



Salient features of the Security Interest

in Moveable Property Act, 2019

Chattels securitization is common in Uganda but has been an informal affair between the lender and borrower and few transactions were complying with the now repealed Chattels Transfer Act 1978 and Chattels Securities Act 2014 as many never got to be perfected in the chattel's registry. Most chattels transactions were being carried out in the informal sector where people do not have land titles to take out mortgages and hence secure loans by pledging properties like chairs television sets and music systems.

The Security Interest in Movable Property Act (SIMPA) No.8 of 2019 came into force on 31st March 2019 and repealed the Chattels Securities Act of 2014 because of the number of gaps which impeded its operationalization including the narrow scope of assets that could be used as security.

The new act seeks to widen the ambit of properties that can be used as securities. The act provides for; the use of movable property as collateral for credit, creation and perfection of interest. The rules for determining priority of claims among competing claimants and the registration of security interests in movable property by notices is also covered. It also provides for register of security interests in movable property, the enforcement of security interests, search of register and other related matters.

Meaning of Security Interest: It is defined as the giving of personal property or chattel other than land as security for a loan or a debt. The secured transactions generally deal with guarantees and giving chattels or personal property as security for a loan or a debt. In essence that chattel security secures the performance of an obligation usually the repayment of a loan. These transactions are usually used or entered into with individuals as lenders as opposed to banks, to secure payments of loans or debts.

Security Interests include: debentures, stock, bonds issued or proposed to be issued by a government or body corporate: any right, warrant, option or futures in respect of any debenture, stocks, shares, bonds, notes or in respect of commodities; bills of exchange; promissory notes; or certificates of deposit issued by a bank or financial institution.

The **SIMPA** applies to security rights movable property where the movable property is; a tangible asset located in Uganda; an intangible asset, where the grantor of the asset is located in Uganda; a tangible or intangible asset which is ordinarily used outside Uganda where the grantor of the asset is located in Uganda; a movable property attached to immovable property.

The act also applies to security interests in movable property where: the collateral is a deposit account maintained in a financial institution that has a place of business in Uganda; the transaction involves a movable property that secures payment or performance of an obligation including a floating charge, fixed charge, a pledge or debenture, a warehouse receipt and any other transaction that secures the payment or performance of an obligation with movable property created by a judgment of court. The security interest can also be for the sale of accounts receivable, commercial consignments and for the lease of goods for more than one year.

This act does not apply to: the creation, lease or transfer of an interest in immovable property; a sale of accounts receivable as part of the sale of a business out of which the accounts receivable arose; the assignment of accounts receivable where the assignment is only for the purpose of collection action; and the transfer of a claim for compensation of an employee.

A lender may use more than one mode of perfecting a security provided this security remains perfected and these include: registration of the security, taking possession of the collateral; and taking control of a deposit account where the security is a deposit account.

With respect of perfection of security interest by registration, the law introduces an online electronic registration process for this purpose that the Security interest in Movable Property registry System (SIMPRS) which makes it easy and convenient for any lender who is registered on the system to perfect their interest at any time of their choice by following the prompts on <https://sim-po.ursb.go.ug>

Establishment of this registry is aimed at providing a solution to the many people and businesses that are in need of affordable credit. The registry provides information on encumbrances of movable property of borrowers. Secured creditors will have access to the database on line. Registration notifies the public of the secured interest in this movable property. Other services like searches can be carried out on this on line platform.

SIMPA has produced a dual system of perfection of securities involving corporate entitles because it does not recognize security interests in movable property registered under the Companies Act of 2012, unless the security was registered before its coming into force. Thus securities by corporate entitles will have to comply with both SIMPA and the Companies Act as the requirements of the Companies Act in respect of charges remain in force until such time the two regimes will be harmonized through amendments to the legislations.

Securities that were previously created and perfected under the laws prior to the coming into force of the SIMPA are preserved by SIMPA. For existing securities that are not perfected under any other law, 150 days window within which the same can be perfected under SIMPA is provided for. The expiration date was 28th October 2019 after which determination of priority ranking would have to be based on date and time of registration on SIMPRS.

Priority of security interests:

A perfected security interest has priority over unperfected security interest and priority between perfected security interest shall be determined by the order of whichever of the following actions first occurs:

- a) The registration of initial notice
- b) The secured creditor, or another person on the secured creditors behalf taking possession of the collateral; or
The secured creditors or another person on the secured creditors behalf acquiring control of the collateral;

Priority between unperfected security interests in the same collateral shall be determined by the order of creation of the security interest.

Enforcement of security interest

Where the debtor defaults on the obligation to pay or where another event of default occurs, the security interest becomes enforceable.

Where a grantor defaults to perform a secured obligation, the secured creditor may enforce the security interest by exercising any right created under the security agreement or any other written law.

The secured creditor must give notice in writing demanding the borrower to pay the money owing, however the act is silent on the notice period to be given to the borrower.

If not remedied within the prescribed time, the creditor can take action as empowered under this act if its perfected by registration. The actions envisaged without recourse to court include;

- a) Where the security interest is in accounts receivable, the creditor may instruct the account debtor to make payment to the secured creditor
- b) Where the security interest is perfected in a deposit account, the secured creditor may ask the financial institution to apply the balance to clear the loan
- c) If the security interest is in a deposit account perfected by a control agreement, the secured creditor may instruct the financial institution to pay the balance of the deposit account to the account of the secured creditor and
- d) If the security interest is a document of title that is perfected by possession, the secured creditor may possess the goods covered by the document of title.

Benefits of this act to both the lender and borrower:

a) Cost benefit

The registration of an interest SIMPA is cheaper than under URA, while URA requires payment of 0.1% stamp duty on borrowing using motor vehicles, SIMPA registration fees are standard. Registration is about UGX18, 000/= (Uganda shillings eighteen thousand).

b) Wider scope of chattels

The SIMPA has widened the scope of items that can be registered as securities and these include: livestock, crops, motor vehicles, electronics and furniture among others.

c) Efficient and fast.

The registration process is very efficient and fast. The lender holds an account with URSB and it's on that account that you keep perfecting your security interests. As long as proof of payment has been availed, whatever transaction the lender/borrower requires is immediately made available to them.

d) Borrower's interest is protected.

The borrower's interest is protected from illicit dealings of money lenders unlike in the past where the borrowers were required to sign transfer forms before being given credit.

e) This act promotes transparency because any individual can carry out a search on the portal upon payment of search fees

The Disadvantages

a) Double Cost

There is a double cost for chattels and more specifically vehicles because the interest has to be registered with URA. A client has to incur another cost for their chattels security to be registered in accordance to SIMPA. Until the systems are synchronized there will be double payment.

b) Matrimonial Property

The Act is silent on the issue of matrimonial property for example chattels like beds and mattresses should be exempt from being used as security because this can lead to conflict in a home.

c) Spousal consent

The act is silent on spousal consent as a requirement before chattels and personal property can be used as security for married people. This can be disadvantageous to both the lender and borrower at time of enforcement.

d) Notice Period.

The act is silent on the notice period required to remedy the default, this begs the question of what amounts to sufficient notice

Conclusion

Overall this act is beneficial for both borrower and lender and it has closed some gaps that were not clear in the previous laws. It remains to be seen whether its provisions will be followed by the lending community and if Uganda registration Services bureau takes measures to implement and especially register all on the platform. Until then the ordinary borrower is still susceptible to the vagaries associated with the "loan sharks" where, as a condition to borrow, the borrower must sign a sale agreement in lieu of a loan agreement.



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