



**REPUBLIC OF KENYA**

**OFFICE OF THE ATTORNEY GENERAL AND DEPARTMENT OF JUSTICE**

**DRAFT SECURED TRANSACTIONS POLICY**

**MARCH 2026**



## **TABLE OF CONTENTS**

|   |    |
|---|----|
| LIST OF ABBREVIATIONS AND ACRONYMS.....                                       | 4  |
| DEFINITIONS OF TERMS .....  | 5  |
| 1. CHAPTER ONE: INTRODUCTION .....  | 10 |
| 1.1 Background .....  | 10 |
| 1.2 Objectives of the policy .....  | 12 |
| 1.3 Rationale of the Policy.....  | 13 |
| 1.4 Scope of the Policy .....   | 13 |
| 1.5 Guiding Principles of the Policy .....                                    | 14 |
| 1.6 Structure of the Policy .....   | 15 |
| 2. CHAPTER TWO: SITUATIONAL AND GAP ANALYSIS.....                             | 16 |
| 2.1 Evolution of the Secured Transactions Regime in Kenya .....               | 16 |
| 2.2 Key Actors in The Secured Transactions Framework in Kenya .....           | 19 |
| 2.2.1 Business Registration Service.....                                      | 19 |
| 2.2.2 Office of the Registrar of Movable Security Rights.....                 | 20 |
| 2.2.3 MPSR Registry.....  | 21 |
| 2.2.4 The Judiciary .....   | 22 |
| 2.2.5 The Office of the Attorney General and the Department of Justice.....   | 23 |
| 2.2.6 The National Treasury .....   | 23 |
| 2.2.7 Central Bank of Kenya.....  | 24 |
| 2.2.8 Financial Sector Actors.....  | 24 |
| 2.2.9 Borrowers and Lenders.....  | 25 |
| 2.3 Institutional Intersections with the MPSR Framework.....                  | 25 |
| 2.3.4 Institutional Gaps and Coordination Challenges .....                    | 32 |
| 2.4 Key Regulatory Developments Since the Enactment of MPSR Act.....          | 32 |
| 2.5 Existing International Standards and Guidance on Secured Transactions ... | 35 |
| 2.6 Regulation of Secured Transactions in Select Jurisdictions.....           | 37 |
| 2.6.1 USA.....  | 37 |
| 2.6.2 New Zealand.....  | 38 |
| 2.6.3 Australia .....   | 39 |
| 2.6.5 Ghana .....   | 40 |
| 2.6.6 Malawi.....   | 41 |
| 2.6.7 Nigeria.....  | 42 |
| 2.6.8 China .....   | 43 |
| 2.7 Lessons Learnt from select jurisdictions .....                            | 44 |
| 2.8 Gaps and Challenges Identified in Kenya’s Secured Transactions Regime ... | 47 |
| 3. CHAPTER THREE: POLICY AND STRATEGIC INTERVENTIONS.....                     | 51 |
| 3.1 Policy Objective.....   | 51 |
| 3.1.1 Policy Objective Outcome.....   | 51 |
| 3.2 Policy Objective.....   | 52 |
| 3.2.1 Policy Objective Outcome.....   | 52 |
| 3.3 Policy Objective.....   | 54 |
| 3.3.1 Policy Objective Outcome.....   | 54 |
| 3.3.2 Policy Issue .....  | 54 |

|       |   |    |
|-------|---|----|
| 3.3.3 | Policy Intervention and Strategies.....                   | 54 |
| 3.4   | Policy Objective.....                                     | 55 |
| 3.4.1 | Policy Objective Outcome.....                             | 55 |
| 3.4.2 | Policy Issue .....  | 55 |
| 3.4.3 | Policy Interventions and Strategies .....                 | 55 |
| 3.5   | Policy Objective.....                                     | 56 |
| 3.5.1 | Policy Objective Outcome.....                             | 56 |
| 3.5.2 | Policy Issue .....  | 56 |
| 3.5.3 | Policy Interventions and Strategies .....                 | 57 |
| 3.6   | Policy Objective.....                                     | 58 |
| 3.6.1 | Policy Objective Outcome.....                             | 58 |
| 3.6.2 | Policy Issue .....  | 58 |
| 3.6.3 | Policy Interventions and Strategies .....                 | 59 |
| 4.    | CHAPTER FOUR: FRAMEWORK FOR IMPLEMENTING THE POLICY ..... | 60 |
| 4.1   | Coordination framework and administrative mechanisms..... | 60 |
| 4.2   | Legal and Regulatory Framework.....                       | 60 |
| 4.3   | Funding Arrangements .....                                | 60 |
| 5.    | CHAPTER FIVE: MONITORING AND EVALUATION .....             | 61 |
| 6.    | CHAPTER SIX: POLICY REVIEW .....                          | 61 |
| 7.    | ANNEXTURE 1: IMPLEMENTATION MATRIX .....                  | 62 |

## **LIST OF ABBREVIATIONS AND ACRONYMS**

| <b>Acronym</b> | <b>Full meaning</b>                                  |
|----------------|--|
| BETA           | Bottom-up Economic Transformation Agenda             |
| BRS            | Business Registration Service                        |
| CBK            | Central Bank of Kenya                                |
| EBRD           | European Bank for Reconstruction and Development     |
| IFC            | International Finance Corporation                    |
| IP             | Intellectual Property                                |
| KECOBO         | Kenya Copyright Board                                |
| KIPI           | Kenya Industrial Property Institute                  |
| MPSR Act       | Movable Property Security Rights Act, 2017           |
| MPSR Registry  | Movable Property Security Rights Registry            |
| NTSA           | National Transport and Safety Authority              |
| OAG            | Office of the Attorney General                       |
| SMEs           | Small and Medium Enterprises                         |
| MSME           | Micro, Small and Medium Enterprises                  |
| SACCO          | Savings and Credit Cooperative Society               |
| UNCITRAL       | United Nations Commission on International Trade Law |

## **DEFINITIONS OF TERMS**

| <b>Term</b>                       | <b>Definition</b>  |
|-----------------------------------|--|
| <b>Collateral</b>                 | A movable asset that is subject to a security right; or a receivable that is the subject of an outright transfer.  |
| <b>Collateral Registry</b>        | The registry established in the Movable Property Security Rights Act whose function is to receive, store and make accessible to the public information on registered notices with respect to security rights and rights of non-consensual creditors.                         |
| <b>Default</b>                    | A failure by the debtor to meet obligations under the secured transaction, triggering the secured creditor's enforcement rights against the collateral.  |
| <b>Enforcement Predictability</b> | The degree to which enforcement of security rights occurs in a timely, consistent, and procedurally clear manner that enables creditors and borrowers to reasonably anticipate legal and commercial outcomes.  |
| <b>Equipment</b>                  | A tangible asset other than inventory or consumer goods that is primarily used or intended to be used by the grantor in the operation of its business.   |
| <b>Financial Inclusion</b>        | Ensuring access to affordable, useful, and timely financial products and services for all individuals and businesses, especially the underserved and unbanked.   |
| <b>Financing Statement</b>        | A formal notice filed with the registry showing that a security interest has been created and perfected. It does not transfer ownership but provides public notice of a creditor's claim against specified collateral.   |
| <b>Functional Equivalence</b>     | The principle that transactions which in substance secure payment or performance of an obligation are treated as security rights regardless of their legal form or title-based structure.  |
| <b>Future Asset</b>               | A movable asset, which does not exist or which the grantor does not have rights in or the power to encumber at the time the security agreement is concluded.   |
| <b>Intangible Asset</b>           | Includes receivables, choses in action, deposit accounts, electronic securities and intellectual property rights.  |
| <b>Intellectual Property</b>      | Copyright as defined in section 2(1) of the Copyright Act (Cap. 130); industrial property rights as defined in section 2(1) of the Industrial Property Act (Cap. 509); trade mark as defined in section 2(1) of the Trade Marks Act (Cap. 506); and any other related right. |

|                                    |   |
|------------------------------------|---|
| <b>Inventory</b>                   | Tangible assets held by the grantor for sale or lease in the ordinary course of the grantor's business, including raw and semi-processed materials.   |
| <b>Interoperability</b>            | The ability of the collateral registry to connect and exchange data with related systems to create a unified credit information environment.  |
| <b>Institutional Fragmentation</b> | The existence of multiple institutions, registries, or regulatory bodies exercising related or overlapping mandates without structured coordination, operational alignment, or integrated systems, resulting in duplication, procedural inefficiencies, or uncertainty in the administration of secured transactions. |
| <b>Legal Harmonisation</b>         | The alignment and coherence of statutory, regulatory, and institutional frameworks affecting secured transactions to minimise conflict, ambiguity, or duplicity of laws.  |
| <b>Movable Asset</b>               | Any tangible or intangible asset, that is distinct from land or permanent fixtures to land.   |
| <b>Perfection</b>                  | The legal process by which a secured creditor makes its security interest effective against third parties, typically by public registration of a notice in the collateral registry, ensuring the interest is externally apparent and enforceable.   |
| <b>Priority</b>                    | The order of competing claims among secured creditors over the same collateral, generally determined by the time of perfection, so that creditors understand whose claim ranks first on enforcement.  |
| <b>Receivable</b>                  | A right to payment of a monetary obligation, excluding a right to payment evidenced by a negotiable instrument, a right to payment of funds credited to a deposit account and a right to payment under security.  |
| <b>Registry Utilisation</b>        | The manner and extent to which stakeholders engage with the Collateral Registry, including patterns of registration, search, amendment, and discharge of notices.   |
| <b>Secured Transaction</b>         | A legal arrangement in which a borrower (debtor) grants a lender (secured creditor) a security interest in specified property (collateral) to secure the repayment of a loan or performance of an obligation.   |
| <b>Security Interest</b>           | A proprietary right claim in movable property granted by a debtor to a creditor to secure payment or performance of an obligation. Once effective against third parties (typically by registration), it   |

entitles the secured creditor to enforce rights in the collateral on default.

**System Resilience**

The capacity of the electronic registry infrastructure to maintain operational continuity, data integrity, and cybersecurity protection in the face of technical, operational, or external disruptions.

**Tangible Asset**

All types of goods and includes motor vehicles, crops, machineries, livestock.

## **EXECUTIVE SUMMARY**

This National Secured Transactions Policy provides a coherent framework for strengthening the use of movable assets to support access to credit in Kenya. It builds on the legal and institutional reforms introduced through the secured transactions regime and the establishment of the electronic Collateral Registry. While these reforms created an important foundation, evidence from registry data, market practices, and stakeholder engagement shows that the system has not yet achieved its full potential.

The use of movable collateral remains uneven across lenders and borrower groups. Many financial institutions continue to rely primarily on traditional forms of security such as land, while a wide range of movable and intangible assets remain underutilised. At the same time, operational and legal uncertainties continue to affect how secured transactions are implemented in practice. These include challenges related to valuation of movable assets, predictability of enforcement, overlaps with other legislation, and limited co-ordination among institutions involved in the secured transactions ecosystem.

This Policy responds to these challenges by providing a comprehensive framework to strengthen the secured transactions system as a whole. It recognises that the effectiveness of secured transactions is determined not only by the law, but also by the interaction between legal rules, institutional arrangements, registry operations, market behaviour, and borrower experiences. The Policy therefore adopts a system-wide approach that addresses these interrelated dimensions.

The overall objective of the Policy is to enhance the effectiveness, inclusiveness, and reliability of Kenya's secured transactions framework so that movable assets can be used more widely and confidently as collateral for credit. In doing so, the Policy supports broader national goals of financial inclusion, enterprise growth, and economic development. Particular attention is given to improving access to finance for micro, small and medium enterprises, women-owned businesses, youth enterprises, agricultural producers, and participants in the informal economy.

To achieve this objective, the Policy focuses on several key areas of reform. First, it aims to strengthen the role of the Collateral Registry as a reliable public notice system that supports priority determination and informed lending decisions. Second, it promotes greater legal clarity and harmonisation across the secured transactions landscape, including issues that arise from interactions with other statutes and with financing arrangements such as leasing and hire purchase. Third, it seeks to improve the predictability and efficiency of enforcement so that security rights can be realised in a timely and proportionate manner. Fourth, it addresses valuation challenges and market infrastructure that influence lender confidence in movable collateral. Fifth, it promotes greater awareness, capacity, and market adoption among both lenders and borrowers. Finally, it integrates principles of fairness, transparency, and consumer protection to ensure that expanded access to credit does not create undue risks for borrowers.

