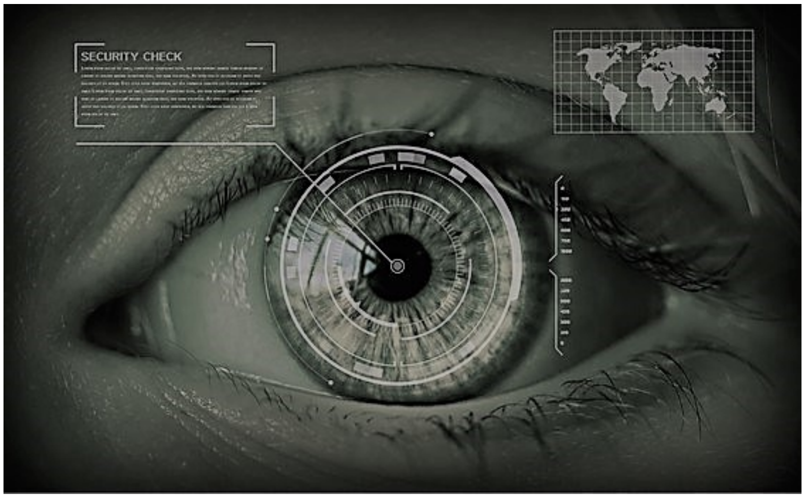

MUSHORIWA PASI CORPORATE ATTORNEYS

Conveyancing, Securities & Property Law update

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Changes to Securitisation Laws in Zimbabwe

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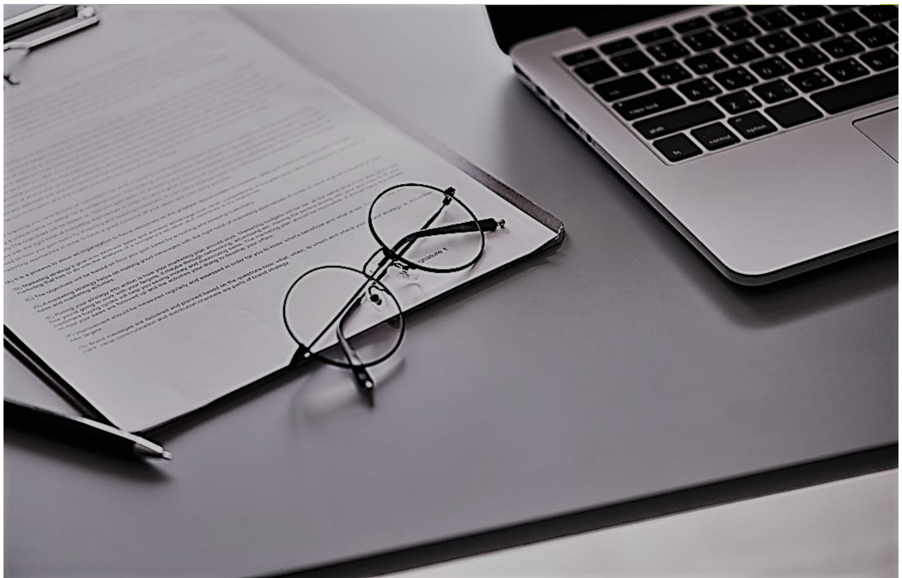
For long, businesses and individuals who sought security for commercial transactions were largely limited to real security through various types of mortgage bonds over immovable security, while Notarial General Covering Bonds were generally not preferred as they gave insufficient security over movables. The legislature has recently intervened in a manner which will affect the way in which obligations are secured, specifically in respect of movables. The Movable Property Security Interests Act [Chapter 14:35] ("the Act") was published in the Government Gazette on the 4th August 2017, and shall come into operation on a date to be fixed by the President. The Act allows for the use, as security, of all types of tangible assets (goods, including motor vehicles, crops, machineries and livestock) and intangible assets (receivables, choses in action, deposit accounts, electronic securities, intellectual property rights). The Act establishes a Collateral Registry and provides for the registration of security rights in movable property.

