



UGANDA LAW REFORM COMMISSION

**A STUDY REPORT ON REFORM OF
THE LAWS RELATING TO
CHATELS SECURITIES**

KAMPALA, UGANDA

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UGANDA LAW REFORM COMMISSION

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Foreword

The Government of Uganda has committed itself to reviewing its commercial laws in order to support private sector development and encourage private investment.

The Uganda Law Reform Commission with the support of the Justice, Law and Order Sector of the Ministry of Justice and Constitutional Affairs, has reviewed not less than eighteen commercial, trade and related laws.

Law cannot be adequately reformed without appreciating the political, cultural and socio-economic context in which it operates. It is for this very reason that the commission, during the course of this work, carried out wide consultations with the relevant stakeholders and individuals with a range of expertise on policy issues who formed the taskforce and people affected by the laws during field consultations.

Given the complexity of the law under review, the commission contracted Messrs Policy Analysis and Advocacy Centre (PACE) to undertake a study of existing laws and make appropriate proposals for reforms to the commission.

This report is a combination of the work of the consultants, the task force, stakeholders and the commission. It aims at providing vision and direction in the reform of laws relating to secured transaction with the goal of boosting the borrowing and lending markets.

The commission appreciates the response from the stakeholders through their participation and is indeed confident that their contribution has helped in preparing this final report on secured transactions, which it hopes will boost the credit market thereby contributing to poverty eradication and modernisation of agriculture.

The Uganda Law Reform Commission acknowledges with appreciation the work of all consultants on the project, especially Messrs Reid and Priest, Clare Manuel and Policy Analysis and Advocacy who guided the study to its logical end. The Commission is indebted to the financial support given through the Justice Law and Order Sector, which made it possible to conduct this study.

Professor Joseph M.N. Kakooza
Chairman, Uganda Law Reform Commission.

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1. Bankruptcy Act, Cap. 67.
2. Chattels Transfer Act, Cap. 70.
3. Civil Procedure Act, Cap. 71.
4. Companies Act, Cap. 110.
5. Debts (Summary Recovery) Act, Cap.67.
6. Deeds of Arrangement Act, Cap.75.
7. Financial Institutions Act, Cap 54.
8. Government Proceedings Act, Cap. 77.
9. Income Tax Act, Cap 340.
10. Judicature Act, Cap. 13.
11. Money Lenders Act, Cap.273
11. Land Act, Cap. 227.
12. Mortgage Act, Cap.229.
13. Registration of Titles Act, Cap. 230.
14. Executive Committees (Judicial Powers) Act, Cap. 8.
15. Uganda Law Reform Commission Act, Cap 25
16. US Uniform Commercial Code
17. UK Companies, 1985
18. Chattels Transfer Act, Cap. 70

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LIST OF CASES

1. Cochrane v Moore (1890) 25 Ch. D. 57 per Fry L.J. pp 70-71.
2. Dearle v. Hall (1828) 3 Russ. 1.
3. Dublin City Distillers Ltd v Doherty [1914] A.C. 823.
4. English & Scottish Mercantile Investment Co. v Brunton [1892] 2 Q.B. 700.
5. Esbeger Son v. Capital Counties Bank [1913] 2 Ch. 366.
6. Granthan v Hawley (1615) Hob. 132.
7. Independent Automatic Sales Ltd. v. Knowles Foster [1962] 3 All E.R.27.
8. McEntire v Crossley Bros. [1895] A.C. 457.
9. NV Slavenburg's Bank v. Intercontinental Natural Resources Ltd. [1980] 1 All E.R. 955. 1.
10. Palmer v Carey ([1926] A.C. 703.
11. Pawnbrokers' Act 1984 of NSW.
12. Re Charge Card Services Ltd [1986] 3 All E.R. 289.
13. Rothman Ltd v Freeman Mathews Treasure Ltd (1985) Ch. 207.
14. Siebe Gorman & Co. Ltd v Barclays Bank (1979) 2 Lloyds Rep. 142.
15. United States v. New Orleans and Ohio Railroad Co. 79 U.S. (12 Wall) 362, 365; 20.
16. William v Burlington Investments Ltd (1971) 121 S.J. 424, HL.

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ACRONYMS/ABBREVIATIONS

ABA	Australian Bankers Association.
BOU	Bank of Uganda.
CJRP	Commercial Justice Reform Programme.
EAC	East African Community.
COMESA	Common Market for East and Southern Africa.
GOU	Government of Uganda.
JLOS	Justice Law and Order Sector.
LSSP	Land Sector Strategic Plan.
PACE	Policy Analysis and Advocacy Centre.
PEAP	Poverty Eradication Action Plan.
PERD	Public Enterprise Reform and Divesture.
R&P	M/s Reid and Priest.
RTA	Registration of Titles Act.
ULRC	Uganda Law Reform Commission.

PREFACE.

Establishment of the Uganda Law Reform Commission.

The Uganda Law Reform Commission was established in 1990, by the Uganda Law Reform Commission Act, Cap. 25. Prior to this enactment, law reform was the responsibility of the department of law reform and law revision under the Ministry of Justice, which had been set up in 1975. In 1995, with the promulgation of the Constitution, the commission became a constitutional commission by virtue of article 248.

Composition of the commission.

Under section 3 of the Uganda Law Reform Commission Act, the commission consists of a chairman and six other commissioners, all of whom are appointed by the President on the advice of the Attorney General.

The chairperson and four of the commissioners are lawyers who are retired or sitting judges of the Court of Appeal or High Court of Uganda; or are lawyers qualified to be appointed as judges of the Court of Appeal or High Court of Uganda; or are senior practising lawyers or senior teachers of law at a university or similar institution of law in Uganda. The remaining two commissioners, as set out by section 4(2), are non-lawyers but persons who have distinguished themselves in disciplines relevant to the functions of the commission.

Additionally, section 12 empowers the Attorney General, on the advice of the commission, to appoint experts or consultants in any specific aspect of law reform undertaken by the commission.

The commission is serviced by a secretariat composed of an executive secretary, and other staff. The commission has three departments which are: the law reform department, headed by commissioner law reform; the law revision department, headed by commissioner law revision and the department of finance and administration, headed by undersecretary. The staff of the commission consists of lawyers and non-lawyers appointed by the Attorney General from among persons who are either public or non-public officers.

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Functions of the commission.

The main function of the commission as set out under section 10 of the Uganda Law Reform Commission Act, Cap. 25 is to study and keep under constant review the Acts and other laws of Uganda with the view of making recommendations for their systematic improvement, development, modernisation and reform with particular emphasis on-

- (a) the elimination of anomalies in the law, the repeal of obsolete and unnecessary laws and the simplification and translation of the law;
- (b) the reflection in the laws of Uganda of the customs, values and norms of society in Uganda as well as concepts consistent with the United Nations Charter for Human Rights and the Charter of Human and Peoples' Rights of the African Union;
- (c) the development of new areas in the law by making the laws responsive to the changing needs of the society in Uganda;
- (d) the adoption of new or more effective methods or both for the administration of the law and dispensation of justice; and
- (e) the integration and unification of the laws of Uganda.

Powers of the commission.

In the performance of its functions, the commission may-

- (a) receive, review and consider any proposals for the reform of the law which may be referred to it by any person or authority;
- (b) prepare and submit to the Attorney General, from time to time, for approval, programmes for the study and examination of any branch of the law with a view to making recommendations for its improvement, modernisation and reform; and those programmes shall include an estimate of the finances and other resources that will be required to carry out any such studies and the period of time that would be required for the completion of the studies;
- (c) undertake, pursuant to any such recommendations approved by the Attorney General, the formulation of draft bills or other instruments for consideration by the Government and Parliament;

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- (d) initiate and carry out, or, with the approval of the Attorney General, direct initiation and research necessary for the improvement and modernisation of the law;
- (e) provide, at the instance of the Government, to Government ministries and departments and other authorities concerned, advice, information and proposals for reform or amendment of any branch of the law;
- (f) encourage and promote public participation in the process of lawmaking and educate and sensitise the public on lawmaking through seminars, publications and the mass media; and
- (g) appoint or empanel committees, in consultation with the Attorney General, from among members of the commission, or from among persons outside the commission, to study and make recommendations to the commission on any aspect of the law referred to the committees by the commission.

Profile of the commission.

Vision.

The vision of the commission is to promote, in Uganda, a legal system with just and up-to-date laws, easily accessible to all.

Mission statement.

To contribute to sustainable development, an equitable and just legal system through revision, harmonisation, development and reform of the law.

Values of the commission.

The commission-

- (a) seeks to be impartial at all times in all dealings with its clients,
- (b) endeavours to operate with integrity and in a professional way,
- (c) is committed to equity and pragmatic diversity in the workplace,
- (d) respects and values the contribution of the people, and

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- (e) endeavours to communicate consistently and effectively with all stakeholders in all its projects.

Slogan.

“Law reform for good governance and sustainable development”.

Justification for legal reform.

The Ugandan society like all societies is in a constant state of change caused by political, social and economic factors yet there have been few changes in the law since the inception of the English law in Uganda in 1902. In addition, there are emerging cultural patterns and gender relations, new Government policies such as decentralisation, privatisation, economic liberalisation, poverty eradication, private sector development and the plan for modernisation of agriculture. However, there have been few changes in the law yet the law, at any given time, has to effectively respond to changes and to the aspirations of the people. There is need for extensive research including the need for extensive consultations with stakeholders when proposing reforms in any area of the law.

Current members of the Uganda Law Reform Commission.

1. Professor Joseph Moll Nnume Kakooza.

Professor Kakooza is a holder of the degrees of B.C.L. and LL.B. of the National University of Ireland, Dublin; LL.M. (Harvard); M.Litt. and a Postgraduate Diploma in Anthropology of the University of Oxford; Certificate in International Relations, of the University of Oslo; Barrister-at-Law, of the Inner Temple, London and Advocate of the High Court, Uganda.

Professor Kakooza served as a lecturer at the Faculty of Law, University College, Dar-es-Salaam, as a senior lecturer and founding head (later twice dean) and finally Professor of Law at Makerere University. He has been a visiting scholar at Harvard Law School; guest lecturer at the college of criminal justice, Northeastern University Boston and visiting professor, College of Law, University of Florida. He is currently teaching law at Kampala International University and medical jurisprudence in the Faculty of Medicine, Makerere

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University, part-time. He is widely published, particularly in criminal justice and family law and he is a member of many professional organisations. He is listed in the international publication of *WHO IS WHO in Education* and was given the award of *MAN OF THE YEAR, 2003*, by the American Biographical Institute, Inc.

Professor Kakooza has, among other spells of public service, served as Ag. Judge of the High Court of Uganda, Ag. Solicitor General, President of Uganda Industrial Court; and commissioner of law reform. He was acting chairman of the commission from 2000 to 2002 when he became its chairman.

He has been in charge of the Domestic Relations Law Project and Labour Laws Project. He is currently in charge of the Intellectual Property Law Project, the Reform of the Accountants Act Project, the Living Law Journal Project, the Sentencing Legislation Reform Project and Community Law Reform Programme.

2. Ms. Percy Night Tuhaise.

Ms. Tuhaise is a holder of the degrees of LL.B and LL.M of Makerere University, Kampala; a Postgraduate Diploma in Legal Practice of the Law Development Centre, Kampala. She also holds various certificates in human rights teaching and research (Ottawa Canada 1991), (Strasbourg, France, 1995). She is the deputy director and a principal lecturer of the Law Development Centre, Kampala. She is also an advocate of the High Court of Uganda. Ms Tuhaise was appointed a part-time commissioner in 1995. She assisted commissioner Kibuka in the Rape and Defilement Project. She has been in charge of the Business Associations cluster of the Commercial Law Project and Succession Law Project, and is currently in charge of the Codification of the Contracts Law Project under the Commercial Law Project II and Simplification of the Penal Code Act Project. She is also a member of the editorial board for law revision.

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3. Mr John Mary Mugisha.

Mr. Mugisha holds the degree of LL.B of Makerere University and a Postgraduate Diploma in legal practice, LDC. He was appointed a part-time commissioner in 1999. He is a principal lecturer at the Law Development Centre, Kampala and an advocate of the High Court of Uganda. Mr. Mugisha is a former President of Uganda Law Society; Vice President of the East African Law Society; lead counsel for the Constitutional Review Commission; and deputy secretary general in charge of Eastern Africa, International Bar Association (IBA). He is also a member of the Law Council representing the Uganda Law Society. Mr. Mugisha has been the commissioner in charge of Secured Transactions and Fair Trade Clusters of the Commercial Law Reform Project. He is currently in charge of subsidies and countervailing measures, under the Commercial Law Reform Project II and Trial Procedures Reform Project under the Criminal Law Reform Project I.

4. Dr. Lillian Tibatemwa-Ekirikubinza.

Dr. Tibatemwa-Ekirikubinza is a holder of a PhD in law from the University of Copenhagen, Denmark; an LL.M in Commercial Law from the University of Bristol, UK; an LL.B (Hons) degree from Makerere University and a Postgraduate Diploma in Legal Practice from the Law Development Centre, Kampala. She was the deputy dean of the Faculty of Law, Makerere University. She was appointed part time commissioner of the commission in 1999. She is currently Deputy Vice Chancellor in charge of academics at Makerere University.

Dr. Tibatemwa-Ekirikubinza is widely published in areas of women's law; children's rights and constitutionalism. Her publications include "*Women's Violent Crime in Uganda: More Sinned Against Than Sinning*" (1999). Her latest publication is entitled "*Gender and Human Rights: A Case Study of Polygamy Among the Basoga of Uganda*" (2003).

Apart from being a commissioner of the Uganda Law Reform Commission where she has been in charge of various projects namely: the Insolvency Cluster of the Commercial Law Reform Project I, the Domestic Violence

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Project, the E-Commerce, Computer Crime and E-Evidence Project under the Commercial Law Reform Project II. Dr Tibatemwa-Ekirikubinza has also held other positions of responsibility among which are: board member of the Uganda National Bureau of Standards, member of the academic board of Makerere University Business School, Nakawa and a complimentary member of the British Institute of International and Comparative Law.

Former members of the Uganda Law Reform Commission.

1. Justice Sir Harold G. Platt.

Justice Sir Harold Platt is retired but actively involved in various aspects of the legal field. He is a holder of M.A of Oxford University after his first degree in India. He served in various capacities in East Africa including: 1994 -2000, Chairman Uganda Law Reform Commission when he was in charge of the Commercial Law Project among others; 1989-1994, judge of the Supreme Court of Uganda, 1968-1989; judge of the High Court and Court of Appeal Kenya; 1962-1972 Government service, provincial magistrate Tanzania; 1954 -1962 colonial legal service Tanganyika; and 1951-1954 in law chambers. Justice Sir Harold Platt was called to the bar in 1952 after serving in the royal air force from 1942-1947.

2. Professor Eric Paul Kibuka.

Professor Kibuka holds a B.A and PhD of Makerere University. He was a director of the United Nations African Institute for the Prevention of Crime and Treatment of Offenders, Kampala. He was appointed a part-time commissioner in 1995. He is a retired lecturer of sociology at Makerere University. Professor Kibuka was in charge of the Rape and Defilement Law Project. He was also in charge of the Decriminalisation of Petty Offences Project as well as the Contracts Law Project.

3. Ms. Hilda A. Tanga.

Ms. Tanga is a holder of a B.A degree in education and a postgraduate diploma in Human Resources Management. She has been a graduate teacher at Kololo S.S.S; lecturer in business communication at the National College of Business

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Studies; Ag. registrar and deputy academic registrar at the Uganda Polytechnic Kyambogo. Ms. Tanga has also been an adhoc consultant with Management Training and Advisory Centre (MTAC) on management and training of trainers. She is currently an examiner with the Uganda National Examinations Board (UNEB) and National Business Examinations Council (Nakawa).

4. Ms. Filda Mary Lanyero Ojok.

Ms. Lanyero was a senior lecturer and dean of the Faculty of Arts, Institute of Teacher Education, Kyambogo. She is also involved with various non-governmental organisations in various capacities. Ms. Lanyero holds certificates from the American Studies Winter Institute, USA. She holds a masters degree in international relations, Carleton University Ottawa, Canada and a B.A of Makerere University majoring in history and literature in English. Ms. Lanyero was a teaching assistant, University of Carleton, Ottawa Canada.

5. Mr. Francis Butagira.

Mr. Butagira was appointed commissioner on 22nd January 1996. He holds the degrees of LL.B Makerere University and LL.M (Harvard). He is an advocate of the High Court of Uganda and former principal lecturer at the Law Development Centre.

6. Mr. Richard Aboku Eryenyu.

The late Eryenyu served as commissioner from 19th January 1996 until his death on 7th April 1999. He was an LL.B graduate of Makerere University and a chief magistrate.

EXECUTIVE SUMMARY.

(1) Introduction and background.

The Government of Uganda through the Uganda Law Reform Commission (ULRC) embarked on the reform of commercial law under the Commercial Justice Reform Programme (CJRP). The CJRP aims at enhancing the environment where the private sector operates by ensuring that commercial transactions are respected. The reform of commercial laws is one of the components of the CJRP. Under the commercial laws reform project, secured transactions were identified as one area for reform within the laws affecting land transactions, loan or credit sale transactions, commercial transactions and banking.

With regard to secured transactions, except for the Land Act, most laws governing secured transactions and mortgages in Uganda have been in existence for at least twenty years.

The Mortgage Act, Cap. 229 is a 1974 instrument, while the Registration of Titles Act, Cap. 230 enactment and the Companies Act, Cap. 110 was last revised in 1964. These laws are not adequate to effectively address the issue of secured transactions. For instance, the Mortgage Act, Cap. 229 merely provides for remedies available to the mortgagee upon breach of contract by the mortgagor. It does not provide for the rights and obligations of each party under a security agreement such as rights to prepayment, discharge or a statement of account. It also lacks provisions for disclosure by both parties. The absence of these important provisions has left the Act wanting both in substance and procedure. Secured transactions generally deal with guaranteeing and giving of security either for a debt, credit or property. The essence of the security is to secure the performance of an obligation, usually repayment of a debt arising from money borrowed or property bought, hired or leased. The overall purpose of the security is to improve the chances of getting repayment through any of the following-

- a) *Coercion*: the threat by the lender that he or she will enforce the security to ensure repayment;

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- b) *Enforcing the security:* usually by selling the security and using the proceedings for repayment or by foreclosure or taking possession; or
- c) *Preference:* the holder of a security interest can prevent the seizure of the property by a bailiff to satisfy another creditor. If the debtor is made insolvent, the secured creditor is in a much better position than unsecured creditors.

