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SECURED TRANSACTIONS IN MOVABLE ASSETS ACT, 2017



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SECURED TRANSACTIONS IN MOVABLE ASSETS ACT, 2017

ACT No. 3

AN ACT TO PROVIDE FOR SECURED TRANSACTIONS, REGISTRATION AND REGULATION OF SECURITY INTERESTS IN MOVABLE ASSETS ; AND FOR RELATED MATTERS.

[30th Day of May, 2017]

Commence-
ment

ENACTED by the National Assembly of the Federal Republic of Nigeria—

PART I—OBJECTIVES AND SCOPE

1. The objectives of this Act are to—

Objectives

- (a) enhance financial inclusion in Nigeria ;
- (b) stimulate responsible lending to micro, small and medium enterprises ;
- (c) facilitate access to credit secured with movable assets ;
- (d) facilitate perfection of security interests in movable assets ;
- (e) facilitate realisation of security interests in movable assets ; and
- (f) establish a collateral registry and provide for its operations.

2.—(1) This Act applies to—

Scope

- (a) all security interests in movable assets created by an agreement that secures payment or the performance of an obligation ;
- (b) a person who is a creditor, borrower or grantor under this Act ; and
- (c) every public registry established by any Act of the National Assembly to co-ordinate or ware house or oversee transactions in movable assets in Nigeria shall be operated in a manner that creates automated interface between such a registry and the National Collateral Registry, with a purpose to ensuring and guaranteeing that the registry is made accessible through, by, and from the National Collateral Registry.

(2) This Act does not apply to—

- (a) any right of set-off ;
- (b) the creation or transfer of an interest in land other than account receivables ; and
- (c) any interest created by a transfer, assignment or mortgage in movable property governed by a law for which a registry has been established with regards to ships and aircrafts.

(3) Nothing in this Act shall prevent the creation of security interest in the form of charges by companies registered under the Companies and Allied Matters Act.

Cap. C20,
LFN, 2004

PART II—SECURITY INTERESTS

Creation of
a security
interest

3.—(1) A security interest is created by a security agreement between a grantor and creditor.

(2) The security interest in any asset acquired by a grantor after the coming into force of the Security Agreement shall take effect without further consent or any other act of the Grantor at the moment the Grantor acquires such asset where—

(a) the asset falls under the collateral description in the Security Agreement ; and

(b) the Security Agreement provides that the security interest extends to the grantor's present and future assets.

Grantor's
rights in the
collateral

4.—(1) A security interest shall be created to the extent of the rights that the Grantor has in the collateral.

(2) A transfer of account receivable or security interest in an account receivable by a grantor is effective—

(a) between the grantor and the creditor ; and

(b) against the account debtor of the account receivable notwithstanding any agreement limiting the account debtor's right to create a security interest in or assign its account receivable.

(3) A creation of a security interest in any movable asset is effective notwithstanding any agreement limiting the grantor's right to create such security interest.

Content of a
security
agreement

5. A security agreement shall—

(a) reflect the intention of the grantor and creditor to create a security interest ;

(b) identify the grantor and creditor ;

(c) describe the secured obligation including the maximum amount for which the security interest is enforceable ;

(d) describe the collateral adequately ;

(e) indicate the tenor of the obligation secured ; and

(f) confirm the agreement by parties to submit to arbitration, as first recourse in a situation that any civil dispute arises.

Description
of collateral
in a security
agreement

6.—(1) A description of collateral is adequate if it is accompanied with—

(a) item, kind, type or category, year of manufacture or any other description that can identify the collateral ; or

(b) a statement that a security interest is taken in all the present and future assets of the grantor ; and

(c) for the purpose of section 6 (1) (a) and (b), a description of the insurance cover on the collateral.

(2) A security interest shall extend to the identifiable or traceable proceeds of a collateral, whether or not the security agreement contains a description of the proceeds.

7.—(1) A security interest shall automatically continue in the identifiable or traceable proceeds of the collateral, whether or not the security agreement contains a description of the proceeds.

Continuation
of a security
interest

(2) A security interest created in tangible property before they were commingled in a mass or product continues in the mass or product.

8.—(1) A security interest is perfected when a financing statement in respect of that security interest has been registered in the Collateral Registry established under this Act.

Perfection
of security
interest

(2) For the purposes of this Act, a secured creditor may take possession of the collateral but mere possession does not perfect the security interest.

9.—(1) A security interest in any proceeds of the collateral is perfected automatically without any further action by the grantor or the creditor when the proceeds arise or are acquired if—

Perfection of
security
interest in
proceeds

(a) the proceeds are described in the Financing Statement ; or

(b) the proceeds are in the form of money, accounts receivables, negotiable instruments or bank accounts.

