



**THE SECURED TRANSACTIONS
OF MOVABLE PROPERTIES ACT**

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ACT NO.4 OF 2011

I ASSENT

{ DR. ALI MOHAMED SHEIN }
PRESIDENT OF ZANZIBAR

AND

CHAIRMAN OF THE REVOLUTIONARY COUNCIL

1st July 2011

**AN ACT TO PROVIDE FOR SECURED
TRANSACTIONS OF MOVABLE PROPERTIES
AND OTHER MATTERS CONNECTED
THEREWITH AND INCIDENTAL THERETO**

ENACTED by the House of Representatives of Zanzibar.

**PART I
PRELIMINARY PROVISIONS**

Short
title and
commencement.

1. This Act may be cited as the Secured Transactions of Movable Properties Act, 2011 and shall come into operation on such date as the Minister may, by notice published in the Gazette, appoint.

Application.

2.(1) The provisions of this Act shall apply to, and in relation to every law applied before or after the commencement of this Act, all rights in movable property created by a security agreement.

(2) This Act shall not apply to:-

- (a) aircraft and ships if not registered in Zanzibar; or
- a transfer of present or future wages, salary, pay, commission, or any other compensation for labour or personal services of an employee.



(3) The validity and effectiveness of a security right shall be governed by the laws of Zanzibar if:-

- (a) at the time the security right was made effective, the collateral is situated in Zanzibar; or
- (b) at the time the security right was made effective, the collateral is situated outside Zanzibar but the creditor has knowledge that it is intended to move the collateral to Zanzibar; or
- (c) the security agreement provides that Zanzibar law is the law governing the transaction.

(4) Part IV of Companies Decree CAP. 153 (sections 92 to 103) shall not apply to charges relating to movable property.

Interpretation.

3. In this Act, unless the context otherwise requires:

“Accession” means goods that are installed in or affixed to other goods;

“After-acquired” means personal property acquired by the debtor after the security agreement was made;

“Collateral” means movable property that is subject to a security right;

“Commingled goods” means goods that subsequently become part of a product or mass so processed that their identity is lost in the product or mass;

“Consumer goods” means goods that are used or acquired for use primarily for personal, family, or household purposes;

“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;

“Creditor” means one person or several persons that has or have a security right;



“Debtor” means one or several persons who owe payment or performance of a secured obligation, whether or not that person owns or has other rights in the collateral, and includes the owner of movable asset the use of which as collateral he has consented to;

“Default” means the failure to pay or otherwise perform the obligation secured when due; or the occurrence of an event that, under the security agreement, gives the secured party the right to enforce the security;

“Equipment” means goods that are held by a debtor, other than as inventory or consumer goods;

“Inventory” means tangible movable property that is held by a person for sale or lease in the ordinary course of that person’s business; or raw materials or semi-raw materials used in work in progress;

“Minister” means the Minister responsible for matters relating to registration of security rights under this Act;

“Movable property” means any property of every description which is movable;

“Priority” means the right of a person to derive the economic benefit of its security right in preference to a competing claimant;

“Proceeds” means anything which is received in respect of collateral or anything which is received as a result of sale or other disposition of collateral, insurance proceeds and claims arising from defects in, damage to or loss of collateral;

“Receivable” means a right to payment of a monetary obligation;

“Register” means the Register of Security Rights in movable property established under section 4(2) of this Act;



“Registrar” means the Registrar General of the Government appointed by the President in accordance with the provisions of law.

“Security agreement” means an agreement in whatever form or terminology between a person securing either its own obligation or that of another person and a creditor that creates a security right;

“Security right” means the right entitled to creditor as provided in the security agreement.

PART II ESTABLISHMENT OF THE SECURITY RIGHTS REGISTRY

Establishment of registry.

4. (1) There is hereby established the Registry to be known as the Registry of Security Rights on Movable Properties.

(2) There shall be a Register of Security Rights on movable properties to be prepared and maintained by the Registrar.

(3) The manner and contents of the Register shall be in the form as prescribed in the regulations made under this Act.

(4) The Register may be kept in both paper-based and electronic means.

Registrar.

