



# **Registration of Security under the Secured Transactions in Movable Assets Act, 2017 and Implications for Secured Loan Transactions**



## 1.0 Introduction

The Secured Transaction in Movable Assets Act 2017 (“STMA”) was enacted into law in 2017 to provide a comprehensive legal framework for the creation, registration and enforcement of security interests over movable assets. It was also aimed at improving access to credit for micro, small and medium-sized enterprises (“SMEs”) by allowing them to use their movable assets, such as inventory, equipment and receivables, as collateral for loans. The security interest is registrable at the National Collateral Registry (“NCR”). The NCR is an electronic public database that contains information on security interests in movable property. The STMA exempts instruments registrable with the NCR from stamp duty in order to make it cheaper for SMEs to use their movable assets as security for loans. Prior to the passing of the STMA into law, the creation, registration and enforcement of security for corporate entities/businesses was already covered by the then Companies and Allied Matters Act, 2004 (“CAMA 2004”), which has now been repealed and replaced by the Companies and Allied Matters Act, 2020 (as amended) (“CAMA 2020”).

The STMA effectively created a second regime for the registration of security interests in movable assets for SMEs, which operates alongside the existing registration framework under CAMA with limited exceptions. This raises questions such as whether dual registration is required under the CAMA and STMA to protect a lender’s interest, and the priority of security interests registered under the CAMA and the STMA, and whether stamping is required to tender a document in evidence in respect of security registered with the NCR.

This article examines the STMA’s framework for registering security interests in comparison with the CAMA. It assesses their combined impact on secured lending in Nigeria and identifies the gaps and overlaps that arise from operating these two parallel registration systems.

## 2.0 The types of assets the security over which need to be registered at the NCR

Section 2(1)(a) of the STMA stipulates that the Act applies to all security interests in movable assets created by an agreement that secures payment or the performance of an obligation. The term “movable assets” is defined under the STMA to mean “tangible or intangible property other than real property”.<sup>1</sup>

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<sup>1</sup> Section 63 (1) of the STMA.



This definition is broad and covers a wide range of assets, beyond what was contemplated before the enactment of the STMA the security over which need to be registered at the NCR. Examples of movable assets the security over which is registrable at the NCR include:

- (a) **Tangible movable assets:** These are physical items that can be moved or transferred from one place to another such as machinery and equipment (factory machinery, tools, vehicles and other industrial equipment), goods (such as inventory, consumer products, manufactured products, and raw materials).
- (b) **Intangible Movable Assets:** These assets, though lacking a physical presence, hold significant value the security over which is also registrable at the NCR. These include accounts receivables, bank accounts, negotiable instruments, intellectual property, securities etc.

There are, however, certain types of property interests and assets that are specifically excluded from the scope of application of the NCR. These include:

- (i) **Right of Set-Off:** A right of set-off allows one party to reduce or cancel a debt by offsetting it against a claim owed by the other party. Such rights are not registrable at the NCR;<sup>2</sup>
- (ii) **Interests in Land:** The STMA does not apply to the creation of security interests over land. However, security over account receivables arising from land transactions can still be registered at the NCR;<sup>3</sup> and
- (iii) **Interests in Ships and Aircraft:** While ships and aircraft qualify as movable assets, the STMA specifically excludes security interests in these assets from registration with the NCR. This exclusion is due to the fact that ships and aircraft are subject to specialised legislation and registration systems that govern security interests in these types of property.<sup>4</sup>

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<sup>2</sup> Section 2 (a) of the STMA.

<sup>3</sup> Section 2 (b) of the STMA.

<sup>4</sup> Section 2 (c) of the STMA.



### **3.0 Distinction between the Security Interests Covered Under the CAMA 2020 and the STMA**

Section 222 of the CAMA 2020 outlines the types of security interests registrable with the Corporate Affairs Commission (“CAC”). These include charges securing debentures, charges on uncalled share capital, any charge documented in an instrument that would require registration as a bill of sale if made by an individual, charges over land or interests in land (excluding rent), charges over book debts, floating charges over company assets, undertakings and unpaid share calls, and charges over ships, aircraft, shares in ships, goodwill, and intellectual property.

As discussed in paragraph 2.0 above, the STMA applies to all security interests in movable assets created by agreement to secure the payment of a debt or the performance of an obligation with the exception of the rights of set-off, interests in land (except for interests in account receivables), or security interests in movable property that are already governed by other laws with their own registries (such as those relating to ships and aircraft).<sup>5</sup>

In summary, while both the CAMA 2020 and the STMA regulate security interests in tangible and intangible movable assets, there are differences in the scope of applications of both laws. For instance, the CAMA 2020 has a broader scope which extends to security interests in real property and assets subject to specialised registries (such as ships and aircraft), while the STMA is limited to movable assets (tangible and intangible) and excludes land, set-off rights, and assets already governed by other sector-specific laws.

