

REPUBLIC OF ZAMBIA

THE TRADES CHARGES ACT

CHAPTER 415 OF THE LAWS OF ZAMBIA

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ARRANGEMENT OF SECTIONS

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CHAPTER 415

TRADES CHARGES

49 of 1973
13 of 1994

An Act to provide for the creation of charges to secure loans advanced by banks, financial institutions or parastatal corporations to persons licensed under the Trades Licensing Act; to establish a register to record such charges; and to provide for matters incidental to or connected therewith.

[28th September, 1973]

1. This Act may be cited as the Trades Charges Act. Short title

2. In this Act, unless the context otherwise requires- Interpretation
 - "bank" and "financial institution" shall have the meaning respectively assigned to those expressions in the Banking and Financial Services Act. Cap. 387

 - "bulk transfer" means transfer by a person of the whole or a substantial part of his secured property otherwise than in the ordinary course of his business;

 - "debtor", in relation to a particular floating charge, means the person identified in the register as the debtor;

 - "parastatal corporation" means any body corporate established by an Act of Parliament; or any company (registered under section *thirty-two* of the Companies Act) in which more than fifty per centum of the paid-up capital is held directly or indirectly by Government; Cap. 388

 - "person giving the security", in relation to a particular floating charge, means the person identified in the register as the owner of the secured property;

 - "register" means the register maintained under subsection (2) of section *four*;

 - "Registrar" means the Registrar of Trades Charges appointed under subsection (1) of section *four*;

 - "secured party", in relation to a particular charge, means the bank, financial institution or parastatal corporation which is identified in the register as the creditor or its assignee;

 - "secured property" means, with respect to a specific floating charge, the stock-in-trade or other personal property described in the register, whether or not at the time of registration such property is in existence or owned by the person giving the security and, with respect to a specific fixed charge, the property described in the register;

 - "stock-in-trade" means any goods the person giving the security sells by way of business as defined in the Trades Licensing Act; Cap. 393

"reserved licence" has the meaning assigned to it in section *seventeen* of the Trades Licensing Act; Cap. 393

"trader" means a person who holds a reserved licence.

3. (1) Notwithstanding anything contained in any written law, and subject to the production of adequate proof by the trader of his ownership, a bank, financial institution or parastatal corporation may, for the purpose of securing repayment of a loan or advance made to a trader, take a floating charge on the stock-in-trade and personal property which the trader owns or of which he may subsequently become the owner, whether or not such property is in existence at the time of such delivery. Floating and fixed charges

(2) A bank or financial institution or parastatal corporation may take a fixed charge on any personal property which the trader owns at the time he delivers the document creating the fixed charge.

(3) The sum secured may be either a specific amount, advanced in one sum or in more than one sum, or a fluctuating amount advanced on a current account whether or not subject to a maximum specified in the floating charge. The floating charge may, if the parties so speculate, continue to be effective, notwithstanding the fluctuation or temporary extinction of the debt.

4. (1) The Minister shall appoint a public officer as a Registrar of Trades Charges. Procedure for and effect of registration of charges and the satisfaction and cancellation thereof

(2) The Registrar shall, from all notices in the prescribed form received by him, maintain a register showing the following information:

- (a) the date the notice is received;
- (b) the name, in alphabetical order, of the person giving security;
- (c) the name and address of the debtor;
- (d) the owner of the security and the creditor;
- (e) a description of the secured property;
- (f) the maximum amount and term of the loan or advance and the type thereof; and

(g) if specified, the duration of the charge.

(3) All notices filed under this section shall be executed by the person giving the security.

(4) The register and the notices filed under this section shall at all reasonable times be open to any member of the public who may, on payment of the prescribed fee, make copies or extracts therefrom or request the Registrar to provide him with a certified copy of any entry in the register or a certified copy of a notice received under this section.

(5) For all purposes connected with the secured property, registration of a charge under this section shall, from its commencement and throughout its continuance, constitute, unto all persons, actual notice both of the charge and of the fact of its registration.

(6) No rights or powers as against any person, other than a debtor or person giving any security shall, under this Act, accrue to any bank or financial institution or parastatal corporation in respect of any property until a notice in the prescribed form is received by the Registrar.

(7) Unless the parties to the notice withdraw it earlier, the notice shall cease after the expiration of three years.

(8) Registration of a charge may, by the submission of a renewal notice in the prescribed form, be renewed, within sixty days prior to the expiration of the original notice.