Implementation of the Policy will be guided by clear institutional roles, coordinated action among relevant agencies, and measurable indicators of progress. The Policy also emphasises continuous monitoring and review to ensure that reforms remain responsive to developments in financial markets, technological change, and emerging forms of collateral.

Overall, this Policy provides a strategic framework for strengthening Kenya's secured transactions system so that movable collateral can function effectively as a tool for expanding credit, supporting enterprise development, and promoting inclusive economic participation.

## 1. CHAPTER ONE: INTRODUCTION

### 1.1 Background

Secured transactions have transformed credit systems globally by enabling borrowers to use movable assets as collateral. Traditional lending models predominantly relied on immovable property such as land and buildings. While such assets provide long-term security, their use as the primary form of collateral created structural and transactional barriers that limited participation in formal credit markets. Many individuals and small and medium-sized enterprises (SMEs) were excluded because they lacked registered land or other high-value fixed assets.

In Kenya, these challenges have been particularly significant. Micro, small and medium enterprises (MSMEs) constitute approximately 90 per cent of all businesses, contribute over 30 per cent of Kenya's Gross Domestic Product (GDP), and provide the majority of employment opportunities outside the public sector.<sup>1</sup> Despite their economic importance, many MSMEs rely on informal lending or personal savings due to difficulties in meeting traditional collateral requirements.<sup>2</sup>

However, many of these enterprises possess valuable movable assets including machinery, inventory, livestock, motor vehicles, receivables, and agricultural produce which are central to their operations and revenue generation. Historically, Kenya's legal framework did not provide an efficient, unified system for using such assets as collateral.

Prior to reforms on the legal framework, secured lending in movable property was governed by fragmented legislation enacted at different historical periods and designed to address specific commercial needs rather than a unified secured transactions system. These included the Chattels Transfer Act, the Pawnbrokers

---

<sup>1</sup> Kenya National Bureau of Statistics, *2023 Economic Survey* (KNBS 2023) <<https://www.knbs.or.ke/reports/2023-economic-survey/>> accessed on 23<sup>rd</sup> February 2026

<sup>2</sup> Central Bank of Kenya, *FinAccess Household Survey 2021* (CBK 2021) <https://www.centralbank.go.ke/2021/12/16/2021-finaccess-household-survey-2/> accessed on 23<sup>rd</sup> February 2026

Act, the Hire-Purchase Act (which is still in force), and provisions on company charges under the Companies Act. These statutes were enacted at different historical times and for distinct regulatory purposes. Therefore, they did not establish a single, coherent, and technology-driven system for secured lending using movable property as collateral. Rather, they functioned as parallel regimes. The existence of multiple registries, inconsistent procedures, and differing priority rules created duplication, legal uncertainty, and weakened the practical use of movable assets as security.

Global financial reforms also recognised similar challenges. International bodies, including the United Nations Commission on International Trade Law (UNCITRAL), promoted modern secured transactions frameworks designed to unlock the economic value of movable assets, reduce lending risk, and strengthen private sector development.<sup>3</sup> Countries across Africa, Asia, and Latin America adopted functional, notice-based systems supported by electronic collateral registries, significantly improving access to credit for households and SMEs.<sup>4</sup>

In Kenya, these global lessons and domestic economic realities converged. SMEs remained largely excluded from formal credit markets due to strict collateral requirements, while financial institutions required predictable, transparent, and efficient tools to manage credit risk. At the same time, the Government sought to deepen financial markets, promote enterprise development, and align domestic commercial law with international best practice.

These pressures led to the enactment of the Movable Property Security Rights Act (MPSRA), its Regulations, and the establishment of the Movable Property Security Rights Registry on the e-Citizen platform. The MPSRA governs the creation, registration, effectiveness, priority, and enforcement of security rights in movable property, recognising both tangible and intangible assets, including present and future assets. The Regulations provide the procedures, forms, fees,

---

<sup>3</sup> United Nations Commission on International Trade Law, *Legislative Guide on Secured Transactions* (UNCITRAL 2010).

<sup>4</sup> World Bank Group, *Doing Business 2020: Getting Credit* (World Bank 2020).

and timelines necessary for operationalisation. The electronic, notice-based registry administered by the Business Registration Service allows centralized registration and public search of security interests, improving transparency and reducing information asymmetry in the credit market.

This legal framework marked a major shift from a fragmented system to a unified, modern regime. It harmonised previously separate legislative approaches and aligned Kenya with international best practice. It marked a decisive shift from the earlier fragmented approaches to secured lending towards a functional, asset-neutral system designed to support modern credit markets.

Despite these advances, Kenya still lacks a comprehensive policy framework to guide coordinated implementation, integration, and development of secured transactions within the broader financial and legal ecosystem. Awareness of movable asset financing remains uneven, registry usage does not yet fully reflect MSME demand, integration with other financial sector systems is evolving, and consistent enforcement and institutional coordination need strengthening. Without clear policy guidance, inconsistencies may persist and the full economic potential of movable asset financing remains underutilised.

This Policy builds upon the MPSRA reforms. It provides strategic guidance for strengthening the legal, institutional, and market environment for secured transactions in Kenya. By setting objectives, principles, and operational measures, the Policy seeks to enhance coordination, improve efficiency, promote financial inclusion, and align secured transactions with Kenya's broader economic priorities, including the Kenya Vision 2030 and the Bottom-Up Economic Transformation Agenda (BETA). Ultimately, it aims to enable borrowers and lenders to transact with confidence, transparency, and predictability, ensuring that movable assets are effectively leveraged to expand access to credit and support sustainable economic growth.

## **1.2 Objectives of the policy**

The overarching objective of this policy is to strengthen the effectiveness and uptake of the unified secured transactions framework established by the

Movable Property Security Rights Act, 2017, by enhancing legal certainty, institutional coordination, market confidence, inclusivity and alignment with international principles, thereby expanding access to credit.

Specifically, the Policy seeks to;

- i. Strengthen inter-institutional coordination for effective perfection and enforcement of security rights in movable assets;
- ii. Increase lender confidence and adoption of the MPSR framework;
- iii. Enhance public awareness and understanding of the MPSR regime among borrowers, especially MSMEs, women and youth entrepreneurs, and informal businesses;
- iv. Reduce perceived risk associated with movable collateral; and
- v. Promote best practice in secured transactions.

### **1.3 Rationale of the Policy**

Despite the enactment of a modern secured transactions legal framework in Kenya, there remain structural and operational gaps that hinder consistent application, certainty and optimal use of movable collateral in Kenya's credit markets. A clear policy will align the legal framework with evolving credit practices and new financial instruments, address fragmentation and implementation challenges, strengthen the efficiency of the collateral registry, and ensure that all stakeholders understand roles and procedures for creating, perfecting and enforcing security rights. This, in turn, will reduce risk, expand the use of movable assets as collateral, deepen financial inclusion, and improve access to credit for individuals and enterprises that previously lacked sufficient tangible security, thereby supporting sustainable economic growth.

### **1.4 Scope of the Policy**

This policy applies to all stakeholders involved in the secured transactions regime in Kenya. It covers secured creditors (including banks, financial

institutions, non-bank lenders and any other entities or individuals extending credit using movable assets as collateral), grantors/debtors (individuals, companies and other persons or entities offering movable assets to secure obligations), and any other users of the collateral registry and secured transactions system. It also applies to regulatory and supervisory bodies, including agencies responsible for overseeing credit markets, financial institutions and the collateral registry.

## **1.5 Guiding Principles of the Policy**

The implementation of the Secured Transactions Policy shall be guided by the following principles;

### **i. Legal certainty and predictability**

Ensure clarity, consistency and transparency in rules for creating, perfecting, prioritising and enforcing security rights.

### **ii. Inclusivity**

Cover a wide range of movable assets and security interests.

### **iii. Simplicity and accessibility**

Promote simple, efficient procedures for establishing and registering security rights to reduce costs and barriers to use.

### **iv. Transparency**

Uphold clear and transparent priority rules that link registration/perfection timing to priority outcomes.

Facilitate access to credit information to inform risk assessment.

### **v. Efficiency and effectiveness**

Support predictable, timely enforcement mechanisms to protect lender and borrower interests.

## **vi. Awareness**

Promote, public awareness to support adoption, confidence and effective market use of secured transactions mechanisms.

### **1.6 Structure of the Policy**

The Secured Transactions Policy document is organised into six chapters.

Chapter One contains the background information on Secured Transactions, policy objectives, rationale for developing the policy, its scope of application and guiding principles for the implementation of the policy.

Chapter Two presents a situational analysis of secured transactions regime in Kenya and a comparative analysis of international standards and regulatory frameworks from various jurisdictions, highlighting challenges encountered and lessons for Kenya.

Chapter Three sets out the policy statements and outlines the government's commitments to achieving a secured transactions regime that is effective, ensuring clarity, coherence, credit access, financial inclusion and sustainability.

Chapter Four outlines the coordination and administrative mechanisms necessary for effective policy implementation.

Chapter Five outlines the monitoring and evaluation process.

Finally, Chapter Six highlights the review process of the Policy.

## **2. CHAPTER TWO: SITUATIONAL AND GAP ANALYSIS**

### **2.1 Evolution of the Secured Transactions Regime in Kenya**

Kenya's secured transactions framework has evolved significantly over the past two decades to address constraints in access to credit and to modernise lending practices. This journey is a reflection of broader economic reforms, financial sector development, and the growing role of SMEs in the national economy.

Prior to the enactment of the MPSR Act, 2017, secured transactions involving movable property operated within a fragmented statutory environment. This regime comprised of multiple statutes and the registration systems were largely paper-based. These laws operated independently and applied differently depending on the type of asset and the type of borrower.

For instance, a key pillar of the older regime was the Chattels Transfer Act (Cap. 28), which dated back to colonial-era legislation and governed security interests in chattels (movable goods). The Act provided for instruments such as chattel mortgages and bills of sale, under which a borrower could transfer ownership or rights in tangible movable property to a lender as security for credit.<sup>5</sup>

Other statutes also played a role in governing aspects of movable collateral, but in a disjointed way. The Pawnbrokers Act regulated the business of pawn broking, under which a borrower (known as a pawner) could obtain a loan by pledging movable property as security with a pawnbroker. This Act focused narrowly on small, short-term secured loans against tangible goods such as jewellery or other personal effects,<sup>6</sup> and did not provide for a broad, generalised system of using movable property as collateral beyond the pawnbroker's shop context.

The Hire-Purchase Act<sup>7</sup>, which is still in force governs hire-purchase agreements, under which a buyer (the hirer) hired goods from an owner with an option to purchase, and ownership remained with the owner until full payment was made.

---

<sup>5</sup> Chattels Transfer Act, Cap. 28 (Repealed).

<sup>6</sup> Pawnbrokers Act, Cap. 529 (Repealed).

<sup>7</sup> Cap. 507.

The provisions relating to registration of hire purchase agreements were repealed by the MPSR Act.

Other statutes intersected with movable security interests in piecemeal ways. These included the Stamp Duty Act<sup>8</sup>, the Agricultural Finance Corporation Act<sup>9</sup>, the Business Registration Service Act<sup>10</sup>, and the Insolvency Act<sup>11</sup>.

As a result of this outdated system, which did not respond to the evolving needs of the modern financial economy, borrowers who lacked formal title to land including most SMEs, agricultural enterprises, and informal sector actors continued to face challenges in accessing secured credit, even where they owned valuable movable assets.

These structural constraints, coupled with the imperative to deepen financial inclusion and align Kenya's credit infrastructure with international best practices, informed the enactment of the Movable Property Security Rights Act, 2017 (MPSR Act). The Act specifically repealed the *Chattels Transfer Act* and the *Pawnbrokers Act* and made consequential amendments to the *Agricultural Finance Corporation Act*, the *Stamp Duty Act*, the *Hire Purchase Act*, the *Business Registration Service Act*, the *Companies Act*, and the *Insolvency Act* to align these laws with the new movable property security rights regime.

