

**Financing Small and Medium Sized Enterprises in Nigeria in Light of UNCITRAL  
Model Law & UCC Art 9**

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LL.M. CAPSTONE THESIS

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## **Abstract**

It is evident that small and medium-sized enterprises (SMEs) drive economic growth in Nigeria as the sector accounts for more than 50 % of employment and over 50 % of industrial output. However, the barrier of access to finance impedes the growth of SMEs.

The Secured Transactions in Movable Asset Act, 2017 (hereinafter: STMA) was enacted with the main objective of stimulating responsible lending to SMEs and to facilitate access to credit secured with movable assets. The passage of the STMA is a step in the right direction as it introduces the use of movable property, a new concept that includes also intangibles but not IP rights as collateral. Albeit, it does not make the priority of creditors maximally predictable both within and outside insolvency as this can gain the trust of creditors to advance loans at a lower cost to SMEs. Again, its enforcement mechanism admits to the use of private receivers who are incentivized to act in the interest of the appointing secured creditor rather than the interest of the business, this is antithetical to the objective of the STMA. Yet again, the rules of perfection are unclear as they admit to the creation of charges at the Corporate Affairs Commission register (hereinafter: CAC) enacted under the Companies and Allied Matter Act (hereinafter : CAMA). These complexities in the STMA stagnate the viability of financing SMEs through movable asset.

Having these deficiencies in sight, this paper will focus on four critical elements for an efficient secured transactions law which are crucial for financing SMEs. These elements are vital to attain credit at lower cost and to increase the amount of credit advanced by creditors. The first element addresses the scope of movable assets approved under the STMA. The second issue targeted is how to improve the perfection rules to make the system more transparent as far as priorities are concerned?

The third element which this paper will buttress on are the rules of priority. The final element will reflect the enforcement mechanisms employed under the STMA. This paper will start with illustrating the importance of secured transactions law in financing SMEs with reference to the objective and terminology provided under UNCITRAL Model and Uniform Commercial Code Article 9 (hereinafter: UCC Art 9). The focus will be on the recently passed Nigerian secured transactions law reform and its four key systemic defects in the light of Nigerian economic realities. This thesis will proffer recommendations that contemplate the peculiarities in the Nigerian regime. Given that the Nigerian secured transactions law reform was influenced by UNCITRAL Model Law, which was inspired by UCC Art 9, this thesis will reference, compare and advocate for improvements in the Nigerian regime using the aforementioned laws.

## **Acknowledgement**

To Female Entrepreneur's for their contributions to economic growth in the Nigerian regime and beyond. To a well-versed innovative – thinker, a self-less and passionate teacher for impacting me with insight on a law as crucial as Secured Transactions Law. Even more for encouraging students to break the mould and think outside the box – Professor Tibor Tajti. To Lawal Kabiru for always sharing from his wealth of experience and knowledge in the Nigerian banking sector.

## Table of Contents

INTRODUCTION .....	1
1.1 Why Focus on SMEs Access to Finance?.....	1
1.2 Aims and Goals.....	4
1.3 Research Questions .....	5
1.4 Structure of the Thesis .....	6
1.5 A Word on Methodology, Bibliography and Caveats on the Sources .....	7
Chapter 1: Overview of Secured Transactions Law .....	8
1.1 Importance of Secured Transactions Law in Financing Small and Medium Sized Enterprises.....	8
1.2 The Objective of the UNCITRAL Model Law & UCC ARTICLE 9.....	13
1.3 Secured Transactions Law and the Functional Approach.....	15
1.4 Terminology of UNCITRAL Model Law & UCC Art 9.....	17
1.4.1 Security Device.....	17
1.4.2 Steps to make a Security Interest.....	19
Chapter 2: A Framework of the Nigerian Regime (Secured Transactions in Movable Assets Act) .....	23
2.1 A Case for SME Financing in the Nigerian Regime.....	23
2.2 Nexus Between the Secured Transaction in Movable Asset Act and the need for Credit in Nigeria .....	25
2.3 The Approach of Security Creation Under the Nigerian Regime.....	27
2.3.1 Attachment and Scope of Acceptable Collateral .....	27