The purpose of the law on secured transactions and mortgages is to regulate the formation, management and discharge of securities. The laws governing secured transactions (mortgages, personal property security and hire purchase) in Uganda are both statutory and non statutory. The basic statutory laws are the Mortgage Act Cap. 229, the Registration of Title Act Cap. 230 , the Financial Institutions Act Cap. 54 and more recently the Land Act Cap. 225, which brought in new changes on systems of land tenure as well as family consent which have a direct impact on the law on secured transactions generally and the law of mortgages specifically. Other laws include the Companies Act and the Chattels Transfer Act, Cap. 70. The latter has been on the statute books since 1919 but has rarely been put to use. However, the major principles of the laws governing secured transactions are an amalgamation of the English common law, doctrines of equity and statutory law. The common law and doctrines of equity apply to Uganda by virtue of the Judicature Act Cap. 13.

Whereas there have been few amendments in the law over the years to keep abreast with changes taking place in society, there has never been a major attempt to reform the law on secured transactions until the Uganda Law Reform Commission Project on reform of commercial and related laws that affect private sector development in 1995. The Reid and Priest report proposed amendments to the law relating to mortgages in Uganda and new legislation for personal property security.

The importance of secured transactions *per se* and a conducive legal framework for it especially in a developing country like Uganda is well summarized in the Introduction to the European Bank's Model Law on Secured Transactions as:

“A legal framework for secured transactions is a key requirement in creating an investor-friendly climate. An investor who knows that he or she has legally recognized rights to turn to his or her debtors in case of non-payment may assess the investment risk quite differently. It may influence his or her decision whether to invest or not ... it may also change the terms on which he or she is prepared to invest (typically by lowering interest rate on a loan). There is a direct relationship between the legal framework and the attitude of the investor. If there is a law on secured transactions which is seen to give a practical protection and remedies in the case of non-payment of a debt, security can become a major part of investment decision, both for local and international interest rates and grace period.”

(2) Justification for reform of chattels security law.

Chattels security, deals with giving of personal property or chattels other than land as security for a loan or debt. The reform effort was aimed at revamping the current Chattels Transfer Act, Cap 70. Currently the law relating to chattels securities is scattered and ambiguous and there is need for consolidation and making clear provisions. Moreover, the law is limited in its application, hence there is a need to widen the definition of chattels security. The procedure for creation of security interest should be clear so that non-sophisticated borrowers are not exploited.

The Act provides for registration of instruments, priorities in case of two registered instruments, mode of creation of securities involving specific chattels i.e. stock, crops, book debts, etc, remedies available, covenants to be implied in instruments such as repayment, maintenance, inspection among others, registration of transfers and offences and penalties.

(3) Scope of study.

The study covered the following–

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- (a) Reviewing and making of proposals for amendments and consolidation of laws relating to personal property security in Uganda, including the Chattels Transfer Act, the Companies Act, Moneylenders Act and common law.
- (b) Literature review on personal property/chattels security law in Uganda, existing reports and proposed bills, if any;
- (c) A comparative study with other jurisdictions and the East African Community (EAC) to ensure harmony;
- (d) Assessment of the impact of interest rates on repayment of loans/credits with chattels as security including the success or failure of loan recovery by lending institutions and the means used to recover the debts;
- (e) Consultation of key stakeholders through meetings, in-depth interviews and workshops to solicit views on issues for reform;
- (f) Preparation of a background paper and draft report on personal property security laws in Uganda. The report identifies key issues in relation to the current state of affairs to wit; the nature of the law in existence, its key provisions, its lacunas and what the current practice and trends in the law are. These findings were analysed and distributed to stakeholders for consultation on the key findings.

(4) Objectives of the study.

After deliberations by the taskforce and other stakeholders at a workshop, it was agreed that–

- (a) the law should be widened to include both tangible and intangible property; and
- (b) simplified so that the language is understood by many people.

The questions asked include-

- a) what types of property can be taken as security?
- b) what kinds of security are there?
- c) what kinds of arrangements can give rise to a security?

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- d) is the property already being used as security? and
- e) what priority can the lender get for the security against other lenders?

(5) Methodology.

The study took into account the current dynamics of doing business, particularly globalisation, harmonisation of laws in the region and modern patterns of regulation and ownership. The study was participatory involving major stakeholders either as respondents or as task force members. The study undertook the following: -

- (a) reviewed and analysed the laws relating to chattel transfer and developed a background paper on the law on chattels;
- (b) identified and analysed problems of chattel transfers in Uganda and made proposals for reform;
- (c) held consultative stakeholder meetings and workshops and prepared a report incorporating proposed recommendations and draft or amendment bills for chattels transfer transactions; and
- (d) drafted a bill and amendment bill for laws relating to chattel securities.

The study involved a literature review of existing reports, proposals and laws. A comparative study was also carried out with other jurisdictions such as Canada, New Zealand, Hong Kong, Australia, South Africa, Tanzania, Kenya and India.

(6) The task force.

For the task force, persons from relevant Government departments, the private sector, academia and individuals with a range of expertise and with access to the relevant networks of other experts to constitute the task force were identified. They were chosen from the following institutions:

- (a) Audit Control Expertise;

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- (b) Bank of Uganda;
- (c) Barclays Bank (U) Ltd;
- (d) Centenary Rural Development Bank;
- (e) Housing Finance Company of Uganda;
- (f) Judiciary- High Court Commercial Division;
- (g) Law Development Centre;
- (h) Makerere University, Faculty of Law;
- (i) Ministry of Finance- Privatisation and Deregulation projects;
- (j) Ministry of Justice and Constitutional Affairs;
- (k) Ministry of Water, Land and Environment;
- (l) Office of the First Parliamentary Counsel;
- (m) Private Sector Foundation;
- (n) Standard Chartered Bank Ltd;
- (o) Uganda Bankers Association;
- (p) Uganda Cooperatives Alliance;
- (q) Uganda Development Finance Company (DFCU);
- (r) Uganda Land Alliance;
- (s) Uganda Law Reform Commission;
- (t) Uganda Law Society; and
- (u) USAID (SPEED).

The terms of reference for the task force were to-

- (a) assist in identifying chattels law issues relevant to the stakeholders;
- (b) comment on the review of the existing law and study proposals from various ministries and organisations done by the consultants

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- (c) present the views of the different sectors they represent on the proposed laws;
- (d) participate in deliberations and reach consensus on the working papers and draft Bills;
- (e) discuss the proposals and recommendations to be presented at the consultative workshop;
- (f) participate in the consultative workshop; and
- (g) discuss the final report within a timetable to be agreed upon.

(7) Analysis and recommendations.

Recommendation 1.

General.

- (a) The chattels security law should include other collaterals both tangible and intangible assets other than land as capable of satisfying debts.
- (b) The law should provide for harmonised, reliable, efficient and affordable procedures, such as registration, for creating and enforcing a security interest.
- (c) Government should develop policies that promote trade in shares, debentures and negotiable instruments without any party being exploited. The law should widen and simplify provisions relating to floating charges to become available to all businesses whether incorporated or not.
- (d) The law should make provisions for a comprehensive and uniform system for the rights and obligations of all the parties involved, including third parties.
- (e) The laws relating to personal property including common law should be consolidated into one uniform.

Recommendation 2.

Title of the law.

The title of the law should be Chattels Securities Act as opposed to Personal Property Security.

Recommendation 3.

Meaning of security interest.

A security interest should include anything other than land, commercially acceptable as security. These should include machinery, debentures, promissory notes, shares, cars and electrical gadgets.

Recommendation 4.

Nature of security interest.

For a transaction to create a security interest it must fulfil the following:

- (a) It must be intended as security;
- (b) it must be a right in rem that is, it creates real not personal rights;
- (c) it must be created by grant or declaration of trust, not by reservation;
- (d) it must be fixed or specific, that is, it must imply a restriction on the debtor's domination over the asset; and
- (e) it must not be taken by the creditor over his or her own obligation to the debtor.

Recommendation 5.

Types of security interest

The chattels securities law should specifically provide the different categories of security interest to avoid ambiguity. This would enable people know what kind of transaction they are entering into.

Recommendation 6.

Types of borrowing arrangements that give rise to securities

The major types of borrowing arrangements such as assignments and transfers of intangible property, leases and factoring should be specifically provided for in the chattels law.

Recommendation 7.

Validity of security arrangement and rights of parties (duty of good faith).

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- (a) The burden of proving good faith should lie with the party alleging it.
- (b) A security agreement becomes valid upon signing by both the borrower and lender.
- (c) The lender and borrower should sign a security agreement in the present of a witness.
- (d) The witness must also sign the security agreement.

Recommendation 8.

Perfection and attachment of security interests.

The new chattels law should have attachment provisions.

Recommendation 9.

Perfection of security interest.

The new law should include other forms of perfection such as attachment, possession and notice.

Recommendation 10.

Duty of secured party to supply information.

The secured party should supply appropriate information to the borrower as such interval as may be agreed upon by the parties during the time of entering the agreement.

Recommendation 11.

Time of registration.

- (a) Registration of a security agreement must be done within 30 working days.
- (b) Validity of registration would be affected if defect, irregularity, omission or error is wilfully or knowingly made or in event of fraud.

**A STUDY REPORT ON THE REFORM OF THE LAWS RELATING TO CHATTLES
SECURITIES
CHAPTER 1**

Chattels Security Law.

1.1 Introduction and background.

Chattels comprise all kind of property, other than interest in land. Chattels include movable property that can be completely transferred by delivery, and includes goods such as machinery, book debts, stock, vehicles, documents such as promissory notes, negotiable instruments, contract agreements and intangible property such as shares, patents, and debt among others. A security interest arises in personal property when it is used as collateral, to ensure repayment as a debt. The current laws governing personal property security are scattered in various pieces of legislation. These include:-

The Chattels Transfer Act regulates security other than land given by an individual or partnership. The Act provides for registration of instruments, priorities in case of two registered instruments, mode of creation of securities involving specific chattels i.e. stock, crops, book debts, etc, remedies available, covenants to be implied in instruments such as repayment, maintenance, inspection among others, registration of transfers and offences and penalties.

The Companies Act regulates charges over assets of a registered company.

It provides for-

- (a) registration of charges and debentures created by companies;
- (b) duties of registrar e.g. issuing certificates of registration;
- (c) registration and enforcement of security by receiver or manager of company property; and
- (d) right of inspection by creditor or member of company.

Registration of Titles Act deals with-

- (a) the effect of a mortgage as a security and not a transfer;

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- (b) the covenants to be implied in every mortgage e.g. payment of principal sum and interest, maintenance and repairs, right of inspection, etc.;
- (c) rights and obligations of the parties such as quiet enjoyment by mortgagor;
- (d) discharge of mortgages; and
- (e) creation of equitable mortgages.

The Money Lenders Act regulates the lending by non institutional lenders known as moneylenders. It provides for the registration and operation of moneylenders. The common law deals with particular types of security interest such as retention of title.

Chattels as collateral for repayment of a debt is not well developed in Uganda. It is mostly used by individual rather than institutional lenders. Banks usually accept only land as security. The current law has not therefore been put into much use.

There are many defects in the present law about taking security over chattels. One of these defects is a preoccupation with the technical form of transactions and a lack of regard for whether transactions subject to existing chattels security regimes are in fact intended to create security rights over personal property. Important types of securities are not covered by the existing regimes.

In addition, the priority rules which apply to each of the schemes, are often confusing and difficult to apply. These are compounded by a lack of uniformity of rules between similar schemes and a multiplicity of registers dealing with the different categories. Prudent potential investors or lenders who are interested in the level of secured debt of an individual or company must be prepared to search the various registers. In Australia for example, this task is made all the more cumbersome by the fact that in each jurisdiction different registers exist for different types of property, different legal categories of securities and different types of borrowing arrangements. The high costs associated with these searches are inevitably passed on to borrowers in the form of higher interest rates and additional charges. There is a great need for reform of Ugandan chattels security laws.

The questions dealt with under the study are–

- a) what types of property can be taken as security?
- b) what kinds of security are there?
- c) what kinds of arrangements can give rise to a security?

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- d) is the property already being used as security?
- e) what priority can the lender get for the security against other lenders?

The need for reform is reflected in the inadequacy of the answers provided to these questions by the existing law. Possession, registration and their effects are critical issues that are not presently treated consistently. The degree to which potential lenders can rely upon existing registers and possession affects how investment decisions are taken. Investors will not take security if the existing law cannot guarantee their priority in the event that the borrower defaults.

1.2 Security interest and the types of personal property that can be taken as security.

The issue is what amounts to a security interest. Section 1 (g) of the Chattels Transfer Act defines an instrument as–

“any instrument given to secure the payment of money or the performance of some obligation and includes any bill of sale, mortgage, lien, or any document that transfers or purports to transfer the property in or right to the possession of chattels, whether permanently or temporarily, by way of sale, security, pledge, gift, settlement or lease.”

The definition covers–

- (a) inventories of chattels with receipts thereto attached;
- (b) receipts for purchase money of chattels;
- (c) declaration of trust without transfer;
- (d) powers of attorney, authorities or licences to take possession of chattels as security for any debt;
- (e) any agreement whether intended to be followed by the execution of any other instrument or not, by which a right in equity to any chattels, or to any charge or security thereon or there over, is conferred;

However, the following were excluded from the Act–

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- (a) securities over, or leases of, fixtures (except trade machinery when mortgaged or charged apart from the land to which it is attached) when mortgaged, charged or leased in any mortgage, charge or lease of any freehold or leasehold interest in, any land or building to which they are affixed, and whether or not such fixtures are specifically included in such mortgage, charge or lease by mention thereof in separate words;
- (b) assignments for the benefit of the creditors of the person making the same;
- (c) transfers of or agreements to transfer instruments by way of security;
- (d) transfers or assignments of any ship or vessel or any share thereof;
- (e) transfers of chattels in the ordinary course of business of any trade or calling;
- (f) debentures and interest coupons issued by any government or local authority;
- (g) bills of sale of chattels in any foreign parts, or at sea;
- (h) bills of lading, warehouse-keepers; certificates, warrants; or orders for the delivery of chattels, entries in auctioneers books or any other document used in the ordinary course of business as proof of the possession or control of chattels, or authorising or purporting to authorise, either by endorsement or delivery, the possessor of such document to transfer or receive the chattels thereby represented;
- (i) debentures and interest coupons issued by any company or other corporate body and secured upon the capital stock or chattels of such company or other corporate body;
- (j) mortgages or charges granted or created by a company incorporated or registered under the Companies Act; and
- (k) hire-purchase agreements.

The scope of chattels securities under the Act is therefore narrow and the issue is whether or not it is still relevant in the current economic environment. In modern security law, security or security interest is defined as a right given to one party in the property of another to secure payment or performance by that other party or a third party. The commission findings revealed that there are very few, if any, restrictions on what type of personal property (chattels) can be used as security. Anything commercially acceptable as security can be used if the lender and borrower so agree. The consultation by ULRC and PACE revealed that all types of property are acceptable as security including machinery, debentures,

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promissory notes, shares, cars and electrical gadgets. However, cars and electronics form the bulk of personal property security transactions. It was also revealed that the more sophisticated form of chattels such as shares and negotiable instruments did not form part of this thriving trade where non-institutional lenders are involved. It is the institutional lenders such as banks who accept debentures, shares and negotiable instruments as security.

In Australia there are some restrictions on particular persons giving security over personal or other property. For instance superannuation funds cannot lawfully borrow even if security is given¹. Security can be taken over tangible and intangible property, including intellectual property such as copyright. However, in relation to the taking of security over deposit accounts, the Australian Bankers' Association (ABA) noted that the English Court of Appeal decision in *Re Charge Card* and the New South Wales Supreme Court decision in *Broad v. Commissioner of Stamp Duties* have cast considerable doubt over the efficacy of a charge taken by a bank over a deposit account of a customer as security for other lending. Sometimes the law itself prescribes the type of property, which is to be taken as security. For example, common law has long recognised that repairers who are asked to repair goods, and carriers who are asked to transport goods from place to place, can keep the goods concerned as security for payment of their charges. This is called a lien.²

1.3 Nature of security interest.

For a transaction to create a security interest there are certain benchmarks it must fulfill. These include—

- (a) the transaction must be intended as security;
- (b) security interest is a right *in rem* (*creates real not personal rights*);
- (c) security interest is created by grant or declaration of trust, not by reservation;
- (d) security interest is fixed or specific, implies a restriction on debtor's domination over asset; and
- (e) security interest cannot be taken by the creditor over his own obligation to the debtor.

¹ Occupational Superannuation Standards Regulations (Cth) reg 16(1)(b).

² Sale of Goods Act, Cap. 82.

1.3.1 Transaction must be intended as security.

The transaction must fulfill criteria for creating a security interest and once this is so it will be treated as such even if it is in form of an outright sale. The problem with this is that a transaction not intended to be security would not be treated as such even if on first sight it appears to be one. Hence a genuine sale of property does not become a security even if it is followed by a lease back or a letting on hire purchase clauses and a sale of debts does not become a security interest merely because the seller gives recourse. However, a debt can be assigned in reduction of the assignor's own indebtedness to the assignee without the transaction constituting either a sale or a security. This was a position in *Siebe Gorman & Co. Ltd v Barclays Bank*³ and restated in *Rothman Ltd v Freeman Mathews Treasure Ltd*⁴.

In the *Siebe Gorman case*⁵ the plaintiff requested for an outright assignment of bills held by their debtors with the respondent bank to be made in their favour. The respondents refused and made payment to the debtor's overdrawn account though the request expressly stated that the assignment was to be security for the debtor's indebtedness to the plaintiffs. On liquidation of the debtor, the plaintiff sued the respondents for recovery of the sums collected on the bills. The defendants contended that the assignment to the plaintiff constituted a charge on books, which was void for want of registration. Slade J. held that while the assignment was not a sale, it was not intended to be a security interest either but was an outright transfer towards payment of the debtor's debts. The words 'as security for the aforementioned debts', though prima facie indicating a security interest or charge, had to be construed in the context as denoting an assignment in payment of the debt. The assignment was therefore not registrable.

The commission agrees with this position and recommends that for a transaction to create a security interest, it must have been intended to be so.