### **4.0 Conflicts Arising from the Operation of the Dual Security Registration System**

The concurrent operation of the CAMA 2020 and the STMA gives rise to practical legal issues. For example, there is uncertainty over the priority of competing security interests registered at both the CAC and the NCR as the STMA indicates that priority is governed by the date of security registration, while the CAMA 2020 provides that ranking of registrable charges is governed by the date of creation, provided that it is registered within 90 days from the date of creation.

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<sup>5</sup> Section 2 of the STMA





Another contentious area is the express indication by the STMA that provisions of Stamp Duties Act (now repealed and replaced by the Nigeria Tax Act 2025 (the “NTA”) shall not apply to any secured transactions covered by the STMA.<sup>6</sup> This is particularly confusing in relation to transactions that also requires concurrent registration with the CAC and the NCR. In addition, most creditors who have possessory interest over some tangible moveable assets to which a possessory security interest has been created in their favour, also do not consider registration with the NCR as being absolutely efficient. This is given the fact that they already have possession of the assets.

We have provided a detailed analysis of these issues and proposed some workable recommendations to provide the necessary clarity on the applicability of the STMA alongside other applicable laws in relation to the registration of security interests.

## **5.0 Procedure for The Registration of Security Interest Under The STMA**

To provide context for our analysis of the issues, we have summarised the registration procedure for security interests under the STMA below.

Section 12 of the STMA sets out the procedure for registering security interests in movable assets with the NCR. Under this section, the responsibility for registration lies with the creditor, although the process may be carried out either directly by the creditor or on its behalf. To register a security interest, the creditor must file a financing statement with the consent of the grantor, which is typically evidenced by a board resolution or the relevant security document submitted with the registration application.

The financing statement must include key information such as the grantor’s details, a description of the collateral, the nature of the security interest, the creditor’s name, relevant particulars, the maximum amount secured, the duration of the security, and any additional information the NCR may require. Once submitted, the NCR will review the application, register the creditor on its platform, and issue a unique registration number. The applicable registration fee is then charged to the bank account provided for the registration, usually that of the grantor, subject to the grantor’s approval for a post-paid debit.

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<sup>6</sup> Section 54 of the STMA



## **6.0 Whether documents to be registered at the NCR need to be stamped?**

Under Section 12 of the STMA, the document to be registered at the NCR is the financing statement. This document provides the necessary information to effect the registration of a security interest under the STMA. A security interest is perfected when the financing statement is registered at the NCR, at which point it is assigned a unique registration number. The security agreement, which is the document that creates the security interest between the grantor and the creditor, is not required to be registered at the NCR. The security agreement is only submitted alongside the application to confirm the grantor's consent to the registration of the financing statement.

Regarding the requirement for stamping, Section 54 of the STMA excludes the applicability of stamping to secured transactions governed by the STMA. As a result, registrable financing statements do not require stamping. This exemption likely reflects the legislature's intention to simplify the registration process and reduce barriers to accessing credit using movable assets as collateral by SMEs. Section 123 and other provisions of the NTA provide that documents required to be stamped will not be admissible in evidence in court, judicial or arbitral proceedings unless they are duly stamped and the applicable stamp duty paid.

Since the STMA exempts the secured transactions evidenced under the financing statement from stamping, the security agreement, in itself, is not covered by this exemption. As a result, while financing statements registrable at the NCR are not required to be stamped, it is our opinion that security agreements must be stamped to avoid issues with registration with the CAC and admissibility in civil proceedings.

In addition, in the event of a default by the borrower, Section 39(1) of the STMA allows the creditor to either enforce its rights under the STMA and the security agreement or pursue other judicial remedies. In enforcement proceedings, it is the security agreement evidencing the creation of the security interest that would be enforced, not the financing statement. In that case, an unstamped security agreement will not be admissible in the civil proceedings unless it is stamped. This is because stamping applies to security agreements. Consequently, while the financing statement does not require stamping for registration at the NCR, the security agreement should be duly stamped and, where applicable, registered with the CAC to avoid challenges in enforcement proceedings.



## 7.0 Whether a Pledge is registrable at the NCR

A pledge is a form of possessory security in which the pledgor transfers possession (either actual or constructive) of an asset to the pledgee as collateral for securing payment or the performance of an obligation. The pledgee will hold the asset until the secured obligation is fulfilled or discharged, at which point possession of the asset is returned to the pledgor. The validity of a pledge depends on the pledgor's continued possession of the pledged asset, whether actual or constructive.