The Moveable Property Security Rights Act introduced a unified legal framework governing the creation, perfection, priority, and enforcement of security rights in movable property. It adopted a functional approach, applying to transactions that secure payment or performance of an obligation regardless of their legal form. This marked a departure from earlier form-based distinctions embedded in prior statutes.

The MPSR Act also provided for the establishment of a central, electronic, notice-based collateral registry.<sup>12</sup> Following its enactment, the Movable Property

---

<sup>8</sup> Cap. 480.

<sup>9</sup> Cap. 323.

<sup>10</sup> Cap. 499B.

<sup>11</sup> Cap. 53.

<sup>12</sup> Property Section 19(2), Movable Security Rights Act 2017

Security Rights Registry was operationalised through the e-Citizen platform, enabling online registration and public searches of security notices. This development replaced fragmented and manual registration systems with a centralised and digitised infrastructure. The Act clarified priority rules among competing security rights<sup>13</sup> and provided structured enforcement mechanisms in the event of default, including both judicial and non-judicial remedies as prescribed under the statute.<sup>14</sup>

By recognising security rights in both tangible and intangible movable property, including present and future assets,<sup>15</sup> the Act significantly expanded the scope of assets capable of serving as collateral. This statutory framework reduced reliance on multiple registration regimes and enhanced legal certainty in determining priority.

Since the operationalisation of the MPSR regime, Kenya's credit environment has continued to evolve. The growth of digital lending platforms, asset-based finance, leasing arrangements, and receivables financing has increased the practical relevance of movable collateral. At the same time, interaction between the MPSR Act, the Companies Act, 2015, and the Insolvency Act, 2015 has highlighted the importance of coherent interpretation across legal regimes, particularly in matters of priority and enforcement during insolvency proceedings.

New classes of assets keep on emerging. For instance, by virtue of the Warehouse Receipt System Act<sup>16</sup> and the Virtual Asset Service Providers Act<sup>17</sup>, new categories of movable assets have emerged. This necessitates a framework that accommodates emerging issues and technologies.

The increase on registration activity and the expanding use of intangible assets has also placed greater emphasis on registry governance, institutional capacity, and stakeholder awareness. These developments demonstrate that while Kenya

---

<sup>13</sup> Part V, Movable Property Security Rights Act 2017.

<sup>14</sup> Part VII, Movable Property Security Rights Act 2017.

<sup>15</sup> Section 7, Movable Property Security Act, 2017.

<sup>16</sup> Cap. 350.

<sup>17</sup> Act No. 20 of 2025.

has established a modern statutory and technological foundation for secured transactions, continued evolution of credit markets necessitates ongoing policy coordination and institutional strengthening.

This trajectory of reforms, from a fragmented pre-2017 regime, to legislative consolidation in 2017, to post-implementation market expansion reflects significant progress of the legal and institutional regime for secured transactions in Kenya. It also underscores the need for sustained policy direction to ensure that the secured transactions framework operates coherently within Kenya's broader financial and economic architecture, both presently and in the long term.

## **2.2 Key Actors in The Secured Transactions Framework in Kenya**

The effectiveness of Kenya's secured transactions framework depends on coordinated action among public institutions, regulators, financial sector actors, and development partners. While the Movable Property Security Rights Act provides the legal foundation, its practical impact relies on the roles played by the following actors.

### **2.2.1 Business Registration Service**

The Business Registration Service (BRS) is the principal institutional authority responsible for implementing and operationalising Kenya's secured transactions framework. It is established under the Business Registration Service Act and is mandated to administer business registries and related legal infrastructure. It was designated as the implementing body for the secured transactions regime following the enactment of the Movable Property Security Rights Act.<sup>18</sup>

Beyond its administrative responsibilities, BRS plays a substantive governance role in ensuring that the secured transactions system is well designed, accessible, and operationally reliable. The credibility of registered security interests depends heavily on the integrity, predictability, and efficiency of the institutional systems that support them. By maintaining robust operational

---

<sup>18</sup> Section 4, Business Registration Service Act.

standards, issuing procedural guidance, and facilitating user support, BRS contributes directly to the stability and trustworthiness of the framework.<sup>19</sup>This institutional reliability is essential to lender confidence, particularly in asset-based lending models that rely on clear priority rules and enforceability.

BRS also undertakes capacity-building and stakeholder engagement functions. Through training initiatives, technical guidance, and inter-agency collaboration, the Service supports financial institutions, legal practitioners, and other users to ensure compliance with statutory and regulatory requirements.<sup>20</sup>These efforts foster a predictable secured lending environment by reducing operational errors, promoting uniform interpretation of the law, and strengthening professional understanding of secured transactions principles.

Importantly, BRS plays an indirect but strategically significant role in shaping the evolution of the secured transactions ecosystem. As the institutional focal point for the framework, it is uniquely positioned to observe market usage trends, identify operational bottlenecks, and detect emerging patterns in movable asset financing. This vantage point enables BRS to inform policy refinements, recommend regulatory adjustments, and contribute to legislative review processes.<sup>21</sup> In this sense, the BRS functions not merely as an administrator but as a feedback conduit between market practice and policy development, helping to ensure that the secured transactions framework remains responsive, coherent, and aligned with Kenya's broader financial sector objectives.

### **2.2.2 Office of the Registrar of Movable Security Rights**

The Office of the Registrar is established under section 19(1) of the Movable Property Security Rights Act (MPSR Act) and constitutes the operational authority responsible for overseeing the functioning of the secured transactions system. While the Business Registration Service (BRS) serves as the institutional

---

<sup>19</sup> Business Registration Service, *Strategic Plan 2023–2027* (BRS 2023) pp. 18–22.

<sup>20</sup> Business Registration Service, *Annual Report and Financial Statements 2022/2023* (BRS 2023) pp. 34–36.

<sup>21</sup> Business Registration Service, *Stakeholder Engagement and Reform Initiatives Report* (BRS 2022).

anchor of the framework pursuant to the Business Registration Service Act, the Registrar performs the legally significant administrative functions that give practical effect to the Act. The Registrar's mandate to oversee the general operation of the Registry is structurally central to the integrity of the secured transactions regime, as the determination of priority and third-party effectiveness depends fundamentally on the accuracy, completeness, and stability of registered notices.

The Registrar's role carries substantial legal and economic consequences. Procedural consistency, timeliness in processing amendments and discharges, and clarity in administrative actions directly influence the reliability of the notice system. Priority under the Act is generally determined by the time of registration,<sup>22</sup> and as such operational shortcomings at this level may distort ranking outcomes and undermine creditor confidence. In secured lending markets, confidence in the integrity of registry outputs influences risk assessment, credit pricing, and willingness to accept movable assets as collateral.

Under the notice-based system, the Registrar's function is primarily administrative rather than adjudicative. This supports efficiency by minimizing verification burdens and avoiding substantive review of underlying transactions. However, the absence of document examination increases the importance of procedural safeguards, correction mechanisms, and system controls that preserve data quality and reduce error propagation. Consequently, procedural consistence, timeliness of updates and clarity of administrative actions carry significant legal and economic impact.

### **2.2.3 MPSR Registry**

Section 19(2) of the MPSR Act establishes the MPSR Registry as an electronic, notice-based system, which is operationalised through the eCitizen government digital services platform. The Registry facilitates registration, search, amendment, and monitoring of security interests in movable property across the

---

<sup>22</sup> Section 30, Movable Property Security Rights Act.

economy. By functioning as a centralised electronic notice system, it reduces transaction costs, enhances transparency, and mitigates the legal uncertainty that characterised earlier fragmented collateral regimes.

Under the administrative oversight of the Registrar and the broader institutional supervision of BRS, the Registry's operational reliability is reinforced through procedural guidance and user education. The BRS has published a comprehensive User Guide to standardise registration practices and promote compliance with statutory requirements.<sup>23</sup> Such standardisation enhances uniformity, reduces registration errors, and strengthens the legal effectiveness of notices.

Beyond its transactional role, the Registry holds broader policy value. Aggregated and anonymised registry data can provide insights into lending trends, asset classes used as collateral, sectoral credit flows, and emerging risk patterns. This data can assist regulators and policymakers in designing targeted interventions to improve access to finance, monitor systemic vulnerabilities, and strengthen credit market transparency. In this sense, the Registry operates not only as private-law infrastructure for secured lending but also as a strategic public policy instrument within Kenya's broader financial architecture.

#### **2.2.4 The Judiciary**

The Judiciary also plays a pivotal role in determining the practical enforceability of security rights.<sup>24</sup> The courts are responsible for adjudicating disputes relating to attachment, priority contests, enforcement proceedings, insolvency interactions, and the validity of security agreements. In doing so, judicial interpretation shapes how statutory provisions operate in real commercial settings. Predictable and coherent jurisprudence reduces legal uncertainty, clarifies ambiguous provisions, and strengthens creditor and borrower confidence in the secured transactions regime. Conversely, inconsistent or

---

<sup>23</sup> Business Registration Service, *Movable Property Security Rights Registry User Guide* (BRS, revised edn 2022).

<sup>24</sup> Section 68 MPSR Act.

delayed judicial outcomes may increase transactional risk and discourage the use of movable assets as collateral.

Judicial oversight also safeguards due process and borrower protections. Timely and predictable enforcement is particularly critical to the economic effectiveness of secured lending. Where courts efficiently uphold validly created and perfected security interests, lenders are more likely to price credit competitively and extend financing against movable collateral. The Judiciary reinforces the credibility of the secured transactions framework and contributes to broader financial sector stability.

### **2.2.5 The Office of the Attorney General and the Department of Justice.**

The Office of the Attorney General occupies a structurally significant position within Kenya's secured transactions framework by virtue of its constitutional mandate and its administrative relationship with the Business Registration Service. As the principal legal adviser to the Government, the OAG plays a central role in legislative coherence, statutory interpretation, and the alignment of legal reforms across intersecting domains.

The institutional location of the Business Registration Service within the OAG framework presents both functional advantages and analytical considerations. On one hand, the arrangement supports legal-policy coordination, particularly in areas where secured transactions intersect with insolvency law, company law, property law, and enforcement regimes. On the other hand, the dual character of registry administration within a ministry-level legal authority underscores the importance of maintaining clear operational boundaries, procedural predictability, and stakeholder confidence in the neutrality of registry functions.

The effectiveness of the secured transactions system therefore depends not only on statutory design but also on how institutional roles are perceived, exercised, and coordinated within this governance structure.

### **2.2.6 The National Treasury**

The National Treasury influences the secured transactions framework at the level of policy direction, financial sector development, and public infrastructure prioritisation. Decisions relating to credit market development, digital infrastructure, and regulatory alignment indirectly affect the incentives and operating environment of secured lending markets.

Treasury involvement is particularly relevant where systemic reforms require cross-sectoral coordination, fiscal support, or integration with broader financial inclusion initiatives.

### **2.2.7 Central Bank of Kenya**

The Central Bank of Kenya is responsible for the general economic well-being of the country through implementation of suitable monetary policy and the regulation of financial institutions. It, therefore, plays a key role in moderating the environment in which financial institutions operate. This influences lending behaviour by financial institutions.

In its supervision role, the Central Bank of Kenya influences the categories of collateral that financial institutions accept, especially through the weight ascribed to various categories of collateral in provisioning. In 2020, the Central Bank of Kenya issued the *Guidelines on Movable Asset Financing*<sup>25</sup> that have gone a long way in guiding financial institutions.

### **2.2.8 Financial Sector Actors**

Financial institutions, including commercial banks, microfinance institutions, SACCOs, leasing companies, and asset financiers, are critical users of the secured transactions system. They provide credit and other financial services using movable assets as collateral. Their practices, risk assessment methodologies, and adoption of registry mechanisms directly shape the effectiveness and utilisation of the framework. These actors also serve as

---

<sup>25</sup> Central Bank of Kenya (2020) *Guidelines on Movable Asset Financing*.

intermediaries for educating borrowers about the benefits and procedures for using movable assets as security.