2.3.2 Rules of Priority .....	29
2.3.3 Rules of Perfection.....	30
2.3.4 Enforcement Procedures .....	33
Chapter 3: Recommendations for Gaps in the Nigerian Regime with reference to UNCITRAL Model Law and UCC Article 9 .....	36
3.1 Conclusion .....	37
BIBLIOGRAPHY .....	39

## **LIST OF ABBREVIATIONS**

ART – Article

AMCON- Asset Management Corporation of Nigeria

CAC – Corporate Affairs Commission

CAMA – Companies and Allied Matters Act

CBN – Central Bank of Nigeria

CRA – Collateral Registry Act

ERDB- European Bank for Reconstruction and Development

GDP – Gross Domestic Product

IFC – International Finance Corporation

ILO – International Labor Organization

IMF – International Monetary Fund

IP rights – Intellectual Property rights

NCR – National Collateral Registry

OHADA- Organization for Harmonization of Corporate Law in Africa

OPPSA – Ontario Personal Property Security Act

S – Section

SME - Small and Medium-Sized Enterprise

STMA - Secured Transactions in Movable Asset Act

UCC – US Uniform Commercial Code

UNCITRAL – United Nations Commission on International Trade Law

WBG – World Bank Group

US – United States



## INTRODUCTION

### 1.1 Why Focus on SMEs Access to Finance?

Having attended a Consultative session at the African Union which buttressed on the World Bank Doing Business Report 2020 and the need for policy reforms to facilitate access to credit, enforcement of contracts, payment of taxes, resolving insolvencies among other areas, this thesis will focus on the issue of financing Small and Medium-Sized Enterprises (hereinafter: SMEs) in Nigeria.<sup>1</sup>

In the Nigerian regime, SMEs comprise of businesses with less than N100 million turnover per annum or less than 300 employees.<sup>2</sup> With over 37 million SMEs in Nigeria, the Secured Transactions in Movable Asset Act (hereinafter: STMA) was established to improve the gaps in financing SMEs portrayed in the downturn of loans advanced to SMEs from 0.099% to 0.067%.<sup>3</sup> This can be attributed to poor credit information and the absence of acceptable collateral.<sup>4</sup> Amongst others, the STMA's objectives is to "stimulate responsible lending for SMEs and facilitate access to credit secured with movable assets."<sup>5</sup>

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<sup>1</sup> Central European University, 'Ebimoghan Attends African Union Consultative Meeting in Brussels' (*Legal.ceu*, 14 January 2020) <<https://legal.ceu.edu/article/2020-01-14/ebimoghan-attends-african-union-consultative-meeting-brussels>> accessed 8 May 2020.

<sup>2</sup> Omolomo O Tobora, 'Challenges faced by entrepreneurs and the performance of small and medium scale (SMEs) In Nigeria: An Intellectual capital issue' (2014) 42 *International Letters of Social and Humanistic Sciences* 32, p. 34; Olusesan Oliyide, 'Law, credit risk management and bank lending to SMEs in Nigeria' (2012) 38(4) *Commonwealth Law Bulletin* 673, p.675.

<sup>3</sup> Olatunde Akande, 'The Movables' National Collateral Registry Newsletter (Abuja, August 2017) Newsletter 1 <<https://www.cbn.gov.ng/out/2017/ccd/ncr%20maiden%20newsletter.pdf>> accessed 22 April 2020.

<sup>4</sup> Mike A Ozekhome, *Personal property law in Nigeria* (Pretoria University Law Press 2019) p. 4.

<sup>5</sup> Secured Transactions in Movable Asset Act 2017, s. 1.

