

**PROPOSED AMENDMENTS TO THE THE SECURITY INTERESTS IN
MOVABLE PROPERTY BILL, 2018**

1. CLAUSE 2: INTERPRETATION.

- (a) Substitute for the words **“account receivable”** for **“accounts receivable”**
- (b) In the definition of the word **“acquisition security right”** delete the words **“or intellectual property”**
- (c) Substitute for the definition of the word **“chattel”**, the following-

“chattel” means any moveable property that can be completely transferred by delivery or property in respect of which a valid document of title exists.”

- (d) Substitute for the definition of the word **“collateral”**, the following-
“collateral” means personal property that is subject to a security interest;
- (e) Insert the following new definitions after the word **“commercial consignment”** the following new definition-

"commingled assets" means funds credited to a deposit account or money mixed with other money so that they ceased to be identifiable.

- (f) Substitute for the definition of the word **“debtor”** the following-

“debtor” means—

- (a) **a person who owes payment or performance of a secured obligation, whether or not that person owns or has rights in the collateral;**
- (b) **a seller of receivables;**
- (c) **a lessee under a lease for a term of more than three years; or**
- (d) **where the debtor and the owner of the collateral are not the same person—**
 - (i) **in any provision dealing with the collateral, the owner of the collateral;**
 - (ii) **in any provision dealing with the obligation, the person under the obligation; and**

- (iii) both the debtor and the owner, where the context permits or requires;

(g) for the word “document title”, there is substituted the following-

“document of title” means a document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the goods it covers;

(h) Substitute for the definition of the word “intellectual property” the following-

“Intellectual property” means –

- (a) literary, scientific and artistic works protected under the Copyright and Neighbouring Rights Act, 2006;
- (b) industrial property rights protected under the Industrial Property Act, 2014;
- (c) trade mark as protected in the Trademarks Act, 2010; and
- (d) any other related right;

(i) insert immediately after the definition of “Minister”, the following-

“Money lender” has the meaning assigned to it under the Tier 4 Microfinance Institutions Act and Money Lenders Act, 2016

(j) in the definition of the word “securities”-

- (i) in paragraph (a), insert immediately after the word “government” the following-

“or body corporate”

- (ii) delete paragraph (b)
- (iii) delete paragraph (d)

(k) substitute for the definition of the word “warehouse receipts” the following-

“Warehouse receipt has the meaning assigned to it under the warehouse receipt systems Act, 2006.”

JUSTIFICATION:

- *for clarity, completeness and better drafting*
- *for consistency with other acts of Parliament*
- *to remedy typographical mistakes*

2. CLAUSE 3: SCOPE OF APPLICATION

(a) In sub clause (1)-

(i) **redraft paragraph (c) as follows-**

“(c) a tangible or intangible asset which is ordinarily used outside Uganda, where the grantor of the asset is located in Uganda.

(ii) **Insert a new paragraph (d) immediately after paragraph (c) as follows-**

“(d) a movable property attached to immovable property.”

(b) In sub clause (3), substitute for “**shall**”, the word “**is**”

(c) In sub clause (4), substitute for “**habitual**”, the word “**ordinary**”

(d) Delete sub clause (5);

(e) In sub clause 6 (b), insert immediately after the word “**of**” appearing in the second line, the word “**which**”

(f) Delete sub clause (7)

Justification:

- *For clarity and better drafting*
- *To remedy grammatical and typographical mistakes in the provision*
- *To remove redundant and misplaced provisions*

3. CLAUSE 4: CREATION OF SECURITY INTEREST

Replace clause 4 as follows-

“4. Creation of security interest

(1) security interest may be created –

- (a) in any type or combination of movable property;
- (b) in a part of or an undivided interest in movable property;
- (c) in a generic category of movable property; or
- (d) in all of the movable property of the grantor.

(2) A security interest is created by a transaction that secures payment or performance of an obligation, without regard to the form of the transaction, identity of the person who has title to the collateral, or whether title to the collateral is in the secured party.