5. The Registrar General shall be the Registrar of Security Rights on movable properties.

Functions of the Registrar

6. The Registrar shall have the following functions:-

(a) to register security agreements;

(b) to keep daily records of activities in the Register;



- (c) to manage the Register;
- (d) to organize the security agreements registration and information service in the most efficient and professional way;
- (e) to perform any other function assigned to him under this Act or as may from time to time be given by the Minister .

Powers of
the
Registrar.

7. The Registrar may:-

- (a) require any person to produce an instrument or a document relating to any matter concerning registration of a security agreement under this Act and the person so required shall produce the same;
- (b) refuse to proceed with registration of security agreements of which information or explanation required to be produced or given is withheld, or if any act required to be performed under this Act is not performed;
- (c) require that any information or explanation be verified on oath or by statutory declaration;
- (d) charge fees for any service rendered by the Registry;
- (e) summon any person or body of persons for the purpose of verification of any document or information, in any matter arising under this Act;
- (f) give orders, directives or conditions on any matter under his jurisdiction under this Act; and
- (g) engage the services of the experts and consultants or commission studies in respect of any of the functions of the Registry.



PART III CREATION AND EFFECTIVENESS OF SECURITY RIGHTS

Creation of
security
rights.

8.(1) For the purpose of this Act, security right shall be created by security agreement in personal property when value is given by the secured party, and the debtor has rights in the personal property.

(2) The provisions of subsection (1) of this section shall not apply if the parties to a security agreement have agreed that a security right is created at a later time, in which case the security right is created at the time specified in the security agreement.

(3) For the purpose of this section "personal property" means movable property as referred under section 12 of this Act.

Contents
of security
agreement.

9. Every security agreement shall contain the following:

- (a) date and duration of agreement;
- (b) identification of parties with full descriptions;
- (c) description of legal status of the parties to the subject matter;
- (d) description of the collateral in a manner that reasonably allows identification thereof;
- (e) maximum monetary amount for which the security right may be enforced;
- (f) terms, conditions and usage of collateral;
- (g) any practices established between the parties;
- (h) date and signatures of the parties and their witnesses; and
- (i) any other thing which the Registrar may direct.



Effectiveness of security right against third parties.

10. Security right shall be effective against a third party in respect of particular collateral only if the collateral is in the possession of the third party.

Description of collateral.

11.(1) The description of collateral shall be in a reasonable way to allow its identification as provided in regulations made under this Act.

(2) For the purpose of subsection (1) of this section, description shall be inadequate if it describes the collateral as consumer goods or equipment without further reference to the item or kind of collateral.

(3) Except as otherwise provided in this Act, a security right in proceeds is effective against a third party whether or not the security agreement contains a description of the proceeds.

(4) A description of collateral as inventory is adequate only while it is held by the debtor as inventory.

Collateral to be used as security.

12.(1) Any type of movable property, tangible or intangible, including inventory, equipment and other intangible property, contractual or non-contractual receivables, proceeds and intellectual property but not fixtures can be used as collateral, provided it belongs to the debtor or a person consenting to the use of his movable property as collateral.

(2) A security agreement may provide for security right in after-acquired property.

(3) A security right in collateral that is dealt with or otherwise gives rise to proceeds shall continue in the collateral.

(4) A security right in goods that becomes an accession shall continue in the accession.

(5) A security right in goods that subsequently become part of a product or mass shall continue in the product or mass if the goods are so manufactured, processed, assembled or commingled.



(6) Goods sold, leased or otherwise acquired in the ordinary course of business may be used as security right.

Determina-
tion of
priority.

13.(1) An effective security right shall have priority over a non-effective security right in the same collateral.

(2) Priority between effective security rights in the same collateral shall be determined by the order of whichever of the following first occurs in relation to a particular security right:-

- (a) the registration of a notice;
- (b) the secured party, or another person on the secured party's behalf, taking possession of the collateral (except where possession is a result of seizure or repossession).

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

Voluntary
subordina-
tion.

14. A secured party may, in a security agreement or otherwise, subordinate its security right to any other right.

Transfer of
collateral.

15.(1) The rights of a debtor in collateral may be transferred consensually or by operation of laws despite a provision in the security agreement prohibiting transfer or declaring a transfer to be a default, provided that a transfer by the debtor does not prejudice the rights of the secured party under the agreement or otherwise, including the right to treat a prohibited transfer as an act of default.

(2) In this section, "transfer" means sale, the creation of a security right, or a transfer under court order.