A loan is a form of credit with the inherent risk of non-repayment.<sup>6</sup> The absence of a security to mitigate this risk disincentivizes creditors from advancing credit.<sup>7</sup>

Developed economies like the United States Uniform Commercial Code Article 9 (hereinafter: UCC Art 9) and Ontario Personal Property Security Act (hereinafter: OPPSA) have reformed their Secured Transactions Law to ensure predictability in creation, perfection, priority and enforcement of security interest.<sup>8</sup> However, these systems were once lacking in efficient laws on secured financing.<sup>9</sup> Before the advent of UCC Art 9 reforms, complex and unstructured rules were used in secured financing.<sup>10</sup> This resulted in onerous registration procedures and unpredictable rules of priority which stifled lending as the system lacked transparent rules to protect the interest of secured creditors.<sup>11</sup> In 1952, the first version of UCC Art 9 was instituted.<sup>12</sup> However, It was the 1962 version amended in 1972 that introduced the unitary functional approach in a single body of law that recognizes a common approach in the creation, the rules of perfection and priority of a security interest.<sup>13</sup>

In Canada, a similar issue of compartmentalized rules and burdensome registration processes requiring affidavits made secured lending complicated.<sup>14</sup> However, Ontario was the first Canadian province to adopt the remedies in UCC Art 9.<sup>15</sup> The drafters of the OPPSA in

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<sup>6</sup> Jacob S. Ziegel, 'The New Provincial Chattel Security Law Regimes' (1991) 70 *The Canadian Bar Review* 681, p. 683.

<sup>7</sup> *ibid.*

<sup>8</sup> Ziegel (n 6) 685-686; Walter Dellinger, 'The Amending Process in Canada and the United States: A Comparative Perspective' (1982) 45(4) *Law and Contemporary Problems* 283, p. 301.

<sup>9</sup> Ziegel (n 6) 684.

<sup>10</sup> Grant Gilmore, *Security Interests in Personal Property* (Little & Brown, Boston & Toronto 1965) vol.1, Part 1.

<sup>11</sup> *Ibid.*

<sup>12</sup> Ziegel (n 6) 685.

<sup>13</sup> James J White and Robert S Summers, *Uniform Commercial Code* (6th edn, West Academic Publishing 2010) p.1149; Uniform Commercial Code 1972 s 9-102(1).

<sup>14</sup> Ziegel (n 6) 684; Jacob S Ziegel, 'Uniformity of Legislation-The Conditional Sales Experience' (1961) 39 *Can. Bar Rev.* 165.

<sup>15</sup> Ziegel (n 6) 686.

adopting the rules of UCC Art 9 departed from several rules in order to address the peculiarities of the Ontario regime which made the OPPSA more concise and understandable than UCC Art 9.<sup>16</sup> Both UCC Art 9 and the OPPSA have recorded successes in the efficiency of their secured transactions reforms.<sup>17</sup> Notably, Ontario and Nigerian law have a close resemblance.<sup>18</sup> Although, Nigeria as an emerging economy undertook her secured transactions law reforms following UCC Art 9's unitary security device approach.<sup>19</sup> Even as this is a laudable step, the reforms lack remedies that complement the peculiarities of the Nigerian regime.<sup>20</sup> This raises questions on if the Nigerian Secured transactions reform is efficient to address the issue of access to credit for SMEs? Can the provisions in the reform be translated into practical remedies for financing SMEs in Nigeria? Indisputably, the Nigerian regime can learn and benefit from the remedies in the US and the Ontario regime.<sup>21</sup> Yet, to get efficient results transplanted laws must reflect local conditions.<sup>22</sup> This is exemplified in Ontario's partial adoption of UCC Art 9.<sup>23</sup>

This paper will make its hypothesis with reference to the economic reality of the Nigerian regime which entails an account of the peculiarities, structural characteristics, the legal climate and the risks inherent in Nigerian.<sup>24</sup> It is a recognition of the local conditions, the traditional systems and norms through which institutional framework in the Nigerian regime is

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<sup>16</sup> Ibid; Jacob S Ziegel, 'The Draft Ontario Personal Property Security Act' (1966) 44 Can. Bar Rev. 124.

<sup>17</sup> Chima W Iheme, *Towards Reforming the Legal Framework for Secured Transactions in Nigeria: Perspectives from the United States and Canada* (Springer International Publishing 2016) p.10.

<sup>18</sup> Ibid. 10-11.

<sup>19</sup> Ozekhome (n 4) 40, 46-47.