(2) If the proceeds are not of the kind covered in the preceding subsection, the security interest will remain perfected if the creditor registers an amendment adding a description of the asset that is proceeds within 15 days after they arose.

PART III—NATIONAL COLLATERAL REGISTRY

10.—(1) There is established in the Central Bank, a registry to be known as the National Collateral Registry (in this Act referred to as “the Collateral Registry”).

Establishment
of the
National
collateral
registry

(2) The Governor of the Central Bank of Nigeria shall appoint a Registrar and such other staff as may be required for the attainment of the objectives of this Act.

(3) The Registrar shall supervise and administer the operations of the Collateral Registry.

Functions of
the collateral
registry

11. The Collateral Registry shall—

- (a) receive, register and store information about security interests in movable assets ;
- (b) provide access to persons who may seek information on security interests from the Collateral Registry ; and
- (c) perform such other functions as may be prescribed by regulations made under this Act.

PART IV—REGISTRATION OF FINANCING STATEMENTS

Procedure
for
registration
of a financing
statement

12.—(1) A financing statement may be registered by or on behalf of a creditor at any time with the consent of the grantor as required under this Act.

(2) A financing statement is registered when a unique registration number, date and time are assigned to it by the Collateral Registry.

(3) The Collateral Registry shall, after a financing statement has been registered, issue a confirmation statement to the creditor who files the financing statement for registration.

Consent to
register a
financing
statement

13.—(1) A Registration of an initial financing statement is ineffective unless the Grantor consented to it in writing.

(2) A security agreement in accordance with section 4 is sufficient to constitute consent by the Grantor for the registration of an initial or amendment financing statement covering the collateral described therein.

(3) The Grantor may give consent in writing to register a financing statement prior to the conclusion of a security agreement.

(4) Registration of an amendment financing statement is ineffective unless consented to by the Grantor in writing if the amendment financing statement—

- (a) adds a description of new collateral ; or
- (b) adds a new grantor unless the new grantor is a transferee of the collateral already described in the registration.

Contents of
a financing
statement

14.—(1) A creditor shall provide in a Financing Statement the following information—

- (a) Grantor type description: individual, micro, small or large business ;
- (b) in the case of a company, co-operative or registered business name, the unique identification number which shall be the Corporate Affairs Commission registration number or other registration number issued by the appropriate authority for registering these types of debtors ;

(c) in the case of an individual, the unique identification number derived from approved biometric based identification, gender, name, address including telephone and date of birth ;

(d) the name and address of the creditor or its representative ;

(e) a description of the collateral ;

(f) the maximum amount for which the secured obligation may be enforced ;

(g) the period of time for which the registration is to be effective ; and

(h) such other information as the Registrar may consider necessary.

(2) A financing statement may in addition also identify a borrower according to the preceding sub-section even if that person has not created a security interest.

(3) If there is more than one grantor or creditor, the required information must be entered in the designated field separately for each grantor or creditor.

(4) If the grantor is an individual who is neither a citizen nor a resident of Nigeria, the secured creditor shall enter the debtor's name and unique identification number that appear on the Grantor's passport issued by a foreign government or any other document as the Central Bank of Nigeria may prescribe.

(5) A confirmation that the parties have agreed to submit themselves to the mediation and arbitration mechanism empowered under this Act, as first recourse, in a situation that any civil dispute arises.

15.—(1) The Financing Statement must include a description of the collateral that reasonably allows its identification.

Description
of collateral

(2) A description of collateral is sufficient if the collateral is described by—

(a) item, kind, type or category ; or

(b) a statement that a security interest is taken in all of the Grantor's present and after-acquired property ; or

(c) any other description that reasonably identifies the collateral.

(3) If a financing statement covers serial-numbered goods, it must contain information of the serial number, in addition to the information as defined in sub-section (2).

(4) Serial-numbered goods that are held as inventory need not be described by a serial number.

(5) A description of serial-numbered goods held as inventory is sufficient if it satisfies the requirements of sub-section (2).

Error in a
financing
statement

16.—(1) Subject to section 12 of this Act, a registered financing statement shall be ineffective if there is an error in—

- (a) the unique identification number of the Grantor ; or
- (b) the serial number of the collateral that causes the registration not to be retrieved in a search.

(2) Where a registered financing statement contains information on multiple grantors or collaterals, an error in—

- (a) the unique identification number of the Grantor shall render the registration ineffective only with respect to that Grantor ; or
- (b) the serial number of a collateral shall render the registered Financing Statement ineffective only with respect to the collateral identified by such serial number.