Recommendation 1

For a transaction to create a security interest, it must have been intended to do so

³(1979) 2 Lloyds Rep. 142

⁴ Ibid

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1.3.2 Security interest is a right in rem.

A security interest creates a real right in the asset given as security as opposed to personal rights to an asset. This is because a purely personal claim to deliver or transfer an asset does not survive the debtor's bankruptcy but becomes converted into a right to prove for a dividend in the debtor's estate in competition with other creditors. On the other hand, a secured creditor is entitled to remove the asset from the general body of creditors. Personal claims, which do not create a security interest, include contractual set-off, condition of repayment, negative pledge, subordination agreement and sale of sub-participation in loan assets.

Recommendation 2

Security interest is a right in rem (creates real not personal rights).

1.3.3 Security interest is created by grant or declaration of trust, not by reservation.

Consensual security interest is derived from grant or declaration of trust for the debtor, not from reservation by the creditor. Hence, reservation of legal title under a sale, hire purchase or leasing agreement does not constitute a security interest. The effect of reservation is not to create a security over an asset of the debtor but to reserve to the creditor his or her absolute legal interest in the asset.⁶ However, the distinction between grant and reservation has been abandoned in article 9 of the US Uniform Commercial Code that deals with security interest in personal property, as a technical rule of law, which disregards the common intention of the parties. Thus reservation of title under a conditional agreement is treated as limited to a security interest and the buyer is deemed to be the owner of the goods for this purpose.

⁶ McEntire v Crossley Bros. [1895] A.C. 457.

Recommendation 3

Security interest should be created by grant or declaration of trust, not by reservation.

1.3.4 Security interest is fixed or specific, implies a restriction on debtor's domination over asset.

A creditor cannot claim a fixed security interest in property and at the same time allow the debtor a right to continue to treat the asset as his or her own. If a debtor who charges his or her stock is allowed to sell them without the creditor's approval (even if the proceeds are held in a blocked or separate account), such creditor has no fixed security interest but merely a floating charge.

1.3.5 Security interest cannot be taken by the creditor over his or her own obligation to the debtor.

Since a person cannot sue himself, a debtor cannot also take from the creditor a charge or other security over the debtor's own obligation. This would amount to a contractual set-off.⁷

Recommendation 4

Security interest should not be taken by the creditor over his or her own obligation to the debtor.

1.3.6 Types of security.

Securities are characterised by a transfer of either possession or rights of ownership (legal or equitable). There are many kinds of securities that can be taken over personal property. There are four main types of securities - the mortgage, the charge, the lien and the pledge. The differences between these securities are reflected in the way that possession or ownership rights are transferred.

Issues to be borne in mind in this analysis are–

- a) whether or not the lender or the borrower has title to the goods,
- b) which party is in possession of the goods, and

⁷ *Re Charge Card Services Ltd* [1986] 3 All E.R. 289.

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- c) what effect the security has against third parties.

1.3.7 The mortgage.

A mortgage gives the creditor ownership rights over the mortgaged property, although the debtor will normally keep possession of the property. In a legal mortgage, the creditor becomes the legal owner of the property (subject to an equity of redemption). For an equitable mortgage, the debtor keeps the legal title, and the creditor gets an equitable right, that is, a right to full ownership if the debtor defaults. In Uganda, the principle mortgage legislations are the Mortgage Act, Registration of Titles Act and common law. As noted in part one of this report, the Act basically governs mortgages already created and does not provide for the manner of creation of the security interest. The Mortgage Act provides only for ways by which a lender can recover the loan in case of default by the borrower. The remedies provided for are basically two that is, to sue or realise from the security (refer to part one of this report).

1.3.8 The charge.

In a charge the debtor gives neither legal nor equitable title to the property, and keeps possession of it. The debtor contracts with the creditor that he or she will not deal with the property in a way inconsistent with the creditor's rights. Although title is not transferred, the contract qualifies the debtor's title and creates an equitable interest in the property.⁸ Unlike the mortgage where title is transferred, a creditor in whose favour a charge has been given must take legal action to enforce his or her rights. A fixed charge affects specified property, while a floating charge affects property in the debtor's hands for the time being, and generally becomes fixed when some specified event occurs, such as default. Only when a charge becomes fixed can the creditor exercise the rights over the property as a floating charge

⁸ Professor Sykes of Australia has argued that security rights which arise only upon default embody the concept of hypothecation: El Sykes *The Law of Securities*, 4th ed, 1986, Law Book Co, Sydney, 19. The NZLC cites Salmond as describing the security interest created by an hypothecation as '... merely a shadow cast by the debt upon the property of the debtor . . . ' and comments that ' . . . this [interpretation] may overstate the case in the sense that not all charges are hypothecations.... [A floating charge, and a fortiori a fixed equitable charge over chattels create an interest before default . . . ': NZLC PP6, Reform of Personal Property Security Law—a report to the Law Commission by Professor John H Farrar and Mark A O'Regan, 1988, Wellington, NZ, 17.

‘crystallizes’ when it is attached to specific property. In Uganda, charges are provided for under the Companies Act.

1.3.9 The lien.

Lien are provided for under the Sale of Good Act⁹. The types of lien, includes–

Possessory lien. A lien is a security that arises by operation of the common law, by statute or in equity as a consequence of a contract between parties. At common law the lien holder has a right to keep possession of property that comes into its possession in connection with the contract (for example, an innkeeper can keep possession of goods left by a guest who leaves without paying the bill). Statutes have extended the lien holder’s right, to allow the lien holder to sell, and pass good title to, the goods once the statutory time period has elapsed. In Australia, the statutory law governing lien is very well developed, which Uganda can learn from. The Australian statutes cover warehoused goods, crops, wool, sugar cane, fruit and stock.¹⁰

Non-possessory lien. Lien can also arise in situations where the lien-holder does not have possession of the secured property. There are five (5) types of *non-possessory* lien¹¹–

- (a) *equitable lien.* Equitable lien may be governed by statute or they may arise by operation of the general law (for example, a trustee has a lien for his or her expenses over the trust property¹²). Where the security arises by statute it is termed a statutory equitable lien (for example, a worker is given a charge for the money due to him or her for work upon moneys due to a contractor or sub-contractor in respect of the relevant contract and likewise a sub-contractor is

⁹ Sections 39-41.

¹⁰ Warehoused goods: Warehouseman’s Liens Act 1935 (NSW) s 6, Warehouseman’s Liens Act 1958 (Vic) s 7, Warehouseman’s Liens Act 1973 (Qld), Warehouseman’s Liens Act 1941 (SA) s 7, Warehouseman’s Act 1952 (WA) s 7 and Warehouseman’s Liens Act (NT); crops: Liens on Crops and Wool and Stock Mortgages Act 1898 (NSW); wool: Liens on Crops and Wool and Stock Mortgages Act 1898 (NSW); Stock Mortgages and Wool Liens Act 1924 (SA).; sugar cane: Liens on Crops of Sugar Cane Act 1931 (Qld); fruit: Liens on Fruit Act 1923 (SA); stock: Liens on Crops and Wool and Stock Mortgages Act 1898 Stock Mortgages and Wool Liens Act 1924 (SA); uncollected goods: Disposal of Uncollected Goods Act 1966 (NSW); Disposal of Uncollected Goods Act 1967 (Qld); Disposal of Uncollected Goods Act 1961 (Vic); Disposal of Uncollected Goods Act 1970 (WA); Disposal of Uncollected Goods Act 1976 (NT).

¹¹ El Sykes, op cit, 68.

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given a charge for the money due to him or her on the sub-contract for any money payable to the contractor or sub-contractor under whom he or she has contracted¹²). Equitable lien “give the lienee a right to take possession of another person’s property in certain circumstances and to retain the property or sell it to pay off a debt”¹³. Equitable lien only confer a right to have a specific claim satisfied out of specific property. The right does not depend on possession, nor does it confer a right to possession. In Australia the right can only be enforced by a judicial sale;¹⁴

- (b) *maritime lien*. Maritime lien does not require possession. Recognised maritime lien currently include damage done by a ship, salvage, seaman’s wages, master’s wages and disbursements, bottomry and respondentia;
- (c) *partner’s lien*. A partner has a lien over the property of the partnership;
- (d) *preferable lien*. An example of a preferable lien is the interest created by the *Lien on Crops and Wool and Stock Mortgages Act 1892 of NSW*. This Act confers a preferable lien on mortgages of growing crops, wool and stock; and
- (e) *statutory lien*. An example of a statutory lien is the power to retain possession of goods stored in his warehouse if the storage costs have not been paid for.

1.3.10 The pledge.

The pledge or constructive delivery of possession of property to the creditor by way of security. The most common example of a pledge¹⁵ is the pawn. Pawns are characterised by a transfer of possession from the borrower to the lender while the borrower retains full ownership of the pledged goods. If the borrower does not redeem the pawn within a specified time, then, at common law, the pawnbroker can sell the goods and pass good title. This

¹³ JW Carter, P Lane, GJ Tolhurst & EM Peden, op cit, 10th ed, 1992, Law Book Co, Sydney, 127.

¹⁴ El Sykes, op cit, 667; EA Francis & KJ Thomas, Mortgages & Securities, 3rd ed, 1986, Butterworths, Sydney, 88.

¹⁵ This should not be confused with a ‘negative pledge’, which is a contractual obligation not to use the property as security again without the consent of the current interest holder party. It gives no interest in the property of itself, but is normally associated with a floating charge.

common law right to dispose of uncollected goods has been enshrined in legislation in some jurisdiction such as Australia.¹⁶

Elements of a pledge¹⁷

Property cannot be pledged if it cannot be possessed. They are therefore confined to goods and documentary tangibles (documents embodying titles to goods, money or securities such that the right to these assets is invested in the holder of documents for the time being and can be transferred by delivery of documents with any necessary endorsement. The payment or delivery obligation is owed not to the original obligee but to the holder of the documents who presents it for payment or delivery. Other examples of tangibles are bills of lading and other documents of title for the goods, commercial paper, registered share certificates, debentures and insurance policies. However, it does not include ordinary written contracts such as those relating to building and hire purchase.

- (b) The pledgee as possessor enjoys a special property or limited interest in the property but ownership remains with the pledgor.
- (c) The pledgee can use the property at his or her own risk so long as this would not impair it.
- (d) The pledgee can assign or sell his or her right as pledgee.

1.4 Types of borrowing arrangements that give rise to securities.

The categories of security arrangements are not closed. A transaction may have the effect of creating a security even though it cannot be characterised as a mortgage, lien, charge or pledge. The contract may relate to borrowings or to sales, either to traders or to the ultimate consumer. Common forms of arrangement that create security include assignments and transfers, leases, factoring arrangements and sales of goods subject to title retention. These arrangements are often documented in a bill of sale. The Sale of Goods Act and Companies Act, make extensive provision about the validity, form and content of bills of sale and whether they are to be publicly registered. Consultation with lending institutions revealed

¹⁶ *Pawnbrokers' Act 1984 of NSW*

¹⁷ *Legal Problems of Credit and Security*, Prof. Goode, Sweet & Maxwell, 2nd Ed. 1988 p 10.

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that they accept charges, debentures and lien as security.¹⁸ The major types of borrowing arrangements include-

1.4.1 Assignments and transfers of intangible property

‘Assignment’ is most commonly used to refer to the transfer of interests in intangible property such as book debts, shares, intellectual property and life insurance policies. For example, a company may assign its book debts to a bank to secure a loan from a bank. If the company defaults on the loan, the bank can exercise full rights of ownership over the debts and collect them as if it were the company.

1.4.2 Leases.

Leases are generally used to allow the lessee to possess and use property that he or she does not own. The lessor transfers possession in return for payment of a fee. The traditional lessee does not, and never intends to, own the property, there is no intention that the property be used as security for the performance of either party’s obligations under the arrangement. Leases can, however, be used as a means of financing a transaction, the ultimate goal of which is a sale as it is often tax-effective to do so. The lease payments are worked out so that when the lease expires the lessee has paid what he or she would have paid to buy the goods in the first place, plus interest. The lease may include a provision for the transfer of ownership to the lessee at the end of the period of the lease. To the extent that a lease has the effect of transferring title in order to secure the performance of an obligation, it will be a security. In Uganda the leasing arrangement is commonly on machinery such as construction equipments, computers. It is a new business that is not regulated, but rules on the common law of contract.

1.4.3 Factoring arrangements.

A factoring arrangement is, in essence, the sale of ownership of book debts. The buyer does not account to the seller for any of the debts collected, and can write them off or deal with them as he chooses. Traders enter into these arrangements to raise capital, for commercial

¹⁸ PACE report 2001 and ULRC report 2001

convenience or as a way of securing loans. Where a factoring agreement transfers title in book debts for the purpose of securing performance of an obligation then it will give rise to a security.

1.4.4 Attachment and perfection of a security interest.

1.4.4.1. Attachment of security interest.

Priority rule governing fixed and floating security cannot be understood without a grasp of the concept of attachment. Application of priority rule which does not take into account the manner in which security interest attaches or the time from which attachment takes place is likely to lead to erroneous solutions. The Chattels Transfer Act does not have provisions on attachment and we recommend that the new law should have attachment provisions as discussed below.

Attachment refers to the creation of the security interest as between debtor and creditor, which fastens the security interest on the property thus giving the creditor real rights as against the debtor, though not necessarily against third parties. The difference between attachment and perfection is that perfection involves possession or registration, which constitutes notice against the whole world. For a security interest to attach other than by operation of law the following must be fulfilled.

- (a) There must be a security transfer or agreement. A mere unilateral action by the creditor does not create a security interest. There must be either a transfer of possession (pledge) or ownership (mortgage) or an agreement express or implied, for the provision of security which equity will enforce as a mortgage or as a mere encumbrance. Thus according to Prof. Goode, a debtor who deposits a document of title for safe custody with his bank does not create a charge or security interest, nor does it empower the bank to unilaterally create a security interest.¹⁹

Debate has raged on as how a mere agreement to transfer security, creates an immediate security interest? At common law it could not as the creation of proprietary rights required a completed transfer, by deed or possession, except where the contract was for sale of goods²⁰ or relates to potential property such as

¹⁹ Legal Problems of Credit and Security (supra) p 28.

²⁰ *Cochrane v Moore* (1890) 25 Ch.D. 57 per Fry L.J. pp 70-71.

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future crops or future young animals identified cattle²¹ among others. However, this is possible at equity since it treats, as done that which ought to be done as long as it is consistent with the parties' agreement and the property can be identified. For this to take effect the consideration must be executed.

A security is consistence with the agreement if–

- (i) it manifests an intention to confer a security interest on the creditor, not a mere contractual right;²²
- (ii) it reflects the intention of the parties that the interest should attach to the property immediately the debtor gets an interest in it;²³
- (iii) the property over which the security is claimed must fall within the description in the security agreement.
- (b) The subject matter must be identifiable. A security interest cannot exist in an asset, which is neither identifiable at the time of the security agreement nor identifiable subsequently as falling within its terms. There is no need to precisely identify the property so long as it is identifiable as falling with the terms of the security agreement.
- (c) The debtor must have an interest in the property or a power to dispose or grant a charge over it. The debtor usually cannot give a valid security over someone's property save where–
 - (i) the debtor has power of attorney;
 - (ii) the owner as held the debtor as having power of disposal;
 - (iii) the law allows such as the debtor being an agent of the owner.
- (d) The debtor must have an obligation to the creditor to settle money owed to him or her.
- (e) The conditions for attachment specified in the security agreement must have been fulfilled.
- (f) If the security interest is a pledge there must be delivery of possession, as an agreement for a pledge not accompanied by delivery of possession is a mere contract conferring no real right on the intended pledge.²⁴

²¹ *Granthan v Hawley* (1615) Hob. 132.

²² *Palmer v Carey* ([1926] A.C. 703.

²³ *William v Burlington Investments Ltd* (1971) 121 S.J. 424, HL.

²⁴ *Dublin City Distillers Ltd v Doherty* [1914] A.C. 823.

1.4.5 Perfection of a security interest.

(a) Nature of perfection.

When a security interest attaches, it becomes enforceable against the debtor himself or herself. However, the existence of the security interest will not necessarily be known to a third party who may desire to acquire an interest in the asset. To safeguard such a third party the law requires the secured party to perfect his security by some form of public notice or act designed to bring the security interest to the notice of subsequent purchasers or encumbrancers. Perfection is not necessarily a step to render the security enforceable against the debtor himself, for as the grantor of the security interest he needs no notice of it.²⁵

Perfection does not guarantee priority over subsequent encumbrancers as this is a matter governed by priority rules. Perfection of a security interest merely gives maximum efficacy to the security interest. In other words, an unperfected security interest will usually be invalid against subsequent encumbrancers regardless of any other priority rule and yet a perfected security interest will bind subsequent encumbrancers unless displaced by a particular priority rule.

(b) Forms of perfection.

There are four methods of perfection: attachment, possession, registration and, in the case of security over a debt or interest in a fund, notice to the debtor or fund holder.

(i) Perfection by attachment.

In England, attachment by itself perfects a security interest without any further step in many cases, especially where the debtor is a company and the security interest is outside the numerous clauses of security interests prescribed by the Companies Act. These include, oral fixed²⁶ mortgages or charges of goods, other than ships or aircrafts,²⁷ fixed charges on shares in a company, even where it is a subsidiary of the debtor; fixed charges on imported

²⁵ A remarkable exception to this rule is to be found in the Bills of Sale Act (1878) Amendment Act 1882, s.8 of which renders an unregistered security bill of sale void as to the security even as against the debtor himself.

²⁶ A floating charge constitutes a distinct category of registrable security under s. 396, the Companies Act.

²⁷ Charges over ships and aircraft constitute distinct heads of registrable charge within s. 396.

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goods (other than ships or air craft) which if granted by an individual would be exempted from registration as a bill of sale.

(ii) Possession.

Possession is available only where the subject matter of the security is capable of being possessed, i.e. pledgeable. Usually, possession is an alternative to registration however, in some cases even a possessory security interest has still to be perfected by registration such as a mortgage of land protected by a deposit of a title deed.

(iii) Registration.

Perfection by registration is sometimes, complicated by the need to perfect in more than one register. Thus a charge by a company over unregistered land which is not protected by deposit of the title deeds, must be registered both in the Companies Registry and in the Land Registry²⁸. In the same way in England a charge by a company over a ship or aircraft must be registered both in the Companies Registry and the ship's Port of Registry²⁹ or the Registry of Aircraft Mortgages,³⁰ as the case may be.