(3) If a debtor transfers a right in collateral that, at the time of the transfer, is subject to an effective security right, that security right has priority over any other security rights granted by the transferee.



(4) The provisions of subsection (1) of this section shall not apply if the transferee acquires the debtor's right free of the security right granted by the debtor.

Liens.

16. A lien arising out of materials or services provided in respect of goods that are subject to a security right in the same goods has priority over that security right if:-

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

PART IV REGISTRATION OF A SECURITY AGREEMENT

Registration
of security
agreement.

17.(1) A security agreement in movable property shall be registered by either party to the Registrar in accordance with the provisions of this Act.

(2) Amendments to a security agreement shall be registered to the Registrar by filing a notice of the amendment within fourteen working days.

(3) The information to be contained in the notice shall be provided in the regulations made under this Act.

(4) Security agreement or notice shall not be registered if:-

- (a) it is not submitted in the form prescribed by the regulations made under this Act; or
- (b) the prescribed fee has not been paid to the Registrar; or



(c) the parties have not been adequately identified; or

(d) the notice has already been registered.

(5) The priority of a security right shall be established when a number, date, and time is assigned to the security agreement in the register.

Certificate
of
registration.

18. A certificate of registration shall be issued after registration of the security agreement or an amendment thereto, and a copy may be issued on demand subject to payment of prescribed fees.

Certificate
of
satisfaction.

19. A certificate of satisfaction shall be issued to the debtor by the Registrar after discharge of all debts under the security agreement.

Knowledge.

20.(1) Registration of a security agreement or notice of amendments shall not be constructive notice of its existence or contents to any person.

(2) Any information registered under this Act shall be deemed to be as true and complete.

Validity of
registration.

21. The validity of the registration of security agreement or amendments shall not be affected by any defect, irregularity, omission or error unless the defect, irregularity, omission or error is misleading.

Duration of
registration.

22. The registration of security agreement or amendment under this Act shall be effective until the expiration of the term specified in the agreement, unless discharged or removed before the expiration of the relevant period.

Transfer
of security
right.

23.(1) A security right may be transferred if:-

(a) parties to security agreement have agreed in writing;

(b) security right to be transferred is described;

(c) a notice of transfer is registered before the transfer of the security right is made;

(d) agreement of transfer is registered.



(2) The transferee of a security right is deemed creditor after the registration of a notice disclosing the transfer of the security right.

Subordinated
security
right.

24. If a security right has been subordinated by the creditor to the right of another person, a notice may be registered to disclose the subordination at any time during the period when the registration of the subordinated security right is effective.

Amendment,
cancellation
and
discharge.

25.(1) An amendment to a registration or a discharge of a registration may be effected by the debtor with a written consent of a creditor registering a notice at any time during the period that the registration is effective, and the amendment shall become effective from the time the notice is registered.

(2) If a registration relates exclusively to a security right in consumer goods, the creditor shall register a notice for cancellation of the registration within fifteen working days after all obligations under the security agreement creating the security right have been performed, unless the registration lapses before the expiration of that period.

(3) The debtor or any person with a security right in property that falls within the collateral description included in a registered notice may give a written demand of discharge to the creditor if:-

- (a) all of the obligations under the security agreement to which the notice relates have been performed;
- (b) the creditor has agreed to release part or all of the collateral described in the collateral description included in the notice;
- (c) the collateral described in the collateral description included in the notice includes an item or kind of property that is not collateral under a security agreement between the creditor and the debtor;
- (d) no security agreement exists between the parties; or
- (e) the security right is extinguished in accordance with the provisions of this Act.



(4) A demand under subsection (3) of this section, shall require the creditor to consent to the debtor's registration within fifteen working days after the demand is given a notice of:-

- (a) cancelling the registration in a case within subsection (3) (a), (d) or (e) of this section; or
- (b) amending or cancelling the registration so as to reflect the terms of the agreement in a case within subsection (3)(b) of this section; or
- (c) amending the collateral description to exclude items or kinds of property that are not collateral under a security agreement between the secured party and the debtor in a case within subsection (3)(c) of this section.

(5) The Registrar shall, upon notification of the parties, correct any clerical error or omission made in a registration.

Search of register.

26.(1) A person may search the Register, and obtain a printed search result in accordance with the procedures laid down in the regulations.

