

SECURITY BY MEANS OF MOVABLE PROPERTY ACT 57 OF 1993

[Updated to 11 October 2024.**]
**Date of last changes incorporated into this Act.

English text signed by the State President

Assented to 29 April 1993

Published: G. 14786

Commencement: 7 May 1993

Amended

National Credit Act 34 of 2005 (G. 28619, with effect from 1 June 2006 [Proc 22, G. 28824]).

[NOTE: The administration, powers and functions of this Act are transferred to the **Minister of Justice and Constitutional Development**, effective immediately before the President assumed office on 19 June 2024 – Proc 199 / G. 51368 / 11 October 2024]

ACT

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

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

ARRANGEMENT OF SECTIONS

1. Legal consequences of special notarial bond over movable property
2. Exclusion of landlord's tacit hypothec
3. Repeal of Act 18 of 1932
4. Amendment of section 2 of Act 24 of 1936, as amended by section 2 of Act 16 of 1943, section 1 of Act 6 of 1972 and section 1 of Act 27 of 1987
5. Savings
6. Short title

1. Legal consequences of special notarial bond over movable property

- (1) If a notarial bond hypothecating corporeal movable property specified and described in the bond in a manner which renders it readily recognisable, is registered after the commencement of this Act in accordance with the Deeds Registries Act, 1937 (Act 47 of 1937), such property shall—

- (a) subject to any encumbrance resting upon it on the date of registration of the bond; and
- (b) notwithstanding the fact that it has not been delivered to the mortgagee,

be deemed to have been pledged to the mortgagee as effectually as if it had expressly been pledged and delivered to the mortgagee.

- (2) Upon the discharge of the debt secured by a bond mentioned in subsection (1) the mortgagee shall, at the request of the mortgagor, furnish to the mortgagor, free of charge, proof of such discharge in the form required for the cancellation of the bond.
- (3) Subject to the provisions of subsection (4) a notarial bond contemplated in subsection (1) other than a notarial bond contemplated in section 1 of the Notarial Bonds (Natal) Act, 1932 (Act 18 of 1932), which was registered before the commencement of this Act shall, upon the insolvency of the mortgagor before or after such commencement, confer on the mortgagee the same preference in respect of the entire free residue of the insolvent estate as that conferred on a mortgagee by a general bond in terms of section 102 of the Insolvency Act, 1936 (Act 24 of 1936).
- (4) The provisions of subsection (3) shall not apply if any part of such free residue was, before the commencement of this Act, paid out to concurrent creditors in terms of a confirmed account.
- (5) If, at the commencement of this Act, an account has been confirmed but dividends have not yet been paid out as contemplated in subsection (4), such account shall be reopened so as to give effect to the provisions of subsection (3) without obtaining the permission of the court in terms of section 112 of the Insolvency Act, 1936.

2. Exclusion of landlord's tacit hypothec

- (1) Notwithstanding anything to the contrary in the common law or in any other law, movable property—
 - (a) which, while hypothecated by a notarial bond mentioned in section 1(1), is in the possession of a person other than the mortgagee; or
 - (b) to which an instalment agreement as defined in section 1 of the National Credit Act, 2005, relates,
[\[S 2\(b\) substituted by s 172 of Act 34 of 2005.\]](#)

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

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

3. Repeal of Act 18 of 1932

The Notarial Bonds (Natal) Act, 1932 (Act 18 of 1932), is hereby repealed.

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

Section 2 of the Insolvency Act, 1936, is hereby amended by the substitution for the definition of “special mortgage” of the following definition—

“special mortgage” means a mortgage bond hypothecating any immovable property or a notarial mortgage bond hypothecating specially described movable property in terms of section 1 of the **[Notarial Bonds (Natal) Act, 1932 (Act 18 of 1932)]** Security by Means of Movable Property Act, 1993, but excludes any other mortgage bond hypothecating movable property;”.

5. Savings

Nothing in this Act contained shall—

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

(i) any body corporate; or

(ii) any association of persons,

constituted or established by or under any law and supported wholly or partly by public funds; or

(b) affect any right acquired under the Agricultural Credit Act, 1966 (Act 28 of 1966).

6. Short title

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