Consequences
of other
errors in the
registration

17. (1) An error in—

- (a) the name or address of the Grantor ;
- (b) the maximum amount for which the security interest may be enforced ; or
- (c) the name or address of the creditor, does not render the registered Financing Statement ineffective.

(2) An error in the collateral description other than in the serial number may render the registered Financing Statement ineffective with respect to that collateral if the error seriously misleads the searcher.

(3) An incorrect description of some collateral shall not render the registered Financing Statement ineffective with respect to other collateral sufficiently described.

(4) An error in other information does not render the registered Financing Statement ineffective.

Duration of
a registered
financing
statement

18.—(1) The registered Financing Statement shall be valid until—

- (a) the expiration of the term specified in the Financing Statement ; or
- (b) its cancellation, whichever comes first.

(2) Duration of a registered financing statement may be renewed or extended by an amendment of the financing statement before its expiration.

(3) No information shall be deleted from the Registry, whether or not an amendment financing statement cancelling the registered Financing Statement has been registered.

(4) An expired registered financing statement shall be maintained in the Registry and searchable by the public for 6 months following its expiration after which it shall be kept in the archive.

(5) A cancelled or expired registered financing statement shall be identified as such in a search.

19.—(1) A registered financing statement may be amended by a creditor upon the registration of an amendment financing statement.

Amendment
of a
registered
financing
statement

(2) An amendment to a registered financing statement that adds a collateral or a new grantor is effective as to the added collateral or the added grantor only from the date and time when the amendment financing statement is registered.

(3) An amendment to a registered financing statement shall be in accordance with Regulations made under this Act.

20. Where a collateral described in a registered financing statement is transferred and the Secured Creditor registers an amendment financing statement adding the transferee as a new grantor within 15 days after the Secured Creditor becomes aware of the transfer, the security interest shall retain its perfection and priority.

Unauthorised
transfer of a
collateral

21.—(1) A registered financing statement may be cancelled upon the filing of a cancellation statement by a creditor.

Cancellation
of a
registered
financing
statement

(2) A creditor shall file a cancellation statement within 15 working days of receiving a request for cancellation from the Grantor or the Borrower only where—

(a) all obligations under the security agreement have been performed ; and

(b) there is no commitment to make future advances.

(3) The Cancellation Statement shall include—

(a) the registration number of the initial financing statement to which the Cancellation Statement relates ;

(b) identification of the Creditor authorising the cancellation ; and

(c) such other information as may be prescribed by Regulations made under this Act.

(4) Where a creditor fails to comply with the request of the Borrower or the Grantor, either the Borrower or the Grantor may appeal to the Registrar showing cause as to why the registered Financing Statement should be cancelled.

(5) The Registrar shall give notice of the appeal referred to in subsection (4) to the Creditor before taking a decision on the appeal.

(6) The Creditor shall have a right to respond within 7 days of the receipt of the notice of appeal.

(7) The decision of the Registrar on the request shall be final and he shall give effect to his decision.

Search of
information
in the
registry

22.—(1) A person may conduct a search in the Registry for information provided in registered financing statements according to criteria set in sub-section (3).

(2) A person who conducts a search pursuant to subsection (1) shall be entitled to a search result upon payment of such fees as may be prescribed by regulations made under this Act.

(3) The criteria for search under this section shall be—

(a) the unique biometric-based identifier of the Grantor ;

(b) the serial number of the collateral ; or

(c) such other criterion as may be prescribed by regulations.

PART V—PRIORITY OF A SECURITY INTEREST

Priority of
security
interests

23. The priority between perfected security interests in the same collateral shall be determined by the order of registration.

Same
priority for
original
collateral,
proceeds and
advances

24.—(1) Subject to Section 9, the priority of a security interest in a collateral and the proceeds derived from the collateral shall be the same.

(2) A security interest shall have the same priority in respect of all secured obligations and advances, whether existing or future.

Transfer
does not
affect
priority

25.—(1) A secured creditor may transfer a secured obligation notwithstanding any agreement with the Grantor or the Borrower limiting the right to transfer the secured obligation and without having to obtain consent of the Grantor or the Borrower.

(2) A security interest that is transferred shall have the same priority as it had at the time of the transfer.

(3) Transfer of a security interest perfected by registration is valid without registering an amendment financing statement in the Registry.

Voluntary
sub-
ordination
of priority.

26.—(1) A creditor may enter into an agreement to sub-ordinate its priority in favour of any other claimant.

(2) Sub-ordination is effective without registering an amendment financing statement in the Registry.