(3) For a transaction to create a security interest, it shall—

- (a) be by written agreement entered into between a secured creditor and a grantor;
 - (b) be intended only as security;
 - (c) be a right that is enforceable against any person;
 - (d) be created by grant or declaration of trust and not by reservation; and
 - (e) expressly specify a restriction on the control by the debtor over the assets.
- (4) An agreement for a security interest becomes enforceable where -
- (a) the grantor is the owner, has a right in the collateral or has the power to encumber the collateral; and
 - (b) the agreement –
 - (i) is signed by the grantor;
 - (ii) identifies the secured creditor and the grantor;
 - (iii) is witnessed by a third party;
 - (iv) describes the collateral in a manner that reasonably allows its identification, as may be prescribed by regulations made under this Act;
 - (v) describes the secured obligation in a manner that reasonably allows for its identification, whether pre-existing, present or future, determined or determinable, conditional or unconditional, fixed or fluctuating or a line of credit, as may be prescribed by regulations made under this Act;
 - (vi) indicates the maximum amount for which the security interest is enforceable; and
 - (c) the secured creditor gives the collateral a monetary value.
- (5) Where the secured creditor is a money lender, the transaction shall in addition to subsection (4) only be enforceable if it complies with the provisions of Tier 4 Microfinance Institutions Act and Money Lenders Act.
- (6) A security interest shall be taken as given by a debtor to a creditor for the sole purpose of creating a security interest and shall not operate as a transfer of an interest in property from the debtor to the creditor.
- (7) Where a debtor signs a transfer as a condition for a grant of a security interest under this Act, the transfer shall be void.

(8) The provisions of the Land Act, Cap. 227 relating to family land rights shall apply to this Act.

JUSTIFICATION

- *To ensure that transactions under the Bill do comply with the strict provisions of the Tier 4 Microfinance Institutions Act and Money Lenders Act as far as money lender's transactions are concerned.*
- *To require transactions under the Act to only be intended as security and not to act as a transfer of the secured property to the secured party;*
- *To subject the creation of security interests to the land Act in order to protect family land;*
- *For clarity and better drafting.*

4. INSERTION OF NEW CLAUSES

Immediately after clause 4, insert the following new clauses-

“Effectiveness of agreement creating security interest and duty of good faith

- (1) Notwithstanding the provisions of this Act, an agreement to create a security interest is effective according to its terms, between the parties to it and is enforceable against a third party.
- (2) A duty of good faith applies to both the debtor and the secured party.”

“Rights and duties where collateral is in possession of secured party.

- (1) A secured party has a duty to use reasonable care to preserve collateral in his or her possession.
- (2) In the case of a negotiable instrument or chattel paper, reasonable care referred to in subsection (1) includes taking necessary steps to preserve rights against prior parties, unless otherwise agreed.
- (3) Unless otherwise agreed, where collateral is in the possession of the secured party—
 - (a) reasonable expenses, including the cost of any insurance incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;
 - (b) the risk of accidental loss or damage is on the debtor to the extent of any deficiency in any effective insurance cover;

- (c) the secured party may hold as additional security, any increase or profits, except money received from the collateral, but money so received, unless remitted to the debtor, must be applied in reduction of the secured obligation; (d) the secured party must keep the collateral identifiable, but fungible collateral may be mixed; and
 - (d) the secured party may re-pledge the collateral upon terms which do not impair the debtor's right to redeem it.
- (4) A secured party is liable under section 96 for failure to discharge any obligation imposed by the preceding subsections but does not lose his or her security interest.
- (5) A secured party may use or operate the collateral for the purpose of preserving the collateral or its value or pursuant to a court order or, except in the case of consumer goods, in the manner and extent agreed.
- (6) Subsections (1), (2), (3), (4) and (5) apply whether or not possession arises from the default of the debtor.