Through product development, financial institutions widen the reach of secured transactions. Further, their continued use of movable collateral is necessary for the overall growth of the sector.

### **2.2.9 Borrowers and Lenders**

Borrowers including individuals, SMEs, agricultural enterprises, informal sector operators, and women entrepreneurs are central to the secured transactions ecosystem. Their participation determines the realisation of policy objectives such as expanded access to credit and financial inclusion. Lenders, on the other hand, depend on reliable registration, priority, and enforcement mechanisms to confidently accept movable assets as collateral. The interaction between borrowers and lenders ultimately defines market uptake, registry engagement, and the success of the secured transactions framework.

## **2.3 Institutional Intersections with the MPSR Framework**

### **2.3.1 Institutions**

Kenya's secured transactions framework operates within a broader administrative and legal environment characterised by multiple registries, asset-specific recording systems, and specialised statutory regimes. While the Movable Property Security Rights Registry provides a unified notice mechanism for security interests, other institutions maintain parallel systems governing ownership, licensing, or rights in particular asset classes. The interaction among these systems has important implications for legal certainty, due diligence practices, and creditor confidence.

Modern secured transactions regimes are designed to be asset-neutral, allowing a wide range of movable property to serve as collateral under a single legal framework. In practice, however, creditors frequently rely on additional institutional records to verify asset identity, ownership, encumbrances, and

transferability. Where registries operate independently, without clear coordination or interoperability, information asymmetries and interpretive ambiguities may arise.

Several institutional intersections are particularly significant within Kenya's context: -

***a) Kenya Industrial Property Institute (KIPI)***

Intellectual property rights represent a growing category of economically valuable movable assets. Patents, trademarks,<sup>26</sup> and industrial designs may serve as collateral, particularly in innovation-driven sectors. However, intellectual property regimes typically maintain specialised registries reflecting ownership and licensing arrangements that are conceptually distinct from security interests.

The Kenya Industrial Property Institute (KIPI) is responsible for the registration and administration of industrial property rights, including patents, trademarks, utility models, and industrial designs.<sup>27</sup> These rights fall within the category of intangible assets recognised as movable property under the Movable Property Security Rights Act and may therefore be used as collateral in secured lending transactions.

Within the secured transactions framework, KIPI performs a foundational role by establishing the legal existence, ownership, and validity of intellectual property rights. While the Collateral Registry under the MPSR regime is able to record security interests over such rights, it does not verify whether the grantor holds valid title to the underlying intellectual property or whether the rights are subsisting and enforceable. As a result, the effectiveness of a registered security interest in intellectual property is inherently dependent on information maintained by KIPI.

---

<sup>26</sup> Section 2, Trade Marks Act, Cap. 506.

<sup>27</sup> Section 3 of the Industrial Property Act, Cap. 509.

The coexistence of IP registries and the Movable Property Security Rights Registry raises important questions of priority signalling and due diligence. Creditors must determine how security rights interact with recorded ownership interests, licences, assignments,<sup>28</sup> and statutory limitations. Where registry systems are not integrated or cross-referenced, creditors may face uncertainty regarding the completeness of searches and the status of competing interests.

This institutional separation gives rise to a structural coordination gap between the KIPI Registry and the MPSR Registry. The two systems operate independently, with no formal mechanism for data sharing, cross-referencing, or verification. Consequently, lenders seeking to take intellectual property as collateral must conduct parallel searches across both registries to confirm ownership, scope, and validity of the rights in question. In practice, this fragmented approach increases due diligence costs, extends transaction timelines, and heightens the risk of inconsistencies or oversight, particularly for lenders and borrowers with limited expertise in intellectual property law.

The absence of coordination also presents practical challenges in the description of intellectual property within financing statements. Unlike tangible movable assets, intellectual property rights are defined by technical registration particulars, including application or registration numbers, classes, duration, and territorial scope. Although the MPSR framework permits general collateral descriptions, imprecise or overly broad references to intellectual property may fail to sufficiently identify the secured asset or may obscure defects in ownership or scope. At the same time, highly specific descriptions may be inaccurately captured by registrants unfamiliar with intellectual property classification systems, undermining the clarity and reliability of registry records.

These challenges are further exacerbated by the dynamic nature of intellectual property rights. Patents and trademarks may lapse, be limited, or be cancelled. Ownership may also change through assignment or licensing arrangements that are not immediately reflected in the MPSR Registry, because updates to KIPI

---

<sup>28</sup> Section 25, Trade Marks Act, Cap. 506.

records do not automatically trigger corresponding amendments to registered security interests. Therefore, a financing statement may continue to signal the existence of a valid collateral interest even where the underlying right has materially changed or ceased to exist. This disconnect weakens the public notice function of the Registry and complicates priority disputes and enforcement proceedings.

In the absence of stronger institutional linkages and clearer guidance on the treatment and description of intellectual property as collateral, the use of intellectual property within Kenya's secured lending market remains exposed to legal and commercial uncertainty. While the MPSR Act formally enables intellectual property to function as movable collateral, the practical realisation of this potential depends heavily on effective interaction between KIPI and the Collateral Registry, as well as on the ability of market participants to navigate both systems with confidence.

***b) Kenya Copyright Board (KECOBO)<sup>29</sup>***

The Kenya Copyright Board administers copyright and related rights, which also qualify as intellectual property under the MPSR Act. Copyright arises automatically upon creation of a work, but KECOBO's administrative processes provide registration certificates that can serve as prima facie evidence of ownership or creation.

Similar considerations arise in relation to copyright-based assets, which are inherently intangible and subject to specialised statutory treatment. The treatment of copyright interests within secured lending frameworks requires clarity regarding transferability, enforcement, and interaction with sector-specific legal protections.

Institutional separation between copyright records and security interest registration may generate informational gaps. Creditors may encounter difficulty

---

<sup>29</sup> Section 3 of the Copyright Act, Cap. 130.

assessing whether Registry notices fully capture relevant rights, restrictions, or competing claims associated with copyrighted works.

Because the MPSR Registry's role is limited to recording security notices and not verifying legal rights, lenders interested in taking security over copyright-based collateral must consult KECOBO's systems or rely on documentation of rights ownership to confirm that the grantor has enforceable rights.

In some cases, KECOBO has even participated in promotional dialogues about the MPSR Registry, indicating a recognition of the need for institutional coordination around use of intellectual property as collateral.

### ***c) National Transport and Safety Authority (NTSA)<sup>30</sup>***

The National Transport and Safety Authority (NTSA) plays a critical role in the secured transactions ecosystem where motor vehicles are used as collateral. NTSA is the statutory body responsible for the registration of motor vehicles, issuance of logbooks, and maintenance of records relating to vehicle ownership and transfer. Motor vehicles constitute one of the most commonly used forms of movable collateral in Kenya, particularly for individuals, MSMEs, and asset-based lenders.

Transport-related assets, including motor vehicles, constitute a common form of movable collateral. NTSA maintains asset-specific registration systems primarily concerned with ownership, licensing, and regulatory compliance. Secured creditors frequently rely on such systems to verify asset identity and ownership status.

The interaction between asset-specific registries and the secured transactions registry introduces potential complexity. Creditors may confront questions concerning the relationship between ownership registration and security interest notice, particularly where procedural rules, terminology, or update cycles differ.

---

<sup>30</sup> Section 3-4 of the National Transport and Safety Authority Act, Cap. 404.

Inconsistencies or delays across systems may affect due diligence reliability and perceptions of priority certainty.

Under the MPSR regime, a security right over a motor vehicle may be registered in the Collateral Registry to achieve third-party effectiveness. However, NTSA remains the institution that determines legal ownership of the vehicle and controls changes to ownership records. The MPSR Registry does not replace or override NTSA's registration system, nor does it automatically reflect encumbrances recorded under the MPSR Act on vehicle logbooks.

As a result, lenders frequently rely on parallel processes such as registering a security right in the MPSR Registry to secure priority and third-party effectiveness, while also engaging with the National Transport and Safety Authority system to manage enforcement risk.

Historically, prior to the enactment of the MPSR Act, financiers were often listed as co-owners on the NTSA Transport Integrated Management System (TIMS) portal as part of logbook loan arrangements, with joint registration of the lender and borrower on the vehicle logbook serving as de facto evidence of the lender's interest in the asset. This practice means that lenders appear on the official logbook which is recognised under the Traffic Act as prima facie evidence of ownership thereby strengthening their practical ability to enforce claims in the event of default. However, the NTSA and MPSR systems remain independent and unlinked, so the MPSR Collateral Registry does not automatically reflect logbook co-ownership, and NTSA does not capture security interests registered under the MPSR Act.

The lack of integration can lead to situations where the logbook shows a co-owner that is not reflected in the MPSR search, or where the MPSR Registry shows a registered security right that is not visible in NTSA records, thus complicating due diligence and enforcement.

In essence, NTSA occupies a pivotal but imperfectly integrated position within Kenya's secured transactions regime for motor vehicles. While the MPSR Registry establishes legal priority and third-party effectiveness of security rights, NTSA

records continue to shape market behaviour, lender confidence, and enforcement strategies because vehicle ownership information remains anchored in the logbook system.

The persistence of practices such as co-ownership registration and logbook retention reflects lenders' efforts to mitigate enforcement and fraud risks in the absence of seamless institutional coordination. This dual reliance exposes structural misalignment between formal legal priority under the MPSR framework and practical control of the motor vehicle. Until clearer alignment or interoperability is achieved between NTSA records and the collateral registry, secured lending involving motor vehicles will continue to operate through parallel safeguards, underscoring the need for institutional harmonisation to fully realise the efficiency and predictability envisioned by the MPSR regime.

### ***2.3.2 Functional Implications of Institutional Fragmentation***

The presence of multiple registries is not inherently problematic. Specialised systems are common across jurisdictions. Diagnostic significance arises where institutional arrangements produce uncertainty, duplication, or misaligned incentives.

Key risks associated with fragmented registry environments include: -

- Inconsistent priority signals across registries,
- Uncertainty in search completeness and reliability,
- Operational inefficiencies in verification processes,
- Heightened legal risk for creditors, and
- Reduced confidence in movable collateral frameworks.

These dynamics influence creditor behaviour. Where asset verification requires navigating multiple systems with uncertain coordination, lenders may adopt conservative collateral strategies or impose additional transaction costs. The practical usability of movable assets as collateral is therefore shaped not only by statutory scope but by the coherence of institutional information systems.

### **2.3.3 Interoperability and System Coherence**

The diagnostic evaluation of institutional intersections focuses on whether registry systems operate as a complementary network or as isolated silos. Interoperability mechanisms, data-sharing arrangements, and procedural harmonisation can mitigate informational fragmentation and enhance system predictability. Conversely, weak coordination may amplify perceived risks even where legal frameworks are conceptually sound.

Within secured transactions systems, institutional coherence is closely tied to creditor confidence. Effective coordination among registries, enforcement institutions, and legal regimes supports reliable due diligence, predictable priority outcomes, and efficient enforcement processes.

While the MPSR institutional framework provides the backbone for registering and publicising security rights, it intersects with several other specialised institutions that govern ownership, existence, or status of specific asset classes used as collateral. These interactions are critical to the practical utility of the MPSR regime.

### **2.3.4 Institutional Gaps and Coordination Challenges**

The performance of a secured transactions regime is shaped not only by the mandates of individual institutions but also by the coherence of their interactions. Even where statutory roles are clearly defined, practical coordination challenges, procedural misalignments, and capacity asymmetries can generate systemic friction. Institutional gaps therefore do not necessarily reflect deficiencies in legal design. Rather, they frequently arise from operational dynamics within complex governance environments.

## **2.4 Key Regulatory Developments Since the Enactment of MPSR Act**

Since the enactment of the Movable Property Security Rights Act, Kenya's secured transactions framework has evolved through institutional, regulatory, and market developments aimed at strengthening access to credit and financial

sector inclusivity. While the Act provided the legal foundation, subsequent years have seen significant regulatory activity designed to support practical implementation and enhance the uptake of movable asset financing.