(3) An agreement to subordinate shall not adversely affect the rights of a person that is not a party to the agreement.

27. A purchase money security interest in a collateral or its proceeds shall have priority over a non-purchase money security interest in the same collateral created by the same Grantor if the purchase money security interest in the collateral or its proceeds is perfected when the Grantor obtained possession of the collateral.

Priority of purchase money security interest and its proceeds

28.—(1) A perfected security interest in goods that subsequently become part of a product or mass shall continue as a perfected security interest in the product or mass if the goods are so manufactured, processed, assembled or co-mingled that their identity is lost in the product or mass.

Priority of security interests in processed or co-mingled goods

(2) If more than one Security Interest is perfected in the goods before they become part of a product or mass, the Security Interests rank equally in proportion to the value of the goods at the time they became part of the product or mass.

29.—(1) A financial institution's right of set-off shall have priority over a perfected security interest that extends to a deposit account.

Priority with respect to receipt of funds or cash

(2) A transferee of funds from a deposit account or cash other than from a deposit account takes the funds or cash free of a security interest unless the transferee acts in collusion with the Grantor or the Borrower in violating the rights of the Creditor.

(3) A transferee of cash for the purpose of this section does not include a bailee.

30. A lien arising out of materials or services provided in the ordinary course of business in respect of goods that are subject to a security interest shall have priority over that security interest.

Priority of holders of liens

31. A holder of a negotiable instrument or title document shall have priority over a perfected security interest in the negotiable instrument or the title document where the holder—

Priority of holders of negotiable instruments and title documents

(a) gave value ;

(b) acquired the negotiable instrument or the title document without knowledge that the transaction is in breach of the security agreement to which the security interest relates ; and

(c) took possession of the negotiable instrument or the title document.

Rights of a
buyer or
lessee of
goods

32.—(1) A buyer or lessee who acquires goods for value and receives possession of the goods shall take the goods free of an unperfected security interest.

(2) A buyer of goods sold in the ordinary course of business of the seller and a lessee of goods leased in the ordinary course of business of the lessor shall take the goods free of a security interest created by the seller or lessor unless the buyer or lessee knows that the sale or the lease constitutes a breach of the security agreement under which the security interest was created.

Rights and
priority of
assignee

33.—(1) The rights of an assignee of an account receivable shall be subject to—

(a) the terms of the contract between the account debtor and the assignor and any defence or claim arising from the contract ; and

(b) any other defence or claim of the account debtor against the assignor, including a defence by way of a right of set-off that accrues before the account debtor receives notification of the assignment.

(2) Subsection (1) of this section shall not apply if the account debtor has made an enforceable agreement not to assert any right to claims arising out of the contract.

(3) Priority between competing assignees is determined according to the time of registration in the Registry irrespective of the time when the account debtor receives a notification of the assignment.

Priority of
judgment
creditor.
Cap. S6,
LPN, 2004

34.—(1) Notwithstanding the provisions of the Sherriff and Civil Process Act, a perfected security interest has priority over the rights of an unsecured creditor that has obtained a judgment or an order of attachment, unless the judgment creditor, before the security interest is perfected—

(a) registers a financing statement ;

(b) seizes the collateral ; or

(c) serves a notice of its claim on the third party holding property for the debtor.

(2) The priority of the security interest extends to credit disbursed by the creditor—

(a) before the expiry of thirty (30) days after the judgment creditor notified the creditor that it had taken the steps referred to in subsection (1) ; or

(b) pursuant to an irrevocable commitment in a fixed amount without any limitation if the commitment was made before the judgment creditor notified the creditor.

PART VI—RIGHTS AND DUTIES OF A GRANTOR, BORROWER AND CREDITOR

35.—(1) All rights and duties that arise under this Act shall be exercised and discharged in good faith and in accordance with reasonable commercial standards.

Good faith
and
commercial
reasonableness

(2) A person does not act in bad faith merely because he acts with knowledge of the security interest of some other person, unless he knows that his actions would violate rights of the other person.

(3) A person in possession of an encumbered asset shall preserve the asset from damage, impairment and loss, excluding fair wear and tear having regard to the nature of the asset.

36. Where a person fails to discharge a duty or obligation imposed by this Act, the person to whom the duty or obligation is owed shall have a right to recover damages for any loss or damage.

Entitlement
to damages

37.—(1) A creditor shall, not later than 15 working days after the day on which the confirmation statement of the registration was received, provide the Grantor and the Borrower a copy of the Confirmation Statement.

Creditor to
provide
confirmation
statement to
the grantor
and the
borrower

(2) The Confirmation Statement may be sent in the same manner prescribed for giving notices under section 40 (2) of this Act.