Secured party to supply information

- (1) A debtor, a judgment creditor, a person with interest in the personal property of the debtor or an authorised agent of any of these, may request the secured party to update him or her on the—
- (a) Status of the collateral; or
 - (b) amount of unpaid debt secured by the security interest;
- (2) The secured party shall, not later than ten working days after the day on which the request is received respond to the request.
- (3) Where the secured party fails to comply with subsection (2), a person aggrieved by that decision may apply to court which may make an order—
- (a) requiring the secured party to comply;
 - (b) extending the time for compliance; or
 - (c) requiring any person to take any other steps it considers necessary to ensure compliance.
- (4) Where, without reasonable excuse, the secured party fails to comply with any order made under subsection (3), the court may order that the security interest of the secured party in respect of which the request was made is to be treated as unperfected or extinguished and that any related registration be discharged.

Justification:

- *To ensure transparency in the relationship between the grantor, secured creditor and third parties.*
- *To provide rights and duties for the grantor and secured creditor*
- *For completeness*

5. CLAUSE 5: CONTINUATION OF SECURITY INTEREST AFTER TRANSFER OF COLLATERAL

- **Replace sub clause (1) as follows-**

“(1) Where collateral is dealt with to give rise to proceeds, the security interest—

- (a) continues in the collateral, unless the secured party expressly or impliedly authorises the dealing; and
- (b) extends to the proceeds.”

- **Delete sub clause (2).**

- **Replace sub clause (3), the following-**

“(3) A security right in collateral extends to commingled goods and commingled assets.”

- **Insert immediately after sub clause (3) the following-**

“(4) Where proceeds in the form of funds credited to a deposit account or money become commingled assets—

- (a) the security right extends to the commingled assets;
- (b) the security right in the commingled assets is limited to the amount of the proceeds immediately before they became commingled goods or commingled assets; and
- (c) if at any time after the commingling the balance credited to the deposit account or amount of money is less than the amount of the proceeds immediately before they became commingled assets, the obligation secured by the security right that is enforceable against the commingled assets is limited to the lowest amount between the time when the proceeds were commingled and the time the security right in the proceeds is claimed.

- (5) Where the secured party enforces the security interest in both the collateral and the proceeds, the amount secured is limited to the market value of the collateral at the date of the dealing.”

Justification:

- *to provide for how to deal with proceeds arising from the sale or transfer of a security interest that are deposited in an account thereby becoming a commingled asset.*
- *To limit the amount the secured party may claim from the grantor. 8*
- *For completeness and better drafting*

6. INSERTION OF NEW CLAUSE

Insert the following new clauses immediately after clause 7,

“Tangible assets covered by negotiable documents

A security right in a negotiable document extends to the tangible asset covered by the document, provided that the issuer of the document is in possession of the asset at the time the security right in the document is created.”

Justification:

- *To provide for the treatment of a tangible assets covered by a negotiable instrument.*

7. CLAUSE 8: METHODS OF PERFECTING SECURITY INTERESTS IN COLLATERAL

- In sub clause (1), delete the words **“in collateral created under part II of this Act”**
- In sub clause (5), substitute for the word **“effected”** appearing in the first line, the word **“perfected”**

Justification:

- *for clarity and better drafting since the words are redundant*
- *to remedy grammatical errors in sub clause 5*

8. CLAUSE 9: METHODS OF PERFECTING PROCEEDS OF SECURITY INTERESTS

- **redraft sub clause (1) as follows-**

“(1) Where collateral is dealt with to give rise to proceeds in form of money accounts receivable, negotiable instruments or a right to payment of funds to a bank account, the proceeds of the collateral shall be perfected without any further action.

- **deleting sub clause (2)**

- **redraft sub clause (3) as follows-**

“(3) Where the proceeds are not of the type described in subsection (1), the secured creditor shall perfect the security interest in the proceeds using any of the methods in section 8 (1) or as may be prescribed by regulations made under this Act.

JUSTIFICATION

- *for clarity and better drafting*
- *in sub clause (3) to remove redundant words and words that would have adversely affected the enforcement of the provision.*

9. CLAUSE 11: SECURITY INTEREST PERFECTED OUTSIDE UGANDA

- Delete all the words appearing after the word “**perfected**” in the fourth line.
- renumber the current provision as sub clause (1);
- Insert the following new clauses-

“(2) Sub clause (1) shall apply where the country in which the collateral was perfected has entered into reciprocal arrangements with Uganda to recognise and continue the perfection of security interests created in Uganda.