(iv) Notice.

This method of perfection is confined to the assignment of debts and other choses in action. This is embodied in the rule in *Dearle v. Hall*,³¹ which regulates the priority of competing assignments. Under the rule, priority goes to the first assignee to give notice to the debtor, trustee or fund holder, subject to the qualification that an assignee only gains priority over an earlier assignee if the advance was made without notice of the prior assignment. This qualification effectively excludes the rule in most cases where the earlier assignment is by way of security and is registrable, for registration constitute notice to subsequent assignees.

A charge on a book debt is a distinct registrable category under section 396 of the 1986 English Companies Act. It should be noted that the rule in *Dearle v. Hall* is totally impracticable when applied to the assignment of streams of receivables in non-notification receivables

²⁸ Land Charges Act 1972.

²⁹ *Merchant Shipping Act 1894*, s.33.

³⁰ Civil Aviation Act 1982, s.86; *Mortgaging of Aircraft Order 1972* (S.I. 1972/1268, as amended S.I. 1981/611 and S.I. 1986/2001), made under S.16 of the *Civil Aviation Act 1968* but having effect under the 1982 Act by virtue of s.17(2)(b) of the *Interpretation Act 1978*.

³¹ (1828) 3 Russ. 1.

³² R.M. Goode, *The Modernisation of Personal Property Security Law*, (1984) 100

financing, and should have been consigned to oblivion as a priority rule for commercial dealings³².

1.4.6 Registration under section 395 of the UK Companies Act 1985.

Section 396 of the UK Companies Act, 1985 lists the categories of company's charges, which require registration under section 395. These include charges on land, book debts, ships and aircraft; floating charges; and charges created or evidenced by an instrument which if executed by an individual, would require registration as a bill of sale. Time for lodgment of the documents is 21 days from the date of creation of the charge (execution of the charge instrument), whether or not there is, at that time, any property to which it can attach.³³

There are two important points to note in registration of charges in England. First, an English company's charges are registrable whether or not created outside the United Kingdom and comprising property situated outside the United Kingdom. Secondly, the effect of section 409 is that a charge by an overseas company on property in England is registrable under section 395 if the company has established a place of business in England even if the place of business has not been registered. This is one of the many important points established by *Slavenburg's case*,³⁴ in which Lloyd J., held that even if the overseas company has no assets in England at the time it grants the charge, its subsequent acquisition of an asset in England within the scope of the charge renders the charge retrospectively registrable within the prescribed 21 day period (which may by then have run out!) or such further period as may be allowed by the court. The difficulties created by the *Slavenburg* decision, and the defects in what is now section 409 of the English Companies Act, 1985 (formerly section 106 of the Companies Act 1948) which that decision highlights, have been admirably set out in a paper by the Law Society's 'Standing Committee on company Law' (reproduced in (1981) 78 L.S. Gaz. 921.)

³³ *Esbeger Son v. Capital Counties Bank* [1913] 2 Ch. 366; *Independent Automatic Sales Ltd. v. Knowles Foster* [1962] 3 All E.R.27.

³⁴ *NV Slavenburg's Bank v. Intercontinental Natural Resources Ltd.* [1980] 1 All E.R. 955. For a comment on the case and on the memorandum by the Law Society's Standing Committee on Company Law, see A.J. Boyle (1981) 2 Co. Law.218.

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1.4.7 Effect of registration of charges.

(a) Registration as a perfection requirement.

Registration is a perfection requirement, which has to be complied with in order to make the charge effective against a liquidator, administrator³⁵ and subsequent creditors. Prior creditors are not prejudiced by want of registration and are not entitled to invoke section 395 even if having an interest in doing so for example in cases where their security ranks after the unregistered charge.³⁶ However, it should be noted that registration is neither a requirement for attachment nor a priority point. An unregistered charge is good against the company itself, so long as it is not in winding up or administration. Priority of competing charges is governed by the common law rules not by the order of registration. So an intending lender who advances money to a company in reliance on a clear search should not assume that he is protected; there may well be an earlier charge granted within the preceding 21 days that has not yet been registered. Unfortunately in England there is no provision in the companies Act comparable to that of the property legislation by which protection is given to one who makes a pre-completion search and then completes his own transaction within 14 days. Similarly, registration does not guarantee priority against subsequent interests even where registration constitutes notice of the charge, as notice is not in all cases a determinant of priority.

(b) Registration as notice

Registration of a charge constitutes notice to the outside world of its existence and not of its content³⁷. The Chattels Transfer Act, though it has registration provisions, does not provide for perfection of a security interest. This is a major omission, which affects implementation. The commission therefore proposes that the new law adopts the perfection provisions in England as discussed above.

³⁵ Thus an administrator appointed under an administration order made pursuant to Part II of the *Insolvency Act* 1986.

³⁶ *United States v. New Orleans and Ohio Railroad Co.* 79 U.S. (12 Wall) 362, 365; 20.

³⁷ *English & Scottish Mercantile Investment Co. v Brunton* [1892] 2 Q.B. 700.

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ANNEX1

CHATTELS SECURITIES BILL 2004

A Bill for an Act

ENTITLED

THE CHATTELS SECURITIES ACT, 2004

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THE CHATTELS SECURITIES BILL, 2004

An Act to regulate the making and enforcement of security interests in chattels and to repeal the Chattels Transfer Act and for other purposes connected Thereto.

PART I-PRELIMINARY

1. Commencement.

This Act shall come into force on such day as the Minister may appoint.

2. Interpretation.

In this Act, except where the context otherwise requires—
“accessions” has the meaning given by section 34.

“cash proceeds” means proceeds in the form of money, cheques, drafts, and deposit accounts in deposit-taking institutions;

“chattels” means any moveable property that can be completely transferred by delivery, and includes machinery, book debts, stock and the natural increase of stock as hereinbefore mentioned, crops and wool, but does not include-

- (a) title deeds, choses in action or negotiable instruments;
- (b) shares and interests in the stock, funds or securities or any government or local authority;
- (c) shares and interests in the capital or property of any company or other corporate body; or
- (d) debentures and interest coupons issued by any government, or local authority, or company, or other corporate body;

“chattel paper” means one or more writings that evidence both a monetary obligation and a security interest in, or a lease of specific goods;

“collateral” means personal property that is subject to a security interest;

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“consumer goods” means goods that a debtor uses or acquires for use primarily for personal, family or household purposes; and the determination whether goods are consumer goods for the purposes of a security interest is made as at the time the security interest in the goods attaches;

“court” means the High Court;

“crops” means crops, whether matured or otherwise, and whether naturally grown or planted, attached to land by roots or forming part of trees or plants attached to land, but does not include trees;

‘debtor’ means-

- (a) a person who owes payment or other performance of an obligation secured, whether or not that a 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; and
 - (ii) in any provision dealing with the obligation, the person under the obligation; and
- (iii) includes both where the context so permits or requires;

“document of title” means a writing 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; and includes a bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods; and is issued by or addressed to a bailee and relates to goods in the bailee’s possession that are identified or are tangible portions of an identified mass;

“executed” means signed by the grantor or his or her attorney;

“factory” or “workshop” means any premises on which any manual labour is exercised by way of trade or for purposes of gain in or about the making, altering, repairing, ornamenting, finishing or adapting for sale of any article or part of any article;

“financing change statement” means writing relating to a registered financing statement;

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“financing statement” means a writing relating to a security interest or proposed security interest permitted to be registered under this Act and, where the context permits, includes a financing change statement and a security document registered under any other Act before the coming into force of this Act ;

“fungible” with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit, and includes unlike units to the extent that they are treated as equivalents under a security agreement;

“future advance” means the payment of money, the provision of credit, or the giving of value secured by a security interest, occurring after the agreement creating the security interest has been entered into, whether or not given pursuant to a commitment, and advances and expenditures made for the protection, maintenance, preservation or repair of the collateral;

“goods” means tangible personal property other than-

- (a) chattel paper;
- (b) documents of title;
- (c) tangibles;
- (d) money;
- (e) negotiable instruments;
- (f) receivables; or
- (g) securities

and includes crops and the unborn young of animals, but does not include trees until they are severed, or petroleum or minerals until they are extracted;

“grantee” means the party to an instrument to whom chattels therein referred to, or any interest therein, are thereby granted or assigned, or agreed so to be, and includes his executors, administrators and assigns, and in the case of a company or corporation, includes the successors and assigns of such company or corporation.

“instrument” means any instrument given to secure the payment of money or the performance of some obligation and includes any bill of sale mortgage, lien, or any document that transfers or purports to transfer the property in or right to the

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possession of chattels, whether permanently or temporarily, by way of sale, security, pledge, settlement or lease, and also the following–

- (a) inventories of chattels with receipt thereto attached;
- (b) receipts for purchase money of chattels;
- (c) declaration of trust without transfer;
- (d) declaration of trust without transfer;
- (e) powers of attorney, authorities, or licences to take possession of chattels as security for any debt;
- (f) any agreement whether intended to be followed by the execution of any other instrument or not, by which a right in equity to any chattels, or to any charge or security thereon or thereover, is conferred;

but does not include the following–

- (i) securities over, or leases of, fixtures (except trade machinery as hereinafter defined, when mortgaged or charged apart from the land to which it is attached) when mortgaged, charged or leased in any mortgage, charge or lease of any freehold or leasehold interest in any land or building to which they are affixed, and whether or not such fixtures are specifically included in such mortgage, charge or lease by mention thereof in separate words;
- (ii) assignments for the benefit of the creditors of the person making the same;
- (iii) transfers of or agreements to transfer instruments by way of security;
- (iv) transfers or assignments of any ship or vessel or any share thereof;
- (v) transfers of chattels in the ordinary course of business of any trade or calling;
- (vi) debentures and interest coupons issued by any government or local authority;
- (vii) bills of sale of chattels in any foreign parts, or at sea;
- (viii) bills of lading, warehouse-keepers' certificates, warrants; or orders for the delivery of chattels, entries in auctioneers' books or any other document used in the ordinary course of business as proof of the possession or control of chattels, or authorising or purporting to authorise, either by endorsement or delivery, the possessor of such document to transfer or receive the chattels thereby represented;

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- (ix) debentures and interest coupons issued by any company or other corporate body and secured upon the capital stock or chattels of such company or other corporate body;
- (x) mortgages or charges granted or created by a company incorporated or registered under the Companies Act; or
- (xi) hire-purchase agreements.

“tangibles” means personal property other than–

- (a) chattel paper;
- (b) documents of title;
- (c) goods;
- (d) money;
- (e) negotiable instruments;
- (f) receivables; or
- (g) securities;

“land” includes a licence to occupy land;

“lease for a term of more than three years” means a lease or bailment of goods for more than three years and includes–

- (a) a lease of an indefinite term, even though the lease is determinable by one or both of the parties not later than three years from the date of its execution; and
- (b) a lease for a term of three years or less that is automatically renewable or that is renewable at the option of one of the parties or by agreement for one or more terms, the total of which may exceed three years; and
- (c) a lease for a term of three years or less where the lessee retains uninterrupted or substantially uninterrupted possession of the goods leased for a period in excess of one year after the day the lessee first acquired possession of them, but the lease does not become a lease for a term of more than three years until the lessee’s possession extends for more than three years

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but does not include–

- (i) a lease by a lessor who is not regularly engaged in the business of leasing; or
- (ii) a lease of household furnishings or appliances as part of a lease of land where the use of the goods is incidental to the use and enjoyment of the land.

“liquidator” has the same meaning as in the Insolvency Act

“machinery” means the machinery used in or attached to any factory or workshop as hereinbefore defined, and machinery and plant used in connection with the production, preparation or manufacture of agricultural products, but does not include–

- (a) the fixed motive powers, such as the waterwheels and steam and other engines and the steam boilers, donkey engines and other fixed appurtenances of the said motive powers;
- (b) the fixed power machinery (such as the shafts, wheels, drums and their fixed appurtenances) for transmitting the action of the motive powers to the other machinery, fixed and loose; or
- (c) the pipes for steam, gas and water.

“minister” means the minister responsible for trade;

“money” means currency authorised as a medium of exchange by the law of Uganda or of any other country;

“negotiable instrument” means –

- (a) a bill of exchange, note or cheque within the meaning of the Bills of Exchange Act, Cap 76;
- (b) any other writing that evidences a right to payment of money and is of a type that in the ordinary course of business is transferred by delivery with any necessary endorsement or assignment; or
- (c) a letter of credit if the letter of credit states on it that it must be presented on claiming payment;

but does not include chattel paper, a document of title or a security;

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“prescribed” means prescribed by regulations made under this Act;

“prior law” means the law in force immediately before the coming into force of this Act;

“prior security interest” means a security interest provided for by an agreement that–

- (a) was made or entered into before the coming into force of this Act; and
- (b) has not been terminated before the coming into force of this Act;

but does not include any such security interest which is renewed, extended or consolidated by an agreement or other transaction made or entered into after the coming into force of this Act;

“proceeds” means identifiable or traceable personal property in any form derived directly or indirectly from any dealing with the collateral or proceeds of the collateral, and includes–

- (a) a right to an insurance payment or any other payment as indemnity or compensation for loss or damage to the collateral or proceeds; and
- (b) a payment made in total or partial discharge or redemption of an intangible, a negotiable instrument, a security or chattel paper;

“provisional administrator” has the same meaning as in the Insolvency Act;

“purchase money security interest” means a security interest to the extent that it is–

- (a) taken or retained by the seller of collateral to secure all or part of its price; or
- (b) taken by a person who, by making advances or incurring an obligation, gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used;
- (c) the interest of lessor of goods under a lease for a term of three years,

but does not include a transaction of sale by and lease back to the seller, and for the purposes of this definition “price” and “value” include credit charges or interest payable for the purchase or loan credit;

“Public Trustee” means the Public Trustee appointed under the Public Trustee Act;

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“receivables” means any right to payment for goods sold or leased or for services rendered which is not evidenced by chattel paper, or by a negotiable instrument or by a security, whether or not it has been earned by performance;

“Register” means the Registrar of Personal Property Securities set up under section 39;

“Registrar” has the meaning assigned to it by section 37;

“registration” means the filing of an instrument with schedules or inventories, or a true copy thereof, with the affidavit hereinbefore mentioned;

“regulations” means regulations made under this Act;

“secured party” means a person who holds a security interest for the person’s own benefit or for the benefit of any other person and includes a trustee where the holders of obligations issued, guaranteed or provided for are represented by a trustee as the holder of the security interest;

“security” means— any instrument given to secure the payment of money or the performance of some obligation;

share, stock, warrant, bond, debenture or similar document—

- (i) that is in a form recognised in the place in which it is issued or dealt with as evidence of a share, participation or other interest in property or an enterprise; or
- (ii) that is evidence of an obligation of the issuer and that in the ordinary course of business is transferred by delivery together with any necessary endorsement, assignment, or registration in the records of the issuer or agent for the issuer, or compliance with any conditions restricting transfer; and an uncertificated security;

“security document” means a writing which creates a security interest, or which evidences such security interest;

“security interest” has the meaning given by section 4;

“stock” includes any sheep, goats, cattle, horses, pigs, poultry, and any other living animals.

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“uncertificated security” means a security which is not evidenced by a security certificate, and the issue and any transfer of which is registered or recorded in records maintained for the purpose by or on behalf of the issuer;

“working day” means any day of the week other than a Saturday, Sunday, or public holiday.

3. Atonement or agreement giving power of distress by way of security to be instrument within meaning of Act.

- (1) An atonement or agreement (not being a mining lease) whereby a power of distress is given or agreed to be given by one person to another by way of security for any present, future or contingent debt or advance, and whereby any rent is reserved or made payable as means of providing for the payment of interest on such debt or advance, or otherwise for the purpose of such security only, shall be deemed to be an instrument within the meaning of this Act so far as regards any chattels which may be seized or taken under the power of distress.
- (2) Where a mortgagee of any interest in land, after entering (under the powers contained or implied in the mortgage) into possession of the mortgaged land or into receipt of the rents and profits thereof, demises the said land or any part thereof to the mortgagor at a fair and reasonable rent, the instrument whereby such demise is effected shall not be deemed to be an instrument within the meaning of this Act.

4. Meaning of “security interest”.

- (1) Subject to subsection (4), for the purposes of this Act the expression security interest” is a right in rem and means an interest in—
 - (a) a chattel paper;
 - (b) a document of title;
 - (c) goods;
 - (d) an intangible;
 - (e) money;

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- (f) a negotiable instrument; or
- (g) a security,

created or provided for by a transaction that in substance secures payment or performance of an obligation, without regard to the form of the transaction and without regard to the identity of the person who has title to the collateral, including where title to the collateral is in the secured party.

- (2) For the purposes of this Act, the reservation of title by a secured party or a seller of goods, notwithstanding shipment or delivery is limited in effect to the reservation of a security interest.

- (3) Without limiting the generality of subsections (1) and (2), the expression “security interest” includes–

- (a) a fixed charge;
- (b) a floating charge;
- (c) any interest created or provided for by–
 - (i) a chattel mortgage;
 - (ii) a conditional sale agreement (including an agreement to sell subject to retention of title);
 - (iii) a hire purchase agreement;
 - (iv) a pledge;
 - (v) a security trust deed;
 - (vi) a trust receipt;
 - (vii) an assignment;
 - (viii) a consignment;
 - (ix) a lease; or
 - (x) a transfer of chattel paper,

which secures payment or performance of an obligation.

- (4) The meaning of the expression “security interest” extends to include an interest created or provided for by–

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- (a) a transfer of receivables; or
 - (b) a leave for a term of more than three years even if the transfer or lease does not secure payment or performance of an obligation.
- (5) For the purposes of this Act the expression “security interest” does not include–
- (a) a lien, charge or other interest created by any other Act or rule of law; or
 - (b) any interest created or provided for by any of the following transactions–
 - (i) a transfer of an interest or claim in or under a contract of annuity or policy of insurance, except as provided by this Act with respect to proceeds and priorities in proceeds;
 - (ii) a transfer of an unearned right to payment under a contract to a person who is to perform the transferor’s obligations under the contract;
 - (iii) the creation or transfer of an interest in land;
 - (iv) an assignment of receivables made solely to facilitate the collection of the receivables on behalf of the person making the assignment;
 - (v) an assignment for the general benefit of creditors of the person making the assignment;
 - (vi) a transfer of present or future wages, salary, pay, commission or any other compensation for labour or personal services;
 - (vii) a transfer of a right to damages in tort;
 - (viii) a transfer of a right to payment that arises in connection with an interest in land, including a transfer of rental payments payable under a lease or a licence to occupy land, unless the right to payment is evidenced by a security;

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- (ix) a sale of receivables as part of a sale of a business out of which they arose unless the vendor remains in apparent control of the business after the sale;
whether or not the interest would otherwise be a security interest.
- (6) The registration of a financing statement relating to any interest in personal property does not create a presumption that the interest is a security interest for the purposes of this Act.