38.—(1) A grantor or borrower may request the Creditor to make available to any person, at an address specified by the Grantor or the Borrower, any or all of the following—

Provision of
certain
information
by a creditor

(a) a summary of the Security Agreement ;

(b) a statement in writing, of the amount of the indebtedness and the terms of payment of the indebtedness ;

(c) an itemised list of the Collateral, unless the Security Interest covers all the movable assets of the Grantor ; or

(d) a statement of account indicating the amount needed to fully satisfy the secured obligation.

(2) Where a creditor no longer has an interest in the obligation secured or collateral covered by the registration, the Creditor shall disclose, the name and address of the immediate successor in interest or transferee and the latest successor in interest or transferee, if known.

(3) A creditor shall comply with the request in subsection (1) within 10 working days of its receipt.

(4) A creditor may only charge the Grantor or the Borrower the reasonable costs for providing the information and the Grantor or the Borrower shall be entitled to one response free of charge every 6 months.

PART VII—REALISATION OF SECURITY INTERESTS

Scope of the
application
of this part

39.—(1) In case of default, a creditor may—

- (a) exercise his rights under this Act and in the Security Agreement ; or
- (b) resort to any appropriate judicial remedy.

(2) An operating lessor may enforce its rights under the agreement or any other law governing the operating lease.

(3) A holder of purchase money security interest may enforce its rights under this Act or any other law governing its rights.

(4) An outright transferee of account receivable may enforce its rights under an agreement or any other law governing the transaction.

(5) The remedies available under this Part are in addition to those available under the Companies and Allied Matters Act, including the right to appoint a receiver.

Cap. C20,
LFN, 2004

Repossession
of collateral

40.—(1) In case of default by a borrower, a creditor shall give the borrower and the Grantor a notice of the default and intention to repossess the collateral.

(2) The notice referred to in subsection (1) may be delivered by—

- (a) hand ;
- (b) courier service ;
- (c) electronic mail ;
- (d) registered mail ; or
- (e) any other means agreed to under the Security Agreement.

(3) The Creditor may, 10 days after sending the notice of default—

- (a) take possession of the Collateral ; or
- (b) without taking possession, render the Collateral inoperative.

(4) A creditor may repossess a collateral under this Act—

- (a) pursuant to judicial process ; or
- (b) without judicial process, if the Grantor consented to relinquishing possession without a court order in the Security Agreement.

(5) In the case of repossession without judicial process, a creditor may request for assistance from the Nigeria Police having authority within the location of the collateral.

(6) The Nigeria Police shall provide assistance for the peaceable repossession of the collateral, upon presentation by the creditor of a copy of the relevant security agreement and duly certified confirmation statement.

(7) A creditor may require a grantor to assemble the collateral and make it available at a designated place.

41.—(1) There is established under this Act a Mediation and Dispute Resolution Panel (in this Act referred to as “the Panel”).

Establishment
of a
mediation
and dispute
resolution
panel

(2) The Panel shall serve as the first resource for mediation and settlement over any civil dispute which may arise between the Creditor and the Grantor in the course of implementing this Act.

(3) The Governor shall issue guidelines that will set out the modalities and regulate the functioning of the Panel: Provided, that in exercising the power granted in subsection (3), the Governor shall ensure that three (3) persons shall constitute the membership of any panel set up to arbitrate on any civil dispute under this Act.

42. A creditor may render a collateral inoperative if the Collateral is of a kind that cannot be easily moved from the Grantor's premises or is of a kind for which adequate storage facilities are not easily available.

Creditor
may render
collateral
inoperative

43.—(1) A creditor may collect and apply an account receivable, money or a negotiable instrument taken as collateral to the satisfaction of the obligation secured by the security interest if the Grantor or the Borrower is in default.

Creditor
may collect
account
receivable

(2) The secured creditor may notify the account debtor and collect payment even prior to default.

44.—(1) A creditor may dispose of a collateral by sale, lease, licence or other form of disposal in its present condition or following any commercially reasonable preparation or processing.

Creditor may
dispose of a
collateral

(2) A creditor may sell a collateral in an auction, public tender, private sale or any other method provided for in the Security Agreement.

(3) In exercising the power of sale, a creditor shall obtain a reasonable price available at the time of the sale or disposal.

(4) A creditor may dispose of a collateral on the Grantor's premises provided that it shall not cause any person in possession of the premises, other than the Grantor, any serious inconvenience.