(3) Nothing shall prevent a person who has perfected a security interest under the laws of a state other than Uganda to perfect the security interest in Uganda where the collateral is relocated or transferred to Uganda.

Justification:

- *To only continue the perfection of collateral perfected outside Uganda if the country of origin of the collateral grants similar recognition to collateral created in Uganda.*
- *To allow for the perfection of collateral originating outside Uganda.*

10. INSERTION OF NEW CLAUSE

Immediately after clause 11, insert the following new clause-

“Effect of transfer of collateral outside Uganda

- (1) This Act shall continue to apply to collateral perfected in Uganda and relocated or transferred outside the territorial jurisdiction of Uganda.
- (2) Where collateral that is perfected in Uganda is transferred beyond the territorial jurisdiction of Uganda, the collateral shall remain perfected against third party claims.
- (3) Where collateral is transferred or relocated beyond the territorial jurisdiction of Uganda, the secured party may in addition to the collateral already perfected, perfect another security interest using any methods in section (8) or as may be prescribed by regulations.

Justification:

- *To make provision for the treatment of collateral that is transferred outside Uganda.*
- *To allow the perfection of additional security in case the property is transferred or relocated outside Uganda.*

11. INSERTION OF NEW CLAUSE

Immediately before clause 12, insert the following new clauses

“Designation of registrar

- (1) The Registrar General appointed under the Uganda Registration Services Bureau Act, Cap. 210 shall be the registrar of security interest in movable property under this Act.

(2) The functions bestowed on the Bureau under this Act shall be performed by the Registrar General.

(3) The registrar shall have an official seal, the form, use and custody of which shall be prescribed by regulations.

Justification:

- *To designate a registrar to be in charge of implementing the provisions of this Act*
- *To empower the Registrar General to perform the functions of the Bureau*

12. CLAUSE 12: ELECTRONIC REGISTER OF SECURITY INTERESTS IN MOVABLE PROPERTY

Replace clause 12 as follows-

“12. Register of security interest in movable property

- (1) The Bureau shall establish and maintain a register of security interests in personal property to be known as the register security interest in moveable property.
- (2) The register shall be maintained as an electronic records system and shall clearly specify the nature of the security interest registered and details of the chattel over which the interest is created.

Justification:

- *To separate the creation of the register and the mode of registration of security interests which had been merged into one provision, in clause 12.*

13. INSERTION OF NEW CLAUSE

Immediately after clause 12, insert the following new clause

“Mode of registration of security interest

- (1) Security interests in movable property shall be registered electronically in the Register using notices which shall be registered sequentially, in the order in which they are submitted for registration.
- (2) The Register shall reflect the date and time when the information is entered in the Register.

(3) Subject to section 19, a notice shall be effective from the date and time when the information in the notice is entered in the Register.”

Justification:

- *Consequential amendment arising from the amendment of clause 12.*
- *To ensure that a notice registered doesn't become effective until the expiration of the period of objection prescribed in section 19.*
- *For clarity and better drafting*

14. CLAUSE 13: REGISTRATION OF SECURITY INTEREST

- **Replace sub clause (2) as follows-**

“(2) Notices under this Act shall only be registered-

- (a) after the creation of a security interest;
- (b) on the payment of the prescribed fees; and
- (c) upon authorisation by the grantor in writing.”

- **Replace sub clause (3) as follows-**

“(3) Notwithstanding subsection (1), a notice may be registered before the creation of a security right or the conclusion of a security agreement to which the notice relates if the registration of the notice is authorized by the grantor in writing.”

- **Replace sub clause (4) as follows-**

“(4) For purposes of this section, a written security agreement is sufficient to constitute authorization by the grantor for the registration of a notice.”

Justification:

- *To prescribe condition precedents for registration of notices under this Act;*
- *To require authorisation of the grantor every time a notice is to be registered;*

15. CLAUSE 16: INFORMATION REQUIRED IN AN INITIAL NOTICE.

- In sub clause (1), insert a new paragraph (e), immediately after paragraph (d) as following-

“(e) any other information as may be prescribed by the Minister, by regulations”

Justification: To empower the Minister to prescribe other matters that have to be registered in an initial notice.

