

ACT

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THE BORROWERS AND LENDERS ACT, 2014

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(3) The priority between prior security interests and competing claims shall be determined by the prior law during the transitional period.

Regulation. **54.** The Governor may, by statutory instrument, make Regulations as he considers necessary or expedient for giving effect to the provisions of this Act.

Passed in Parliament this *18th* day of *November*, in the year of our Lord two thousand and fourteen.

IBRAHIM S. SESAY,
Clerk of Parliament.

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which has passed Parliament and found by me to be a true and correct printed copy of the said Bill.

IBRAHIM S. SESAY,
Clerk of Parliament.

SIGNED this *22nd* day of *December*, 2014.

DR. ERNEST BAI KOROMA,
President.



No. 13



Sierra Leone

2014

The Borrowers and Lenders Act, 2014.

Short title.

Being an Act to provide the legal framework for credit agreements, to improve standards of disclosure of information in credit agreements, to prohibit certain practices, and promote consistency in the enforcement of credit agreements and to provide for other related matters.

[] Date of commencement.

ENACTED by the President and Members of Parliament in this present Parliament assembled.

PART I—PRELIMINARY

Interpretation. 1. In this Act, unless the context otherwise requires—

“Bank” means the Bank of Sierra Leone ; enacted under section 4 of the Bank of Sierra Leone Act 2011 (Act No. 15 of 2011)

“borrower” means a person who is a party to a credit agreement and who has concluded a credit agreement with a lender and provided some property as collateral to secure obligations specified in the credit agreement and includes—

- (a) a person who buys goods on credit;
- (b) a person who receives services on credit; and
- (c) a financial lessee;

“cash proceeds” includes money, cheques and deposit accounts;

“credit agreement” means an agreement in the nature of a credit facility, a credit transaction, a secured credit guarantee, any combination of these or any other agreement that relates to a transaction, regardless of its form that creates a security interest in movable property to secure all types of obligations, present or future, determined or determinable;

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

“deposited security” includes a security standing to the credit of a security account which is transferable by way of book-entry in the record of depositors and a security in a securities account that is in suspense;

“Governor” means the Governor of the Bank of Sierra Leone;

“inventory “means goods that are—

- (a) held by a person for sale or lease;
- (b) to be provided under a contract for services;
- (d) raw materials or work in progress ; or
- (d) materials used or consumed in a business;

“lender” means a commercial bank or other financial institution licensed by the Bank of Sierra Leone and who, as part of business enters into a credit agreement by advancing loans and other credit facilities including –

- (a) micro credit facilities;
- (b) selling goods on credit;
- (c) providing services on credit; and
- (d) a financial lessor;

“lien by operation of law” include interests in property created by orders, decrees, judgments and other

statutory liens in respect to, movable property;

“Minister” means the Minister responsible for finance;

“person” includes an individual, a company, a partnership, an association and any other group of persons acting in concert, whether incorporated or not;

“proceeds” means identifiable or traceable property received as a result of sale or other disposition, collection, lease or license of collateral, including proceeds of proceeds, civil and natural fruits, dividends, distributions, insurance proceeds and claims arising from defects in, damage to or loss of collateral;

“property” includes movable property and choses in action;

“purchase money security interest” means-

- (a) a security interest in collateral retained by a seller that secures the obligation to pay any unpaid portion of the purchase price of the collateral;
- (b) a security interest taken by a person who gives value for the purpose of enabling a debtor to acquire rights in the collateral, to the extent that the value is applied to acquire those rights; or
- (c) an interest of a financial lessor; but does not include a transaction of sale and lease back to the seller;

“receiver” means a person appointed as receiver in accordance with this Act;

“Registrar” means the Registrar of the Collateral Registry appointed under this Act;

“Registry” means the Collateral Registry established under section 15;

“security interest” includes fixed and floating charge, chattel mortgage, lien, pledge, outright or security assignment of receivables, reservation of title, finance lease, trust, or any other encumbrance of any nature created by an agreement other than liens arising by operation of law;

“significant shareholding” means a direct or indirect holding in a non-bank financial institution which -

- (a) represents ten per cent or more of the capital or of the voting right, or;
- (b) makes it possible to exercise a significant influence over the management of the institution in which a holding subsists;

“value” means consideration that is sufficient to support a simple contract, and includes an antecedent debt or liability, and a binding commitment to provide future value;

2. (1) This Act shall apply to –

- (a) security interests –

Application
of Act .

