

Security by Means of Movable Property Act 57 of 1993¹²

[ASSENTED TO 29 APRIL 1993]	[DATE OF COMMENCEMENT: 7 MAY 1993]
	(see s. 6 of this Act)

(English text signed by the State President)

published in
GG 14786 of 7 May 1993
as amended

by	with effect from	refer to
National Credit Act 34 of 2005	1 June 2006	s. 173 of Act 34 of 2005 ; Proc 22 in GG 28824 of 11 May 2006

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:-

- [1](#) This Act has been updated to include all available historical commencement details
- [2](#) The administration and the powers or functions entrusted by legislation transferred to the Minister of Justice and Constitutional Development (Proc 199 in GG 51368 of 11 October 2024)

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 recognizable, 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 ([Act 34 of 2005](#)), relates;

[Para. (b) substituted by [s. 172 \(2\)](#) of [Act 34 of 2005](#) (wef 1 June 2006).]

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

Repeals the Notarial Bonds (Natal) [Act 18 of 1932](#).

4

Amends section 2 of the Insolvency [Act 24 of 1936](#) by substituting the definition of 'special mortgage'.

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.