5. Meaning of “possession”.

For the purposes of this Act, a secured party does not have possession of collateral that is in the actual or apparent possession or control of the debtor or the debtor’s agent.

6. Meaning of “knowledge”.

- (1) For the purposes of this Act–
- (a) a natural person “knows” or has “knowledge” of a fact in relation to a particular transaction when that person–
- (i) has actual knowledge of the fact; or
 - (ii) receives a notice stating the fact.
- (b) an organisation knows or has knowledge of a fact in relation to a particular transaction when–
- (i) the person within the organisation who is conducting the transaction has actual knowledge of the fact; or
 - (ii) the organisation receives a notice stating the fact; or
 - (iii) the fact is communicated to the organisation in such a way that it would have been brought to the attention of the person conducting the transaction if the organisation had exercised reasonable care.
- (c) a person receives a notice, demand or other document permitted or required to be given or made under this Act when–

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- (i) it is delivered to that person or to the place of business through which the security agreement was made or to any other place held out by that person as the place for the receipt of such communications or;
 - (ii) it is delivered to any address at which it may be left or to which it may be given under section 7.
- (d) a demand, notice or other document is made or given to a person–
- (i) by taking the steps reasonably required to inform the other person in the ordinary course, or
 - (ii) by delivering, leaving or posting it in accordance with section 7,

whether or not the person acquires actual knowledge of it.

- (2) For the purpose of paragraph (a) of subsection (1)–
- (a) “organisation” includes, a body corporate, a body responsible for a local government, an estate, trust, partnership or other association of two or more persons having a joint or common interest, or any other legal or commercial entity;
 - (b) an organisation exercises reasonable care if it takes the steps reasonably required to ensure that significant information is brought to the attention of the person within the organisation conducting a particular transaction; but nothing in this paragraph requires a person acting on behalf of the organisation to communicate information unless such communication is part of that person’s regular duties, or unless the person has reason to know of the transaction and that the transaction would be materially affected by the information.

7. Notice to be in writing.

- (1) Any demand, notice or other document required or authorised by this Act to be made or given to any person must be in writing, and must, in the case of a request

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made under section 17, contain an address for reply, and is sufficiently made or given if–

- (a) in the case of a secured party named in a financing statement, it is delivered to that person or is left at that person’s address as specified in the financing statement or is posted in a letter addressed to that person by name at that address; or
 - (b) in the case of any other person, it is delivered to that person or is left at that person’s usual or last known place of residence or business or at an address specified for that purpose in the security document, or if it is posted in a letter addressed to that person by name at that person’s place of residence or business at that address.
- (2) If the person is absent from Uganda, the notice, demand or other document may be given to that person’s agent in Uganda. If the person is deceased, it may be given to that person’s personal representative.
 - (3) If the person is absent from Uganda and has no known agent in Uganda, or is deceased and has no personal representative, or the identity or whereabouts of the person are not known, the demand, notice or other document may be made or given in such manner as is directed by an order of the court.
 - (4) Notwithstanding anything in subsections (1), (2), and (3), the court may in any case, make an order directing the manner in which any demand, notice or other document is to be made or given, or dispensing with the making or giving thereof.
 - (5) Subsections (1), (2), (3) and (4) do not apply to notices or other documents given or served in any proceedings in any court.
 - (6) Subsections (1), (2), (3) and (4) do not apply to the giving of any notice where another procedure is specified in the agreement creating the security interest for the giving of notices; and a notice given in accordance with that procedure is sufficiently given for the purposes of this Act.
 - (7) The provisions of section 39 concerning the effect of a defect, irregularity, omission or error in a financing statement or in the execution or registration of it apply, with any necessary modifications, to a defect, irregularity, omission or error in a

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notice, demand or other document required or authorised to be given or made to any person by this Act.

8. Registration not to constitute constructive notice

For the purposes of this Act, registration of a financing statement is not constructive notice of knowledge to a third party of its existence or contents.

9. Application of Act.

- (1) This Act applies to—
 - (a) every security interest created or provided for after the coming into force of this Act;
 - (b) every security interest created or provided for before the coming into force of this Act if it has been renewed, extended or consolidated after the coming into force of this Act; and
 - (c) every prior security interest to the extent provided in sections 105 and 106.
- (2) The rights, obligations and remedies provided for in this Act cannot be waived, except as expressly provided in this Act.
- (3) For the avoidance of doubt, each provision of this Act with regard to rights, obligations and remedies, applies whether title to the collateral is in the secured party or in the debtor.

10. Conflict of laws.

- (1) The validity, perfection and effect of perfection or non-perfection of a security interest is governed by the law of Uganda if—
 - (a) at the time when the security interest attaches—
 - (i) the collateral is situated in Uganda, or
 - (ii) the collateral is situated out of Uganda but the secured party has knowledge that it is intended to remove the collateral to Uganda, or

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- (b) the security agreement provides that Uganda law is its proper law; or
 - (c) in any other case the law of Uganda applies.
- (2) An intangible is deemed to be situated at the debtor's place of business, or at the debtor's chief executive office if the debtor has more than one place of business, or debtor's principal residence if the debtor has no place of business.
- (3) Where a security interest to which the law of Uganda does not apply under subsection (1) has attached to collateral before the collateral is removed to Uganda, the security interest is deemed to be perfected by registration under section 20 if the secured party has complied with the requirements for enforceability of the security interest against third parties in the jurisdiction where the security interest attaches

PART II – VALIDITY OF SECURITY AGREEMENT AND RIGHTS OF PARTIES

11. General effectiveness of security agreement and duty of good faith

- (1) Except as otherwise provided by this Act and subject to any other Act or rule of law or equity, 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) To the extent that this Act gives rights and imposes duties, a duty of good faith applies to the debtor and the secured party.

12. Attachment of security interests.

- (1) Subject to section 14, a security interest, including a security interest in the nature of a floating charge, attaches to collateral when it becomes enforceable against the debtor, and does not attach unless–
- (a) the parties agree to create the security interest;
 - (b) value is given by the secured party; and
 - (c) the debtor has rights in the collateral,

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unless the parties agree that it shall attach at a later time, in which case it attaches in accordance with the agreement of the parties.

- (2) Where a person claims a security interest in property in the absence of a security document, including where the property is in the possession of that person, the burden of proving the existence of an agreement to create a security interest lies with the person claiming the security interest.
- (3) For the purposes of subsection (1), an agreement to create a floating charge is not an agreement that the security interest created by the floating charge attaches at a later time.
- (4) For the purposes of paragraph (c) of subsection (1), a debtor has rights in goods which are—
 - (a) leased to the debtor; or
 - (b) sold to the debtor under a conditional sale agreement, including an agreement to sell subject to retention of title;when the debtor obtains possession of the goods.
- (5) For the purposes of paragraph (c) of subsection (1), a debtor has no rights in—
 - (a) crops until they become growing crops;
 - (b) the young of animals until they are conceived;
 - (c) petroleum or minerals until they are extracted;
 - (d) trees until they are served.

13. Attachment: after-acquired property.

Subject to section 14, where an agreement provides for a security interest in after-acquired property, the security interest attaches without specific appropriation by the debtor.

14. Attachment: special rule for consumer goods.

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Where an agreement provides for a security interest in after-acquired property, the security interest does not attach to consumer goods, unless–

- (a) the security interest is a purchase money security interest;
- (b) the after-acquired consumer good is an accession; or
- (c) the security interest is in collateral obtained by the debtor as a replacement for collateral which is the subject of the agreement.

15. Future advances.

An agreement to create a security interest may provide for future advances.

16. Rights and duties when collateral is in secured party's possession.

- (1) A secured party has a duty to use reasonable care in the custody and preservation of 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, when collateral is in the secured party's possession–
 - (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 commingled;
 - (e) the secured party may repledge the collateral upon terms which do not impair the debtor's right to redeem it.

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- (4) A secured party is liable under section 102 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 to the extent agreed.
- (6) Subsections (1), (2), (3), (4) and (5) apply whether or not possession arises from the debtor's default.

17. Secured party to supply information.

- (1) The debtor, a judgment creditor, a person with a security interest in the personal property of the debtor, or an authorised representative of any of them, may send to the secured party a request that the secured party approves or corrects and returns to the debtor an accompanying signed statement, which–
 - (a) specifies the aggregate amount of unpaid indebtedness at a specified date;
 - (b) where the collateral is identified, lists the collateral.
- (2) The secured party must not later than ten working days after the day on which it is received and any required fee is paid under subsection (4), whichever is the later–
 - (a) subject to subsection (3), comply with the request by sending written confirmation or correction;
 - (b) if the secured party no longer has an interest in the obligation or collateral at the time the request is received, send to the debtor a statement specifying the name and address of any successor in interest known to him or her.
- (3) If the secured party claims a security interest in all of a particular type of collateral owned by the debtor, the secured party may indicate that fact in the written reply and need not approve or correct an itemized list of the collateral.

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- (4) The secured party may require payment of a fee of a prescribed amount before complying with any demand under subsection (2), but the debtor is entitled to a reply without charge, once every six months.
- (5) If the secured party fails to comply with subsection (2), the court taking account of a reasonable excuse of the secured party, may make an order–
 - (a) requiring the secured party to comply;
 - (b) extending the time for compliance;
 - (c) requiring the secured party to pay the reasonable legal costs of the person making the request calculated on an advocate and client basis;
or
 - (d) requiring any person to take any other steps it considers necessary to ensure compliance.
- (6) If, without reasonable excuse, the secured party fails to comply with any order made under subsection (5), the court may order that the security interest of the secured party with respect to which the request was made is to be treated as unperfected or extinguished and that any related registration be discharged.
- (7) If the secured party without reasonable excuse fails to comply with subsection (2) or with a court order made under subsection (5)–
 - (a) he or she is liable under section 102 and any loss or damage thereby caused or caused by reliance on information supplied under this section by the secured party that is not true and complete is reasonably foreseeable loss or damage for the purposes of section 102;
 - (b) if the person has properly included in his or her request a statement made in good faith of the obligation or a list of collateral, or both, the secured party may claim a security interest only as shown in the statement against a person misled by his or her failure to comply.
- (8) A person who has sent a statement to the secured party under subsection (1) is estopped from denying the accuracy of the contents of the statement.

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- (9) For the purposes of this section, “secured party” includes a person who was a secured party at any time within the preceding twelve months.

PART III-RIGHTS OF THIRD PARTIES: PERFECTION AND PRIORITIES.

18. Requirements for enforcement against third parties.

Subject to the provisions of this Act, a security interest is capable of being enforced against a third party, including a purchaser of the collateral, another creditor, including a judgment creditor and landlord distraining for rent, a trustee in bankruptcy, liquidator, receiver or provisional administrator if–

- (a) the debtor has signed a security document that–
 - (i) contains an identifying description of the collateral; and
 - (ii) on its true construction indicates that the purpose of the agreement was the creation of security over the collateral described under paragraph (i),
except where the collateral is in the possession of the secured party, or of another person on the secured party’s behalf; and
- (b) the security interest is perfected.

19. When security interest perfected.

A security interest is perfected when–

- (a) it has attached; and
- (b) all steps required for perfection under this Act have been completed; regardless of the order in which the attachment and those other steps occur.

20. Perfection by registration.

Subject to section 19, a financing statement must be registered to perfect all security interests except–

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- (a) a security interest in collateral in possession of the secured party under section 21;
- (b) a security interest temporarily perfected for a ten working day period under section 22;
- (c) a security interest in proceeds for a ten working day period under section 23;
- (d) a security interest temporarily perfected under section 66;
- (e) a security interest covered by the transitional arrangements in section 106; and
- (f) a security interest in consumer goods which are not motor vehicles, aircraft or vessels.

21. Perfection by possession of collateral.

- (1) Subject to section 19, possession of the collateral by the secured party, or on the secured party's behalf by another person, perfects a security interest in—
 - (a) chattel paper;
 - (b) goods;
 - (c) money;
 - (d) a negotiable document of title;
 - (e) a negotiable instrument; or
 - (f) a security,but only while it is actually held as collateral.
- (2) Subject to sections 22 and 23, a security interest in money or a negotiable instrument, other than a certified security or a negotiable instrument which constitutes part of a chattel paper can be perfected only by possession under subsection (1).
- (3) Where the collateral is an un-certificated security, a secured party is deemed to take possession of the security when a transfer of the security to the secured party

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has been registered or recorded in records maintained for that purpose by or on behalf of the issuer.

- (4) When the collateral, other than goods covered by a negotiable document of title, is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest.

22. Temporary perfection where collateral delivered or available to the debtor.

- (1) Subject to section 19, a perfected security interest in a negotiable instrument or a security remains temporarily perfected for the first ten working days after the day on which the secured party delivers the collateral to the debtor for the purpose of—
 - (a) sale or exchange;
 - (b) presentation, collection or renewal; or
 - (c) registration of a transfer.
- (2) A perfected security interest in a negotiable document of title or in goods held by a bailee and not covered by a negotiable document of title remains temporarily perfected for the first ten working days after the day on which the secured party makes the collateral available to the debtor for the purpose of—
 - (a) sale or exchange; or
 - (b) loading, unloading, storing, shipping or trans-shipping; or
 - (c) manufacturing, processing, packaging or otherwise dealing with the goods in preparation for their sale or exchange.
- (3) If a security interest temporarily perfected under subsections (1) or (2) is not perfected by some other method before the expiration of the period referred to in those subsections—
 - (a) it becomes unperfected at the expiration of that period; and
 - (b) the provisions of this Act relating to the perfection of a security interest apply to it as if the security interest had not been temporarily perfected under this section.

23. Security interest in proceeds.

- (1) Subject to subsection (2), where collateral is dealt with or otherwise gives 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.
- (2) 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.
- (3) A security interest in proceeds is continuously perfected for the purposes of this Act if the security interest in the original collateral is perfected by the registration of a financing statement which–
 - (a) contains a description of proceeds, if that description would be sufficient to perfect a security interest in original collateral of the same kind; or
 - (b) contains a description of the original collateral, if–
 - (i) the proceeds are of a kind that are within that description; or
 - (ii) the proceeds are cash proceeds.
- (4) If the security interest in the original collateral was perfected by a method other than one referred to in subsection (3), the security interest in the proceeds is continuously perfected for the purposes of this Act for the first ten working days after the day on which the security interest attached to the proceeds, but–
 - (a) becomes unperfected at the expiration of that period; and
 - (b) the provisions of this Act relating to the perfection of a security interest apply to it as if the security interest had not been perfected under this subsection.

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24. Continuity of perfection.

- (1) A security interest originally perfected under this Act by one method and later perfected by another method, without an intermediate period during which it is unperfected, is continuously perfected for the purposes of this Act.
- (2) Where the secured party is a transferee, the security interest has the same priority as it has at the time of the transfer.

25. Protection of purchasers etc. of goods.

- (1) A purchaser of goods sold in the ordinary course of business of the seller takes free of a perfected security interest created by the seller, even if the purchaser knows of its existence.
- (2) A purchaser of consumer goods takes free of a perfected security interest if the purchaser—
 - (a) gives new value for the interest acquired; and
 - (b) buys the goods without knowledge of the security interest, unless—
 - i) the purchaser buys motor cars in the ordinary course of his or her business; and
 - ii) the consumer good is a motor vehicle.
- (3) A purchaser of goods sold other than in the ordinary course of business of the seller takes free of a security interest to the extent that it secures future advances made—
 - (a) after the secured party acquires knowledge of the sale; or
 - (b) more than twenty working days after the sale,

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whichever occurs first, unless the security interest was made under a commitment entered into without the knowledge of the purchaser and before the expiration of the twenty working day period.

- (4) For the purposes of this section –
- (a) a purchaser of goods includes any person who acquires possession of goods whether by sale, hire-purchase, under a contract for services and materials, barter, or under a lease; and “sold”, “sale”, “seller” and “buys” are construed accordingly;
 - (b) a seller or purchaser sells or buys goods in the ordinary course of business if it is the business of the seller or purchaser to sell or buy goods of that kind or nature.

26. Protection of purchasers etc. of chattel paper, negotiable instruments, documents of title and securities.

- (1) A purchaser of chattel paper or a negotiable instrument who gives new value and takes possession of it in the ordinary course of his or her business has priority over a perfected security interest in the chattel paper or negotiable instrument if the purchaser does not know of the security interest at the time of taking possession.
- (2) Nothing in this Act limits the right of–
- (a) a holder in due course of a negotiable instrument;
 - (b) a holder to whom a negotiable document of title has been duly negotiated; or
 - (c) a good faith purchaser of a security,
- and such holders or purchasers take priority over an earlier perfected security interest.

27. Priorities among conflicting security interests in the same collateral.

- (1) Subject to the provisions of this Act, priority among security interests in the same collateral is determined according to the following rules–

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- (a) priority among perfected security interests is determined by the order of–
 - (i) registration;
 - (ii) possession; or
 - (iii) temporary perfection under sections 22 or 23;whichever first occurs in relation to a particular security interest;
 - (b) a perfected security interest has priority over an unperfected security interest;
 - (c) priority among unperfected security interests is determined by the order of attachment of the security interests.
- (2) For the purposes of subsection (1)–
- (a) a continuously perfected security interest remains perfected by the method by which it was originally perfected; and
 - (b) subject to section 23, the time of registration, possession or perfection of a security interest in original collateral is also the time of registration, possession or perfection of a security interest in its proceeds; and
 - (c) a security interest has the same priority in respect of all advances, including future advances.

28. Priority where purchase money security interests.

A purchase money security interest in collateral has priority over any other security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or not later than ten working days thereafter.

29. Priority where registration becomes ineffective.

- (1) Except as provided in subsection (2), the fact that the registration perfecting a security interest has ceased to be effective as a result of–
 - (a) failure to renew the registration of a financing statement;

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- (b) the discharge of the registration without authorisation; or
- (c) an error,

does not affect the priority of the security interest if the secured party re-registers a financing statement in respect of the security interest not later than ten working days after the day on which the registration ceases to be effective or is discharged.

