

SECURED TRANSACTIONS IN MOVABLE ASSETS BILL, 2016

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A BILL

FOR

AN ACT TO PROVIDE FOR SECURED TRANSACTIONS, REGISTRATION AND REGULATION OF SECURITY INTEREST IN MOVABLE ASSETS AND FOR RELATED MATTERS, 2016

Sponsored by Senator Rafiu J. Adebayo

[] Commencement

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

PART I - OBJECTIVES AND SCOPE

1. The objectives of this Act are to:

Objectives

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

2.-(1) This Act shall apply to:

Scope

- (a) all Security Interests in movable assets created by an agreement that secures payment or the performance of an obligation;
- (b) a person who is a Creditor, Borrower or Grantor under this Act; and
- (c) all financing and operating leases entered into after the commencement of this Act.

(2). This Act shall not apply to:

- (a) any right of set-off;
- (b) the creation or transfer of an Interest in land other than account receivables; and

1 (c) any interest created by a transfer, assignment or mortgage in
2 movable property governed by a law for which a registry has been established
3 with regards to ships and aircrafts.

4 (3) Nothing in this Act shall prevent the creation of security interest in
5 the
6 form of charges by companies registered under the CAMA.

7 PART II - SECURITY INTERESTS

Creation of
Security Interest

8 3.-(1) A Security Interest is created by a Security Agreement between
9 a Grantor and Creditor.

10 (2) The Security Interest in any asset acquired by a Grantor after the
11 coming into force of the Security Agreement shall take effect without further
12 consent or any other act of the Grantor at the moment the Grantor acquires such
13 asset where:

14 (a) the asset falls under the Collateral description in the Security
15 Agreement; and

16 (b) the Security Agreement provides that the Security Interest extends
17 to the Grantor's present and future assets.

Grantor's rights
in the Collateral

18 4.-(1) A Security Interest shall be created to the extent of the rights
19 that the Grantor has in the Collateral.

20 (2) A transfer of Account Receivable or Security Interest in an
21 Account Receivable by a Grantor is effective:

22 (a) between the Grantor and the Creditor; and

23 (b) against the account debtor of the Account Receivable
24 notwithstanding any agreement limiting the account debtor's right to create a
25 Security Interest in or assign its Account Receivable.

26 (3) Creation of a security interest in any movable asset is effective,
27 notwithstanding any agreement limiting the grantor's right to create such
28 security interest.

Content of a
Security
Agreement

29 5. A Security Agreement shall:

1 (a) reflect the intention of the Grantor and Creditor to create a
2 Security Interest;

3 (b) identify the Grantor and Creditor;

4 (c) describe the secured obligation including the maximum amount
5 for which the Security Interest is enforceable;

6 (d) describe the Collateral adequately; and

7 (e) indicate the tenor of the obligation secured.

8 6.-(1) A description of a Collateral is adequate if it is described by:

Description of
Collateral in
security agreement

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

11 (b) a statement that a Security Interest is taken in all the present and
12 future assets of the Grantor.

13 (2) A Security Interest shall extend to the identifiable or traceable
14 proceeds of a Collateral, whether or not the Security Agreement contains a
15 description of the proceeds.

16 7.-(1) A security interest shall automatically continue in the
17 identifiable or traceable proceeds of the collateral, whether or not the
18 security agreement contains a description of the proceeds.

Continuation of
a Security Interest

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

21 8.-(1) A Security Interest is perfected when a Financing Statement
22 in respect of that Security Interest has been registered in the Collateral
23 Registry established under this Act.

Perfection of
Security Interest

24 (2) For the purposes of this Act, a Secured Creditor may take
25 possession of the Collateral but mere possession does not perfect the
26 security interest.

27 9.-(1) A security interest in any proceeds of the collateral is
28 perfected automatically without any further action by the grantor or the
29 creditor when the proceeds arise or are acquired if:

Perfection of
Security Interest
in Proceeds

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

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

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

7 PART III - NATIONAL COLLATERAL REGISTRY

8 Establishment of
the National
Collateral Registry

9 **10.**-(1) There is established in the Central Bank, a registry to be
10 known as the
11 National Collateral Registry (in this Act referred to as "the Collateral
12 Registry").

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

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

18 Functions of the
Collateral Registry

19 **11.** The Collateral Registry shall-

20 (a) receive, register and store information about Security Interests in
21 movable assets;

22 (b) provide access to persons who may seek information on Security
23 Interests from the Collateral Registry; and

24 (c) perform such other functions as may be prescribed by Regulations
25 made under this Act.