<sup>20</sup> Ibid; David U Enweremadu, 'Nigeria as an emerging economy? Making sense of expectations' (2013) 20 (1) South African Journal of International Affairs 57, 61.

<sup>21</sup> Iheme (n 17) 11.

<sup>22</sup> Ozekhome (n 4) 47.

<sup>23</sup> Ziegel (n 6) 686.

<sup>24</sup> Michael Hibbard & Lori Davis, 'When the Going Gets Tough: Economic Reality and the Cultural Myths of Small-Town America' (1986) 52 (4) Journal of the American Planning Association 419, 424.

administered.<sup>25</sup> This is essential to address the barriers of financing SMEs in Nigeria, being that an appraisal of its institutional peculiarities will provide a necessary understanding of the systemic gaps and defects that affect access to credit. As Nigeria is a bank-based system, the local realities will be contextualized to address gaps in the banking system, the judicial system, and other laws that supplement the secured transactions reform.<sup>26</sup>

## 1.2 Aims and Goals

This thesis will inquire into the policy considerations of the reforms in the STMA. Its central question is to what extent are the reforms efficient in relation to the scope of movables that can be admitted, the rules of perfection, the rules of priority and the enforcement mechanism of a security interest? This paper will provide recommendations that resonate with the economic realities of the Nigerian regime. The author is opined that for the Nigerian regime to leverage on the legitimacy of transplanted solutions, her local conditions must be contextualized.<sup>29</sup> Thus, the need to improve the law to address the systemic gaps and deficiencies.

The policy consideration for law reforms ought to contemplate a remedial purpose that is efficient in order to mitigate the perpetuity of systemic defects.<sup>30</sup> Being that the STMA was modelled following UCC Art 9 and UNCITRAL Model law which was inspired by UCC Art 9, this paper will analyze and address the gaps in the STMA in light of these laws.<sup>31</sup>

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<sup>25</sup> Ozekhome (n 4) 46.

<sup>26</sup> Ibid. 4.

<sup>29</sup> Ibid 47; Chika Ezeanya-Esiobu, 'How Africa can use its traditional knowledge to make progress' (*TED*, 9 September

2017)<[https://www.ted.com/talks/chika\\_ezeanya\\_esiobu\\_how\\_africa\\_can\\_use\\_its\\_traditional\\_knowledge\\_to\\_make\\_progress/footnotes](https://www.ted.com/talks/chika_ezeanya_esiobu_how_africa_can_use_its_traditional_knowledge_to_make_progress/footnotes)>accessed 17 April 2020 ; Muritala Dauda, Mohammad Zaki Bin Ahmad and Mohammad Faisol Keling, 'Appraisal of African Solutions to African Problems: An Empirical Analysis of the African Union's Experience' (2018) 6(3) Asian Journal of Multidisciplinary Studies 60, 66.

<sup>30</sup> Ngozi Okonjo-Iweala, *Reforming the Unreformable: Lessons from Nigeria* (MIT Press 2012) 6, 24.

<sup>31</sup> Hideki Kanda, 'Methodology for harmonization and modernization of legal rules on secured transactions: legal, functional, or otherwise?' (2017) 22 Unif. L. Rev., 885; Ozekhome (n 4) 40,53.

### 1.3 Research Questions

The main research question is whether Nigeria's secured transactions reform enshrined into the STMA provide predictability to ensure that creditors will easily know who will have what priority and as a result extend more credit to finance SMEs at a favorable term like the UCC Art 9 and UNCITRAL Model law?

The subsidiary questions are on the scope of movable assets (tangible and intangible) that can be used as collateral. In this regard, does the law recognize the use of receivables, inventory and Intellectual Property rights (hereinafter: IP rights) as collateral to make access to finance for SMEs easy and affordable?