Financial sector institutions have progressively integrated movable asset lending into their credit frameworks. Commercial banks, microfinance banks, and Savings and Credit Cooperative Organisations (SACCOs) have increasingly incorporated movable property into their risk assessment and credit appraisal processes. This evolution reflects growing confidence in asset-based lending, moving away from an overreliance on land-based collateral and guarantor models. The supervisory oversight provided by the Central Bank of Kenya and the Sacco Societies Regulatory Authority has reinforced sound credit risk management while encouraging responsible lending innovations, such as receivables financing and inventory-backed loans.<sup>31</sup>

Since 2018, regulatory guidance and financial sector initiatives have supported the diversification of acceptable collateral. Lenders increasingly recognise receivables, inventory, agricultural produce, and livestock as viable security. For instance, the Central Bank of Kenya's *Guidelines on Movable Asset Financing* explicitly encouraged banks to adopt alternative collateral frameworks, enabling MSMEs and agricultural enterprises to access credit more easily.<sup>32</sup> This change has enhanced the financial inclusion impact of the secured transactions framework, making movable asset lending a practical option for borrowers without formal land titles.

Structured stakeholder engagement has been a key regulatory development. The Business Registration Service, in collaboration with the Office of the Attorney General and Department of Justice and technical partners has convened public consultations to address operational challenges in implementing the MPSRA.<sup>33</sup> These discussions have focused on harmonisation with other

---

<sup>31</sup> Central Bank of Kenya, *Bank Supervision Annual Report 2019/2020* (CBK 2020) pp. 45–47.

<sup>32</sup> Central Bank of Kenya, *Guidelines on Movable Asset Financing* (CBK 2020) pp. 3–5.

<sup>33</sup> Business Registration Service, *Report of Stakeholder Consultations on Secured Transactions Implementation* (BRS, October 2022).

commercial laws, procedural clarity, enforcement mechanisms, and reducing administrative delays. The resulting recommendations are intended to guide ongoing policy adjustments, clarify lender obligations, and strengthen borrower protections.

Legislative amendment initiatives have also emerged. In 2024, the Business Registration Service facilitated public consultations on the Movable Property Security Rights (Amendment) Bill 2024, which proposed clarifications on notice cancellation, harmonisation with hire purchase arrangements, and procedural improvements for priority claims.<sup>34</sup> These reforms aim to improve coherence across the legal framework, reduce uncertainty, and make movable asset lending more predictable and enforceable for both borrowers and lenders.

Capacity building and awareness campaigns have further strengthened the framework. Training programmes for banks, legal practitioners, and judicial officers has enhanced knowledge of secured transactions principles and their application.<sup>35</sup> This initiative has improved the consistency and reliability of movable asset financing, fostering confidence among lenders and borrowers alike.

Together, these developments illustrate that the secured transactions framework in Kenya has matured beyond statutory enactment to include market adaptation, regulatory guidance, and institutional learning. While the legal foundation provided by the MPSRA remains critical, these regulatory interventions have deepened practical uptake, expanded collateral options, and supported financial sector innovation. Sustained policy formulation, coordination and periodic refinement remain essential to maximise the potential of movable asset financing and ensure it contributes effectively to credit expansion, financial inclusion, and broader economic growth objectives.

---

<sup>34</sup>Business Registration Service, *Movable Property Security Rights (Amendment) Bill, 2024: Consultation Feedback Report* (BRS, March 2024).

<sup>35</sup> Financial Sector Deepening Kenya, *Technical Assistance on Secured Transactions: Final Report* (FSD Kenya, 2023).

## **2.5 Existing International Standards and Guidance on Secured Transactions**

Modern secured transactions law has been shaped by widely recognised international instruments that outline core principles, structures and registry systems for effective collateral regimes. These frameworks may vary in form, but they share key principles: that credit markets function more efficiently where security rights are treated functionally rather than formally; transparency in registries makes interests visible and reduce information gaps; and where priority rules produce predictable outcomes. Their relevance to Kenya lies in providing coherent analytical benchmarks for evaluating observed system behaviour rather than prescribing legislative replication. Below is a concise summary of key international standards and guidance.

### **a) UNCITRAL Legislative Guide on Secured Transactions (2007)**

The UNCITRAL Legislative Guide on Secured Transactions represents a foundational reference point for contemporary collateral reform. The Guide advances a functional conception of security rights, under which transactions securing payment or performance of obligations are analysed according to economic substance rather than formal legal categorisation. This approach responds to inefficiencies associated with fragmented security devices and inconsistent treatment of economically equivalent arrangements.

A central contribution of the Guide is its articulation of the notice-based registry model.<sup>36</sup> Registration is designed to operate as a publicity mechanism signalling the potential existence of a security right, without requiring documentary validation or substantive examination by registry officials. Priority outcomes are therefore anchored in objective and publicly verifiable criteria, typically linked to registration or perfection timing.

For Kenya, these principles illuminate the design logic underlying the Collateral Registry. Observed patterns, including high registration volumes, variations in

---

<sup>36</sup> UNCITRAL, *Legislative Guide on Secured Transactions* (United Nations, New York, 2007)

search behaviour, and filer-driven data anomalies, are consistent with dynamics anticipated in notice-based systems. The Guide's emphasis on broad collateral scope also provides a benchmark for evaluating utilisation of movable and intangible assets within Kenya's regime.

### **b) UNCITRAL Model Law on Secured Transactions (2016)**

The UNCITRAL Model Law consolidates and refines the principles articulated in the Legislative Guide, providing a structured legal framework for states adopting modern secured transactions regimes. Its defining feature is the unitary and functional treatment of security interests, encompassing traditional security devices alongside arrangements such as financial leases and retention-of-title transactions.

The Model Law underscores that legal certainty depends on coherence between creation, perfection, priority, and enforcement mechanisms. Registries are conceptualised as priority-management infrastructures rather than institutions verifying ownership or contractual validity. Priority disputes are resolved through transparent rules designed to minimise interpretive ambiguity.<sup>37</sup>

Kenya's statutory framework reflects this functional orientation. However, benchmarking against the Model Law highlights the importance of institutional understanding of functional equivalence, particularly in contexts involving leasing structures, hire purchase arrangements, and non-traditional collateral categories.

### **c) EBRD Core Principles for a Secured Transactions Law**

The European Bank for Reconstruction and Development (EBRD) Core Principles articulate performance-oriented benchmarks for evaluating secured transactions regimes. Rather than prescribing legislative form, the Principles identify outcomes associated with economically effective security systems:

---

<sup>37</sup> UNCITRAL, *Model Law on Secured Transactions* (United Nations, Vienna, 2016)

reduction of creditor risk, low-cost creation of enforceable rights, prompt realisation of collateral value, and predictable post-insolvency treatment.

A defining emphasis of the EBRD framework is the relationship between enforcement reliability and credit market behaviour. Security regimes influence lending practices only where creditors perceive remedies as timely, predictable, and commercially meaningful. High enforcement uncertainty may therefore undermine collateral acceptance irrespective of statutory design.<sup>38</sup>

For Kenya, these principles provide an analytical lens for interpreting creditor behaviour, particularly persistent reliance on conventional collateral and cautious adoption of certain movable asset categories.

#### **d) World Bank and IFC collateral registry diagnostics**

World Bank Group and IFC secured transactions diagnostics translate normative principles into operational evaluation methodologies.<sup>39</sup> These frameworks treat collateral registries as components of broader credit infrastructures, interacting with insolvency regimes, enforcement practices, credit information systems, and valuation ecosystems. Empirical findings across multiple jurisdictions demonstrate that registry effectiveness is mediated by creditor incentives, cost structures, search behaviour, and institutional capacity. Registry anomalies and adoption asymmetries are frequently associated with transitional dynamics rather than design defects.

Kenya's registry usage patterns and creditor participation trends are therefore appropriately interpreted within this global empirical context.

## **2.6 Regulation of Secured Transactions in Select Jurisdictions**

### **2.6.1 USA**

*Key laws/ framework:* The core legal foundation for secured transactions is Article 9 of the Uniform Commercial Code (UCC), adopted by all 50 states and

---

<sup>38</sup> EBRD, *Core Principles for a Secured Transactions Law* (European Bank for Reconstruction and Development, 2014).

<sup>39</sup> World Bank Group & International Finance Corporation, *Secured Transactions Systems and Collateral Registries Toolkit* (World Bank, Washington DC, 2010)

U.S. territories. Article 9 sets out a uniform statutory regime for the creation, attachment, perfection, priority and enforcement of security interests in personal property and fixtures, allowing lenders to secure obligations with movable collateral and providing predictable rules for competing claims.<sup>40</sup>

*Regulators:* Secured transactions law is governed primarily at the state level and administered by state authorities. The state Secretary of State offices typically act as the filing and record-keeping bodies for financing statements that perfect security interests under the Uniform Commercial Code (UCC). Federal regulators such as the Office of the Comptroller of the Currency (OCC), Federal Reserve, FDIC and the Consumer Financial Protection Bureau (CFPB) oversee banking and lending practices.<sup>41</sup>

*Notable features:* A defining feature of the U.S. regime is its state-based uniformity. Article 9's broad adoption creates consistent commercial rules across jurisdictions while still accommodating some state-specific variations. The framework emphasises public filing (usually UCC-1 financing statements) to perfect interests and establish priority, supports both tangible and intangible collateral, and provides structured remedies on debtor default. Though statutory, the regime benefits from predictable and widely understood practices, making secured lending more efficient and transparent in the U.S. legal and credit markets.

### **2.6.2 New Zealand**

*Key laws/ framework:* The principal statute is the Personal Property Securities Act 1999 (PPSA), which establishes a unified legal regime for creating, perfecting, prioritising and enforcing security interests in personal property. The PPSA applies to a broad spectrum of movable assets including; inventory, equipment, receivables and other personal property and operates in conjunction with the

---

<sup>40</sup> Article 9 of the United States Uniform Commercial Code.

<sup>41</sup> Article 9 of the United States Uniform Commercial Code.

Personal Property Securities Register (PPSR) for public notice and priority determination.<sup>42</sup>

*Regulators:* The secured transactions system is administered through the Personal Property Securities Register (PPSR), an online public database maintained by the New Zealand Companies Office under the Ministry of Business, Innovation and Employment. The Companies Office handles filings and searches of security interests in personal property, enabling lenders and buyers to verify encumbrances. While there is no separate sector regulator for secured transactions law, general financial and corporate conduct oversight is provided by agencies such as the Reserve Bank of New Zealand and the Financial Markets Authority.<sup>43</sup>

*Notable features:* The New Zealand regime embodies a functional, broad definition of security interests, treating various forms of credit collateral in substance rather than form, and emphasising public registration for perfection and priority. The PPSA's framework enables security interests to be perfected typically by filing a financing statement on the PPSR, creating predictable priority outcomes based on registration timing. Its comprehensive scope, broad collateral coverage and centralised online registry make movable asset lending more transparent and efficient, supporting wider access to credit.

### **2.6.3 Australia**

*Key laws/ framework:* The legal framework for secured transactions is the Personal Property Securities Act 2009 which established a unified national system for creating, perfecting, prioritising and enforcing security interests in personal property. Under this Act, the PPSR serves as the nationwide online system where security interests in movable assets are registered, replacing multiple prior state-and-territory registers to reduce inconsistency and transaction costs.<sup>44</sup>

---

<sup>42</sup> Personal Property Securities Act (PPSA) No. 126, 1999.

<sup>43</sup> Personal Property Securities Act (PPSA) No. 126, 1999.

<sup>44</sup> Personal Property Securities Act No. 130, 2009.

*Regulators:* Australia's secured transactions system is administered nationally through the Personal Property Securities Register (PPSR), which is operated by the Australian Financial Security Authority (AFSA) on behalf of the Attorney-General's Department. AFSA, via the Registrar of Personal Property Securities, manages the PPSR, oversees its integrity, provides guidance and support to users, and ensures reliable public access to security interest data so that lenders, borrowers and buyers can search and register interests in personal property.<sup>45</sup>

*Notable features:* A defining feature of Australia's regime is its single national register (PPSR) that consolidates security interest filings and provides transparency across the country, enabling lenders and buyers to easily verify encumbrances and establish priority. The system covers both tangible and intangible personal property and emphasises public access and priority by time of registration, which supports efficient secured lending and credit risk management. Broad usage of the registry underscores the PPSR's role as key financial infrastructure supporting credit markets and economic activity.