26 PART IV - REGISTRATION OF FINANCING STATEMENTS

27 Procedure for
registration of a
Financing Statement

28 **12.**-(1) A Financing Statement may be registered by or on behalf of a
29 creditor at any time with the consent of the grantor as required under this Act.

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

(3) The Collateral Registry shall, after a Financing Statement has
been registered, issue a Confirmation Statement to the Creditor who files the

1 Financing Statement for registration.

2 13.-(1) Registration of an initial financing statement is ineffective
3 unless the Grantor consented to it in writing.

Consent to Register
a Financing
Statement

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

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

9 (4) Registration of an Amendment Financing Statement is
10 ineffective unless consented to by the Grantor in writing if the Amendment
11 Financing Statement:

12 (a) Adds a description of new collateral;

13 (b) or

14 (c) Adds a new Grantor unless the new Grantor is a transferee of the
15 collateral already described in the registration.

16 14.-(1) A creditor shall provide in a Financing Statement the
17 following information:

Contents of a
Financing
Statement

18 (a) Grantor type description: individual, micro, small or large
19 business;

20 (b) In the case of a Company, Co-operative or registered Business
21 Name, the unique identification number which shall be the Corporate
22 Affairs Commission registration number or other registration number
23 issued by the appropriate authority for registering these types of debtors;

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

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

28 (e) a description of the collateral;

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

1 (g) the period of time for which the registration is to be effective; and
2 (h) such other information as the Registrar may consider necessary.

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

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

9 (4) If the grantor is an individual who is neither a citizen nor a resident
10 of Nigeria, the secured creditor shall enter the debtor's name and unique
11 identification number that appear on the Grantor's passport issued by a Foreign
12 Government or any other document as the Central Bank of Nigeria may
13 prescribe from time to time.

Description of
Collateral

14 15.-(1) The Financing Statement must include a description of the
15 collateral that reasonably allows its identification.

16 (2) A description of collateral is sufficient if the collateral is described
17 by:

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

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

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

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

25 (4) Serial-numbered goods that are held as inventory need not be
26 described by a serial number. A description of serial-numbered goods held as
27 inventory is sufficient if it satisfies the requirements of sub section 2.

Error in a
Financing Statement

28 16.-(1) Subject to Section 10 of this Act, a registered Financing
29 Statement shall be ineffective if there is an error in:

30 (a) the unique identification number of the Grantor; or

1 (b) the serial number of the Collateral that causes the registration
2 not to be retrieved in a search.

3 (2) Where a registered Financing Statement contains information
4 on multiple Grantors or Collaterals, an error in:

5 (a) the unique identification number of the Grantor shall render the
6 registration ineffective only with respect to that Grantor; or

7 (b) the serial number of a Collateral shall render the registered
8 Financing Statement ineffective only with respect to the Collateral
9 identified by such serial number.

10 17.-(1) An error in-

11 (a) the name or address of the Grantor;

12 (b) the maximum amount for which the security interest may be
13 enforced; or

14 (c) the name or address of the creditor does not render the
15 registered Financing Statement ineffective.

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

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

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

24 18.-(1) The registered Financing Statement shall be valid until-

25 (a) the expiration of the term specified in the Financing Statement;

26 (b) its cancellation, whichever comes first.

27 (2) Duration of a registered Financing Statement may be renewed
28 or extended by an amendment of the Financing Statement before its
29 expiration.

30 (3) No information shall be deleted from the Registry, whether or

Consequences of
other errors in the
Registration

Duration of a
Registered
Financing
Statement

1 not an Amendment Financing Statement canceling the registered Financing
2 Statement has been registered.

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

6 (5) A cancelled or expired registered Financing Statement shall be
7 identified as such in a search.

Amendment of
a registered
Financing
Statement

8 **19.-(1)** A registered Financing Statement may be amended by a
9 Creditor upon the registration of an Amendment Financing Statement.

10 (2) An amendment to a registered Financing Statement that adds a
11 Collateral or a new Grantor is effective as to the added Collateral or the added
12 Grantor only from the date and time when the Amendment Financing
13 Statement is registered.

14 (3) An amendment to a registered Financing Statement shall be in
15 accordance with Regulations made under this Act.