Also, does the law provide clear rules of perfection which also impact the needed clarity for the rules of priority? Furthermore, what enforcement avenues are available to secured creditors under the Nigerian Regime? Does it provide for self-help repossession, strict foreclosure, disposition and other means to ensure quick and efficient enforcement for the creditor? Being that the creation of a unitary security device rests on the provision of clear and predictable steps in creating and enforcing security interests.<sup>32</sup> The efficient operation of the creation, rules of perfection, priority and enforcement of a security interest are interrelated as the admission of a wide scope of movable assets as collateral will enable SMEs access credit at a lower cost.<sup>33</sup> Again, providing transparent rules of perfection and priority will enable creditors measure their risk appetite and repose trust in the system.<sup>34</sup> The provision of quick and expedited enforcement

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<sup>32</sup> White and Summers (n 13) 1149.

<sup>33</sup> Anthony Saunders, Anand Srinivasan, Ingo Walter and Jeffrey Wool, 'The Economic Implications of International Secured Transactions Law Reform: A Case Study' (1999) 20 U Pa J Int'l Econ L 309, 311.

<sup>34</sup> *ibid.*

procedures will incentivize creditors to advance more loans at lower terms.<sup>35</sup> In the absence of these, access to credit for SMEs will be impeded by unfavorable loan requirements.

#### 1.4 Structure of the Thesis

**In Chapter one**, this thesis will first show the importance of secured transactions in financing SMEs. It will also investigate the significance of secured lending and the objective of UNCITRAL Model law and UCC Art 9. It will then analyze the functional approach of secured lending under both laws and show the terminology used for secured transactions.

This is essential to lay a necessary foundation that captures the solutions embedded in an efficient secured transactions regime. Even more, it will show the solutions advanced by both laws to serve as a guide for secured transactions reforms.

**In Chapter two**, it will make a case for SME financing, it will also analyze the connection between the STMA and the need for credit. It will then investigate the scope of acceptable collateral under the Nigerian regime. It will further analyze the rules of perfection and priority for which transparent rules are critical to increase lending at a lower cost and to gain the trust of creditors. This analysis will be achieved by comparing the STMA with UNCITRAL Model law and UCC Art 9 which were influential for the Nigerian reforms. Again, it will evaluate the enforcement mechanism employed in the STMA and investigate whether it provides for quick and expedited procedures.

In all this paper will investigate the gaps in the STMA and make a case to address the defects by providing insight into the lending practices in the Nigerian regime. Thus, it will make recommendations to improve the STMA to promote access to credit for SMEs.

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<sup>35</sup> *ibid.*

### 1.5 A Word on Methodology, Bibliography and Caveats on the Sources

To achieve this, a doctrinal research methodology will be used to examine statutes, case – law and secondary sources. Furthermore, this thesis will critique the rules of perfection, priority and enforcement in the Nigerian regime with reference to UCC Art 9 and the UNCITRAL Model law, both of which inspired the Nigerian secured transactions reforms.<sup>36</sup> The purpose of this capstone thesis is to investigate and address the gaps in the STMA relating to steps for creating a security interest and proffer recommendations to improve lending practices for SMEs.

Whilst conducting this research, a glaring limitation is that the Nigerian secured transactions reform is a novel law and as such there are insufficient materials on it.<sup>37</sup> Iheme, Otabor-olubor, Esangbedo and Ozekhome are the few leading scholars with written publications on Nigerian secured transactions law.<sup>38</sup> More so, there is a lack of empirically oriented research on this newly instituted law. Only the Central Bank of Nigerian (hereinafter: CBN) has produced a statistically oriented data which the author will analyze with reference to secondary sources of information. By way of admonition, these limitations have resulted in the authors' recourse to secondary sources of information.

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<sup>36</sup> Ozekhome (n 4) 40, 53.

<sup>37</sup> *ibid.* 1.

<sup>38</sup> Chima W Iheme, *Towards Reforming the Legal Framework for Secured Transactions in Nigeria: Perspectives from the United States and Canada* (Springer International Publishing, 2016); Iyare Otabor-Olubor, 'Reforming the law of secured transactions: bridging the gap between the company charge and CBN Regulations security interests' (2017) 17 *Journal of Corporate Law Studies* 39; Mike A Ozekhome, *Personal property law in Nigeria* (Pretoria University Law Press 2019) ; Gregory Esangbedo, 'Receiverships and the reform of personal property security law in Nigeria' (2019) 45 *Commonwealth Law Bulletin*, 3.