16. CLAUSE 17: PERIOD OF PERFECTION OF INITIAL NOTICE

- In sub clause (1), delete all the words appearing after the word “**notice**”
- In sub clause (2), substitute for the words “**for a period not exceeding five years**” the words “**for the period indicated by the secured creditor in the amendment notice.**”

- **Replace sub clause (3) as follows-**

“(3) Where an initial notice lapses without amendment, the security interest that was perfected by the lapsed initial notice shall be release.”

- **Delete sub clause (4)**

- **Insert a new sub clause (5) immediately after sub clause (4) as follows-**

“(5) The lapsing of an initial notice shall not preclude the secured creditor, where the grantor has not fulfilled its obligations under the agreement that created the security interest, from perfecting the security interest by any other method. “

Justification *To empower the secured creditor and the grantor to determine by agreement the duration of the initial notice;*

For clarity and better drafting

To allow the secured creditor to release the security interest were the initial notice lapses.

To allow the perfection of a security interest by another method upon the lapsing of the initial notice only where the grantor still has outstanding obligations towards the secured creditor.

The deletion of sub clause (4) is a consequential amendment arising from the amendment to sub clause (3) and the insertion of sub clause (5)

17. CLAUSE 18: AMENDMENT AND CANCELLATION NOTICES.

- In sub clause (1) delete the words “**the person identified as the secured creditor**”
- In sub clause (2), delete the words “**the person identified in the initial notice as**”
- Delete sub clause (4)

Justification: *To remove redundant words from the provisions*

Sub clause (4) is redundant in light of clause 13 which requires notices registered under the Act to be registered only after authorisation of the grantor.

18. INSERTION OF NEW CLAUSE

Immediately after clause 18, insert the following new clauses

“Cancellation of initial and amendment notices

- (1) The secured creditor or grantor may register a cancellation notice where the—
- (a) registration of an initial notice or the amendment notice was done in error or through fraud;
 - (b) registration of the initial notice or amendment notice was not authorised by the grantor;
 - (c) collateral is no longer subject to the security interest;
 - (d) security right to which the notice relates has been extinguished and the secured creditor has no further commitment to provide value to the grantor.

- (2) Notwithstanding subsection (1), the Registrar may cancel notices filed under this Act where-
- (a) the duration in section 17 lapses without the notice being amended;
 - (b) the transaction creating security interest rights between the grantor and the secured creditor contravenes the provisions of the Tier 4 Microfinance Institutions and Money Lender's Act;
 - (c) there is a mistake or error in the description of the collateral;
 - (d) there is wrong description of the collateral;
 - (e) the collateral is destroyed or is no longer in existence;
 - (f) the Registrar is ordered by court to cancel the notice;
- (3) The Bureau shall, before cancelling the registration of the initial notice or amendment notice, give notice to the secured creditor or grantor as the case may be.
- (4) Notwithstanding subsection (1) (d), where a grantor has met its obligations to the secured entity, the grantor or secured entity shall file a discharge notice with the registrar.
- (5) A person aggrieved by a decision of the Bureau to cancel an initial notice or an amendment notice may appeal the High Court.

Justification: *To grant powers to the secured party or the grantor to register a cancellation notice;*
To empower the Registrar to cancel notices.
To provide for circumstances under which a notice may be cancelled

19. CLAUSE 19: NOTICE OF OBJECTION

Replace sub clause 19 as follows

“19. Notice of objection

- (1) A person may object to the registration of a notice within fourteen days of registration of the notice on grounds prescribed in subsection (2).
- (2) The grounds referred to in subsection (1) are where the notice -
 - (a) contains a wrong description of the collateral; or

- (b) the grantor has no right to create a security interest in the collateral.
- (3) The objection shall be in the form prescribed by regulations.
- (4) The Registrar shall upon receipt of the objection, suspend the registration of the notice and inquire into the objection.
- (5) The Registrar shall, within seven days of receipt of the objection, inform the grantor and the secured party.
- (6) The grantor or the secured party may respond to the objection within three days of receipt of the notification referred to in subsection (5).
- (7) The Registrar shall where-
 - (a) he or she considers the objection to have merit, remove the notice from the register; or
 - (b) he or she finds the object to lack merit, maintain the notice on the register and inform the person objection of its decision.
- (8) A person aggrieved by the decision of the Registrar may appeal to the High Court.

