Africa's expanding security landscape - Zambia and Uganda

December 2017
Business Brief

Legislative reform and development for forms of credit support

During the last year, various African countries have taken steps towards legislative reform with a view to creating new forms of security specific to the economic climate of borrowers in Africa. We share some insight into the developments in the laws of Zambia and Uganda to promote greater access to credit facilities in these countries.

Zambia

In April 2016 Zambia enacted the Moveable Property (Security Interest) Act 3 of 2016 (the MPA). The MPA aims to promote economic development by enhancing the availability of low-cost secured credit to borrowers and the creation of a single all-inclusive registration authority for secured transactions.

It contemplates the use of moveable assets such as consumer goods that are primarily used by a debtor for personal, family or household purposes as a form of collateral. By extending the definition of collateral to include consumer goods, borrowers now have the ability to utilise the full value of their assets as support for obtaining credit.

In addition, section 7 of the MPA provides for the establishment of a Collateral Registry Office, which is required to manage and facilitate access to the electronic collateral registry, oversee the operation and maintenance of the registration system and provide practical advice relating to the registration and search processes.

Section 11 further provides for the establishment of an electronic collateral registry through which documents known as "financial statements" can be registered and recoded in the collateral registry.

A financial statement is defined as a prescribed form document that must contain the detailed information required in terms of section 13(1)(a)-(j). A validly registered financial statement constitutes perfected security under the MPA.

The existing requirements for the perfection of security over movable property have not been repealed by the MPA and secured creditors can perfect the security taken over movable property by taking possession of, or control over, the relevant moveable property without registering a financial statement.

Uganda

Access to affordable credit is one of the key challenges faced by Ugandans and businesses. The issue stems from the fact that a significant percentage of Ugandans do not own land titles. Banks are reluctant to lend money to borrowers without collateral over tangible assets such as land.

The outcome of the new Movable Property Security Interest Act of 2017 (the Movable Property Security Act) is that Ugandan businesses and individual borrowers that do not own land, will be able use movable assets like machinery, livestock, inventory, accounts receivable, vehicles, crops, intellectual property rights, electronics, jewellery and many other movables as security for credit facilities.

The Moveable Property Security Act also establishes a fully electronic movable property security interest registry which provides secured lenders with an online platform where they can register their security interests over a particular movable asset.

The direct impact of the electronic registry is the reduction of risk for secured lenders who can protect their security interests against third party claims. The first secured lender to register a security interest over movable assets in the electronic register, will upon the default of the borrower, be paid before any other claimants.

The legislative developments explored in this article evidence the innovative thinking of African legislators to develop and enact legislation that speaks directly to the needs of African individuals and businesses and facilitates economic growth on the continent. Lenders and borrowers are granted more flexibility in terms of the types of assets which can be encumbered for purposes of credit support.

> Read the full article online