- (i) in movable property created by a credit agreement, regardless of the form of the transaction, the type of movable property or the nature of the secured obligation;
 - (ii) against third parties in tangible property if the property is located in Sierra Leone;
 - (iii) in intangible property if the borrower is located in Sierra Leone;
 - (iv) in a deposit account, if a bank or other financial institution that maintains the relevant deposit account has a place of business in Sierra Leone; and
 - (vi) in proceeds of the original collateral; and
- (b) issues relating to the enforcement of a security interest in tangible property if –
- (i) the enforcement takes place in Sierra Leone; and
 - (ii) the borrower is located in Sierra Leone.

(2) Nothing in this Act shall prevent a court from invalidating, as fraudulent, a credit agreement where parties are not dealing at arm's length and intend to defraud a third party including–

- (a) a shareholder loan or other credit agreement between a corporate body as borrower and a person acting as a lender who has a significant shareholding in that corporate body;

- (b) a loan to a shareholder, or other credit agreement between a corporate body, as lender, and a person who has a controlling interest in that corporate body, as borrower;
- (c) a credit agreement between persons who are in a familial relationship; or
- (d) any other arrangement that is of a type that has been held in law to be between parties who are not dealing at arm's length.

3. (1) This Act shall not apply to security interest in–

- (a) ships and aircrafts;
- (b) payment rights arising under or from financial contracts;
- (c) assignment of wages, pension, health and similar benefits as provided in the National Social Security and Insurance Trust Act, 2001 and other applicable legislation;
- (d) contracts of annuity or life policy of insurance; and
- (e) transfers of right to damages in tort not related to commercial activity.

Non-application of Act.

(2) This Act shall not apply to any matter that is the subject of a court, administrative or alternative dispute resolution proceedings that had commenced before the coming into operation of this Act.

PART II—SUPERVISION AND ENFORCEMENT

Functions of
the Bank.

4. (1) For the purposes of this Act, the Bank shall—
- (a) promote the development of a fair, transparent, competitive and accessible credit market throughout Sierra Leone;
 - (b) monitor the credit market throughout Sierra Leone in order to detect and prevent any conduct prohibited by this Act;
 - (c) receive complaints in writing about alleged contraventions of this Act;
 - (d) conduct investigations in order to ensure compliance with this Act;
 - (e) take such enforcement measures in accordance with section 46 of the Banking Act, 2011 (Act No.14 of 2011) as may be appropriate;
 - (f) promote public awareness on matters relating to the credit market throughout Sierra Leone;
 - (g) design and disseminate information, for the purposes of public education, on matters relating to the credit market throughout Sierra Leone;
 - (h) establish standards for protection of the rights of borrowers and lenders under this Act;

- (i) report to the Minister annually on the volume and cost of different types of credit products, market practices relating to those products, and their implications for borrowers' choice and competition in the credit market throughout Sierra Leone;
- (j) advise the Minister on matters of national policy related to the credit market in Sierra Leone; and
- (k) adopt any other measures necessary for the promotion and development of the credit market in Sierra Leone.

(2) In the performance of its functions under subsection (1), the Bank shall take cognizance of international best practice in the field of credit and financing.

5. (1) Where the Bank suspects that a person has committed an offence under this Act the Bank may conduct investigations, as it considers necessary, in order to establish his liability or otherwise. *Investigation.*

(2) For the purposes of carrying out an investigation under subsection (1), the Bank shall have power to, examine, make copies or take possession of books of accounts, other documents and transactions of a lender and a lender shall give the Bank access to and shall produce books of accounts, documents and information that may be required by the bank in the conduct of the investigation.