(2) The Register may be searched by reference to the following criteria:-

- (a) the name and identification of the debtor;
- (b) if the debtor is a registered entity, its unique identification number;
- (c) if collateral is required by this Act or by the regulations to be described in a notice by serial number;
- (d) the registration number assigned to that registration; or
- (e) any other criteria specified in the regulations.

PART V GENERAL PROVISIONS

Title to collateral

27. The title to collateral vested to the secured party other than the debtor shall not affect the application of any provision of this Act relating to rights, obligations, and remedies.



Rights duties or obligations to the exercised in good faith.

Enforcement of security right.

28. All rights, duties or obligations that arise under a security agreement under this Act shall be exercised or discharged in good faith and in accordance with reasonable standards of commercial practice.

29. (1) Every person involved in an enforcement of a security right shall enforce his rights and perform his obligations in good faith and in a commercially reasonable manner and cannot waive or contract out of that standard, unless after default and not to the adverse of any person not a party to the agreement.

(2) A person who fails to comply with obligations under subsection (1) of this section shall be liable for damages caused by such failure.

Post default rights of creditor.

30. After default of debtor, creditor as he may select, shall be entitled to:-

- (a) the possession of tangible collateral; or
- (b) sell or otherwise dispose of, lease or license collateral in open market to the extent of debtor's rights therein; or
- (c) propose to acquire collateral or part thereof in total or partial satisfaction of debtor's obligation.

Post default rights of debtor.

31. After default of a creditor, debtor shall be entitled to:-

- (a) pay in full the secured obligation and obtain a release from the security right in his collateral;
- (b) pay the sum actually in arrears or remedying any other reason of which creditor intends to sell or otherwise dispose of the collateral;
- (c) propose to creditor or reject the proposal of creditor to acquire collateral in full or partial satisfaction of the secured obligation;
- (d) exercise any other right provided in the security agreement or any relevant law.



Enforcement
procedure.

32.(1) After default, creditor shall give notice of its intention to sell or otherwise dispose of collateral, provided that the notice shall not be given if collateral is:-

- (a) perishable; or
- (b) may decline speedily; or
- (c) of a kind sold on a recognized market.

(2) If creditor opts to give notice to debtor with a set number of days for fulfilling his obligation, notice shall be given to the Registrar, who as a matter of expedience shall consent or dismiss it in the form of a certificate of disposal.

(3) Notice is also to be given by creditor to debtor and any other person that owes performance of the secured obligation or has possession of the collateral.

(4) Orders of manner, contents, timing and other particulars of the notice will be subject to regulations issued under this Act.

Effects of
enforce-
ment.

33.(1) The debtor is entitled to recover the amount of any surplus from the creditor and shall remain liable for any shortfall owing after application of the net proceeds of enforcement to the secured obligation.

(2) The debtor or any other interested person is entitled to satisfy the secured obligation in full, including payment of the costs of enforcement up to full satisfaction.

Regulations.

34.(1) The Minister may make regulations for better implementation of the purpose of this Act.

(2) Without prejudice to the provision of subsection (1) of this section the Minister may make regulations in relation to any of the following matters:-

- (a) fees to be paid to the Registrar under this Act;



- (b) forms of security agreement, certificates and any other forms to be used under this Act,
- (c) contents of Register;
- (d) the procedures for inspections;
- (e) disclosure of information; or
- (f) any other matter to be prescribed under this Act.

Transitional
period.

35.(1) Security rights in movable property that have been created before the commencement of this Act shall continue to be effective for a transitional period of six months.

(2) An existing secured party shall after the expiration of the transitional period, register his security right under this Act.

(3) A prior security right that is not made effective under this Act within the transitional period shall be deemed to be a non-effective security right on the close of the transitional period.

(4) During the transitional period:-

- (a) priority between a prior security rights that were made effective by registration according to this Act and a security rights registered before the commencement of this Act, shall be determined in accordance with the provisions of this Act;
- (b) priority between a non-effective security rights shall be determined by the order in which the security rights were created.

PASSED in the House of Representatives of Zanzibar on 24th day of March, 2011.

{IBRAHIM MZEE IBRAHIM}
CLERK OF THE HOUSE OF REPRESENTATIVES
ZANZIBAR.