(9) Notwithstanding anything to the contrary contained in the Bills of Sale Acts, 1878-1882, of the United Kingdom, a charge registered under this Act shall have effect and no such charge shall be deemed to be a Bill of Sale within the meaning of those Acts.

(10) When the loan or advance secured by the charge and all interest due thereon have been fully paid, the secured party shall, on the written request of the debtor or the person giving the security, execute and deliver to the Registrar a certificate of satisfaction in the prescribed form and the Registrar shall forthwith cancel the registration of the charge:

Provided that when, after due request he secured party refuses or fails to deliver a certificate of satisfaction, the person making the request may inform the Registrar to cancel the registration and the Registrar, if satisfied on the evidence produced to him that all debts which are the subject of the charge have been full paid, shall forthwith cancel the registration of the charge.

5. (1) The provisions of subsections (2) to (8) of section *four* shall apply to a charge created under this Act and such a charge shall have, in so far as it is not inconsistent with the provisions of the said subsections (2) to (8), the same effect as if the charge had been created by a duly registered debenture under the provisions of the Companies Act.

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(2) (a) The secured party shall have the right to take possession of the secured property and, after five clear days or, in the case of perishable goods immediately, to sell the secured property upon the happening of the following events:

- (i) the insolvency of the debtor or of the person giving the security;
- (ii) a receiving order in bankruptcy being made against the debtor or the person giving the security;
- (iii) the death of the trader or the person giving the security;
- (iv) the dissolution of the partnership in the case where the debtor is in partnership or the property charged is partnership property;
- (v) the non-payment of the sum secured, or of any interest due thereon, in accordance with the terms of the loan or advance; or
- (vi) notice in writing, to that effect, being given by the secured party to the debtor, on the happening of any event which, by virtue of the charge, confers upon the holder the right to give such notice:

Provided that the secured party shall immediately notify, in writing, the debtor and the person giving the security, if any, that he has taken possession of the secured property and intends to sell it.

- (b) The proceeds from the sale of the secured property by the secured party shall go first to discharging the expenses incurred in connection with the sale of the secured property, then the interest and other charges, and finally the principal of the loan or advance.
- (c) Any surplus shall be returned forthwith to the person giving the security; and in the event of the net proceeds of the sale being less than the sum outstanding, the debtor shall continue to be liable for the deficiency.

(3) Any secured property shall not, for the purposes of section *forty-one* of the Bankruptcy Act, comprise the property of the bankrupt divisible among his creditors.

Cap. 82

(4) A charge registered under this Act shall have priority over all rights subsequently acquired in, on or in respect of the secured property except-

- (a) any rights acquired in the secured property that is stock-in-trade by a subsequent purchaser in good faith; and
- (b) any rights acquired by a subsequent secured party in any secured property with the written agreement of a prior secured party.

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(5) If any secured property is transferred by the person giving the security in order to defraud the secured party or, generally, creditors, the transfer of the secured property shall be null and void.

(6) In the event of the secured party being unable to take possession of the secured property in which his right has, under this section priority, he shall be entitled to receive, from the person to whom the person giving the security, sold or transferred the secured property, the proceeds from any such sale or transfer. The proceeds shall be applied as provided for in paragraph (b) of subsection (2).

6. If, with the intent to defraud, the person giving the security removes or suffers to be removed from his possession the secured property, or any part thereof, or obtains the cancellation of the registration of the charge, he shall be guilty of an offence and on conviction liable to a prescribed fine or to imprisonment for a prescribed period, or to both. Effect of fraud

7. Any person giving security who-

- (a) fails to disclose to a person from whom the charge is obtained that property offered is already secured under this Act; or
- (b) withholds from the person from whom the charge is obtained material information affecting the secured property; or
- (c) gives to the person from whom the charge is obtained incorrect material information affecting the secured property;

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shall be guilty of an offence and on conviction shall be liable to a fine of five thousand penalty units or to imprisonment for two years with hard labour, or to both.

(As amended by Act No. 13 of 1994)

8. (1) The Minister may, by statutory instrument, make regulations providing for the better carrying out of the Act and, without prejudice to the generality of the foregoing, such regulations may make provision for- Regulations

- (a) the form of any notice to be given under this Act;
- (b) the form of the register to be maintained under section *four*;
- (c) the form of cancellation, discharge or release of a charge;
- (d) prescribing anything required to be prescribed under this Act.

(2) Regulations made under this section may provide in respect of any contravention thereof that an offender shall be guilty of an offence and may, for such an offence prescribe a penalty in respect thereof.