As we have stated earlier, under the STMA, all security interests in movable assets created by an agreement to secure payment or performance of an obligation are registrable at the NCR. The STMA defines a *"Security Interest"* as *"a property right in collateral that is created by an agreement and secures payment or other performance of an obligation, regardless of whether the parties have denominated it as a security interest, but it does not include a personal right against a guarantor or other person liable for the performance of the secured obligation."*

A pledge is a form of property right in collateral through possession to secure an obligation. Consequently, the conclusion that we have arrived at is that where a pledge is documented in an agreement (such as a deed of pledge), the deed of pledge will be registrable at the NCR. This is provided that the pledged asset falls within the category of movable assets the security over which is registrable with the NCR pursuant to the STMA.

## 8.0 Whether a security interest created over movable assets in Nigeria in favour of a foreign lender requires registration at the NCR?

The STMA defines a "Creditor" as *"the person granting a facility secured by a security interest under this Act"*<sup>7</sup>. This is a broad definition that does not exclude foreign lenders that take security over movable assets in Nigeria. This implies that security interests created in favour of foreign lenders over movable assets in Nigeria are registrable at the NCR.

Section 51 of the STMA, however, provides specific guidelines on when the STMA applies to the creation, perfection, and priority of security interests, particularly in cases involving foreign grantors or movable assets located across different jurisdictions. An analysis of Section 51 of the STMA and the extent of its application is set out below:

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<sup>7</sup> Section 63 (1) of the STMA.



- A. **Security Interests in Tangible Assets located in Nigeria:**<sup>8</sup> The STMA governs the creation, perfection, and priority of security interests in tangible assets located in Nigeria. As a result, if a foreign lender takes a security interest over tangible collateral within Nigeria, the security interest will be registrable at the NCR to ensure it is perfected and enforceable. It is immaterial whether the grantor of the security interest in the tangible asset is located in Nigeria or not.
- B. **Security Interests in Tangible Assets Used in More than One Country:**<sup>9</sup> Where the tangible asset is of a type ordinarily used in more than one country, a security interest created over such an asset will be registrable at the NCR if the grantor of the security interest is located in Nigeria.
- C. **Security Interests in Intangible Assets:**<sup>10</sup> Security interests over intangible assets are registrable under the STMA only when the grantor is located in Nigeria, regardless of the location of the intangible asset. For instance, a deed of share charge involving a foreign chargor would not be registrable at the NCR, even if the lender is a Nigerian or foreign entity.
- D. **Security Interests in Proceeds of Collateral:**<sup>11</sup> The law governing the creation, perfection, and priority of a security interest over proceeds from a collateral is the same as that which applies to the original collateral. For instance, if tangible goods are sold and converted into cash, the STMA will continue to govern the security interest in the cash proceeds. This is provided that the STMA applied to the original collateral.

## 9.0 What Determines the Priority of Registered Security Interest, the CAMA 2020 or the STMA?

In considering this issue, it is important to note that both the CAMA 2020 and the STMA are statutes enacted by the National Assembly of the Federal Republic of Nigeria. Consequently, both laws are hierarchically on the same footing. In addition, neither of the Acts expressly nor impliedly overrides the other. In fact, section 2(3) of the STMA provides that *“Nothing in this Act shall prevent the creation of security interest in the form of charges by companies*

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<sup>8</sup> Section 51 (1) of the STMA.

<sup>9</sup> Section 51 (2) of the STMA.

<sup>10</sup> Section 51 (3) of the STMA.

<sup>11</sup> Section 51 (4) of the STMA.





*registered under the Companies and Allied Matters Act.*” This provision effectively acknowledged and preserved the security registration regime under the CAMA. Furthermore, each of the Acts establishes its own rules for determining the priority and ranking of security interests.

Under the CAMA 2020, priority among company charges depends on the nature of the charge, the date it was created and whether it was registered within 90 days from the date of creation. For instance, under the CAMA 2020, a fixed charge takes precedence over a floating charge on the same asset, where the floating charge does not have a negative pledge,<sup>12</sup> and where two charges are of the same type, the earlier created charge takes priority. That is, priority is according to the date of creation of the charge. Registration of the charge with the CAC serves to give constructive notice of the charge, but priority is given according to the date of creation and registration within the prescribed timeline of 90 days from the date of creation.