Justification: To impose a time line within which a person may object to the registration of a notice and the procedure of objecting.

20. INSERTION OF NEW CLAUSE

Immediately after clause 19, insert the following new clause

“Notice of Discharge

- (1) A secured creditor shall, within five days after the obligation secured by the collateral has been paid or performed in full or in part, discharge a security interest and file a discharge notice.
- (2) Where the secured creditor does not, within the time prescribed in subsection (1) file a discharge notice, the grantor may file a discharge apply to the Registrar to amend or remove from the register, the initial or amendment notice.

Justification: To require the registration of a discharge notice in order to notify third parties.

CLAUSE 20: SEARCH OF REGISTER.

- Delete sub clause (3)

Justification: *The provision is redundant*

21. CLAUSE 21: INTEGRITY AND SECURITY OF REGISTER

- In sub clause (2), substitute for the words “subsection (1)”, the words “this Act”

Justification: *Consequential amendment having allowed the registrar to make changes to register through cancelling and removing notices as prescribed in clause 19 and the insertion of a new clause immediately after clause 18.*

22. CLAUSE 22: LIMITATION ON LIABILITY OF THE REGISTRY.

- In the head note, substitute for “Registry”, the word “Registrar”

Justification: it is the registrar that has immunity and not the registry.

23. CLAUSE 23: GENERAL RULES OF THE PRIORITY OF PERFECTED SECURITY INTERESTS.

- Substitute for clause 23, the following-

“23. Priority of security interest in same collateral

Priority between security interests in the same collateral shall be determined as follows—

- (a) a perfected security interest shall have priority over an unperfected security interest;
- (b) priority between perfected security interests shall be determined by the order of whichever of the following actions first occurs—
 - (i) the registration of an initial notice;
 - (ii) the secured creditor, or another person on the secured creditor’s behalf, taking possession of the collateral; or
 - (iii) the secured creditor, or another person on the secured creditor’s behalf acquiring control of the collateral; and

- (a) Priority between unperfected security interests in the same collateral shall be determined by the order of creation of the security interests.”

Justification: *For clarity and better drafting*

24. CLAUSE 24: GENERAL RULES OF PRIORITY OF SECURITY INTERESTS THAT ARE NOT PERFECTED.

Delete clause 24 of the Bill

Justification: *Consequential amendment arising from the merger of clause 23 and 24 together since they relate to the same subject matter.*

For clarity and better drafting

25. INSERTION OF NEW CLAUSE

Immediately after clause 24, insert the following new clause-

“Competing security rights created by different grantors

A security interest created by a grantor is subordinate to an earlier created security interest in the same collateral.

Justification: *To prescribe which security interest has priority amongst competing security interests created in the same collateral by two different grantors.*

26. CLAUSE 27: PRIORITY OF SECURITY INTEREST IN PROCEEDS

- Substitute for clause 27, the following-

“27. Priority of security interest in proceeds

The priority of a security interest in the collateral shall also be the priority with respect to proceeds arising from dealing in the collateral.”

Justification: *For clarity and better drafting*

27. CLAUSE 28: PRIORITY OF SECURITY INTEREST IN COMMINGLED GOODS

- In sub clause (1), delete the words “**and the security interests extend to the product or mass**” appearing in the second line.
- **Insert the following new clauses immediately after sub clause (2)-**
“(3) where more than one security interest extends to commingled goods, a security interest perfected before the goods become commingled has

priority over a security interest that is perfected at time the collateral becomes commingled goods.

- (4) where more than one security right in commingled goods is perfected before the security interest become commingled goods, the security interest shall rank equally in proportion to the value of the collateral at the time it became commingled goods.