### **2.6.5 Ghana**

*Key laws/ framework:* The principal legal framework is the Borrowers and Lenders Act, 2020, which provides for the creation, registration, priority and enforcement of security interests in both movable and immovable collateral. The Act mandates that security interests be registered with the Collateral Registry and establishes rules for priority, disclosure and enforcement, including the ability for lenders to realise registered security interests without recourse to court proceedings.<sup>46</sup>

*Regulators:* The Collateral Registry established within the Bank of Ghana serves as the key institutional body. The Registry administers the public database for registering and searching security interests in collateral, facilitates realisation of security upon default, and educates stakeholders on the secured credit system.

---

<sup>45</sup> Personal Property Securities Act No. 130, 2009.

<sup>46</sup> Borrowers and Lenders Act, 2020.

It functions as the central filing and enforcement support institution for both lenders and borrowers in secured financing.<sup>47</sup>

*Notable features:* Ghana's regime features a unified electronic Collateral Registry that enhances transparency and reduces information asymmetry by allowing lenders to search for existing security interests. The law also broadens collateral types to include various movable and immovable assets, streamlines enforcement procedures, and gives registered security interests supremacy over other claims, which supports more efficient credit delivery and reduces reliance on traditional, costly enforcement routes.

### **2.6.6 Malawi**

*Key laws/ framework:* The legal framework governing secured transactions is the Personal Property Security Act, 2013 (PPSA), which modernises the law relating to security interests in personal property. The PPSA provides for the creation, perfection, priority, registry and enforcement of security interests in movable assets, and it establishes the PPSR as the public notice system for such interests.<sup>48</sup> This law is modelled on international best practice, drawing on frameworks like the UNCITRAL Legislative Guide on Secured Transactions to support broader use of movable assets as collateral.

*Regulators:* The secured transactions system is administered through the Personal Property Security Registry (PPSR), an online public database maintained by the Registrar General's Office under the Ministry of Justice, Constitutional and Religious Affairs. The PPSR serves as the official mechanism for registering and searching security interests in movable assets, providing lenders and buyers with transparency on encumbrances against collateral.<sup>49</sup>

*Notable features:* Malawi's secured transactions regime emphasises functional asset-based lending and public transparency. The PPSA allows a wide range of movable assets to serve as collateral, requires registration of security interests

---

<sup>47</sup> Borrowers and Lenders Act, 2020.

<sup>48</sup> Personal Property Security Act, 2013.

<sup>49</sup> Personal Property Security Act, 2013.

in the PPSR to achieve perfection and priority, and facilitates lenders' ability to assess encumbrances before extending credit. The online PPSR improves information access, enabling both lenders and the public to search for registered security interests, which enhances predictability, reduces risk and supports wider credit access for businesses and individuals.

### **2.6.7 Nigeria**

*Key laws/ framework:* The principal law governing secured transactions is the Secured Transactions in Movable Assets Act, 2017 (STMA), which creates a statutory regime for the creation, perfection, priority and realisation of security interests in movable property. Under the STMA, a security interest becomes perfected when a financing statement is filed with and registered by the NCR, and priority among competing interests is generally determined by the time and date of registration. The Act applies to security interests in most movable assets but excludes interests in land and certain other classes of property governed elsewhere.<sup>50</sup>

*Regulators:* The secured transactions system in Nigeria is anchored by the National Collateral Registry (NCR), an online public registry established and administered by the Central Bank of Nigeria (CBN) to register security interests in movable assets. The NCR operates under the Secured Transactions in Movable Assets Act, 2017 (STMA) and provides lenders, borrowers and the public with a platform to conduct searches and register financing statements for movable collateral, helping reduce information asymmetry and improve transparency. Searches may be conducted by any person, whereas registration is carried out by licensed financial institutions and regulated lenders.

*Notable features:* Nigeria's regime emphasises broad coverage of tangible and intangible movable assets including; equipment, inventory, farm products and accounts receivable, and relies on a centralised electronic Collateral Registry to provide public notice and establish priority among secured parties. The system allows borrowers to retain possession of collateral while using it to secure credit,

---

<sup>50</sup> Secured Transactions in Movable Assets Act, 2017.

and the STMA includes provisions to interface with other public asset registries to coordinate security interests.<sup>51</sup> The Act also aims to enhance financial inclusion and stimulate lending to MSMEs by facilitating use of movable property as collateral.

### **2.6.8 China**

*Key laws/ framework:* The legal basis for secured transactions is primarily found within the Civil Code, as well as earlier provisions in the Property Law (2007) and associated judicial interpretations that govern security interests such as mortgages, pledges and guarantees. The law recognises security rights in both tangible and intangible assets including accounts receivable, inventory and intellectual property, and allows for future property to be subject to security. Secured interests must be registered in the national PBoC registry to be enforceable against third parties, with priority generally determined by timing and registration rules under the statute.<sup>52</sup>

*Regulators:* In China, secured transactions are supported by a combination of government institutions and specialised public registries. The People's Bank of China (PBoC), through its Credit Reference Center, operates the unified online registry for security interests in movable property and rights, which allows lenders, borrowers and the public to file and search financing statements for pledges and similar interests.<sup>53</sup> This centralised filing system enhances transparency and public notice for lenders across the economy. Meanwhile, broader financial oversight (including lending practices affecting secured credit) is influenced by the China Banking and Insurance Regulatory Commission (CBIRC) and other economic regulators, although they do not directly govern secured transactions law itself.

*Notable features:* China's regime has broad collateral coverage, permitting security interests over a wide array of movable and intangible assets, and

---

<sup>51</sup> Secured Transactions in Movable Assets Act, 2017.

<sup>52</sup> Civil Code of the People's Republic of China (*adopted 28 May 2020, effective 1 January 2021*).

<sup>53</sup> Civil Code of the People's Republic of China (*adopted 28 May 2020, effective 1 January 2021*).

increasingly recognises functional equivalents of secured transactions such as financing leases and conditional sales in practice. The centralised PBoC online registry improves public notice and helps reduce information gaps among creditors. China's integrated secured transactions and credit information system enhances transparency and accessibility of borrower and collateral information

## **2.7 Lessons Learnt from select jurisdictions**

Kenya aims at advancing toward a regime that is more transparent, inclusive and interoperable, giving lenders greater confidence in movable collateral and promoting broader use of credit. This comparative insight will help shape a secured transactions policy that supports implementation of its secured transactions legal regime and enhance access to credit and financial inclusion. Kenya can draw the following valuable lessons from the experiences of other jurisdictions:

### **i. Implement priority rules to strengthen lender confidence**

Kenya should implement clear and predictable priority rules as they are essential for building lender confidence in a secured transactions system. Jurisdictions like the United States, New Zealand and Australia use registration-based priority to resolve competing claims and reduce uncertainty. Kenya should adopt similarly objective priority mechanisms anchored in timely registry filings so that lenders can assess recovery risk in advance and rely on transparent, predictable outcomes when taking movable collateral.

### **ii. Establish asset filing standards and guidelines to minimise ambiguities in the Registry**

Modern secured transactions registries in jurisdictions such as Australia, New Zealand, Ghana and Nigeria operate on a notice-based model, where the registry records and makes publicly searchable simple notices of security interests rather

than examining the underlying legal documentation. These centralised electronic systems support rapid online filing and searching, reduce administrative barriers, and improve transparency by alerting market participants to existing encumbrances.

Experience from these jurisdictions also shows that the effectiveness of notice-based systems depends on clear filing practices, particularly with respect to collateral descriptions and asset classification. Where filing standards are unclear, inconsistencies in collateral descriptions may arise, creating uncertainty for lenders and other registry users.

To improve registry clarity and reliability, the Government will develop and publish standardised asset description and filing guidelines for use within the MPSR collateral registry, supported by user guidance to ensure consistent classification and registration of movable collateral.

### **iii. Develop valuation standards and enforcement rules for intangible and dynamic assets**

The United States, New Zealand, China, and Nigeria recognize security rights over a wide range of assets including receivables, inventory, contractual rights, and other non-possessory assets. China's experience is particularly illustrative of scale effects associated with receivables financing and registry integration within broader credit information systems. Comparative evidence indicates that lender confidence in intangible collateral depends heavily on valuation practices, enforcement predictability, and priority clarity. Although Kenya's secured transactions framework recognizes the use of intellectual property as collateral, their usage remains relatively low. Kenya should build strong, transparent valuation standards and enforceable rules with clear priority outcomes for intangible and dynamic collateral under the MPSR regime.

#### **iv. Integration with Credit Information Systems to Strengthen Lender Confidence**

Effective secured transactions systems are strengthened when collateral registries operate alongside broader credit information infrastructure, enabling lenders to assess borrower risk more accurately. In several jurisdictions, collateral registry information is integrated with credit reporting systems to improve transparency regarding borrowers' existing obligations and encumbered assets. For instance, China's receivables financing registry operates within the People's Bank of China Credit Reference Center, allowing lenders to access information on both borrower credit histories and registered security interests.

To strengthen risk assessment and improve lender confidence in movable asset-based lending, the Government will promote integration and information sharing between the MPSR collateral registry and credit reference bureaus, enabling lenders to access information on borrowers' credit histories and existing secured obligations.

#### **v. Public Awareness, Capacity Building and Stakeholder Engagement and sensitization are Critical**

Comparative analyses to Ghana and Nigeria show that legal reform alone is not enough. Awareness campaigns, training for lenders and borrowers and engagement with financial sector actors are essential to increase adoption. Kenya should implement coordinated public education and capacity-building initiatives targeting both lenders and borrowers to raise awareness of the MPSR regime, explain how to use the e-Collateral Registry, and promote understanding of the benefits and processes of securing credit with movable assets.

## **vi. Integrated Legal Frameworks Minimise Fragmentation**

Canada's struggle with dual legal regimes illustrates how fragmented laws can reduce predictability and slow credit markets. Whereas Kenya's secured transactions legal framework is unified, collateral registry operation is independent of other inter-related registries pertaining to movable property thus inhibiting seamless perfection of security rights for lenders. Interoperability of these registries will strengthen lender confidence in the security rights framework, ultimately lowering transaction costs and improving access to credit.

## **2.8 Gaps and Challenges Identified in Kenya's Secured Transactions Regime**

### **i. Institutional Fragmentation and Limited Interoperability**

Kenya's secured transactions system operates within a complex institutional environment characterised by multiple asset-specific registries and sector regulators. While the MPSR Registry serves as the central notice-based platform for security interests in movable property, it does not function within a fully integrated registry ecosystem. Land registries, motor vehicle databases, intellectual property systems, and sector-specific licensing authorities continue to operate in parallel rather than through structured interoperability mechanisms.

This fragmentation creates potential uncertainty where collateral intersects with other legally registrable interests. For example, assets that are affixed to land, subject to statutory licensing regimes, or governed by specialised intellectual property protections may raise priority and verification complexities. In the absence of automated cross-registry validation or harmonised operational protocols, lenders may be required to undertake duplicative searches and independent confirmations. This increases transaction costs and introduces avoidable risk into secured lending decisions.

Beyond administrative inefficiency, limited interoperability undermines systemic coherence. A secured transactions regime achieves its full economic utility only

when institutional actors operate in alignment. Where mandates overlap without structured coordination, the predictability of the system depends on informal practice rather than formalised integration. Over time, this may constrain the scalability of movable asset financing.

**ii. Limited Awareness and Market Utilisation**

The secured transactions framework presupposes a shift in market behaviour, from land-centric collateral culture to asset-based financing grounded in movable and intangible assets. However, legal reform alone does not automatically transform entrenched lending practices.

Many small scale lenders particularly microfinance institutions and SACCOs continue to rely on familiar collateral structures perceived as safer or more enforceable. This behavioural inertia may stem from limited technical capacity, internal risk policies that have not been recalibrated, or uncertainty regarding priority and enforcement dynamics. Similarly, MSMEs, agricultural borrowers, informal enterprises, and women entrepreneurs may lack awareness of how to leverage receivables, inventory, or future assets as security. The asymmetry in registry engagement, observed in lower search volumes relative to registrations, underscores how behavioural and procedural factors limit utilisation.