(3) Any person who fails, without reasonable cause, to furnish the Bank with information requested by the Bank under subsection (2) or impedes the Bank in the conduct of an investigation under this section commits an offence and shall, on conviction, be liable to a fine of Le.50,000,000.00 or to a term of imprisonment not exceeding one year.

Confidentiality

6. Information obtained by the Bank pursuant to section 5, shall be confidential and shall not be disclosed to a third party without the consent in writing, of the person who has custody or control of the books or other documents unless the disclosure is required for the purposes of criminal proceedings or other action under this Act.

Order for search of premises.

7. (1) Where the Bank has reasonable grounds to suspect that—

- (a) an action prohibited by this Act has taken place, is taking place or is likely to take place on or in any premises;
- (b) information connected with an investigation into any conduct prohibited under this Act, is in the possession of, or under the control of, a person who is on or in any premises; or;
- (c) information which have been requested by the Bank, in accordance with subsection (2) of section 5, and has not been produced but is in the possession or under the control of a person who is on or in any premises;

the Bank may apply to the court for the issue of a warrant authorizing the person named in the warrant to enter and search the premises.

(2) A person authorised to enter and search premises under subsection (1), may—

- (a) search the premises;
- (b) search any person on the premises if there are reasonable grounds to believe that the person has personal possession of any article or document that has a bearing on the investigation;

- (c) examine any article or document that is on or in the premises that has a bearing on the investigation;
- (d) request information about any article or document from the owner of, or person in control of the premises or from a person who has control of the article or document, or from any other person who may have the information;
- (e) take extracts from, or make copies of, any book or document that has a bearing on the investigation that is on or in the premises;
- (f) use any computer system on the premises, or require assistance of person on the premises to use that computer system, to—
 - (i) access any data contained in or available to that computer system;
 - (ii) reproduce any record from that data;
 - (iii) seize an output from that computer for examination and copying; and
 - (iv) attach, and if necessary, remove from the premises for examination and safekeeping, any item that has a bearing on the investigation.

(3) In this section “premises” includes any structure, building, place, aircraft, vehicle and vessel.

Annual
report .

8. (1) The Bank shall, within six months after the expiration of each financial year submit to the Minister an annual report on the administration of this Act.

(2) The annual report referred to in subsection (1) shall include—

- (a) a record of violations and remedial actions taken;
- (b) volumes of different types of credit products, and
- (c) proposals for ongoing improvement for the effective administration of this Act.

PART III—EFFECTIVENESS OF SECURITY INTERESTS

Execution of
credit
agreement

9. (1) A credit agreement shall be executed in writing or electronically, and it may consist of one or more writings or electronic records that, taken together, establish the intent of the parties to create a security interest in some property.

(2) Non-payment of stamp duty or any other tax shall not invalidate a credit agreement.

Registration
of security
interests.

10. (1) A lender shall register a security interest with the Registry in order to render the security interest effective against third parties.

(2) Where a security interest is created by a lender, the registration of the security interest with the Registry shall be sufficient to render the security interest effective against third parties.

Description
of collateral.

11. (1) A credit agreement shall contain a specific description of the collateral.

(2) For the purposes of subsection (1), a description such as “all inventory” or “all movable property” of the borrower shall be sufficient.

(3) After a security interest is created and becomes effective between a lender and borrower, it shall automatically extend to any identifiable proceeds of the collateral whether or not the credit agreement contains a description of the proceeds.

12. Except as otherwise provided in this Act, a security interest shall be effective against third parties when it is created in accordance with section 9 and registered in accordance with section 10. Achieving third-party effectiveness.

13. A security interest shall continue to be effective against third parties for the purposes of this Act, if the security interest has been registered and has not been discharged or lapsed. Continuity of third-party effectiveness.

14. (1) Except as otherwise provided in this Act, a security interest collateral that is dealt with or gives rise to proceeds shall extend to the proceeds. Third-party effectiveness in proceeds.

(2) If the lender enforces the security interest against both the collateral and the proceeds, its recovery from the collateral and proceeds shall be limited to the value of the collateral at the date of the disposition that gave rise to the proceeds.