Justification: *To delete redundant words in subsection (1)
To prescribe how priorities rank in commingled goods.*

28. CLAUSE 30: PRIORITY OF SECURITY INTEREST IN FIXTURES.

- In sub clause (1), substitute for the word “may” the word “shall”
- In sub clause (2) -
 - (i) Insert the words “**tangible asset that becomes a**” before the word “**fixture**”
 - (ii) Substitute for the word “**land**” the words “**land Act Cap 246**”
 - (iii) Insert immediately after the word “**Act**” appearing in the last line, the word “**Cap 229**”

Justification:

- *To provide the full citation of the laws cross referenced in the provision.*
- *For clarity and better drafting.*

29. CLAUSE 31: PRIORITY OF SECURITY INTEREST IN CROPS.

- In sub clause (3)-
 - (a) Delete the word “**an**” appearing in the second line.
 - (b) Insert immediately after the word “**security**” appearing in the second line the word “**interest**”

Justification: *To correct grammatical and typographical errors in the provision.*

30. CLAUSE 32: RIGHTS OF PURCHASERS AND OTHER TRANSFEREES

- Replace sub sub clause (1) as follows-

“(1) A purchaser, transferee, lessee or licensee of a collateral sold, transferred, leased or licensed in the ordinary course of business, takes the collateral free of a perfected security interest created in the collateral except where-

 - (a) the purchaser, transferee, lessee or licensee acquires the collateral free of the security interest and the secured creditor authorizes the sale, transfer or lease to be free of the security interest;

(b) purchaser, transferee, lessee or licensee of the collateral, does not have knowledge that the sale, transfer, leasing or licensing violates the rights of the secured creditor under the security agreement;

(b) Delete sub clause (2)

(c) Inserting immediately after sub clause (1) the following-

“(2) For the purposes of this section—

(a) a purchaser of goods includes a person who acquires possession of goods by sale, hire-purchase, under a contract for services or materials or through barter;

(b) a person sales, transfers, leases or licenses goods in the ordinary course of business if it is the business of that person to sale, transfer, lease or license goods of that kind or nature.

Justification:

- *To expand the provision to extend to purchaser, transferee, lessee or licensee in all aspects dealt with in the provision*
- *To expand the provision to include purchase, transfer, leasing or licensing in ordinary course of business and other than in the ordinary course of business.*
- *Sub clause (2) should be a stand-alone clause since it does not relate to the head note and sub clause (1) of the provision.*
- *To define what amounts to ordinary course of business.*

31. INSERTION OF NEW CLAUSE

Immediately after clause 32, insert the following new clause-

“Priority over unperfected security interest

Where collateral is subject to a security interest that is not perfected, a person who takes possession or control of the collateral without knowledge of the security interest, takes the collateral free of an unperfected security interest.

Justification: *To make provision for priority over unperfected security interest.*

32. CLAUSE 33: ACQUISITION SECURITY INTEREST

Replace clause 33 as follows-

“33. Acquisition security interest

- (1) An acquisition security interest has priority over a competing non-acquisition security interest that is created by the grantor.

- (2) For purpose of this Act, “an acquisition security interest” means a security interest in a tangible asset or in intellectual property or the rights of a licensee under a licence of intellectual property, created by a person who provides credit to the grantor which secures an obligation to pay any unpaid portion of the purchase price of an asset or other credit extended to enable the grantor to acquire a tangible asset or rights in an asset to the extent that the credit is used for that purpose.

Justification: *For clarity and better drafting*

To define what amounts to acquisition security interest

33. CLAUSE 34: SECURITY INTEREST IN NEGOTIABLE INSTRUMENTS

- In sub clause (2), delete number “5” appearing in the second line between the words “the” and “security”.

Justification: *to remove a typographical error in the provision*

34. CLAUSE 35: APPLICATION OF PART.

Delete clause 35

Justification: *The provision is redundant*

35. CLAUSE 36: DEBTOR AND GRANTOR NOT TO WAIVE RIGHTS BEFORE DEFAULT

Delete the words “or vary by agreement” appearing in the third line.