45.—(1) A creditor who intends to sell a collateral shall not less than 10 working days before selling the collateral, send notice in the manner stipulated in section 40 (2) of this Act to the following—

Notice of
sale of
collateral

(a) the Borrower ;

(b) the Grantor ; and

(c) any other creditor who has registered a financing statement in respect of the collateral before the Creditor repossessed the Collateral.

(2) Subsection (1) shall not apply where—

(a) the Collateral may perish within 10 working days of the repossession ;

(b) the Creditor believes on reasonable grounds that the Collateral will decline substantially in value if it is not disposed of immediately ;

(c) the cost of care and storage of the Collateral is disproportionately large in relation to its value ; or

(d) the Collateral consists of inventory or farm products.

Discharge of
subordinate
security
interests

46. If the collateral has been sold under this part, all security interests in the collateral that are subordinate to the security interest of the Creditor who sold the Collateral shall be discharged.

Creditor to
give
Statement of
Account

47. A Creditor shall, within 15 working days after the sale of a collateral, give to the persons entitled to receive a notice of sale, a statement of account in writing, stating the—

(a) amount realised from the sale ;

(b) amount of the costs of the sale ; and

(c) balance due to the Grantor or to the Creditor, as the case may be.

Distribution
of proceeds
of sale

48.—(1) A creditor who has sold a collateral, shall, before applying the amount realised from the sale towards the satisfaction of the debt or other obligation secured by the Security Interest, apply the proceeds of the sale towards the reasonable costs and expenses of the sale and to the extent provided for in an agreement other reasonable expenses.

(2) The Creditor shall pay the following persons any surplus accrued from the sale in the following order—

(a) creditors who have a subordinate security interest perfected by registration, in the order of their priority ; and

(b) the Grantor.

(3) A Creditor may pay the surplus into the Court if there is a dispute as to who is entitled to receive payment pending a resolution of the matter.

(4) A Borrower remains liable for any outstanding financial liabilities.

Right to
redeem
collateral

49.—(1) At any time before a creditor sells the collateral, the Borrower, Grantor, or other Creditor may redeem the collateral by—

(a) fulfillment of all the obligations secured by the Collateral ; and

(b) payment of any other reasonable expenses incurred by the Creditor.

(2) A grantor's right to redeem the collateral shall have priority over any other person's right of redemption.

50.—(1) At any time before a creditor sells the collateral, a borrower may reinstate the Security Agreement by—

Reinstatement
of security
agreement

(a) paying the sums owed ;

(b) remedying any other default ; and

(c) paying a sum equal to the reasonable expenses incurred by the Creditor.

(2) Unless otherwise agreed, a borrower shall not be entitled to reinstate a security agreement more than twice in each year.

PART VIII—APPLICABLE LAW AND CONFLICT OF LAW

51.—(1) The law applicable to the creation, perfection and priority of a security interest in tangible property when the tangible asset is located in Nigeria is this Act.

Applicable
Law

(2) If the tangible asset is of a type ordinarily used in more than one country, this Act applies if the Grantor is located in Nigeria:

(3) The law applicable to the creation, perfection and priority of a security interest in an intangible asset when the Grantor is located in Nigeria is this Act.

(4) The law applicable to the creation, perfection and priority of security interest in proceeds is the law applicable to the creation, perfection and priority of the security interest in the original collateral from which the proceeds arose.

(5) The law applicable to issues relating to the enforcement of a security interest in tangible goods is the law of the State where enforcement takes place.

(6) The law applicable to issues relating to the enforcement of a security interest in intangible assets is the law of the State where the Grantor is located.

52. The law applicable to the mutual rights and obligations of the grantor, the borrower and the secured party arising from their security agreement is the law chosen by the parties and, in the absence of a choice of law, the law governing the security agreement.

Law
governing the
security
agreement

53. The commencement of insolvency proceedings under the relevant insolvency laws does not displace the conflict of law's provisions that determine the law applicable to the creation, perfection, priority and enforcement of a security interest.

Insolvency
proceedings.

Non-
applicability
of Stamp
Duties Act
Cap. S8,
LFN, 2004

54. The provisions of the Stamp Duties Act shall not apply to any secured transactions under this Act.

General

55.—(1) For the purposes of this Act, the Grantor is located in Nigeria if it has a place of business in Nigeria.

(2) If the grantor does not have a place of business, reference is to be made to the habitual residence of the grantor.

(3) The location of the property or of the Grantor shall be determined, for creation purposes, at the time of the creation of the security interest and, for perfection and priority purposes, at the time the issue arises.