(3) A security interest shall remain effective against third parties with respect to proceeds if —

- (a) the security interest in the original collateral has been made effective against third parties by registration that contains a description of the original collateral;
- (b) the proceeds are—
 - (i) of a kind that is within the description of the collateral: or
 - (ii) cash proceeds;

(4) A security interest in proceeds shall temporarily remain effective against third parties until the expiration of ten (10) working days after the proceeds arose, if the proceeds—

- (a) are not cash proceeds; and
- (b) are not within the description of a collateral in the registration under subsection (3).

(5) The security interest shall not continue in the proceeds if the lender fails to render it effective against third parties within ten (10) working days after the proceeds arose.

Collateral
Registry.

15. (1) The Bank shall establish and maintain a Collateral Registry as a unit or department within the Bank which shall be responsible for the registration of security interests on movable property.

(2) The Bank shall appoint a Registrar on terms and conditions specified in the letter of appointment and who shall be responsible for the management of the Registry.

(3) The records of the Registry shall be public records.

Registration
of security
interest

16. (1) A lender shall register a security interest covering collateral created by the borrower in favour of a lender.

(2) A registration of a security interest under subsection (1) shall contain—

- (a) the identity of the borrower;
- (b) the identity of the lender;

(c) the maximum amount secured by the security interest;

(d) a description of the collateral; and

(e) any other information required by the Registrar.

(3) The Registrar shall prepare and keep an index of registered security interests.

(4) The Registrar shall issue a certificate of the registration which shall be evidence of registration in any court proceedings.

(5) The Registrar shall, upon request and payment of the prescribed fee, issue a printed search result in the form of a certificate which shall be irrefutable evidence of the existence of information in the Registry as of the date and time of its issuance.

17. (1) A security interest shall be effective against third party interests after it has been registered and a number, date and time assigned to it by the Registrar. Effectiveness of registration.

(2) The effectiveness of a registration of a security interest shall not be affected by any defect, irregularity, omission or error, unless the defect, irregularity, omission or error is misleading.

(3) A registration of a security interest shall be ineffective if there is a defect, irregularity, omission or error in—

- (a) the identity of a borrower; or
- (b) the serial number of a collateral if the collateral is of a kind that is required by the Registry to be described by a serial number.

Refusal of register

18. The Registrar shall not register a security interest if—

- (a) it is not submitted in such form as may be prescribed by the Registrar;
- (b) the prescribed fee has not been paid.

Voluntary amendment of re-registration.

19. (1) An amendment to a registration that adds a new collateral, a new borrower or that modifies the maximum amount secured by the security interest shall be effective and have priority to the—

- (a) added collateral;
- (b) added borrower
- (c) new maximum amount,

from the date when the amendment was registered.

(2) Unless a registration modifies the maximum amount secured by the security interest, it may relate to one or more credit agreements that cover the collateral described in the registration.

Compulsory amendment and re-registration of satisfaction of obligation.

20. (1) A lender shall register satisfaction of a secured obligation within fifteen (15) working days after receipt of demand from the borrower, when all obligations under a credit agreement creating a security interest have been performed

(2) A borrower shall give a written demand to a lender to amend or discharge the registration if—

- (a) all of the obligations under the credit agreement to which the registration relates have been performed and there is no commitment to make future advances;

- (b) the lender has agreed to release part of the collateral described in the registration;
- (c) the collateral described in the registration includes an item or kind of property that is not collateral under a credit agreement between the lender and borrower;
- (d) no credit agreement exists between the parties; and
- (e) the security interest has been extinguished in accordance with this Act.

(3) If the lender fails to comply with the demand within fifteen (15) working days after its receipt, a person making the demand under subsection (2) may apply to the Court to order registration of satisfaction of obligation or an amendment of the registration as appropriate.

PART IV-GENERAL PRIORITY RULES

21. Priority between security interests in the same collateral shall be determined by the order of possession of that collateral or registration of the security interests whichever occurred earlier. Priority between security interests.