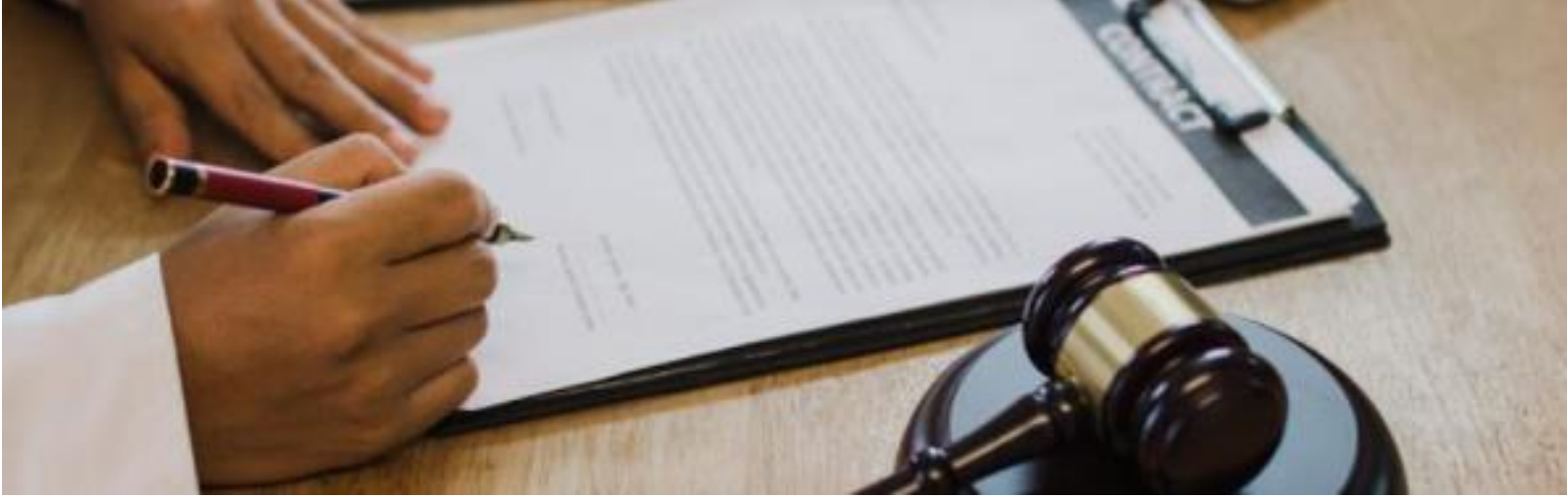
In contrast, the STMA adopts a registration-focused approach in determining the priority of security interests registered with the NCR. Section 23 of the STMA provides that *“the priority between perfected security interests in the same collateral shall be determined by the order of registration”*. That is, once a financing statement is registered with the NCR in respect of a collateral, that security interest enjoys priority over any later filings over the same assets, irrespective of when or how the underlying obligation arose.

As both security registration regimes operate in parallel and neither statute overrules the other, conflicts in the order of priority can arise. A creditor with a floating charge registered under CAMA 2020 may argue that he/she has priority over a security interest registered under the STMA and vice versa. In the absence of judicial or legislative guidance on how to reconcile these conflicts, our recommended course for lenders is to perfect their security interests in both registries.

In the event of a conflict between the registration regime under the CAMA 2020 and the STMA, the provisions of the CAMA 2020 will prevail override those of the STMA to the extent of the inconsistencies. This is based on the general principle of statutory interpretation that where the provisions of a new law conflict with those of an earlier law, the later law prevails. This position has been upheld by Nigerian courts in many cases to the effect that where two enactments are inconsistent or repugnant, the latter shall be read as having impliedly repealed or amended the earlier one. The courts have, however, cautioned that repeal by implication is not readily inferred except

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<sup>12</sup> Section 204 of the CAMA



where the two enactments are so plainly inconsistent that effect cannot be given to both at the same time.

## **10.0 Conclusion**

The enactment of the STMA has significantly enhanced the legal framework for secured lending in Nigeria by expanding the range of movable assets that can be used as collateral and simplifying the registration process through the NCR. Its concurrent operation with the CAMA 2020 has, however, introduced areas of overlap, uncertainty, and potential conflict, particularly in relation to registration requirements, priority of security interests, and the applicability of stamping obligations. These issues are most pronounced in transactions involving corporate borrowers, where security interests are registrable under both regimes.

In the absence of clear legislative or judicial guidance reconciling the the areas of inconsistencies between the two frameworks, lenders are advised to adopt a conservative approach by ensuring dual registration of security interests at both the CAC and the NCR, where applicable. Security agreements should also be stamped notwithstanding the exemption applicable to financing statements under the STMA. This approach mitigates enforcement, priority, and admissibility risks and aligns with prevailing market practice. Until further clarification is provided by the courts or regulators, careful structuring and comprehensive perfection of security interests remain critical to protecting and preserving creditor rights under Nigerian law.

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