Jurisdiction

56. Any action or proceeding as between parties arising out of a transaction governed by this Act shall be actionable in a court within any State of the Federation vested with jurisdiction to entertain commercial borrower and lender claims :

Provided that nothing in this section shall derogate from the exclusive jurisdiction vested in the Federal High Court under the Constitution of the Federal Republic of Nigeria, 1999.

PART IX—MISCELLANEOUS

Fees and
charges

57. The Registrar shall fix, impose and review such fees and other charges for services of the Registry as may be specified by regulations made under this Act.

Offences and
penalties

58.—(1) A person who, being required to supply information for the registration, amendment or cancellation of a financing statement under this Act, knowingly provides a false or misleading information to the Registry, commits an offence and is liable on conviction to—

(a) a term of imprisonment for 1 year or a fine of ₦100,000.00, or both ; and in addition, where he has by his conduct benefitted financially, shall fully indemnify the Registry and the person affected by his conduct ; and

(b) in the case of a corporation, partnership or other entity—

(i) the Court may impose the penalty referred to in paragraph (a) on every officer of the corporation, partnership or entity found to have facilitated or to have been personally responsible for the offence, and

(ii) the corporation, partnership or entity shall be liable to a fine of ₦1,000,000.00.

(2) If a grantor against whom a financing statement has been registered sells or otherwise disposes the asset to a third party without disclosing the fact of encumbrance, commits an offence and is liable on conviction—

(a) to a term of imprisonment of 1 year or a fine of ₦100,000.00, or both ; and

(b) where the offender has by his conduct benefitted financially, he shall, in addition to the fine and term of imprisonment specified in paragraph (a), fully indemnify the Registry and the person affected by his conduct.

(3) In this section, “false or misleading information” means the entry of information of facts required to assure the public of the truth and accuracy of the information by a person who knew that the entry is false in any material particular or is recklessly neglectful of the duty to ensure the truth or accuracy of the information supplied by that person.

59. All offences under this Act shall be tried by a court of competent jurisdiction in the place where the offence is alleged to have been committed. Criminal jurisdiction

60. A person aggrieved by any decision or action of the Registry may, within 60 working days of the decision, give notice to the Registry addressed to the Registrar, to address the grievance and if no response or satisfactory response is obtained within 30 working days, the aggrieved person may appeal to the Court for judicial determination. Grievance procedure

61. The Registrar may make rules and issue guidelines for the proper administration of the Registry. Rules and guidelines

62.—(1) Security interests in movable assets created before the coming into effect of this Act shall continue to remain valid and effective on the terms and conditions agreed to by the Grantor and Creditor. Transitional provisions

(2) Security interests in movable assets created by a grantor under the Central Bank of Nigeria (Registration of Security Interests in Movable Property by Banks and Other Financial Institutions in Nigeria) (Regulations, No. 1, 2015) shall continue to remain valid and effective and be deemed to have been entered into under this Act if the transaction is still current and subsisting upon the coming into effect of this Act.

(3) Transactions creating security interests referred to in subsection (2), shall be valid only for a period of 180 days after the commencement of this Act, unless financing statements in respect of those transactions are registered and brought into compliance with the provisions of this Act before the expiration of the period.

Interpretation

63.—(1) In this Act—

“*Account Receivable*” means a right to receive value arising from an obligation owed by an account debtor to the grantor including book debts but excluding a negotiable instrument ;

“*Amendment Financing Statement*” means a form in which information is entered to update the initial financing statement ;

“*Borrower*” means a person to whom credit is extended with a financial obligation to repay under a Security Agreement ;

“*Central Bank*” means Central Bank of Nigeria ;

“*Registrar*” means the Registrar of the Collateral Registry ;

“*Collateral*” means movable property, whether tangible or intangible, that is subject to a security interest ;

“*Confirmation Statement*” means a certificate issued by the Collateral Registry confirming the registration number, date and time of a registration ;

“*Consumer Goods*” means goods that the debtor uses or intends to use primarily for personal, family or household purpose ;

“*Creditor*” refers to the person granting a facility on the back of a security interest created under this Act ;

“*Equipment*” means machinery or other capital goods used in the operation of the grantor’s business ;

“*Farm Products*” include—

(a) crops grown, growing, or to be grown ;

(b) fish stocks ;

(c) livestock, poultry and their unborn offspring ;

(d) seeds, fertilizers, manure and supplies used or produced in a farming operation ; and

(e) products of crops and livestock in their unprocessed states ;

“*Financial Institution*” means banks, body association or group of persons, whether corporate or incorporate which carries on the business of investment and securities, a discount house, insurance institutions, debt factorisation and convention firms, bureau de change, finance company, primary mortgage institutions, money brokerage firm whose principal business includes factoring, project financing, equipment leasing, debt administration, fund management, private ledger service, investment management, local purchase order, financing export finance, project consultancy, financial consultancy, pension funds management and such other business as the Central Bank, or other appropriate regulatory authorities may designate ;