- (2) A competing perfected security interest has priority over a security interest in respect of which a financing statement is re-registered under subsection (1) to the extent that the competing security interest secures advances made or contracted for—
 - (a) after the registration of the security interest ceases to be effective or is discharged; and
 - (b) before the re-registration of the financing statement.

30. Priority where negotiable document of title.

A perfected security interest in a negotiable document of title has priority over a security interest in the goods perfected by another method after the issue of the negotiable document of title.

31. Priority of lien.

A lien over goods with respect to which a person has furnished materials or services in the ordinary course of business has priority over a perfected security interest in the same goods unless the lien is given by an enactment which provides that lien does not have priority.

32. Priority of security interests in fixtures.

- (1) Goods fixed to any land or building to which a security interest has attached remain goods for the purposes of this Act even if they are subsequently fixed to any land or building, and are removable by a secured party who becomes entitled to possession of them under a security agreement.
- (2) A secured party who has a right to remove any goods fixed to any land or building must not remove them without first giving to the owner or other person for the time

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being in possession of the land or building, not less than ten working days notice of the secured party's intention to remove the goods.

- (3) A secured party who has a right to remove goods from any land or building must exercise the right in a manner that—
 - (a) causes no greater damage or injury to the land or building or other property situated on the land; and
 - (b) puts the occupier of the land or building to no greater inconvenience than is necessarily incidental to the removal of the goods.

33. Priority of security interests in crops.

- (1) A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season, and given not more than three months before the crops become growing crops take priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than six months before the crops become growing crops, even though the person giving new value had knowledge of the earlier security interest.
- (2) Except as otherwise provided in this Act, a security interest in crops is a secured interest in the crops not only while growing, but afterwards when cut or separated from the soil, and whether stacked or stored on the land where the crops were grown or any other land or premises.
- (3) A security interest in crops does not prejudicially affect the rights of any lessor or mortgagee of any land on which the crops are growing, unless and so far as the lessor or mortgagee has consented in writing to the creation of that security interest.
- (4) A perfected security interest in crops is not extinguished or prejudicially affected by any subsequent sale, lease, or mortgage, or other encumbrance upon the land on which the crops are growing.
- (5) No security interest in crops gives a security over crops that cannot in the ordinary course of husbandry be harvested within one year from the date of the agreement creating the security interest.

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- (6) Subsections (1) and (3) of section 32 apply with all necessary modifications to the seizure and removal of growing crops from land.

34. Priority of security interests in accessions.

- (1) “Accessions” means goods that are installed in or fixed to other goods.
- (2) Except as provided in this section, and subject to section 35, a security interest in an accession has priority, as to the accession, over a claim of a person to the goods to which the accession attaches, for the purposes of “other goods”.
- (3) A security interest that attaches to goods after they become an accession is postponed in priority to the interests of a person with an interest in the other goods at the time the security interest attaches to the accession, who has not in writing;
- (a) consented to the security interest; or
 - (b) disclaimed an interest in the accession.
- (4) A security interest in an accession does not take priority over–
- (a) a subsequent purchaser for value of any interest in the whole;
 - (b) an assignee for value of the interest of a person with an interest in the whole at the time the goods become an accession; or
 - (c) a person with an earlier perfected security interest in the whole who, without knowledge of the security interest and before its perfection–
 - (i) makes an advance under the agreement creating the security interest, to the extent of the advance; or
 - (ii) acquires a right to retain the whole in satisfaction of the obligation secured.
- (5) A secured party who has a right to remove an accession from the whole, must exercise the right in a manner that–
- (a) causes no greater damage or injury to the other goods;
 - (b) puts the person in possession of the whole to no greater inconvenience,

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than is necessarily incidental to the removal of the accession.

- (6) A person, other than the debtor, who has an interest in the other goods at the time the goods subject to the security interest become an accession, is entitled to reimbursement for any damage to that person's interest in the other goods caused during the removal of the accession, but is not entitled to reimbursement for diminution in the value of the other goods caused by the absence of the accession or by the necessity of its replacement.
- (7) A person entitled to reimbursement under subsection (6) may refuse permission to remove the accession until the secured party gives adequate security for reimbursement.

35. Priority when goods are processed or commingled.

- (1) A perfected security interest in goods that subsequently become part of a product or mass continues in the product or mass if—
 - (a) the goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass; or
 - (b) a financing statement covering the original goods also covers the product into which the goods have been manufactured, processed or assembled.
- (2) In a case to which paragraph (b) of subsection (1) applies, no separate security interest in that part of the original goods which has been manufactured, processed or assembled into the product may be claimed under section 34.
- (3) If more than one perfected security interest continues in the product or mass under subsection (1), the security interests rank equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the total product or mass.

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36. **Priority subject to postponement.**

- (1) A secured party may postpone the priority of that party's security interest to any other interest.
- (2) A postponement of priority is effective between the parties according to its terms and may be enforced by a third party if the third party is the person or one of a class of persons for whose benefit the postponement is intended.

PART IV-REGISTRATION

37. **Appointment of registrar.**

In this Part "registrar" means the Registrar of Chattels Securities appointed by the Minister, and his or her duly authorised officer.

38. **Registrar's official seal.**

The registrar must have an official seal.

39. **Register of chattels securities.**

The registrar shall establish and maintain a register of security interests in personal property to be known as the Register of Chattels Securities.

40. **Registrar book and index to be kept.**

- (1) The registrar shall—
 - (a) cause every instrument registered in his office under this Act to be numbered;
 - (b) mark on every instrument so registered, or on the filed copy thereof, the date of registration and the number; and

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- (c) at the time of registration, enter, in a register to be kept for the purpose in his office, the particulars of the instrument as registered in a prescribed form.
- (2) The registrar shall keep an index of the names of grantors and grantees of instruments and shall refer therein to the entries in the register book of the instruments given by each grantor.
- (3) The index shall be arranged in divisions corresponding with the letters of the alphabet, so that all grantors and grantees whose surnames begin with the same letter (and no others) shall be comprised in one division, but the arrangement within each division need not be strictly alphabetical.
- (4) Where the instrument describes the residence of the grantor to be in some place outside the area in which the registry is situated or where the instrument describes a part of the chattels enumerated therein as being in some place outside such district, the registrar shall forthwith and within three clear days after registration in the registry, and in accordance with the prescribed directions, transmit an abstract in the prescribed form of the contents of such instrument to the registrar in whose area such places are situate, and, if such places are in more areas than one, to each such registrar.
- (5) Every abstract so transmitted shall be filed, kept and indexed by the registrar concerned.
- (6) A person may search, inspect, make extracts from and obtain copies of the abstract so registered in the like manner and upon the like terms as to payment or otherwise as in the case of instruments registered by the registrar.
- 41. Central register book, etc.**
- (1) The registrar shall keep a register to be called the Central register book in his or her office at Kampala, together with an index thereof, in the prescribed form.

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- (2) Within seven days after the last day of each month, abstract in the prescribed form of the contents of every instrument registered by him during the preceding month, and the registrar shall file the same in his office
- (3) The registrar shall cause the abstract received by him under subsection (2) to be entered in the Central register Book.

42. Mode of registration

- (1) Registration of an instrument shall be effected by filing to the registrar–
 - (a) the instrument and all schedules endorsed thereon, annexed thereto or referred to therein; or
 - (b) a true copy of such instrument and the schedules and a statutory declaration in a prescribed form.
- (2) The registrar must register every duly completed financing statement in the form in which it is submitted.
- (3) The registration of a duly completed financing statement is effective from the time it is delivered to the registrar.
- (4) A financing statement may relate to one or more than one agreements to create a security interest.
- (5) The validity of the registration of a financing statement is not affected by a defect, irregularity, omission or error in the financing statement or in the execution or registration of the financing statement, unless the defect, irregularity, omission or error is seriously misleading.
- (6) Where collateral includes goods of a kind that are required or permitted by regulations to be described in a financing statement by serial number, the registration is invalid within the meaning of subsection (4) if the financing statement or the registration contains a seriously misleading defect, irregularity, omission or error either in the debtor's name or in the serial number of goods.
- (7) A defect, irregularity, omission or error may be found to be seriously misleading, even if no one was actually misled by it.

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- (8) Failure to provide a description in a financing statement in relation to any item or kind of collateral does not affect the validity of the registration with respect to other items or kinds of collateral.
- (9) The secured party or any person named as secured party in a financing statement must give to each person named as debtor in the statement, not later than ten working days after the day on which it is delivered for registration, a copy of the financing statement, unless a person entitled to a copy has waived in writing the right to receive it.

43. Time for registration.

- (1) A financing statement may be registered before or after an agreement to create a security interest is made, or a security interest attaches.
- (2) The period within which an instrument may be registered is twenty-one days from the day on which it is executed and the precise time of registration shall be recorded by the registrar—provided that when the time for registering an instrument expires on a day on which the registrar office is closed, the registration shall be valid if made on the next following day on which such office is open.
- (3) The registration of a financing statement registered more than twenty working days after the agreement to create the security interest is entered into, does not perfect the security interest, if within twelve months of the date of registration, a trustee in bankruptcy is appointed, or a winding up order made in respect of the debtor.
- (4) If there are more grantors than one, the date of execution of an instrument shall be deemed to be the date of the execution by the grantor who last executes the instrument.
- (5) The day on which an instrument is executed shall not be included in the period within which such instrument may be registered under subsection (1) although it may be registered on that day.
- (6) An instrument executed but not registered before the commencement of this Act may be registered within twenty-one days from such commencement.

Searches and office copies

44. Search of register book and instruments.

The register books, indexes, every instrument registered, the filed copy or abstract thereof, may be searched and inspected by all persons during office hours upon payment of a prescribed fee for every search.

45. Office copies.

Any person shall be entitled to have an office copy or an extract of or from any instrument with the schedules filed therewith, or of or from the copy or abstract thereof registered or filed as aforesaid, and an office copy of any affidavit filed under this Act, on payment of a prescribed fee.

Effect of non-registration, etc.

46. Attestation and registration.

Every instrument shall be attested by at least one witness, who shall add to his or her signature his or her address and occupation.

47. Instruments not duly attested and registered to be void, etc.

An instrument not duly attested or registered shall be void, except as against the grantor, in respect of the chattels comprised therein.

48. Order and disposition.

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Chattels comprised in an instrument, which has been duly registered under this Act shall not be deemed to be in the possession, order or disposition of the grantor, within the meaning of the Bankruptcy Act.

49. Order of priority in case of two registered instruments.

In case of two or more instruments, comprising in whole or in part any of the same chattels, they shall have priority in the order of the time of their registration respectively as regards such chattels.

50. Form of instrument.

Every instrument made under this Act shall be in a prescribed form.

51. Instrument to take effect from registration.

Every instrument shall be deemed to be made on the day on which it is executed, but shall take effect from the time of its registration.

52. Instrument to have inventory of chattels.

Every instrument shall contain or shall have endorsed thereon or annexed thereto one or more schedules containing such description of the chattels comprised in the instrument as is required by this Act, or no description is so required, then such description as is reasonably sufficient to make the chattels capable of identification, and save as is expressly provided by this Act, shall give a good title only to the chattels so described and shall be void, except as against the grantor, in respect of the chattels not so described.

53. Instrument not to affect after acquired chattels.

Save as is otherwise expressly provided in this Act, an instrument shall be void, except as against the grantor, in respect of any chattels specifically described in a schedule contained in, endorsed on or annexed to the instrument, of which the grantor was not the true owner at the time of the execution of the instrument.

54. Instrument subject to defeasance, etc.

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- (1) If an instrument is made or given subject to any defeasance, condition or declaration of trust not contained in the body thereof, such defeasance, condition or declaration of trust shall, for the purposes of this Act, be taken as part of such instrument, and shall be written on the same paper or parchment on which such instrument is written, otherwise such instrument shall be void, except as against the grantor, in respect of the chattels comprised therein.
- (2) In the case of a document securing the payment of the moneys or of any part thereof payable by virtue of an instrument, it shall not be necessary for the purposes of this section to write such document on the same paper or parchment so long as the date, the names of the parties thereto and the nature of the security are set forth in the instrument or in some schedule thereto.

55. Chattels acquired in substitution.

Nothing contained in section 20 or section 21 shall prevent the parties to provide in the instrument that the grantor may acquire any chattels in substitution for all or any for the chattels described in a schedule to the instrument, and where such substitution is effected, the chattels so substituted shall be deemed to be chattels comprised in that schedule.

56. Instrument securing current account.

An instrument securing a current account shall continue in full force and effect notwithstanding that the grantor may from time to time be in credit on such account.

57. Saving of laws prescribing formalities as to execution of instruments or securing rights thereunder.

Nothing in this Act shall be deemed to affect any law for the time being in force—

- (a) prescribing any formalities to be observed concerning the execution of instruments within the meaning of this Act; or

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- (b) conferring or securing any rights or claims under or in respect of any such instrument.

Instruments comprising stock.

58. Stock to be described.

Where stock are comprised in any instrument, they shall be described or referred to in the instrument or in a schedule thereto by some brand or brands, earmark or earmarks, or other mark or marks upon them or shall be so described or referred to by sex, age, name, colour or other mode of description as to be reasonably capable of identification; and the land or premises on which such stock are or are intended to be depastured or kept shall be described or mentioned in such instrument or schedule.

59. Stock to include increase of stock, etc.

- (1) An instrument comprising stock shall, unless the contrary be expressed therein, be deemed to include not only the stock comprised therein as provided by section 25, but also the natural increase of such stock, and all stock of the class or classes described in the instrument, the property of the grantor, branded, earmarked, or marked as specified in the instrument, or which the grantor has covenanted or agreed by such instrument to so brand, earmark, or mark and which after the execution of such instrument are depasturing or are at, in, or upon any lands or premises mentioned in such instrument or in a schedule thereto, or any land and premises used and worked as part of the first mentioned land and premises, whether or not such stock be removed therefrom.
- (2) The grantee shall have the same legal property and right in all stock which by virtue of subsection (1) are deemed to be included in the instrument as he has in the stock described in the instrument or in the schedule thereto.

60. Duration of, amendments to, and discharge of registration.

- (1) A registration is effective for the period of time indicated in the financing statement by which the registration is effected or amended, unless it is sooner discharged.

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- (2) Subject to compliance with section 64, a registration may be renewed or amended or discharged or partially discharged by registering a financing change statement at any time before the original registration ceases to be effective, and the renewal, amendment, discharge or partial discharge of the registration is effective from the time at which the duly completed financing change statement is delivered for registration.

61. Transfers and variations of priority of security interests.

- (1) Where a secured party with a security interest in respect of which a financing statement has been registered transfers the interest or a part of it—
 - (a) the transfer may be recorded by submitting a financing change statement for registration; and
 - (b) if a security interest in part only of the collateral is transferred, the financing change statement must contain a description of the collateral to which the transfer relates.
- (2) When a secured party transfers a security interest which is not perfected by registration, a financing statement may be registered in respect of the security interest naming the transferee as the secured party.
- (3) A financing change statement recording a transfer of a security interest may be registered before or after the transfer.
- (4) After registration of a financing change statement recording a transfer of a security interest, the transferee is the secured party for the purposes of this Part.
- (5) Where two or more secured parties agree to vary the priority of any security interest in respect of which a financing statement has been or is to be registered, any secured party to whose security interest priority is conceded must register a financing change statement recording the agreed order of priorities and, if the duration of the agreement is shorter than the period for which the registration of the financing statement is effective, the duration of the agreement.

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- (6) Loss or damage as a result of reliance on a search result which did not disclose a change in the order of priorities of security interests is reasonably foreseeable loss or damage for the purposes of section 102.

62. Records of registry.

- (1) Subject to any regulation made under this Act, the registrar may, for the purpose of registering a financing statement which has been delivered for registration, process and record, the information contained in the financing statement and any document containing the information so recorded shall be accepted for all purposes as if it were the original financing statement.
- (2) Information in a registered financing statement or other registered document may be removed from the registrar's records only—
- (a) when the registration is no longer effective;
 - (b) on the receipt of a financing change statement discharging or partially discharging the registration;
 - (c) if the registrar discharges or partially discharges the registration under section 65; or
 - (d) if the registrar discharges or partially discharges a registration in accordance with an order of the court.

63. Register searches.

- (1) A person may, upon payment of the prescribed fee, request one or more of the following—
- (a) a search of the register against the name of a debtor and the issue of the search result;
 - (b) a search of the register according to the serial number of goods of a kind that are required or permitted to be described by serial number in a financing statement and the issue of the search result;
 - (c) a search according to a registration number and the issue of the search result; or

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- (d) a copy of any registered financing statement or other registered document.
- (2) A search result or a copy of a financing statement or registered document authenticated by the registrar's official seal is receivable in evidence and for all other purposes as *prima facie* proof of its contents.
- (3) The date and time of registration of a financing statement as shown on a search result issued under this section is *prima facie* proof of the date and time of registration of the financing statement.

64. Fees.

Every person who delivers a financing statement or other document for registration, or requests a search of the register must pay the prescribed fee to the registrar.

65. Duty to amend or discharge registration.

- (1) For the purposes of this section–
 - “secured party” includes any person identified on a registered financing statement as a secured party; and
 - “debtor” includes any person identified on a registered financing statement as a debtor.
- (2) The debtor or any person with an interest in property that falls within the description of the collateral in a registered financing statement may make a written demand to the secured party–
 - (a) requiring that the registration be discharged if–
 - (i) all the obligations under the security agreement to which it relates have been performed; or
 - (ii) no security agreement exists between the secured party and the debtor; or-
 - (b) requiring that the registration be amended or discharged to reflect the terms of any agreement by which the secured party has agreed to release part or all of the collateral described in the financing statement; or

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- (d) requiring that the description of the collateral contained in the financing statement be amended to exclude the items or kinds of property that are not collateral under the agreement between the secured party and the debtor.
- (3) Not later than ten working days after the day on which the demand referred to in subsection (2) is given, the secured party must either–
 - (a) register a financing change statement amending or discharging the registration; or
 - (b) apply to the court under subsection (6).
- (4) If the secured party fails to register a financing change statement as required by subsection (3), the person who has made the demand may require the Registrar to give a notice to the secured party stating that the registration will be discharged or amended by the registrar, in accordance with the demand, on the expiry of twenty working days after the day on which the registrar gives the notice, unless in the meantime, the secured party registers an order of a court maintaining the registration.
- (5) If the secured party who has been given a notice under subsection (4) has not–
 - (a) registered a financing change statement amending or discharging the registration as required in the demand made under subsection (2); or
 - (b) given notice to the registrar of an application for a court order under subsection (6),
before the expiry of twenty working days after the day on which the notice was given, the registrar must amend or discharge the registration in accordance with the demand.
- (6) On application by the secured party, the court may order that the registration–
 - (a) be maintained or restored on any conditions and for any period of time no longer than the period for which the registration is effective under section 60; or
 - (b) be discharged or amended.

