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## THE PRESIDENCY

No. 783

7 May 1993

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

**No. 57 of 1993: Security by Means of Movable Property Act, 1993.**



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**GENERAL EXPLANATORY NOTE:**

**[**                    **]** Words in bold type in square brackets indicate omissions from existing enactments.

\_\_\_\_\_ Words underlined with a solid line indicate insertions in existing enactments.

# ACT

To regulate the legal consequences of the registration of a notarial bond over specified movable property; to exclude the operation of the landlord's tacit hypothec in respect of certain movable property; to repeal the Notarial Bonds (Natal) Act, 1932; to adjust another law in consequence of such repeal; and to provide for matters connected therewith.

*(English text signed by the State President.)  
(Assented to 29 April 1993.)*

**B**E IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

**Legal consequences of special notarial bond over movable property**

1. (1) If a notarial bond hypothecating corporeal movable property specified and described in the bond in a manner which renders it readily recognizable, is registered after the commencement of this Act in accordance with the Deeds Registries Act, 1937 (Act No. 47 of 1937), such property shall— 5

(a) subject to any encumbrance resting upon it on the date of registration of the bond; and

(b) notwithstanding the fact that it has not been delivered to the mortgagee, be deemed to have been pledged to the mortgagee as effectually as if it had expressly been pledged and delivered to the mortgagee. 10

(2) Upon the discharge of the debt secured by a bond mentioned in subsection (1) the mortgagee shall, at the request of the mortgagor, furnish to the mortgagor, free of charge, proof of such discharge in the form required for the cancellation of the bond. 15

(3) Subject to the provisions of subsection (4) a notarial bond contemplated in subsection (1) other than a notarial bond contemplated in section 1 of the Notarial Bonds (Natal) Act, 1932 (Act No. 18 of 1932), which was registered before the commencement of this Act shall, upon the insolvency of the mortgagor before or after such commencement, confer on the mortgagee the same preference in respect of the entire free residue of the insolvent estate as that conferred on a mortgagee by a general bond in terms of section 102 of the Insolvency Act, 1936 (Act No. 24 of 1936). 20

(4) The provisions of subsection (3) shall not apply if any part of such free residue was, before the commencement of this Act, paid out to concurrent creditors in terms of a confirmed account. 25

(5) If, at the commencement of this Act, an account has been confirmed but dividends have not yet been paid out as contemplated in subsection (4), such account shall be reopened so as to give effect to the provisions of subsection (3) without obtaining the permission of the court in terms of section 112 of the Insolvency Act, 1936.

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#### Exclusion of landlord's tacit hypothec

2. (1) Notwithstanding anything to the contrary in the common law or in any other law, movable property—

(a) which, while hypothecated by a notarial bond mentioned in section 1(1), is in the possession of a person other than the mortgagee; or

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(b) to which an instalment sale transaction as defined in section 1 of the Credit Agreements Act, 1980 (Act No. 75 of 1980), relates,

shall not be subject to a landlord's tacit hypothec.

(2) The provisions of subsection (1) in respect of movable property hypothecated by a notarial bond mentioned in section 1(1) shall not apply if such bond is registered after the landlord's hypothec has been perfected.

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#### Repeal of Act 18 of 1932

3. The Notarial Bonds (Natal) Act, 1932 (Act No. 18 of 1932), is hereby repealed.

#### Amendment of section 2 of Act 24 of 1936, as amended by section 2 of Act 16 of 1943, section 1 of Act 6 of 1972 and section 1 of Act 27 of 1987

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4. Section 2 of the Insolvency Act, 1936, is hereby amended by the substitution for the definition of "special mortgage" of the following definition:

" 'special mortgage' means a mortgage bond hypothecating any immovable property or a notarial mortgage bond hypothecating specially described movable property in terms of section 1 of the **[Notarial Bonds (Natal) Act, 1932 (Act No. 18 of 1932)]** Security by Means of Movable Property Act, 1993, but excludes any other mortgage bond hypothecating movable property;"

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#### Savings

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5. Nothing in this Act contained shall—

(a) affect any mortgage, hypothecation, pledge, tacit hypothec, preference, lien or right of retention acquired by or in accordance with any law by the State or by—

(i) any body corporate; or

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(ii) any association of persons, constituted or established by or under any law and supported wholly or partly by public funds; or

(b) affect any right acquired under the Agricultural Credit Act, 1966 (Act No. 28 of 1966).

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#### Short title

6. This Act shall be called the Security by Means of Movable Property Act, 1993.