“*Finance Lease*” means a lease which transfers ownership of the asset to the lessee at the end of the lease term ;

"Financing Statement" means the prescribed forms on which information is provided to effect a registration under this Act or any regulation made hereunder ;

"Goods" means tangible movable property and include farm products, inventory, equipment, consumer goods, trees that have been severed and oil, gas or minerals that have been extracted ;

"Governor" means Governor of the Central Bank of Nigeria ;

"Grantor" means a person that has rights in the collateral, and includes a grantor of any type of security interest in the form of a charge, chattel mortgage, pledge or lien in movable property ;

"Initial Financing Statement" means financing statement in the prescribed form that a person originally submits to the Collateral Registry for registration ;

"Initial Financing Statement Registration Number" means the number assigned to the initial financing statement by the Collateral Registry on its registration that is permanently associated with such financing statement ;

"Inventory" means goods that are :

(a) held for sale or lease in the ordinary course of business ; and

(b) raw materials or work in progress ;

"Movable Assets" means tangible or intangible property other than real property ;

"Operating Lease" means an agreement between two parties whereby the lessor allows the lessee to use its asset for a specific period of time in exchange for periodic fees ;

"Proceeds" means identifiable or traceable movable asset received as a result of sale, other disposition, collection, lease or licence of the collateral, including natural fruits, distributions, insurance payments and claims arising from defects in, damage to or loss of collateral ;

"Purchase Money Security Interest" means :

(a) a right in collateral taken or retained by the seller to secure all or part of its purchase price ;

(b) a right taken by a person who provides credit to enable the grantor to acquire the collateral if such credit is in fact so used ; and

(c) a right of a financial lessor.

"Registration" means the processing of a financing statement to bring it in compliance with the requirements of this Act ;

"Registry" means the Collateral Registry established under section 10 (1) of this Act ;

"Security Agreement" means an agreement in any form and howsoever entitled entered into between the grantor and the creditor that creates a security interest under this Act ;

"*Security Interest*" means a property right in collateral that is created by agreement and secures payment or other performance of an obligation, regardless of whether the parties have denominated it as a security interest but it does not include a personal right against a guarantor or other person liable for the performance of the secured obligation ;

"*Serial-numbered Goods*" means movable property that have a serial or identification-number permanently marked on or attached to its body frame by the manufacturer limited to motor vehicles, planes, and boats that are not held as inventory ;

"*Serial Number*" means an identification number marked or attached to the body frame of a movable property by the manufacturer ;

(2) For the purposes of this Act, the determination of whether goods are consumer goods, equipment, farm products or Inventory is to be made at the time when the Security Agreement is concluded and the Creditor may rely on the representations of the Grantor as to the intended use.

Citation.

64. This Act may be cited as the Secured Transactions in Movable Assets Act, 2017.

I certify, in accordance with Section 2 (1) of the Acts Authentication Act, Cap. A2, Laws of the Federation of Nigeria 2004, that this is a true copy of the Bill passed by both Houses of the National Assembly.

MOHAMMED ATABA SANI-OMOLORI
Clerk to the National Assembly
26th Day of May, 2017.

EXPLANATORY MEMORANDUM

This Act provides for secured transactions, registration and regulation of security interests in movable assets.

SCHEDULE TO THE SECURED TRANSACTION IN MOVABLE ASSETS BILL, 2017

(1) <i>Short Title of the Bill</i>	(2) <i>Long Title of the Bill</i>	(3) <i>Summary of the Contents of the Bill</i>	(4) <i>Date Passed by the Senate</i>	(5) <i>Date Passed by the House of Representatives</i>
Secured Transactions in Movable Assets Bill, 2017.	An Act to provide for secured transactions, registration and regulation of security interests in movable assets ; and for related matters	This Bill provides for secured transactions, registration and regulation of security interests in movable assets.	25th May, 2017.	25th May, 2017.

I certify that this Bill has been carefully compared by me with the decision reached by the National Assembly and found by me to be true and correct decision of the Houses and is in accordance with the provisions of the Acts Authentication Act Cap. A2, Laws of the Federation of Nigeria, 2004.

I ASSENT



MOHAMMED ATABA SANI-OMOLORI
Clerk to the National Assembly
26th Day of May, 2017.

PROF. YEMI OSINBAJO, SAN GCON
Acting President of the Federal Republic of Nigeria
30th Day of May, 2017.