

# Security rights over movable property under old law to expire in a month's time

Did you know that you need to register any security right you hold over movable property in Kenya online by 15<sup>th</sup> February 2018 under a new law in order to enforce such security against third parties?



The Movable Property Security Rights Act came into force on 16<sup>th</sup> May 2017. Before then, registration of security rights was governed by various laws and mainly by the Chattels Transfer Act. Section 89 of the Movable Property Security Rights Act provides for security rights within its scope, including those created prior to its commencement.

A written agreement between the grantor and the secured creditor creating a prior security right made before the coming into force of the Act

is sufficient to constitute authorization by the grantor for the registration of a notice relating to that security right after the commencement of the Act. Under Section 90, the existence of a prior security right is determined by the law under which it was created and remains effective between the parties even if its creation did not comply with the requirements of the new Act.

## Effectiveness against third parties

Under the Act, a security right in any movable asset becomes effective against third parties if a notice relating to it is registered; third parties being persons engaged in a transaction affecting a secured movable asset other than the grantor of the security and the secured creditor.

Thus, if a movable asset over which a security right is registered (for example, a car) is unscrupulously transferred/sold to a third party, then the third party remains liable to the claim of the secured creditor made upon the grantor in the event of a default. However, such liability is placed on a third party only if a notice relating to the secured creditors security right has been registered under this new Act.

Effectiveness against a third party therefore refers to the ability of the secured creditor to enforce against a person who is not a party to a security agreement in the event of default.

A security right that was enforceable against third parties prior to the coming into force of the Act continues to be effective until either the time it was scheduled to lapse or at the end of nine months after the coming into force of the new Act, whichever comes earlier. Consequently, third party effectiveness created under the old Act lapses in February 2018. It is therefore important to have a security right created before the coming into force of the new Act registered again under the new Act for a secured creditor to be able to claim against a third party after 15<sup>th</sup> February 2018.

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