Unauthorized
transfer of a
Collateral

16 **20.** Where a collateral described in a registered Financing Statement
17 is transferred and the secured creditor registers an Amendment Financing
18 Statement adding the transferee as a new grantor within 15 days after the
19 Secured Creditor becomes aware of the transfer, the security interest shall
20 retain its perfection and priority.

Cancellation of a
registered Financing
Statement

21 **21.-(1)** A registered Financing Statement may be cancelled upon the
22 filing of a Cancellation Statement by a Creditor. A Creditor shall file a
23 Cancellation Statement within 15 working days of receiving a request for
24 cancellation from the Grantor or the Borrower only where:

25 (a) all obligations under the Security Agreement have been
26 performed; and

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

28 (3) The Cancellation Statement shall include:

29 (a) the registration number of the initial Financing Statement to which
30 the Cancellation Statement relates;

1 (b) identification of the Creditor authorizing the cancellation; and
2 (c) such other information as may be prescribed by Regulations
3 made under this Act.

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

8 (5) The Registrar shall give notice of the appeal referred to in sub
9 section (4) of this section to the Creditor before taking a decision on the
10 appeal.

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

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

15 22.-(1) A person may conduct a search in the Registry for
16 information provided in registered Financing Statements according to
17 criteria set in (3).

Search of
information in
the Registry

18 (2) A person who conducts a search pursuant to sub-section (1) of
19 this Section shall be entitled to a search result upon payment of such fees as
20 may be prescribed by Regulations made under this Act.

21 (3) The criteria for search under this Section shall be:

22 (a) the unique biometric-based identifier of the Grantor,

23 (b) the serial number of the collateral, or;

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

25 PART V - PRIORITY OF A SECURITY INTEREST

26 23. The priority between perfected Security Interests in the same
27 Collateral shall be determined by the order of registration.

Priority of
Security Interests

28 24.-(1) Subject to Section 9, the priority of a Security Interest in a
29 Collateral and the proceeds derived from the Collateral shall be the same.

Same priority for
original Collateral,
proceeds and
advances

30 (2) A security interest shall have the same priority in respect of all

1 secured obligations and advances, whether existing or future

Transfer does not
affect priority

2 **25.-(1)** A Secured Creditor may transfer a secured obligation
3 notwithstanding any agreement with the Grantor or the Borrower limiting the
4 right to transfer the secured obligation and without having to obtain consent of
5 the Grantor or the Borrower.

6 (2) A Security Interest that is transferred shall have the same priority
7 as it had
8 at the time of the transfer.

9 (3) Transfer of a Security Interest perfected by registration is valid
10 without registering an Amendment Financing Statement in the Registry.

Voluntary
subordination
priority

11 **26.-(1)** A Creditor may enter into an agreement to subordinate its
12 priority in favour of any other claimant.

13 (2) Subordination is effective without registering an Amendment
14 Financing Statement in the Registry.

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

Priority of
purchase money
security interest
and its proceeds

17 **27.** A Purchase Money Security Interest in a Collateral or its proceeds
18 shall have priority over a non-Purchase Money Security Interest in the same
19 Collateral created by the same Grantor if the Purchase Money Security Interest
20 in the Collateral or its proceeds is perfected when the Grantor obtained
21 possession of the Collateral.

Priority of security
interests in
processed or
co-mingled goods

22 **28.-(1)** A perfected Security Interest in goods that subsequently
23 become part of a product or mass shall continue as a perfected Security Interest
24 in the product or mass if the goods are so manufactured, processed, assembled
25 or co-mingled that their identity is lost in the product or mass.

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

1 29.-(1) A Financial Institution's right of set-off shall have priority
2 over a perfected Security Interest that extends to a deposit account.

Priority with
respect to receipt
of Fund and Cash

3 (2) A transferee of funds from a deposit account or cash other than
4 from a deposit account takes the funds or cash free of a Security Interest
5 unless the transferee acts in collusion with the Grantor or the Borrower in
6 violating the rights of the Creditor.

7 (3) A Transferee of cash for the purpose of this section does not
8 include a more bailee.

9 30. A lien arising out of materials or services provided in the
10 ordinary course of business in respect of goods that are subject to a Security
11 Interest shall have priority over that Security Interest.