Where knowledge gaps persist, utilisation remains constrained. More fundamentally, confidence in a secured transactions regime is built through repeated, successful use. In the absence of widespread, demonstrable enforcement outcomes and sector-wide familiarity, the system may operate below its transformative potential. Market education, technical guidance, and institutional signalling therefore remain essential components of effective reform.

**iii. Lack of Predictability and Efficiency in Enforcement**

The economic credibility of a secured transactions framework ultimately rests on enforcement. Although the legal framework provides for judicial and non-judicial remedies, enforcement frequently requires coordination among courts, law enforcement agencies, insolvency practitioners, auctioneers, and asset-specific authorities.

Where procedural alignment is incomplete or institutional roles are not clearly operationalised, enforcement risk increases. Movable collateral is particularly vulnerable to depreciation, concealment, or deterioration. Delays or uncertainty in repossession procedures may significantly erode asset value before realisation. In such circumstances, lenders may discount movable collateral or revert to traditional fixed-asset security structures.

Moreover, inconsistencies in enforcement can create uncertainty in priority outcomes. A secured transactions regime that is formally robust but practically unpredictable weakens its own developmental purpose.

#### **iv. Valuation and Emerging Asset Complexities**

The increasing use of receivables, intellectual property, agricultural outputs, and other intangible assets as collateral introduces complex valuation and risk assessment challenges. Unlike land or fixed property, many movable assets lack transparent secondary markets or established valuation methodologies.

Inconsistent valuation standards may lead to divergent risk assessments across institutions. This can limit lender appetite for innovative asset classes and restrict the development of specialised financing products such as supply chain finance, receivables discounting, or inventory-backed lending.

Furthermore, the absence of efficient secondary markets for repossessed movable assets may reduce recovery values and heighten enforcement risk. Without complementary market infrastructure such as valuation standards, asset tracking mechanisms, and resale platforms, the legal framework alone may not fully unlock asset-based credit expansion.

#### **v. Legal Harmonisation and Cross-Statutory Tensions**

Secured transactions operate within a broader commercial law ecosystem that includes insolvency law, company law, consumer protection law, and sector-specific regulatory statutes. Where cross-references are unclear or statutory provisions are not fully harmonised, interpretive uncertainty may arise.

Potential tensions between secured creditor rights and insolvency proceedings, or between security enforcement and consumer protection standards, may generate hesitation among lenders and borrowers alike. Even where such tensions are manageable through judicial interpretation, the mere perception of ambiguity may influence risk pricing and collateral preferences.

Sustained legal review and inter-agency alignment are therefore necessary to ensure that the secured transactions framework remains internally coherent and externally harmonised.

#### **vi. Dependency on Technology and System Resilience**

As an electronic notice-based system, the secured transactions regime depends on technological infrastructure for registration, search, and verification. While digitalisation enhances efficiency and transparency, it also introduces dependency on system uptime, cybersecurity safeguards, and data integrity.

Any perception of system vulnerability whether due to technical downtime, data inaccuracies, or cybersecurity risk may affect user confidence. Ensuring system resilience, data protection, and continuous improvement of digital infrastructure is therefore not merely an administrative concern but a structural component of market trust.

#### **vii. Adaptive Capacity in a Rapidly Evolving Financial Environment**

Financial markets are evolving rapidly, with increasing digitisation, platform-based lending, tokenised assets, and complex supply chain financing arrangements. The secured transactions framework must remain sufficiently flexible to accommodate emerging asset classes and financing models that were not central to the original reform context.

If regulatory guidance does not evolve alongside financial innovation, gaps may emerge between market practice and legal infrastructure. A static regime risks becoming misaligned with contemporary credit structures, limiting its relevance in supporting economic transformation.

### **3. CHAPTER THREE: POLICY AND STRATEGIC INTERVENTIONS**

This Chapter addresses policy issues, interventions and implementation strategies geared towards addressing identified gaps and challenges within the Secured Transactions regime, following the situational analysis as expounded in Chapter Two. The overarching objective of this policy is to guide effective implementation of the secured transactions legal framework, ensuring clarity, coherence, credit access, financial inclusion and sustainability in the secured transactions regime.

#### **3.1 Policy Objective**

Strengthen inter-institutional coordination for effective perfection and enforcement of security rights in movable assets.

##### **3.1.1 Policy Objective Outcome**

Improved interoperability and coordination among registries associated with movable and intangible assets.

##### **3.1.2 Policy Issue**

Weak institutional co-ordination among key agencies, including the Business Registration Service (BRS), the National Transport and Safety Authority (NTSA), the Kenya Industrial Property Institute (KIPI), and the Kenya Copyright Board (KECOBO), undermines seamless perfection and enforcement of security rights over movable and intangible assets.

##### **3.1.3 Policy Interventions and Strategies**

###### ***Intervention:***

Establish a structured institutional co-ordination framework to strengthen collaboration among public agencies responsible for asset registries, regulatory oversight, and enforcement within the secured transactions ecosystem.

###### ***Strategies:***

The Government will undertake the following actions:

- i. Establish an inter-agency technical working group comprising representatives from BRS, NTSA, KIPI, KECOBO, the CBK, and other relevant institutions to co-ordinate operational and policy matters relating to the registration, perfection, and enforcement of security rights.
- ii. Promote technical interoperability between the MPSR e-Collateral Registry and other relevant asset registries, including the NTSA motor vehicle registry and intellectual property databases, to facilitate verification of asset ownership and reduce duplication of registration processes.
- iii. Develop and implement standard operating procedures and data-sharing protocols among relevant agencies to clarify institutional roles, timelines, and information flows in the registration, perfection, and enforcement of security rights.
- iv. Establish a mechanism for periodic inter-agency review of registry conflicts, priority disputes, and operational challenges arising from overlapping asset registries in order to strengthen consistency in the application of secured transactions law.

## **3.2 Policy Objective**

Increase lender confidence and adoption of the Movable Property Security Rights (MPSR) framework.

### **3.2.1 Policy Objective Outcome**

Increased use of registered movable collateral in lending, reflected in a rising proportion of loans secured through the MPSR collateral registry.

### **3.2.2 Policy Issue**

Persistent preference for traditional forms of collateral due to familiarity with existing lending practices and greater certainty in enforcement processes. This has limited the adoption of movable asset-based lending despite the legal framework established under the MPSR Act.

### **3.2.3 Policy Interventions and Strategies**

#### **Intervention:**

Strengthen lender confidence in movable asset-based lending through targeted capacity building, regulatory guidance, and development of market infrastructure that supports the effective use and realisation of movable collateral.

#### **Strategies:**

The Government will undertake the following actions:

- i. Conduct targeted capacity-building and sensitisation programmes for banks, SACCOs, microfinance institutions, and other credit providers to strengthen their understanding of the legal, operational, and risk management aspects of movable asset-based lending.
- ii. Develop and issue sector-specific guidance and best practice frameworks on the registration, perfection, monitoring, and enforcement of security rights under the MPSR regime.
- iii. Facilitate the development of secondary markets and asset disposal platforms for movable collateral in order to improve recovery prospects and enhance lender confidence.
- iv. Encourage financial institutions to pilot and scale movable asset-backed lending products through appropriate policy support and engagement with industry associations.
- v. Promote integration and information sharing between the MPSR collateral registry and credit reference bureaus to enable lenders to access information on borrowers' credit histories and existing secured obligations for improved credit risk assessment.
- vi. Develop and promote practical guidance on the valuation of commonly used movable collateral, including equipment, inventory, livestock, receivables and intellectual property, to support consistent risk assessment by lenders and improve confidence in movable asset-based lending.

### **3.3 Policy Objective**

Enhance public awareness and understanding of the MPSR regime among borrowers, especially MSMEs, women and youth entrepreneurs, agricultural enterprises, and informal businesses.

#### **3.3.1 Policy Objective Outcome**

Increased borrower awareness and utilisation of movable assets as collateral, leading to broader access to credit through the MPSR framework.

#### **3.3.2 Policy Issue**

Awareness of the opportunity to use movable property as collateral under the MPSR regime remains low among borrowers, particularly MSMEs, women and youth entrepreneurs, agricultural enterprises, and informal businesses. As a result, many potential borrowers do not offer movable assets as collateral and remain dependent on traditional collateral requirements or informal sources of finance.

#### **3.3.3 Policy Intervention and Strategies**

##### **Intervention:**

Strengthen borrower awareness and practical understanding of the MPSR regime in order to expand the use of movable assets as collateral and improve access to formal credit.

##### **Strategies:**

The Government will undertake the following actions:

- i. Conduct nationwide public awareness campaigns through mass media and digital platforms to inform the public about the use of movable assets as collateral under the MPSR regime.
- ii. Develop and disseminate simplified educational materials explaining the operation of the e-Collateral Registry, the types of movable assets that may be used as collateral, and the procedures for registration and enforcement.

- iii. Partner with business associations, MSME support organisations, farmers' co-operatives, women's enterprise networks, youth organisations, and financial sector associations to conduct targeted outreach, workshops, and advisory support on the use of movable collateral.
- iv. Strengthen the capacity of credit officers, business advisory service providers, and financial institutions to guide borrowers in identifying eligible movable assets, understanding valuation considerations, and navigating collateral registration processes.
- v. Integrate awareness of the MPSR framework into government-supported MSME development programmes, financial literacy initiatives, and entrepreneurship support platforms to ensure sustained borrower education.

### **3.4 Policy Objective**

Reduce perceived risk associated with movable collateral.

#### **3.4.1 Policy Objective Outcome**

Greater acceptance of movable assets as collateral by lenders.

#### **3.4.2 Policy Issue**

Many lenders perceive movable assets as higher-risk collateral due to concerns about asset loss, deterioration, disposal by the borrower, and uncertainty about how easily such assets can be repossessed and realised in the event of default. These concerns continue to influence lending practices and contribute to the preference for traditional forms of collateral.

#### **3.4.3 Policy Interventions and Strategies**

##### **Intervention:**

Strengthen risk mitigation mechanisms and improve clarity on valuation, registration and enforcement processes in order to enhance lender confidence in movable asset-based lending.

## **Strategies**

The Government will undertake the following actions:

- i. Develop and promote practical valuation standards and risk assessment guidance for commonly used movable collateral, including equipment, inventory, livestock, receivables and intellectual property.
- ii. Publish clear operational guidance on enforcement procedures under the MPSR regime, including lawful repossession and disposal of collateral in accordance with the Act.
- iii. Promote consistent use of the MPSR electronic Collateral Registry by lenders to verify existing security interests, determine priority of claims and reduce the risk of double pledging.
- iv. Support the development of collateral management, asset disposal, and recovery services that facilitate the efficient realisation of movable assets upon default.

### **3.5 Policy Objective**

Promote harmonisation of the secured transactions legal and institutional framework.

#### **3.5.1 Policy Objective Outcome**

Improved clarity and ease of use of the secured transactions framework.

#### **3.5.2 Policy Issue**

Fragmentation and overlap between the Movable Property Security Rights Act and other legal and regulatory frameworks governing secured lending create uncertainty for lenders and borrowers. In particular, the interaction between the MPSR framework and title-retention financing arrangements such as hire purchase and financial leasing creates ambiguity regarding registration requirements, priority of interests, and enforcement procedures. Similar

uncertainties arise in the interaction between the MPSR regime and the Companies Act charges framework, insolvency law, intellectual property registries and warehouse receipt financing systems. These inconsistencies discourage the full utilisation of the secured transactions framework.

### **3.5.3 Policy Interventions and Strategies**

#### **Intervention:**

Undertake a comprehensive legal and regulatory harmonisation process to ensure coherence between the Movable Property Security Rights Act and other laws and regulatory regimes affecting secured lending and asset registration.

This process will also clarify the treatment of title-retention financing arrangements, including hire purchase and financial leasing, within the secured transactions framework. The aim is to ensure legal certainty regarding registration requirements, priority of interests, and enforcement rights where ownership of the asset is contractually retained by the creditor.