Purpose

The Act seeks to enable entities and individuals to use their movable property as collateral in accessing loans. The Act assists small to medium enterprises access funding where they do not own immovable property and resultantly experience difficulty in accessing financing from the formal sector. The Act also safeguards creditors in that where a movable asset is given as collateral, it may be registered as such in a central electronic registry. Once registered, the said registration constitutes proof of security of the loan and guarantees recovery upon default.

Significant Provisions of the Act

The Act creates a "security interest" which is defined as a property right in a movable asset created by an agreement to secure payment. Put simply, a security interest is created when a borrower and lender enter into an agreement in terms of which the lender provides a loan to the debtor. The loan is thereafter secured by a movable asset provided by the debtor. In terms of the Act, the security agreement must be in writing and signed by both the debtor and creditor. It must identify both parties and, except in the case of receivable, it must describe the secured obliga-



Detail is everything in security agreements

-This Act will widen the available scope of executable and reliable security which should see a change in lending requirements by financial institutions -

tion and the collateral. This is beneficial in that the Act permits such security interests to be registered in the Collateral Registry and thereafter enforceable against all other third parties.

The Act formalizes the registration of security interests in a central, public registry, in section 4, by creating a department known as the Collateral Registry. The duties of the Collateral Registry are to register all security interests and to establish priority of secured creditors on the assets subject to security interest. The Collateral Registry is a publicly available database of interests in, or ownership of movable assets allowing borrowers to prove their credit worthiness and potential lenders to assess their ranking priority in potential claims against particular collateral

The Act in Section 6 as read together with the First Schedule regulates the registration of notices in the Collateral Registry. This may be utilized by potential lenders in that they may register their security interests in all movable property once security agreements have been entered into with various debtors. This safeguards lenders in that as soon as the notice is registered, it becomes a preferential creditor in connection with that specific security interest. Furthermore, in the event that the security interest is already registered in favor of another creditor, the potential lender would easily be able to ascertain this as the Collateral Registry permits searches by members of the public.

Searches may also be utilized by potential lenders to establish whether a movable asset is encumbered or to verify whether a security interest has been discharged following payment of a debt or performance of the secured obligation. Additionally, potential lenders may utilize the Collateral Registry to benefit them, by registering as users, and gaining access to information on whether the movable asset has been pledged as a security interest in whole or part for another debt. This invariably reduces potential lenders risk. In addition, where a notice has been registered the potential lender will be able to enforce its security interest even where the debtor becomes insolvent and will ensure that its debt is prioritized over others.

Section 8 of the Act deals with the enforcement of registered interests relating to

Security is complementary to a good financial transaction

security interests. Specifically, where there has been a failure to perform or pay in terms of the security agreement, the secured creditor will have the right to speedy recovery through provisional sentence proceedings. Potential lenders may utilize this to reduce the time it takes to recover outstanding credit facilities as there is no need for it to go through ordinary lengthy litigation proceedings. Furthermore, potential creditors would be guaranteed of recovery of the debt as a result of the security. Moreover, the Act gives the secured creditor the right to take possession of the movable asset (in accordance with the security agreement) pending the litigation in that regard. This safeguards the value of the movable property against devaluation through wear and tear and ensures a swift realization of security interests in the event of default. In general, the Act is beneficial to potential lenders in that it creates a transparent legal and secure method of using movable assets, as collateral.

Conclusion

In conclusion, the Act secures potential creditor's interests and opens up vast business opportunities for both potential creditors and debtors. However, in order to fully exploit the benefits of the Act, potential creditors will need to ensure security agreements are properly drawn up, and registered with the Collateral Registry. Furthermore, the benefits of the provisions of the Act to potential creditors, will largely depend on whether the Collateral Registry records are frequently updated and easily accessible. At the time of the writing of this article, the Reserve Bank of Zimbabwe had begun setting up the Collateral Registry. We shall continue to monitor the gradual progress in implementing the Act and we shall send further alerts once we obtain and review the Regulations of the Act from Government Printers. We shall also update you on the proceedings at the collateral registry once it is fully set up and operational and when the Act itself comes into

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