22. Priority of a security interest in an original collateral shall be the priority with respect to its proceeds. Priority of a security interest in proceeds

23. (1) A lender may stipulate in an agreement to subordinate its priority to any other lender. Subordination of priority.

(2) An agreement referred to in subsection (1) shall not adversely affect rights of a person who is not a party to the agreement.

Priority of future advances.

24. A security interest shall have the same priority in respect of all extensions of credit that a lender makes in the future up to the maximum amount secured by the security interest indicated in the registration.

Priority of purchase money security interest.

25. (1) A purchase money security interest in collateral or its proceed other than inventor, shall have priority over a non-purchase money security interest in the same collateral created by the same borrower if the purchase money security interest in the collateral or its proceed is made effective against third parties by registration not later than ten (10) working days after the day on which the borrower obtained possession of the collateral.

(2) A purchase money security interest in inventory or its proceeds shall have priority over a previously registered non-purchase money security interest in the same collateral, given by the same borrower, if the purchase money security interest in the inventory or its proceeds is made effective against third parties by registration and the lender receives a notification at the time the borrower obtains possession of the collateral.

Priority of security interest in accessions and commingled goods.

26. (1) A security interest in goods that is made effective against third parties before the goods become an accession, shall have priority over a claim to the goods as an accession made by a person with an interest in the goods.

(2) A security interest in goods that is made effective against third parties that subsequently become part of a product or mass and their identity is lost shall continue in the product or mass.

(3) If more than one security interest is effective against third parties in the goods before they become part of a product or mass, the security interests rank equally in proportion to the value of the goods at the time they became part of the product or mass.

27. (1) The rights of a borrower in the collateral shall be transferred despite a provision in a credit agreement prohibiting transfer or declaring a transfer to be a default. Priority with respect to transferred collateral

(2) If a borrower transfers an interest in collateral, that is subject to security interest effective against third parties, that security interest shall have priority over any other security interest granted by the transferee.

PART V—PRIORITY OF TRANSFEREES OF MONEY, ETC. Priority of transferees of money.

28. (1) A transferee of money shall take the money free from a security interest, unless the transferee acts in collusion with a borrower in violation of the rights of a lender.

(2) A creditor who receives payment of a debt owing by a borrower through any payments system shall receive the payment free from security interest, whether or not the creditor had knowledge of the security interest at the time of the payment.

(3) A purchaser of a negotiable instrument, document of title, chattel paper or security certificate shall have priority over a security interest effective against third parties in the negotiable instrument, the document of title, the chattel paper or the security certificate if the purchaser—

- (a) gave value;
- (b) acquired the negotiable instrument, the document of title, the chattel paper or the security certificate without knowledge that the transaction is in breach of a credit agreement to which the security interest relates; and

- (c) took possession of the negotiable instrument, the document of title, the chattel paper or the security certificate.

Priority of buyers.

29. (1) A buyer or lessee of a movable property collateral who acquires it for value, shall take the collateral free from a security interest that has not been made effective against third parties.

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

Possessory lien arising by operation of law with respect to movable property

30. A possessory lien given to a person who provided materials or services for movable property that are subject to a security interest in the same property shall have priority over that security interest if

-
- (a) the materials or services relating to the lien were provided in the ordinary course of business;
 - (b) the lien has not arisen under an Act that provides that the lien does not have the priority
 - (c) the person who provided the materials or services did not, at the time the person provided those materials or services, know that a credit agreement relating to the goods contained a provision prohibiting the creation of a lien by the borrower.

31. (1) The interest of a judgment creditor in any collateral shall have priority over any security interest in the same collateral if the security interest is not made effective against third parties at the time of execution. ^{Judgment liens}

(2) In this section, “time of execution” means –

- (a) the time of seizure, if movable property is seized by or on behalf of an execution creditor;
- (b) the time when a judicial order is served on a person who is holding movable property for or on behalf of a borrower; or
- (c) the time when a judgment or order with respect to movable property is registered in the Registry.