Priority of holders
of liens

12 31. A holder of a negotiable instrument or title document shall have
13 priority over a perfected Security Interest in the negotiable instrument or the
14 title document where the holder:

Priority of holders
of negotiable
instruments and
title documents

15 (a) gave value;

16 (b) acquired the negotiable instrument or the title document
17 without knowledge that the transaction is in breach of the Security
18 Agreement to which the Security Interest relates; and

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

21 32.-(1) A buyer or lessee who acquires goods for value and receives
22 possession of the goods shall take the goods free of an unperfected Security
23 Interest.

Rights of a buyer
or lessee of goods

24 (2) A buyer of goods sold in the ordinary course of business of the
25 seller and a lessee of goods leased in the ordinary course of business of the
26 lessor shall take the goods free of a Security Interest created by the seller or
27 lessor unless the buyer or lessee knows that the sale or the lease constitutes a
28 breach of the Security Agreement under which the Security Interest was
29 created.

Rights and
Priority of
Assignee

1 33.-(1) The rights of an assignee of an Account Receivable shall be
2 subject to:

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

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

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

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

Priority of
judgment Creditor

14 34.-(1) Notwithstanding the provisions of the Sherriff and Civil
15 Process Act, Cap LFN 2004, a perfected security interest has priority over the
16 rights of an unsecured creditor that has obtained a judgement or an order of
17 attachment, unless the judgement creditor, before the security interest is
18 perfected:

19 (a) registers a financing statement;

20 (b) seizes the collateral; or

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

23 (2) The priority of the security interest extends to credit disbursed by
24 the creditor:

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

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

1 PART VI - RIGHTS AND DUTIES OF A GRANTOR, BORROWER
2 AND CREDITOR

3 35.-(1) All rights and duties that arise under this Act shall be Good faith and
4 exercised and discharged in good faith and in accordance with reasonable commercial
5 commercial standards. reasonableness

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

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

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

15 37.-(1) A Creditor shall, not later than 15 working days after the Creditor to provide
16 day on which the Confirmation Statement of the registration was received, confirmation
17 provide the Grantor and the Borrower a copy of the Confirmation Statement. statement to the
18 Grantor and the
19 Borrower

18 (2) The Confirmation Statement may be sent in the same manner
19 prescribed for giving notices under Section 42(2) of this Act.

20 38.-(1) A Grantor or Borrower may request the Creditor to make Provision of certain
21 available to any person, at an address specified by the Grantor or the information by a
22 Borrower, any or all of the following: Creditor

23 (a) a summary of the Security Agreement;

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

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

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

30 (2) Where a Creditor no longer has an interest in the obligation

1 secured or Collateral covered by the registration, the Creditor shall disclose,
2 the name and address of the immediate successor in Interest or transferee and
3 the latest successor in Interest or transferee, if known.

4 (3) A Creditor shall comply with the request in sub-section (1) of this
5 section within 10 working days of its receipt.

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

9 PART VII - REALISATION OF SECURITY INTERESTS

10 40.-(1) In case of default, a Creditor may-

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

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

15 (3) A holder of Purchase Money Security Interest may enforce its
16 rights under this Act or any other law governing its rights.

17 (4) An outright transferee of Account Receivable may enforce its
18 rights under an agreement or any other law governing the transaction.

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

22 41.-(1) In case of default by a Borrower, a Creditor shall give the
23 Borrower and the Grantor a notice of the default and intention to repossess the
24 Collateral.

25 (2) The notice referred to in sub section (1) of this section may be
26 delivered by:

- 27 (a) hand;
28 (b) courier service;
29 (c) electronic mail;
30 (d) registered mail; or

Scope of the
application of
this part

Repossession of
Collateral

1 (e) any other means agreed to under the Security Agreement.

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

3 (a) take possession of the Collateral; or

4 (b) without taking possession, render the Collateral inoperative.

5 (4) A Creditor may repossess a Collateral under this Act:

6 (a) pursuant to judicial process; or

7 (b) without judicial process, if the Grantor consented to
8 relinquishing possession without a court order in the Security Agreement.

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

12 (6) The Nigeria Police shall provide assistance for the peaceable
13 repossession of the collateral, upon presentation by the creditor of a copy of
14 the relevant Security Agreement and duly certified Confirmation Statement.

15 (7) A Creditor may require a Grantor to assemble the Collateral and
16 make it available at a designated place.

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

Creditor may
render Collateral
inoperative

20 **43.-(1)** A Creditor may collect and apply an Account Receivable,
21 money or a negotiable instrument taken as Collateral to the satisfaction of
22 the obligation secured by the Security Interest if the Grantor or the Borrower
23 is in default.