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- (7) No fee or expense shall be charged or reimbursed and no amount shall be accepted by a secured party for compliance with a demand made under subsection (2).
- (8) A secured party who, without reasonable excuse, fails to comply with demand made under subsection (2) is liable to pay to the person making the demand the reasonable legal costs of enforcing the demand calculated on an advocate and client basis and any loss or damage caused thereby is reasonably foreseeable for the purposes of section 102.

66. Transfer of debtor's interest in collateral or change of debtor's name.

- (1) Where a secured party gives consent to the transfer by the debtor of all or part of the debtor's interest in collateral which is subject to a security interest perfected under section 20, the secured party's security interest in the transferred collateral is postponed in priority—
 - (a) to a security interest in the transferred collateral that is perfected in the period beginning on the eleventh working day after the transfer and ending at the time at which the secured party submits for registration, a financing change statement naming the transferee of the collateral as the new debtor, or takes possession of the collateral, whichever is the earlier; or
 - (b) to an interest in the transferred collateral, other than a security interest, that arises in the period referred to in paragraph (a); or
 - (c) to a security interest in the transferred collateral perfected in the first ten working days after the day of the transfer, if, within that period, a financing change statement is not submitted for registration in respect of the security interest first mentioned in this subsection, naming the transferee of the collateral as the new debtor.
- (2) Where, without the consent of the secured party, the debtor has transferred all or part of the debtor's interest in collateral which is subject to a security interest perfected under section 20 and the secured party has knowledge of the information required to register a financing change statement showing the transferee as the new debtor, the secured party's security interest in the transferred collateral is postponed in priority—

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- (a) to any other security interest in the transferred collateral that is perfected in the period beginning on the eleventh working day after the day the secured party has knowledge of the information required to register a financing change statement and ending at the time at which the secured party submits for registration a financing change statement naming the transferee of the collateral as the new debtor or takes possession of the collateral, whichever is the earlier; or
 - (b) to an interest in the transferred collateral, other than a security interest, that arises in the period referred to in paragraph (a); or
 - (c) to any other security interest in the transferred collateral perfected in the first ten working days after the day on which the secured party has knowledge of the information required to registrar a financing change statement, if, within that period, a financing change statement is not submitted for registration in respect of the security interest first mentioned in this subsection naming the transferee of the collateral as the new debtor.
- (3) Where, following a transfer of an interest in collateral by the debtor in the circumstances referred to in subsection (2), there are one or more subsequent transferees of the collateral without the consent of the secured party before the secured party learns the name of the transferee who has a possession of the collateral, the subsection applies as from the time at which the secured party acquires knowledge of the information required to register a financing change statement showing a subsequent transferee as the new debtor, without any need to register a financing change statement with respect to any intermediate transferee.
- (4) Where in respect of a security interest perfected under section 20 there has been a change in the name of the debtor and the secured party has knowledge of the new name of the debtor, the secured party's security interest in the collateral is postponed in priority–
- (a) to any other security interest in the collateral that is perfected in the period beginning on the eleventh working day after the day the secured party has knowledge of the new name of the debtor and ending at the time at which the secured party submits for registration a financing

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change statement indicating the new name of the debtor or takes possession of collateral, whichever is the earlier;

- (b) to an interest in the collateral, other than a security interest, that arises in the period referred to in paragraph (a); or
- (c) to any other security interest in the collateral perfected in the first ten working days after the day on which the secured party has knowledge of the new name of the debtor, if, within that period, a financing change statement is not submitted for registration in respect of the security interest first mentioned in this subsection, indicating the new name of the debtor.

67. Right to compensation.

- (1) A person who suffers loss or damage by reason of any matter specified in section 68 is entitled to compensation from the State in respect of that loss or damage, subject to sections 69 and 70.
- (2) On receipt of an application for compensation, the court shall determine whether compensation is payable to the applicant under this section and if so, the amount of the compensation.

68. Matters in respect of which compensation is payable.

For the purposes of section 67, the specified matters are—

- (a) that the registrar has failed to register any financing statement submitted for registration in accordance with this Act;
- (b) that the registrar has entered in the register any particulars of a security interest that do not correctly reflect the information contained in the financing statement;
- (c) that in response to a request for a search or other inquiry authorised by or under this Act, the registrar has issued any search result or made a statement that does not correctly represent the state of the register in relation to any specified debtor or collateral;

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- (d) that the registrar has failed to discharge or amend the registration of any security interest in respect of which a financing change statement has been submitted for registration in accordance with this Act;
- (e) that the registrar has failed to discharge or amend the registration of any security interest which should have been discharged or amended by the registrar in accordance with any provision of this Act or of any regulations made under section 103;
- (f) that the registrar has discharged or amended the registration of any security interest which should not have been discharged or amended; and
- (g) that the registrar has removed from his or her records, information which should not have been removed.

69. Maximum compensation payable.

- (1) The amount of any compensation paid to a secured party under section 67 shall not exceed the amount of the debt or other pecuniary obligation or the value of any other obligation that was secured by the security interest and that is still owing to the secured party at the time when the payment of compensation is made.
- (2) The amount of any compensation paid to a person other than a secured party under section 67 shall not exceed the prescribed amount.

70. Factors that may prevent or reduce compensation payments.

- (1) Where any loss or damage is occasioned wholly or partly by any act or omission of any person other than the registrar, the compensation that would otherwise be payable under section 67 may be reduced by such amount as the court considers appropriate.
- (2) Where—
 - (a) any person applies to the court for payment of compensation in respect of any loss or damage suffered by reason of any amendment or discharge of a registration or the removal of any information from the registrar's records; and

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- (b) the registrar, before amending or discharging the registration or removing the information, gave to the person entered in the register as the secured party, a notice requiring that person to show cause why the registration should not be amended or discharged, or the information removed; and
- (c) that person failed, within ten working days of the date on which the notice was given, to show cause to the registrar's satisfaction why the registration should not be amended or discharged, or the information removed,

the court shall not make an order for payment of compensation to the applicant unless the court is satisfied that cause was not shown to the registrar's satisfaction because of circumstances beyond the applicant's control or for reasons that ought reasonably to be excused.

71. Exemption from liability.

- (1) Except as provided in section 67, no proceedings lie against the State, or registrar, or any other person engaged in the administration of this Act, arising from anything done or omitted to be done under this Part, unless it is shown that person acted in bad faith in doing or omitting to do that thing.
- (2) Nothing in subsection (1) applies in respect of any application for judicial review.

72. State right of subrogation.

- (1) Where compensation is paid to an applicant under section 67, the State is subrogated to the rights of the applicant against any person indebted to the applicant whose debt was the basis of the loss or damage in respect of which the claim was paid.
- (2) Where the applicant is compensated under section 67 by an amount less than the value of the interest the applicant would have had if the error or omission had not occurred, the right of subrogation under subsection (1) does not prejudice the ability of the applicant to recover in priority to the State an amount equal to the difference between the amount paid to the applicant and the value of the interest the applicant would have had if the error or omission had not occurred.

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73. Remedies available when default.

- (1) When a debtor is in default under an agreement to create a security interest, a secured party may—
- (a) sue the debtor on the claim; or
 - (b) realise the collateral in accordance with this Part.
- (2) If the collateral is a document of title, the secured party may proceed either as to the document of title, or as to the goods covered by it.
- (3) When a secured party has reduced any claim to judgment, the lien of any levy which may be made upon the collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in such collateral.

74. Real and personal collateral.

If an agreement to create a security interest covers both real and personal property, the secured party may, if the debtor is in default;—

- (a) proceed under this Part as to the personal property; or
- (b) proceed as to both the real and the personal property in accordance with the secured party's rights and remedies in respect of the real property, in which case the provisions of this Part do not apply.

75. Realisation of collateral.

- (1) A secured party may realize collateral when the debtor is in default by—
- (a) appointing a receiver under section 76;
 - (b) taking possession of the collateral under section 77;
 - (c) sale under section 78;
 - (d) foreclosure under section 84; or
 - (e) collection under section 85.

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- (2) For the purposes of this Part, “sale” includes lease or other disposition, and “sell” and “sold” are construed accordingly.
- (3) Section 16 applies when the secured party’s possession arises from the debtor’s default.

76. Appointment of a receiver.

- (1) When a debtor is in default, a receiver may be appointed in respect of the collateral by—
 - (a) the secured party where a security document in respect of the collateral so provides; or
 - (b) the court.
- (2) Where the security document confers a power to appoint a receiver, the power extends to the appointment of two or more receivers.
- (3) The powers, rights and duties of a receiver are provided for in the Insolvency Act.

77. Possession by secured party.

- (1) When a debtor is in default, unless otherwise agreed, a secured party has the right to take possession of the collateral without the need for a court order, provided this can be effected without a breach of the peace.
- (2) Without removal, a secured party may render equipment unusable and dispose of collateral on the debtor’s premises under section 78.

78. Sale by secured party.

- (1) When a debtor is in default, a secured party may sell any or all of the collateral in its then condition or following any commercially reasonable preparation or processing.

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- (2) The proceeds of any sale must be applied as follows, and in the following order–
- (a) in payment of the reasonable expenses of retaking, holding, preparing for sale, selling, and to the extent provided for in the agreement, the reasonable legal costs incurred by the secured party calculated on an advocate and client basis;
 - (b) to the satisfaction of indebtedness secured by the security interest under which the sale is made;
 - (c) subject to subsection (3), to the satisfaction of indebtedness secured by any subordinate security interest in the collateral;
 - (d) subject to subsection (4), if the security interest secures an indebtedness, the residue, if any, to the debtor, or, if the secured party knows that the collateral is not owned by the debtor, to the owner.
- (3) The secured party must apply proceeds under paragraph (c) of subsection (2) only–
- (a) if before distribution of the proceeds is completed, reasonable proof of the subordinate security and demand therefore is received; and
 - (b) to the extent of the proceeds undistributed when such notification is received.
- (4) If the underlying transaction was a sale of receivables or a lease not securing payment or performance of an obligation, the secured party must apply proceeds under paragraph (d) of subsection (2) only if the agreement creating the security interest so provides.
- (5) Sections 79 to 82 apply to a sale under this section.
- 79. Treatment of any deficiency after sale.**
- (1) Subject to subsection (2), unless otherwise agreed, the debtor (but not the owner where the owner of the goods is not the debtor) is liable for any deficiency after sale proceeds have been applied, unless–
- (a) otherwise agreed; or
 - (b) the deficiency arose because of non-compliance with section 80.

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- (2) If the underlying transaction was a sale of receivables or a lease not security payment or performance of an obligation, the debtor is liable for any deficiency only if the agreement creating the security interest so provides.

80. Mode of sale.

- (1) Sale of the collateral may be by public auction or private sale and may be made by way of one or more contracts.
- (2) Sale may be as a unit or in parcels and at any time and place and on any terms, but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable.
- (3) In determining what is commercially reasonable under subsection (2), the fact that a better price could have been obtained by a sale at a different time or in different method is not of itself sufficient to establish that the sale was not commercially reasonable.

81. Notice of sale.

- (1) Unless the collateral is perishable, the secured party must, in accordance with subsection (2), give twenty working days notice of–
 - (a) the time and place of any public auction; or
 - (b) the time after which any private sale is to be made.
- (2) Notice under subsection (1) must be given to–
 - (a) the debtor, unless he or she has signed, after default, a statement renouncing or modifying such right;
 - (b) the owner of the collateral, where the secured party knows that the debtor is not the owner of the collateral; and
 - (c) any other secured party from whom the secured party has received, before sending notice under paragraph (a) to the debtor or before the debtor's renunciation of rights to such notice, written notice of a claim of an interest in the collateral.

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82. Effect of sale.

- (1) When the collateral is sold under section 78 to a purchaser for value, the sale—
 - (a) transfers to the purchaser all the debtor’s rights in the collateral;
 - (b) discharges the security interest; and
 - (c) discharges any security interest or lien subordinate to the security interest.

- (2) Subsection (1) applies even though the secured party fails to comply with the requirements of this Part—
 - (a) in the case of a public auction, if the purchaser—
 - (i) has no knowledge of any defects in the sale; and
 - (ii) does not buy in collusion with the secured party, other bidders or the person conducting the sale; or
 - (b) in any other case, if the purchaser acts in good faith.

83. Debtor’s right to redeem.

Subject to section 84, at any time before the secured party has sold or contracted to sell collateral under section 78, the debtor, including the owner of the collateral where the debtor is not the owner, or any other secured party may, unless otherwise agreed in writing after default, redeem the collateral by tendering—

- (a) fulfilment of all obligations secured by the collateral; and
- (b) the expenses reasonably incurred by the secured party in retaking, holding and preparing the collateral for sale, in arranging for the sale, and to the extent provided in the agreement, his or her reasonable Advocate’s fees and legal expenses.

84. Foreclosure.

A secured party may apply to the court to foreclose the right of a debtor under section 83 to redeem the collateral.

85. Collection rights of secured party.

- (1) When so agreed, and in any event on default, the secured party may notify–
 - (a) a person who is obligated on a chattel paper, intangible or receivable; or
 - (b) the obligor on a negotiable instrument,to make payment to the secured party, and also to take control of any proceeds to which the secured party is entitled under section 23.
- (2) Subject to subsection (3), if the security agreement secures an indebtedness–
 - (a) the secured party must account for any surplus to the debtor or, if the secured party knows that the collateral is not owned by the debtor, to the owner; and
 - (b) unless otherwise agreed, the debtor, but not the owner of the collateral where the debtor is not the owner, is liable for any deficiency.
- (3) If the underlying transaction was a sale of receivables or a lease not securing payment or performance of an obligation–
 - (a) the debtor or, if the secured party knows that the collateral is not owned by the debtor, the owner is entitled to any surplus; and
 - (b) the debtor (but not the owner of the collateral where the debtor is not the owner) is liable for any deficiency if the agreement creating the security interests so provides.

86. Secured party's liability for failure to comply.

If the secured party does not comply with this Part, the debtor or any person entitled to notification or whose security interest has been made known to the secured party prior to a sale, may apply to the court for an order–

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- (a) that a sale takes place or be restrained on appropriate terms and conditions;
- (b) for damages in respect of any loss or damage caused by a failure to comply with the provisions of this Part, which loss or damage is reasonably foreseeable for the purposes of section 102.

Securities over crops and animals.

87. Security may be given over crops.

An instrument may be granted over the crops described or referred to in the instrument or in a schedule thereto then actually sown or growing or planted or to be sown or grown or planted in or upon the lands mentioned in the instrument, and shall entitle the grantee thereof to the whole of the crops therein mentioned, not only while growing but after wards when cut or separated from the soil, and whether stacked or stored on the land where the same were grown or any other land or premises, or whether the nature of the crop has been altered by a process of curing or manufacture.

88. Rights of landlord or mortgagee.

- (1) No instrument shall prejudicially affect the rights of any landlord or mortgagee of any land whereon the said crops are growing, unless the landlord or mortgagee has consented in writing to such instrument: Provided that no instrument being duly registered shall be extinguished or prejudicially affected by any subsequent sale, lease, mortgage or other encumbrance of or upon the land described or referred to in the instrument or in any schedule thereto.
- (2) For the purposes, “landlord” shall mean a person having an interest superior to that of the grantor.

89. Security may be given domestic animals.

An instrument may be granted over animals depasturing upon the lands mentioned therein or in such schedule, and shall entitle the grantee thereof to the animal.

Sales

90. Sale of chattels or part thereof.

Chattels or any part thereof under this Act may be sold along with or separately from land, if any, mortgaged to secure payment of the same moneys are secured by any instrument under this Act.

91. Mode of sale of chattels.

Where an instrument expressly or impliedly gives power to the grantee to sell all or any of the chattels comprised therein without applying to court, such sale shall be by public auction, unless the grantor and encumbrancers subsequent to the grantee, if any, consent to a sale by private treaty.

92. Vesting interest in chattels.

On and after the filing of a memorandum of satisfaction, the debt or charge created by the instrument shall be vacated to the extent specified in the memorandum, and the interest of the grantee of the chattels expressed to be discharged shall vest in the person from the time being entitled to the equity of redemption therein, in so far as such interest is expressed by the memorandum of satisfaction to be determined, and subject to any lien or equity affecting the chattels.

93. Grantor's interest in chattels may be sold in execution of judgement against grantor.

- (1) Where legal process issues against the chattels of a judgement-debtor for the execution of a judgement of any court, and the said chattels, or any of them, are comprised in any instrument under this Act, the officer charged with the execution of the process may, in lieu of seizing and selling the chattels so comprised, sell the right, title and interest of the judgement-debtor in the same.

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- (2) The purchaser of the right, title and interest of the chattels shall serve the grantee with a notice of the purchase and on receiving such notice, the grantee may take possession of the chattels comprised in the instrument.
- (3) A grantee so taking possession shall be deemed to hold the chattels in trust for the purchaser of the said right, title and interest, subject to payment of all moneys due under the instrument.
- (4) If the chattels are afterwards sold under the power of sale expressed or implied in the instrument, and any surplus remains out of the proceeds of the sale after payment of all moneys due under the instrument, the grantee shall on demand pay over that surplus to the purchaser of the said right, title and interest.
- (5) If the grantee does not pay over the surplus to the purchaser as required by subsection (4), the purchaser may bring an action against him or her to recover the surplus, as money received for the use of the purchaser.

94. Inter-pleader process not affected by the Act.

Nothing in section 42 shall be deemed to affect the right of an execution creditor to test the validity of any instrument by Inter-pleader process.

Implied covenants, etc.

95. Covenants as set out in Fourth Schedule.

There shall be implied in every instrument the covenants for title on the part of the grantor set forth in the first Schedule to this Act, and such implied covenants shall have the same effect as if the same were respectively set out at length in the instrument.