PART VI–BORROWERS RIGHTS, OBLIGATIONS AND DISCLOSURE OF INFORMATION

32. (1) A lender shall not discriminate against a person on grounds of race, gender, ethnicity, political affiliation or religion but may refuse to enter into a credit agreement with a prospective borrower on reasonable commercial grounds consistent with the lender’s customary risk management and underwriting practices including– ^{Protection against discrimination.}

- (a) the ability of a prospective borrower to meet the obligations of a proposed credit agreement;
- (b) the cost of a credit agreement to the borrower;
- (c) the terms and conditions of a credit agreement;

- (d) compliance by the prospective borrower with the terms of the credit agreement;
- (e) the exercise of any right of the lender under a credit agreement, this Act or any other law relating to credit; or

(2) A prospective borrower who alleges discrimination by a lender may make a complaint to the Bank for redress.

Delivery of documents

33. For the purposes of a credit agreement under this Act, delivery of documents shall be—

- (a) in person;
- (b) by ordinary mail;
- (c) by facsimile;
- (d) by electronic-mail;
- (e) by printable web-page; or
- (f) by any other means agreed between the lender and the borrower.

Protection of borrower credit right

34. (1) A lender shall not in response to a borrower's exercise of a right under this Act—

- (a) penalise the borrower;
- (b) alter, or propose to alter the terms or conditions of a credit agreement with the borrower to the detriment of the borrower; or

- (c) take an action to accelerate, enforce suspend or terminate a credit agreement with the borrower.

(2) Where a credit agreement or the provision of a credit agreement is declared unlawful, or severed from the agreement, the lender in that agreement shall not, in response to that decision,

- (a) alter the terms or conditions of another credit agreement that is a party to the impugned agreement, except to the extent necessary to correct a similarly unlawful provision; or
- (b) take an action to accelerate, enforce, suspend or terminate another credit agreement with another party to the impugned agreement.

35. A lender or a person who acts on behalf of a lender shall not disclose information obtained from a borrower unless the information is required under any other law or by a court of competent jurisdiction. Confidentiality.

36. (1) A lender shall not conclude a credit agreement with a prospective borrower unless the lender prepares a pre-agreement statement specifying— Pre-agreement disclosure.

- (a) the principal amount;
- (b) the proposed disbursement schedule of the principal debt;
- (c) the interest rate;
- (d) other credit costs;

- (e) the total amount involved in the proposed agreement;
- (f) the proposed repayment schedule; and
- (g) the basis of any cost that may be assessed if the borrower breaches the contract.

(2) A lender who contravenes this section is liable to such enforcement measures, as may be imposed by the Bank, in accordance with section 46 of the Banking Act, 2011 (Act No.14 of 2011) as may be appropriate

(3) A borrower may sue a lender for damages or loss suffered as a result of contravening subsection (1).

Marketing information.

37. (1) A written solicitation to induce a person to apply for or obtain credit shall include—

- (a) the name and business address of the lender;
- (b) the nature of the proposed credit agreement;
- (c) the lender's current annual interest rate and other costs of credit;
- (d) whether deposit or security is required;
- (e) whether residual payment will be required;
- (f) whether other restrictions apply; and
- (g) any other information determined by the Bank.

(2) A person who makes an oral solicitation to induce a person to apply for or obtain credit shall provide a written statement containing the information set out in subsection (1).

38. (1) A borrower or guarantor shall settle the credit amount at any time subject to notice requirements as the conditions provided for in a credit agreement. Borrower's or guarantor's obligations

(2) A credit agreement shall provide for the terms and conditions of any prepayment and the order in which advance payments are to be applied.

(3) Unless otherwise agreed by the parties, the amount required to settle a debt agreement is the total of—

- (a) the principal amount;
- (b) the accrued interest charges;
- (c) a prepayment charge, if any, agreed between the borrower and the lender;
- (d) the other fees and charges payable by the borrower to the lender up to the date for settlement.

(4) Subject to notice requirements provided in a credit agreement, a lender shall accept any payment under a credit agreement when it is tendered, even if that is before the date on which the payment is due.

(5) A lender shall credit each payment made under a credit agreement to the borrower as of the date of receipt of the payment.