Justification:

- *The words limit the grantor and the secured creditor from agreeing to waive rights after default*
- *The words conflict with the general scheme of the provision which appears to prohibit unilateral actions of the secured creditor or grantor.*

36. CLAUSE 37: RIGHTS OF SECURED CREDITOR UPON DEFAULT.

- **Substitute for sub clause (2) the following-**

“(2) Where a grantor defaults to perform a secured obligation, the secured creditor may enforce the security interest by exercising any right—

- (a) under this Act;
- (b) provided in the security agreement; or
- (c) provided under any other written law.

- **Insert immediately after sub clause (2) the following-**

(3) Where a grantor defaults to perform a secured obligation, the secured creditor shall serve on the grantor a notification, in writing or in other form agreed between the parties, to pay the money owing or perform and observe the agreement as the case may be.

(4) The notification shall state the following matters—

- (a) the nature and extent of default;
- (b) if the default consists of non-payment, the actual amount and the time by the end of which payment must be completed;
- (c) if the default consists of the failure to perform or observe any covenant, express or implied, in the agreement, the act the grantor must do or desist from doing, so as to rectify the default and the time by the end of which the default must have been rectified; and
- (d) the consequence that if the default is not rectified within the time specified in the notification, the secured creditor will proceed to exercise any of the remedies available at law.

(5) Where the grantor does not remedy the default within the time period indicated in the notification, the secured creditor may-

- (a) in case of a security interest perfected by registration, register a default and enforcement notice with the registrar; and

(b) in the case of a security interest perfected other than by registration, take any action as empowered under this Act.

Justification:

- *to prescribe when the secured creditor may enforce a security interest in a collateral.*
- *To guide the enforcement of collateral*
- *To require a secured creditor to serve onto the grantor, a default notification*
- *To require a secured creditor to register a default and enforcement notification with the registrar were the grantor doesn't comply with the default notification*

37. CLAUSE 38: RIGHT OF SECURED CREDITOR WITH PRIORITY TO ENFORCE A SECURITY

Replace clause 38, as follows-

“38. Right of secured creditor with priority to enforce a security interest

Where the enforcement of a security interest is commenced by a secured creditor other than the secured creditor whose right has priority over that of the enforcing creditor, the secured creditor shall be entitled to take over the enforcement at any time before the sale of the collateral.”

Justification:

- *To broaden the provision beyond a lien holder;*
- *To limit the enforcement of the collateral through sale only*
- *To remove the possibility of the secured creditor and grantor from privately agreeing to the sale or disposition of the collateral other than by sale of the collateral.*

38. CLAUSE 40: EXPEDITED POSSESSION BY SECURED PARTY

Delete clause 40

Justification:

- *The provision will be open to abuse by the secured creditor*

- *The provision is contrary to the principles of creating a security interest which is, to secure payment. By allowing a secured creditor to take over the collateral upon default is likely to lead to a proliferation of security agreements that automatically result in the takeover of a security interest in case default.*
- *This provision will infringe on the provisions of the money lender's Act since it prohibits such takeover of collateral without court process.*

39. INSERTION OF NEW CLAUSES

Insert the following new clause immediately after clause 40 as follows-

“Sale by secured party

- (1) Save as provided for under section 39, where a debtor is in default, a secured party may sell any or all of the collateral in its condition or following any commercially reasonable preparation or processing.
- (2) The sale of the collateral shall be by auction.

Justification: *To ensure that the disposal of collateral is only through a public sale.*

40. CLAUSE 41: NOTICE OF DISPOSITION OF COLLATERAL

- **substitute for clause (1) the following-**

“(1) A secured creditor shall, at least ten working days before disposing of a collateral, give notice to grantor, any other secured creditor, owner of the collateral or any other person as it deems fit and file with the Registrar, a disposal notice.
- **In sub clause (2),**
 - (a) delete paragraphs (d) and (f);
 - (b) in paragraph (e), delete the words “**where the disposition is by a private sale**” and the word “**and**” appearing at the end of the paragraph.
- **Insert new sub clauses immediate after sub clause (2) as follow-**