96. Covenants to be several as well as joint.

Where there are two or more grantors or two or more grantees of any instrument, then, any covenants, conditions, provisos, agreements and powers expressed in such instrument, or implied therein by this Act, and imposing an obligation on such grantors or grantees, or enduring for the benefit of such grantors or grantees, shall, except in so far as contrary

intention appears, be deemed to impose such obligation, or confer such benefit, as the case may be, severally as well as jointly.

97. Covenants to bind executors.

Except in so far as the contrary intention appears, all covenants, conditions, provisos, agreements and powers expressed in any instrument, or implied therein by the Act, shall bind the executors, administrators and assigns of the person, or the successors and assigns of a company or corporation, upon whom such covenants, conditions, provisos, agreements and powers impose an obligation, and shall operate for the benefit of the executors, administrators and assigns of the person, or the successors and assigns of the company or corporation, for whose benefit the same endure.

98. Covenants may be negated or varied.

All or any of the covenants, provisos, conditions, agreements or powers set forth in this Act may be negated, modified or altered, or others may be added to them by express words in the instrument.

Transfers of instruments.

99. Form of transfer of instrument.

Every instrument may be transferred by a document in a prescribed form or to the like effect, and every transferee, his executors, administrators and assigns shall, in respect of the instrument transferred, have the same rights powers and remedies, and be subject to the same obligations, as the transferor.

100. Registration of transfer of instrument.

Transfers of instruments may be registered at any time after the execution thereof in like manner as instruments are registered; and, in case two or more transfers of any one such instrument are executed, a registered transfer shall have priority over an unregistered transfer; and, in case two or more transfers of any one such instrument are registered, priority shall be given to such transfers in the order of their time of registration.

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101. Defrauding or attempting to defraud grantee.

Every grantor of an instrument under this Act who, by sale or delivery without the consent of the grantee of any chattels comprised in or affected by such instrument, or by any other means, defrauds or attempts to defraud the grantee of the same or any part thereof, and thus or by any other means directly or indirectly defeats, invalidates or impairs the grantee's security over the same or attempts so to do, and every person who wilfully aids and abets any person in defrauding or attempting to defraud the grantee by defeating, invalidating or impairing such instrument or in attempting to do so, shall be guilty of an offence and liable to a term of imprisonment not exceeding six months or to a fine not exceeding two thousands shillings or to both.

PART VI-MISCELLANEOUS.

102. Entitlement to damages for breach of obligations.

If a person fails to discharge any duty or obligation imposed on that person by this Act, the person to whom the duty or obligation is owed and any other person who can reasonably be expected to rely on performance of the duty or obligation has a right to recover damages for any loss or damage that was reasonably foreseeable as likely to result from failure.

103. Regulations.

The Minister may make regulations for carrying into effect the provisions of this Act.

104. Repeal and saving.

- (1) The Chattels Transfer Act is hereby repealed.
- (2) Notwithstanding the repeal of the aforesaid Act, be so registered earlier, shall continue to be valid within the meaning of that Act for a period not exceeding ninety days from the commencement of this Act, whereafter it shall be rendered void until executed and registered in accordance with the provisions of this Act
- (3) The provisions of section 42 shall, *mutatis mutandis*, apply in respect of the registration of an instrument required to be registered under subsection (2).

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- (4) The rules of equity and common law applicable to personal property securities continue in force except in so far as they are inconsistent with the provisions of this Act.

PART VII-TRANSITIONAL.

105. **Transitional: applicable law.**

- (1) The validity of a prior security interest is governed by prior law.
- (2) The order of priorities among security interest is determined under prior law if all of the competing security interests are prior security interests.
- (3) The order of priorities between a security interest and the interest of a third party is determined by prior law if the third party interest arose before this Act comes into force and the security interest is a prior security interest.
- (4) In any case not coming within subsection (2) or subsection (3), the order of priorities among security interests and between a security interest and the interest of a third party is determined under this Act.

106. **Transition: registration.**

- (1) In this section, “prior registration law” means the Chattels Transfer Act.
- (2) Except as otherwise provided in this section, a prior security interest that, on the coming into force of this Act, is covered by a registration under prior registration law is deemed to be registered and perfected under this Act.
- (3) Subject to compliance with this Act, the registered and perfected status of a prior security interest deemed to be registered and perfected under subsection (2) continues.
- (4) A registration of a prior security interest in the Companies Registry or

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the Chattels Transfer Registry is deemed to be registered and perfected under this Act for the period of five years after the day on which this Act comes into force and, subject to compliance with this Act, may be perfected for a further period by registration under this Act.

- (5) A prior security interest that under prior law had the status of a perfected security interest without filing or registration and without the secured party taking possession of the collateral is perfected for the purposes of this Act, as at the date the security interest was created, and that perfection continues for three years from the coming into force of this Act, after which period it becomes unperfected unless it is otherwise perfected under this Act.
- (6) A prior security interest that, when this Act comes into force, could have been, but was not—
 - (a) registered under prior registration law; or
 - (b) perfected under prior law through possession of collateral by the secured party,
 - (c) may be perfected by registration or possession in accordance with this Act.
- (7) A prior security interest that under this Act may be perfected by the secured party taking possession of the collateral is perfected for the purposes when possession of the collateral is taken in accordance with section 21 whether the possession was taken before or after this Act comes into force and even if under prior law the security interest could not be perfected by taking possession of the collateral.
- (8) A period security interest that, when this Act came into force, was covered by a registration under prior registration law, and is perfected under this Act without registration or the secured party taking possession of the collateral, remains perfected under this Act.
- (9) A prior security interest that, when this Act came into force, could

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have been, but was not, covered by a registration under prior registration law and that, under this Act, may be perfected without registration or the secured party taking possession of the collateral, is perfected under this Act if all of the conditions for perfection of a security interest are met.

- (10) A person who fails to indicate in the prescribed manner the appropriate prior registration law on a financing change statement providing for the continuation of a registration under prior law fails to discharge an obligation within the meaning of section 102 to any person who has suffered loss or damage as a result of reliance on the financing change statement; but the failure is not seriously misleading for the purposes of section 42.
- (11) Nothing in section 66 applies to a prior security interest registered under prior registration law and deemed by this section to be registered and perfected under this Act.

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First Schedule

ss. 95,99

Covenants, provisos and powers implied in instruments

1. That the grantor will pay to the grantee the principal money and interest hereby secured, after the rate and at the time herein mentioned, without any deduction whatever.
2. That the grantor will also pay interest on any further advances that may be secured by this instrument, computed from the time of making the same, respectively, at the rate and on the dates mentioned for the payment of interest in this instrument.
3. That the grantor will not, at any time while any moneys remain owing on his security, do or allow any act or deed whereby the chattels hereby assigned shall or may become prejudicially affected, and will at all times, while any moneys remain owing on this security, duly pay all rents from time to time coming due in this security, duly pay all rents from time to time coming due in respect of any lands or premises on which any of the chattels hereby assigned are for the time being situate.
4. That the grantor will at all times, while any moneys remain owing on this security, keep and maintain all and singular the chattels hereby assigned in the like good order and condition in which they are at the date hereof; and, if any of the same are damaged or destroyed, or cease to exist, will repair such damage, or replace the chattels so destroyed or ceasing to exist with other chattels of a like nature; and further will, if required so to do by the grantee, execute any instrument that may be necessary to give to the grantee security over chattels replacing the chattels which have been destroyed or have ceased to exist.

Provisos and agreements implied in instruments

5. Provided always, and it is hereby declared and agreed, that until the grantor makes default in the payment of any of the moneys hereby secured, or in the observance or performance of any covenant, condition or agreement herein expressed or implied, and on his part to be observed and performed, or until the grantor becomes bankrupt, or until execution is levied against the goods of the grantor and such execution is not stayed or satisfied within ten days, the grantor may retain possession and use of the chattels hereby assigned.

6. Provided further that the giving by the grantor to the grantee of any bill of exchange or promissory note for the whole or any part of the money hereby secured shall not, until such bill or note is honoured or met, be considered as payment of or on account of the moneys secured by this instrument, or in any way affect or alter the rights or powers of the grantee by virtue of this instrument; and no promissory note or bill of exchange which before, at, or at any time after the execution of this instrument may be given by the grantor to the grantee for the whole or any portion of the moneys hereby secured, or the remedy thereon of the grantee or of the holder thereof, shall merge in the covenants herein expressed or implied.

Powers implied in instruments

7. Provided always, and it is hereby declared and agreed, that if default is made by the grantor in payment of any of the principal or interest moneys hereby covenanted to be paid on the day on which the same ought to be paid according to the terms hereof, or in the observance or performance of any of the covenants, conditions or agreements herein expressed or implied, and on the grantor's part to be observed and performed or if the grantor becomes bankrupt, or if at any time execution is levied against the goods of the grantor such execution is not stayed or satisfied within ten days, then and in such case the grantee, either personally or by his agent or servants may immediately thereupon or at any time thereafter without any further consent

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by the grantor, and without giving to the grantor any notice, or waiting any time, and notwithstanding any subsequent acceptance of any payment of any money due on this security, enter upon any lands or premises whereon the chattels for the time being subject to this security may be, and take possession thereof, and sell or dispose of same or any part thereof by public auction, or if consent as required by section 41 of the Chattels Transfer Act has been obtained, then by private treaty, separately or together, in such lots and generally in such manner in every respect as the grantee deems expedient, with power to allow time for payment of purchase money, or to buy in the said chattels or any part thereof at such auction and to rescind or vary the terms of any contract or sale, and to resell without being answerable for any loss or expense occasioned thereby, and to execute all such assurances and do all such things for giving effect to any such sale as may be necessary or proper; and the receipt of the grantee or his agent shall be a sufficient discharge to any purchaser at such sale for any of the purchase money; and upon any sale purporting to be made in exercise of the powers herein expressed or implied no purchaser shall be bound to inquire as to the propriety or regularity of any such sale is improper or irregular.

And it is hereby declared and agreed that the grantee shall stand possessed of the proceeds of any such sale upon trust, after paying thereout the costs, charges and expenses of and incidental to such taking possession, sale and the preparation and registration of this instrument, to apply the same in reduction of the moneys then owing on the security of this instrument, including all moneys herein covenanted to be paid, notwithstanding that the same may not then have become due, or that any promissory notes or bills of exchange may then be current for the same, and to pay the balance to the grantor.

Powers, covenants and provisions to be implied in instruments over stock.

8. That during the continuance of this security, the grantee his or hers agents or servants, may from time to time, and at reasonable times for that purpose, enter into and upon the said lands or premises or any

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other lands or premises whereon the stock for the time being subject to this security are depasturing, for the purpose of viewing the state and condition of the same; and that the grantor will, upon receiving seven days' previous notice in writing delivered to him or her personally or addressed to him through the ordinary course of post or otherwise at his or her last known place of abode in Uganda, give, and afford to the grantee, his or her agents or servants, all reasonable assistance to enable the grantee, his or her agents or servants view the same accordingly.

9. That there are now depasturing upon the said lands and premises all the stock herein respectively mentioned as depasturing thereon. And that the grantor will not, during the continuance of this security, without first obtaining the grantee's consent in writing, further encumber the stock for the time being subject to this security, or change the general quality, character or description of the same or remove the same or any part thereof except in the ordinary course of business, but no sale shall be made so as to reduce the number of the stock stated in this security.

And that the grantor will, during the continuance of this security, at the usual and convenient season for so doing, well and properly brand, earmark and mark with the brand, earmark and mark herein specified, all stock for the time being subject to this security, so that all such stock shall bear and continue to bear the brands, earmarks and marks herein specified.

And will not, without the leave in writing of the grantee, brand, earmark or mark, or permit to be branded, earmarked or marked any stock for the time being subject to this security with any brands, earmarks or marks, other than the brands, earmarks or marks herein specified.

And will at all times during the continuance of this security take, use and adopt all due and proper means for keeping and maintaining all stock now depasturing or that may during the continuance of this security be brought upon the said lands or premises or any part thereof, free from disease, and in clean and healthy condition: and will at all

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times during the continuance of this security pay and defray all expenses in and about the good and proper conduct and management of the said lands or premises efficient and proper assistance to assist in the said conduct and management: And will, every year, on demand by the grantee, render and deliver to him a return or account in writing setting forth the number, ages and sexes of the stock for the time being subject to this security and the places where the same are depasturing or kept.

10. That all stock belonging to the grantor, branded, earmarked or marked as aforesaid, or covenanted so to be, of which possession has been taken, under the power in that behalf herein contained, shall be subject to the same powers, provisions, declarations and agreements as are herein expressed or implied of and concerning the stock and increase of stock herein expressed to be assigned, and may be dealt with in the same manner in all respects as if the stock of which possession is taken as aforesaid had formed part of the stock hereby assigned: And that the grantor will, at his or her own cost and charges, do and execute all such deeds, matters and things as may be necessary, or as the grantee may think proper, the further, better and more perfectly assigning and assuring to the grantee the stock, and increase of stock, and all and singular other premises hereby assigned or intended so to be, or the stock for the time being on the said lands or premises, and any stock branded, earmarked or marked as aforesaid, or covenanted so to be, of which possession has been taken as aforesaid, so that the same may be held by the grantee upon and for the same ends, intents and purposes, and with, under, and subject to the same powers, provisos, agreements and declarations as are herein expressed or implied of and concerning the stock and premises herein expressed to be assigned: and will from time to time, and at all times during the continuance of this security, pay all and singular fees and other outgoings and payments, and perform and observe all rules and regulations, and conditions which by the owner for the time being of the said stock or premises respectively now are or shall become at any time hereafter due, payable, observable or performable respectively: and that in case the grantor fails or neglects to pay such fees

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and other outgoings and payments as aforesaid, or any of them, or any part thereof, the grantee may make such payments respectively: And that the grantor will from time to time and at all times hereafter, on demand, pay or cause to be paid to the grantee all sums of money paid or advanced by the grantee in or towards such payment as aforesaid, with interest for the same after the rate of eight pounds per centum per annum from the time or respective times when the same were advanced or paid: and that , the stock for the time being subject to this security shall stand charged and chargeable with the payment of the same in like manner as if the same had been principal moneys secured by this instrument. That in case the grantee exercises any power of entry or taking possession vested in him or her hereunder then he or any person or persons appointed by him or her for the purpose, may continue in possession of the said stock and of the lands or premises whereon the same are depasturing or kept until the sale thereof, and manage, conduct and carry on the said lands and stock, and employ servants and assistants, and the grantee for any such purpose shall be entitled without any interference by the grantor to use all branding, earmarking, marking and other implements and plant on or used in connection with the said lands or premises; and, further, that the costs, charges, and expenses of so doing, from the time of such entry and taking possession until the sale and delivery of the said stock and premises to any purchaser thereof, shall, together with interest thereon after the rate aforesaid, until payment, be a charge upon the stock for the time being subject to this security.

Power to be implied in instruments over crops

11. If the grantor does not pay to the grantee the moneys hereby secured, with interest and commission thereof as herein mentioned, at the time herein mentioned for payment of the same, the crops hereby assigned shall be gathered, carried away, and made marketable either by the grantor or by the grantee at the option of the grantee, but in either case at the expense of the grantor, and shall (if gathered by the grantor) be delivered by the grantor to the grantee or his or her order at the place of delivery herein mentioned (or, if no such place is mentioned in the instrument, at such place as the grantee directs); and the grantee may either sell the same in Uganda, in one or more lots by public auction or if consent as required by section 41 of the Chattels Transfer Act has been obtained, then by private treaty, or partly in the one way and partly in the other, and upon such terms and conditions as to credit and otherwise as he or she thinks fit, or may cause the same to be shipped or exported to any place or places out of Uganda, to be sold by his or her agents in the manner and on the terms aforesaid, without being responsible for any loss or deficiency occasioned either by the shipment of the said crop or by any sale or sales thereof, whether in Uganda or elsewhere, or by the act, neglect or default of any agent, broker or other person; and may from the proceeds pay himself the moneys hereby secured, and any rent payable to any landlord, and any moneys payable to any mortgagee or other person that he may be compelled to pay in order to protect his or her security over the said crops, and all costs, mercantile and other charges and expenses incurred in and about the harvesting, sale, shipment and carrying away of such crops, and the storage and freight thereof, or any other account connected with the realisation thereof, and shall pay over the balance, if any, to the grantor.

Power to be implied in instrument over animals

12. If the grantor does not pay to the grantee the moneys hereby secured, with interest and commission thereon as herein mentioned, at the time herein mentioned for payment of the same, the animals mentioned in this instrument, and the increase thereof, and all other animals which if this instrument were an instrument by way of security over animal would be included therein

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PUBLICATIONS OF THE UGANDA LAW REFORM COMMISSION

No.	Publication.
1.	A study report on rape, defilement and other sexual offences.
2.	A study report on the reform of the law of domestic relations.
3.	The sixth revised edition of the laws of Uganda, 2000.
4.	A field Study report on voices of the people on trial procedures, sentencing and decriminalisation of petty offences.
5.	A study report on company law.
6.	A study report on competition law.
7.	A study report on contracts law.
8.	A study report on cooperatives law.
9.	A study report on copyright and neighbouring rights law.
10.	A study report on electronic transactions law.
11.	A study report on geographical indications law.
12.	A study report on industrial property law (patents, industrial designs, innovations and utility models)
13.	A study report on insolvency law.
14.	A study report on intellectual property - traditional medicine practice.
15.	A study report on intellectual property rights - trademarks and service marks law.
16.	A study report on intellectual property rights -trade secrets law.
17.	A study report on law relating to trial procedure law.
18.	A study report on plant variety protection law.
19.	A study report on quadhi's courts law.
20.	A study report on reform of the laws relating to chattel securities.
21.	A study report on reform of the laws relating to hire purchase.
22.	A study report on reform of the laws relating to mortgage transactions.
23.	A study report on sentencing guidelines.
24.	A study report on the law for establishment of special economic zones.
25.	A study report on the proposals for the reform of the Accountants Act, Cap 266.
26.	A study report on the reform of business associations - partnerships law
27.	A Study report on the reform of selected trade laws - consumer protection law.
28.	A Study report on the reform of selected trade laws - sale of goods and services law.
29.	A study report on the reform of selected trade laws - trade licensing law.
30.	Handbook on making ordinances and bye-laws in Uganda.
31.	How our laws are made.
32.	Study report on the legal implementation of the World Trade Organisation Agreements.
33.	Report on the law relating to publishing horrific pictures and pictures of the dead in the press and pornography.