(6) This Part shall apply to all security interests with the exception of—

- (a) an outright assignment of an account receivable; and
- (b) an operating lease that does not secure payment or performance of an obligation.

(7) Where there is a conflict between this Act and other law in relation to the enforcement of a lender's rights, this Act shall prevail.

PART VII—ENFORCEMENT

Default in payment.

39. (1) Where a borrower fails to make payment on the due date for a payment or contravenes the credit agreement, the lender shall give notice of default to borrower in writing and request the borrower to pay the amount due within the time period indicated in the notice.

(2) A lender may deliver a notice under subsection (1) by –

- (a) hand;
- (b) courier service;
- (c) registered mail; or
- (d) other means agreed upon by the lender and the borrower in the credit agreement.

(3) Where the notice is delivered–

- (a) by hand, it shall take effect on the date it is received by or on behalf of the borrower; and

- (b) by courier service or registered mail, it shall take effect on the day it is officially recorded as delivered by return receipt or its equivalent; or
- (c) by other means, it shall take effect on the day as provided in the credit agreement.

(4) If a borrower fails to pay or make satisfactory arrangements to pay the amount outstanding to the lender within thirty days or the time period stipulated in the notice, the lender may enforce the rights provided for under this Act.

40. Where a borrower defaults and the lender delivers a notice of default under section 39 the lender may– Remedies of lender on default

- (a) sue the borrower on any covenant to perform the credit agreement; or
- (b) realise the security interest in the collateral.

41. (1) In the exercise of a right of possession of property that is subject to a security interest under a credit agreement, a lender shall not be compelled to initiate proceedings in court to enforce the right of possession. Lender's right to possession.

(2) Where a lender is unable to enforce a right of possession in a peaceable manner, the lender may use the services of the police or bailiffs to evict the borrower pursuant to a warrant issued by a Court.

42. (1) A lender with priority over other lenders may collect and apply an account receivable, security, money or a negotiable instrument taken as collateral to the satisfaction of the obligation secured by the security interest if the borrower is in default. Application of collateral in satisfaction of obligation

(2) Unless otherwise agreed, the lender may notify the account debtor and collect payment even prior to default.

Disposition of collateral after default by sale.

43. (1) A lender may sell the collateral by auction, public tender private sale, or any other method provided for in the credit agreement after default

(2) A lender who intends to sell collateral under this section shall; at least 10 working days before selling the collateral, give notice to the following persons-

- (a) the borrower;
 - (b) any person who has registered a registration form in respect of the collateral that became effective before the lender repossessed the collateral; and
 - (c) any other person that has given the lender notice that that person claims an interest in the collateral.
- (3) Subsection (2) shall not apply if-
- (a) the collateral may perish within 10 working days of the repossession;
 - (b) the lender believes on reasonable grounds that the collateral will decline substantially in value if it is not disposed of immediately;
 - (c) the cost of care and storage of the collateral is disproportionately large in relation to its value;

- (d) the collateral consists of inventory;
- (e) after the lender repossesses the collateral, every person entitled to receive notice under subsection (2) shall consent in writing to the immediate sale of the collateral; or
- (f) a court may grant leave to the lender to sell collateral without complying with subsection (2).

44. Where a collateral is sold under section 43, all security interests in the collateral and its proceeds that are subordinate to the security interest of the lender who sold the collateral shall be extinguished on the sale of the collateral. Discharge of security interests.

45. Where a collateral is sold under section 43, the lender shall within ten (10) working days after the sale of the collateral, give the persons referred to in subsection 2 of section 43 a written statement of account showing - Accounting of sale.

- (a) the amount of the gross proceeds of sale;
- (b) the amount of the costs and expenses of the sale; and
- (c) the balance owing by the lender to the borrower or by the borrower to the lender, as the case may be.

46. (1) Where a lender has sold a collateral under section 43 he shall, before applying the net proceeds of the sale towards the satisfaction of the debt or other obligation secured by the security interest of the lender, apply the net proceeds of the sale towards the reasonable costs and expenses of the sale incurred by the lender, and to the extent provided for in a credit agreement, and reasonable legal expenses. Distribution of proceeds of sale.