#### **Strategies**

The Government will undertake the following actions:

- i. Conduct a systematic review of laws that interact with the secured transactions regime, including the Hire Purchase Act, the Companies Act provisions on company charges, the Insolvency Act, and the Warehouse Receipts System Act, in order to identify areas of overlap, inconsistency or legal uncertainty.
- ii. Develop and implement legislative or regulatory amendments where necessary to clarify the relationship between the Movable Property Security Rights Act and related legal frameworks governing secured credit, insolvency, company charges, and warehouse receipt financing.
- iii. Promote co-ordinated policy and institutional engagement among relevant public agencies responsible for asset registration and secured lending oversight, including the Business Registration

Service, the National Transport and Safety Authority, the Kenya Industrial Property Institute, and the Kenya Copyright Board, to support consistent interpretation and application of the secured transactions framework.

- iv. Clarify the treatment of title-retention transactions, including hire purchase and financial leasing arrangements, within the secured transactions framework to ensure certainty regarding registration, priority and enforcement.
- v. Clarify the treatment and registration of intellectual property rights used as collateral, including patents, trademarks and copyrights, and strengthen coordination between the MPSR collateral registry and the intellectual property registries administered by the Kenya Industrial Property Institute and the Kenya Copyright Board.

### **3.6 Policy Objective**

Promote the growth and sustainability of the secured transactions ecosystem.

#### **3.6.1 Policy Objective Outcome**

Widespread and sustained use of movable assets as collateral across the financial system.

#### **3.6.2 Policy Issue**

Despite the legal framework established under the Movable Property Security Rights Act, overall usage of the secured transactions regime remains limited across many sectors of the economy. Structural barriers, limited market infrastructure, and operational constraints continue to restrict the scale and depth of movable asset-based lending.

### **3.6.3 Policy Interventions and Strategies**

#### **Intervention:**

Implement targeted market development and institutional strengthening measures that promote adoption, build stakeholder confidence, and support the long-term growth and effective functioning of the secured transactions ecosystem.

#### **Strategies:**

The Government will undertake the following actions:

- i. Promote policy and regulatory measures that support the development and expansion of movable asset-based lending across commercial banks, microfinance institutions, SACCOs and other credit providers.
- ii. Facilitate the development of secondary markets and asset disposal platforms for movable collateral in order to improve recovery prospects and support lender confidence.
- iii. Strengthen enforcement certainty and predictability through clear procedures, consistent interpretation of the law and efficient dispute resolution mechanisms.
- iv. Enhance the usability and functionality of the MPSR collateral registry, including improvements to the user interface, system integration and error reduction mechanisms in order to lower barriers to registry usage.
- v. Publish periodic reports on secured transactions activity, including registry usage, asset trends and lending patterns, in order to enhance market transparency, support policy monitoring and inform evidence-based decision making.
- vi. Encourage the development of innovative secured lending products that utilise non-traditional movable assets including receivables, intellectual property, warehouse receipts and other emerging asset classes.

#### **4. CHAPTER FOUR: FRAMEWORK FOR IMPLEMENTING THE POLICY**

Chapter three of this policy provides a number of policy interventions and strategies intended to address the gaps and challenges identified within the secured transactions framework in Kenya. The strategies will be implemented in the manner prescribed in the implementation matrix annexed as Annexure 1 of the policy. The implementation of this policy has legal, institutional and financial implications.

##### **4.1 Coordination framework and administrative mechanisms**

The implementation of the Secured Transactions Policy will be spearheaded by the Business Registration Service in collaboration with the Office of the Attorney General and Department of Justice, the National Treasury, financial sector regulators and other relevant government agencies.

##### **4.2 Legal and Regulatory Framework**

The implementation of this policy will be in accordance with the Movable Property Security Rights Act, 2017, its subsidiary regulations, and other applicable legislation governing secured transactions in Kenya. This includes statutes that intersect with secured lending, such as the Companies Act, Insolvency Act, Consumer Protection Act, and sector-specific regulatory frameworks. The policy will also align with the mandates of relevant institutions, including the Business Registration Service, the Office of the Registrar, the Office of the Attorney General, the National Treasury, and the Judiciary, to ensure coherent and legally compliant execution.

##### **4.3 Funding Arrangements**

The implementation of this policy will be funded by the National Government. Implementing agencies will mainstream the implementation into their annual work plans and budgets.

## **5. CHAPTER FIVE: MONITORING AND EVALUATION**

A comprehensive Monitoring and Evaluation (M&E) Framework will be established to assess progress in the implementation of this policy. The Business Registration Service and other relevant implementing agencies will develop annual M&E plans to guide monitoring and evaluation processes. These plans will outline key activities, timelines, data collection mechanisms, and reporting structures.

The implementing agencies will prepare periodic reports detailing achievements, challenges and lessons learnt. These reports will be shared with all stakeholders to promote transparency, accountability and continuous improvement in policy implementation.

Implementation of this Policy will be coordinated by the Business Registration Service in collaboration with the Office of the Attorney General & Department of Justice and other relevant public institutions. Progress will be monitored through periodic reporting on the key performance indicators outlined in the implementation matrix. The Government will periodically review implementation progress to ensure that policy objectives are achieved and to address emerging challenges within the secured transactions ecosystem.

## **6. CHAPTER SIX: POLICY REVIEW**

This policy will be reviewed every ten (10) years, or earlier if circumstances arise that require alignment with regional and international frameworks or other emerging developments.

## 7. ANNEXTURE 1: IMPLEMENTATION MATRIX

| Policy Objective   | Policy Issue  | Key Policy Intervention   | Strategy   | Lead Institution                    | Supporting Institutions  | Implementation Timeframe      | Key Performance Indicators   | Funding Source  | Budget (Kshs.)                                      | Expected Outcome  |
|--|---|---|--|-------------------------------------|--|-------------------------------|--|---|---|---|
| <b>Strengthen inter-institutional coordination for effective perfection and enforcement of security rights in movable assets</b> | Weak institutional coordination among agencies such as BRS, NTSA, KIPi and KECOBO undermines seamless perfection and enforcement of security rights | Establish a structured institutional coordination framework and promote interoperability among asset registries                     | <ul style="list-style-type: none"> <li>✓ Establish inter-agency working group;</li> <li>✓ develop data-sharing protocols;</li> <li>✓ facilitate registry interoperability;</li> <li>✓ periodic inter-agency review of registry conflicts</li> </ul>  | Business Registration Service (BRS) | NTSA, KIPi, KECOBO, Central Bank of Kenya, Office of the Attorney General                              | Short Term (0–2 years)        | Inter-agency working group established; number of interoperability initiatives implemented; SOPs developed for registry coordination | Government budget; development partner support                              | To be determined through national budgeting process | Improved interoperability and coordination among registries associated with movable and intangible assets |
| <b>Increase lender confidence and adoption of the MPSR framework</b>   | Persistent preference for traditional collateral by lenders due to familiarity and clearer enforcement processes                                    | Strengthen lender confidence in movable asset-based lending through regulatory guidance, valuation standards and market development | <ul style="list-style-type: none"> <li>✓ Capacity building for lenders;</li> <li>✓ issue enforcement guidance;</li> <li>✓ develop valuation guidance;</li> <li>✓ promote secondary markets for movable collateral;</li> <li>✓ integrate registry data with credit reference bureaus</li> </ul> | National Treasury                   | CBK, BRS, Kenya Bankers Association, AMFI, SASRA, financial institutions                               | Short–Medium Term (0–5 years) | Increase in number of lenders using the MPSR registry; growth in value and volume of loans secured by movable assets                 | Government budget; financial sector contributions; development partners     | To be determined                                    | Increased use of registered movable collateral in lending   |
| <b>Enhance public awareness and understanding of the MPSR regime among borrowers</b>   | Low borrower awareness of the opportunity to use movable property as collateral under the MPSR regime   | Strengthen borrower awareness and practical understanding of the MPSR framework   | <ul style="list-style-type: none"> <li>✓ Nationwide awareness campaigns;</li> <li>✓ simplified educational materials;</li> <li>✓ collaboration with MSME organisations;</li> <li>✓ borrower advisory support</li> </ul>  | National Treasury                   | MSME Authority, BRS, business associations, farmers' cooperatives, women and youth enterprise networks | Short Term (0–2 years)        | Number of awareness campaigns conducted; increase in registry filings by MSMEs and individuals                                       | Government budget; development partner programmes; MSME support initiatives | To be determined                                    | Increased borrower awareness and utilisation of movable assets as collateral                              |

|  |  |   |  |                                     |   |                              |   |   |   |  |
|--|--|---|--|-------------------------------------|---|------------------------------|---|---|---|--|
| <b>Reduce perceived risk associated with movable collateral</b>                    | Perceived risk and mistrust of movable collateral due to concerns over loss, disposal or difficulty in realising value   | Strengthen risk mitigation mechanisms and enforcement clarity within the MPSR regime              | <ul style="list-style-type: none"> <li>✓ Develop valuation standards;</li> <li>✓ publish enforcement guidance;</li> <li>✓ promote registry verification practices;</li> <li>✓ strengthen collateral recovery mechanisms</li> </ul>                       | Business Registration Service       | CBK, professional valuation bodies, financial institutions, legal professional bodies | Medium Term (3–5 years)      | Publication of valuation and enforcement guidelines; reduction in enforcement disputes; increased lender acceptance of movable collateral | Government budget; private sector collaboration | To be determined                                    | Greater acceptance of movable assets as collateral by lenders                            |
| <b>Harmonise the secured transactions legal and regulatory framework</b>           | Fragmentation and overlap between the MPSR framework and other laws including hire purchase, company charges, insolvency law, warehouse receipts and intellectual property regimes | Undertake comprehensive legal and regulatory harmonisation of secured transactions frameworks     | <ul style="list-style-type: none"> <li>✓ Conduct legal review;</li> <li>✓ propose legislative reforms;</li> <li>✓ clarify treatment of title-retention transactions;</li> <li>✓ strengthen coordination with intellectual property registries</li> </ul> | Office of the Attorney General      | National Treasury, BRS, Parliament, relevant regulators                               | Medium–Long Term (3–7 years) | Legal review completed; number of legislative amendments proposed or enacted  | Government budget                               | To be determined                                    | Improved legal clarity and coherence in the secured transactions framework               |
| <b>Promote the growth and sustainability of the secured transactions ecosystem</b> | Low overall usage of the secured transactions framework across sectors   | Implement market development and institutional strengthening measures to support ecosystem growth | <ul style="list-style-type: none"> <li>✓ Develop collateral markets;</li> <li>✓ enhance registry functionality;</li> <li>✓ publish periodic secured transactions reports;</li> <li>✓ support innovation in movable asset-based lending</li> </ul>        | National Treasury                   | BRS, CBK, financial sector associations, research institutions                        | Medium–Long Term (3–7 years) | Periodic secured transactions reports published; increase in registry filings and diversity of collateral types                           | Government budget; development partner support  | To be determined                                    | Widespread and sustained use of movable assets as collateral across the financial system |
| <b>Strengthen inter-institutional coordination for effective perfection</b>        | Weak institutional coordination among agencies such as BRS, NTSA,  | Establish a structured institutional coordination framework and promote                           | <ul style="list-style-type: none"> <li>✓ Establish inter-agency working group;</li> <li>✓ develop data-sharing protocols;</li> </ul>   | Business Registration Service (BRS) | NTSA, KIPi, KECOBO, Central Bank of Kenya, Office of the                              | Short Term (0–2 years)       | Inter-agency working group established; number of interoperability initiatives  | Government budget; development partner support  | To be determined through national budgeting process | Improved interoperability and coordination among registries                              |

|   |   |   |   |  |                  |  |   |  |  |   |
|---|---|---|---|--|------------------|--|---|--|--|---|
| <b>and enforcement of security rights in movable assets</b> | KIPi and KECOBO undermines seamless perfection and enforcement of security rights | interoperability among asset registries | ✓ facilitate registry interoperability;<br>✓ periodic inter-agency review of registry conflicts |  | Attorney General |  | implemented; SOPs developed for registry coordination |  |  | associated with movable and intangible assets |
|---|---|---|---|--|------------------|--|---|--|--|---|