Creditor may
collect Account
receivable

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

26 **44.-(1)** A Creditor may dispose of a Collateral by sale, lease,
27 license or other form of disposal in its present condition or following any
28 commercially reasonable preparation or processing.

Creditor may
dispose of a
Collateral

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

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

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

Notice of Sale
of Collateral

6 45.-(1) A Creditor who intends to sell a Collateral shall not less than
7 10 working days before selling the Collateral, send notice in the manner
8 stipulated in section 41 (2) of this Act to the following:

9 (a) the Borrower;

10 (b) the Grantor; and

11 (c) any other Creditor who has registered a Financing Statement in
12 respect of the Collateral before the Creditor repossessed the Collateral.

13 (2) Subsection (1) of this section shall not apply where:

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

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

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

20 (d) the Collateral consists of Inventory or Farm Products.

Discharge of
subordinate
security interests

21 46. If the Collateral has been sold under this Part, all Security Interests
22 in the Collateral that are subordinate to the Security Interest of the Creditor who
23 sold the Collateral shall be discharged.

Creditor to give
statement of
account

24 47. A Creditor shall, within 15 working days after the sale of a
25 Collateral, give to the persons entitled to receive a notice of sale, a statement of
26 account in writing, stating the:

27 (a) amount realized from the sale;

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

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

1 48.-(1) A Creditor who has sold a Collateral, shall, before applying
2 the amount realized from the sale towards the satisfaction of the debt or
3 other obligation secured by the Security Interest, apply the proceeds of the
4 sale towards the reasonable costs and expenses of the sale, and to the extent
5 provided for in an agreement other reasonable expenses.

Distribution of
proceeds of sale

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

8 (a) Creditors who have a subordinate Security Interest perfected by
9 registration, in the order of their priority; and

10 (b) the Grantor.

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

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

16 49.-(1) At any time before a Creditor sells the Collateral, the
17 Borrower, Grantor, or other Creditor may redeem the Collateral by:

Right to redeem
the Collateral

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

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

21 (2) A Grantor's right to redeem the Collateral shall have priority
22 over any other person's right of redemption.

23 50.-(1) At any time before a Creditor sells the Collateral, a
24 Borrower may reinstate the Security Agreement by:

Reinstatement of
Security Agreement

25 (a) paying the sums owed;

26 (b) remedying any other default; and

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

29 (2) Unless otherwise agreed, a Borrower shall not be entitled to
30 reinstate a Security Agreement more than twice in each year.

PART VIII - APPLICABLE LAW & CONFLICT OF LAW

Applicable Law

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

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

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

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

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

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

Law Governing
the Security
Agreement

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

Insolvency
Proceedings

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

Stamp Duties
Act

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

1 **55.-(1)** For the purposes of this Act, (a) the grantor is located in General
2 Nigeria if it has a place of business in Nigeria.

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

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

8 **56.** Any action or proceeding as between parties arising out of a Jurisdiction
9 transaction governed by this Act shall be actionable in a court within any
10 State of the Federation vested with jurisdiction to entertain commercial I
11 borrower and lender claims provided that nothing in this section shall
12 derogate from the exclusive jurisdiction vested in the Federal High Court
13 under the Constitution of The Federal Republic of Nigeria.

14 PART IX - MISCELLANEOUS

15 **57.** The Registrar shall fix, impose and review such fees and other Fees and Charges
16 charges for services of the Registry as may be specified by Regulations
17 made under this Act.

18 **58.-(1)** A person who, being required to supply information for the Offences and
19 registration, amendment or cancellation of a Financing Statement under this Penalties
20 Act, knowingly provides a false or misleading information to the Registry,
21 commits an offence and is liable on conviction to:

22 (a) a term of imprisonment for 1 year or a fine of N100,000.00, or
23 both; and in addition, where he has by his conduct benefited financially,
24 shall fully indemnify the Registry and the person affected by his conduct;

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

26 (i) the Court may impose the penalty referred to in paragraph (a) of
27 this sub-section on every officer of the corporation, partnership or entity
28 found to have facilitated or to have been personally responsible for the
29 offence; and

30 (ii) the corporation, partnership or entity shall be liable to a fine of

1 NI,000,000.00.

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

6 (a) to a term of imprisonment of 1 year or a fine of NI00,000.00, or
7 both;

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

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

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

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

24 **61.** The Registrar may from time to time make Rules and issue
25 guidelines for the proper administration of the Registry.