(2) The lender shall pay the following persons the amount of any surplus in the following order—

- (a) any person who has a subordinate security interest in the order of their priority;
- (b) any other person who has given the lender notice that that person claims an interest in the collateral; and
- (c) the borrower.

(3) The lender shall pay the surplus into court if there is a question as to whom or in which order is entitled to receive distribution.

Retention
collateral
after default .

47. (1) A lender with priority over other lenders may, after default propose to retain the collateral in satisfaction of the obligation secured by it.

(2) The lender shall give notice of the proposal to the persons outlined in paragraphs (a) (b) and (c) of subsection (2) of section 43.

(3) The lender shall sell the collateral under subsection (1) of section 43 if a person who is entitled to a notice under paragraphs (a), (b) and (c) of subsection 2 of section 43 and whose interest in the collateral would be adversely affected by the lender's proposal to retain collateral gives to the lender a notice of objection within ten (10) working days after receiving the notice referred to in subsection (2) of section 43.

48. (1) If no notice is received, the lender shall, at the expiration of ten (10) days period referred to in subsection (3) of section 43, be deemed to have been irrevocably elected to retain the collateral in satisfaction of the obligation secured by it, and shall be entitled to hold or dispose of the collateral free from all rights and interests of the debtor and of any person entitled to receive notice under subsection (2) of section 43.

Retention
of collateral.

(2) If subsection (1) applies, all security interests in the collateral that are subordinate to the security interest of the lender that retained the collateral under subsection (1) shall be extinguished.

49. (1) At any time before a lender sells a collateral or is deemed to have retained the collateral in satisfaction of the obligation secured by it, a person who is entitled to receive a notice under subsection (2) may, unless the person otherwise agrees in writing after default settle the debt and redeem the collateral by tendering—

Debt settle-
ment and re-
demption of
collateral.

- (a) the principal owed amount;
- (b) the accrued interest;
- (c) any fee for the prepayment of an obligation, if agreed between the borrower and the lender;
- (d) the other fees payable by the borrower to the lender up to the date for settlement; and
- (e) a sum equal to the reasonable expenses of seizing, repossessing, holding, repairing, processing and preparing the collateral for sale, if those expenses have actually been incurred by the secured party, and any other reasonable expenses incurred by the secured party.

(2) The borrower's right to redeem the collateral shall have priority over any other person's right to redeem the collateral.

(3) Upon full settlement of the debt, the borrower shall redeem the collateral and the lender shall release the security interest and discharge the relevant registration.

Appointment
of receiver
or manager.

50. (1) A lender in whose favour a security interest is created may upon default of a borrower—

- (a) appoint a receiver or manager or;
- (b) apply to court for the appointment of a manager to—
 - (i) take possession of and protect the property;
 - (ii) collect the rents and profits derived from the property; and
 - (iii) enforce the security interest on behalf of the lender,

within ten (10) days after the date of the appointment, order or entry.

(2) A lender who appoints a receiver or manager under subsection (1) shall submit notice of that appointment to the Registrar.

PART VIII—MISCELLANEOUS

51. Security interest registered in another registry other than the Registry established under this Act shall not render security interest effective against third parties Security interest in other Registries.

52. (1) A prior security interest that was perfected or effective against third parties shall continue to be enforceable against third parties under this Act during the transitional period. Transitional provision.

(2) A prior security interest remains effective against third parties and shall be deemed to be perfected under this Act until the earlier of—

- (a) the time it would have ceased to be effective or perfected under prior law; or
- (b) the expiration of a period of 6 months after the effective date of this Act.

(3) If the lender satisfies the requirements of this Act for perfection of security interests before the effectiveness or perfection would have ceased under subsection 2, the perfection shall be continuous.

(4) A prior security interest that is not perfected under this Act within the transitional period shall be deemed to be an unperfected security interest thereafter.

53. (1) The priority of a prior security interest shall be calculated from the date it was perfected or made effective. Priority rules for prior security interests.