26 **62.-(1)** Security interests in movable assets created before the coming
27 into effect of this Act shall continue to remain valid and effective on the terms
28 and conditions agreed to by the Grantor and Creditor.

29 (2) Security interests in movable assets created by a Grantor under the
30 Regulations, No.1, 2015 shall continue to remain valid and effective and be

Criminal
Jurisdiction

Grievance
Procedure

Rules and
Guidelines

Transitional
provisions

1 deemed to have been entered into under this Act if the transaction is still
2 current and subsisting upon the coming into effect of this Act.

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

8 64. The Governor may make Regulations generally to give full Regulations
9 effect to the provisions of this Act.

10 65. In this Act: Interpretation

11 "Account Receivable" means a right to receive value arising from an'
12 obligation owed by an account debtor to the grantor including book debts
13 but excluding a negotiable instrument;

14 "Amendment Financing Statement" means a form in which information is
15 entered to update the initial financing statement;

16 "Borrower" means a person to whom credit is extended with a financial
17 obligation to repay under a Security Agreement;

18 "Central Bank" means Central Bank of Nigeria;

19 "Registrar" means the Registrar of the Collateral Registry;

20 "Collateral" means movable property, whether tangible or intangible, that is
21 subject to a Security Interest;

22 "Confirmation Statement" means a certificate issued by the Collateral
23 Registry confirming the Registration Number, date and time of a
24 registration;

25 "Consumer Goods" means goods that the debtor uses or intends to use
26 primarily for personal, family or household purpose;

27 "Creditor" refers to the person granting a facility on the back of a security
28 interest created under this Act;

29 "Equipment" means machinery or other capital goods used in the operation
30 of the grantor's business;

- 1 "Farm Products" include:
- 2 (a) crops grown, growing, or to be grown;
- 3 (b) fish stocks;
- 4 (c) livestock, poultry and their unborn offspring;
- 5 (d) seeds, fertilizers, manure and supplies used or produced in a
- 6 farming operation; and
- 7 (e) products of crops and livestock in their unprocessed states;
- 8 "Financial Institution" means banks, body association or group of persons,
- 9 whether corporate or incorporate which carries on the business of investment
- 10 and securities, a discount house, insurance institutions, debt factorization and
- 11 convention firms, bureau de change, finance company, primary mortgage
- 12 institutions, money brokerage firm whose principal business includes
- 13 factoring, project financing, equipment leasing, debt administration, fund
- 14 management, private ledger service, investment management, local purchase
- 15 order, financing export finance, project consultancy, financial consultancy,
- 16 pension funds management and such other business as the Central Bank, or
- 17 other appropriate regulatory authorities may from time to time designate;
- 18 "Finance Lease" means a lease which transfers ownership of the asset to the
- 19 lessee at the end of the lease term;
- 20 "Financing Statement" means the prescribed forms on which information is
- 21 provided to effect a registration under this Act or any regulation made
- 22 hereunder;
- 23 "Goods" means tangible movable property and include farm products,
- 24 inventory, equipment, consumer goods, trees that have been severed and oil,
- 25 gas or minerals that have been extracted;
- 26 "Governor" means Governor of Central Bank of Nigeria;
- 27 "Grantor" means a person that has rights in the collateral, and includes a
- 28 grantor of any type of security interest in the form of a charge, chattel
- 29 mortgage, pledge or lien in movable property;
- 30 "Initial Financing Statement" means Financing Statement in the prescribed

1 form that a person originally submits to the Collateral Registry for
2 registration;

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

6 "Inventory" means goods that are:

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

8 (b) raw materials or work in progress;

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

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

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

18 "Purchase Money Security Interest" means:

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

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

23 (c) a right of a financial lessor;

24 "Registration" means the processing of a Financing Statement to bring it in
25 compliance with the requirements of this Act;

26 "Registry" means the Collateral Registry established under this Act;

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

30 "Security Interest" means a property right in collateral that is created by

1 agreement and secures payment or other performance of an obligation,
2 regardless of whether the parties have denominated it as a security interest but
3 it does not include a personal right against a guarantor or other person liable for
4 the performance of the secured obligation;

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

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

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

Short Title

15 66. This Bill may be cited as the Secured Transactions in Movable
16 Assets Bill, 2016.

EXPLANATORY NOTE

This Act seeks to provide for the registration of financing statements and use of movable assets as acceptable security for accessing credit by individuals and micro, small and medium enterprises in Nigeria.