## Chapter 1: Overview of Secured Transactions Law

### 1.1 Importance of Secured Transactions Law in Financing Small and Medium Sized Enterprises

Access to finance for SMEs is crucial to the growth and developmental potential of an economy.<sup>39</sup> Accordingly, barriers to financing SMEs can stagnate economic growth.<sup>40</sup> A poor credit system limits economic growth.<sup>41</sup> Through the institutional framework of a functional secured transactions law, lenders and borrowers can advance and access credit at complementary financial terms to foster economic growth.<sup>42</sup> To illustrate this, in the Nigerian regime lending is conducted by banks, other financial institutions and the informal sector.<sup>43</sup> However, to attain low cost credit it is critical to incentivize banks through a secured transactions reform that ensues predictability which will result in the availability of low cost credit and ultimately lead to increased GDP.<sup>44</sup> The World Bank measures getting credit under the auspices of the World Bank Ease of Doing Business Report based on the depth of secured transactions reforms through indicators that show low cost lending and increased availability of credit.<sup>45</sup>

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<sup>39</sup> Alejandro Alvarez de la Campa, 'Increasing Access to Credit through Reforming Secured Transactions in the MENA Region' (2011) World Bank Policy Research Working Paper No 5613.

<sup>40</sup> *ibid.*

<sup>41</sup> Frederique Dahan and John Simpson, *Secured Transactions Reform and Access to Credit* (Edward Elgar Publishing 2009) p.3.

<sup>42</sup> *ibid.*

<sup>43</sup> Ozekhome (n 4) 4.

<sup>44</sup> Simeon Djankov, Andrei Shleifer and Caralee McLiesh, 'Private Credit In 129 Countries' (2007) 84 (2) *Journal of Financial Economics* 299-329.

<sup>45</sup> World Bank 'Getting Credit Methodology' (*Doing business database*) <<https://www.doingbusiness.org/en/methodology/getting-credit>> accessed 2 April 2020.



The pivotal role played by SMEs in emerging economies is endorsed globally.<sup>46</sup> SMEs are instrumental in filling unemployment gaps through their demand for intensive labor.<sup>47</sup> However, lack of low-cost financing has hindered the growth of SMEs in developing economies like Nigeria.<sup>48</sup> Over 87% of businesses operational in Nigeria are SMEs, accordingly access to finance will improve their survival and growth.<sup>49</sup> The requirement for adequate collateral in form of real property has rendered personal property which forms the bulk of SMEs asset as insufficient collateral.<sup>50</sup> Thus, most SMEs have retreated from applying for loans due to the burdensome collateral requirements which they are unable to meet.<sup>51</sup> Due to inadequate collateral, the unpredictability of the market and the short life span of SMEs, providing finance presents a high risk for creditors.<sup>52</sup> An efficient secured transactions law would admit the use of personal property which comprise of tangible movable assets like equipment, goods or inventory and intangible movable assets also known as choses in action like receivables and IP rights.<sup>53</sup> An efficient secured transactions law would also provide transparent rules of priority to protect the interest of lenders against competing claims of third parties.<sup>54</sup> Similarly, under UCC Art 9 the sanctity of secured transactions is hinged on predictable rules of priority to protect the interest of secured creditors.<sup>55</sup> Again, the use of expedited rules of enforcement is critical to mitigate potential risk of non-payment in secured

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<sup>46</sup> Thorsten Beck, 'SMEs, Growth and Poverty: Cross-Country Evidence' (2005) 10 *Journal of Economic Growth* 199, p.200.

<sup>47</sup> *ibid.*

<sup>48</sup> Oreoluwa R Akingunola, 'Small and Medium Scale Enterprises and Economic Growth in Nigeria: An Assessment of Financing Options' (2011) 2(1) *Pakistan Journal of Business and Economic Review* p.80.

<sup>49</sup> *ibid* 82, 88.

<sup>50</sup> Fleisig Heywood, Safavian Mehnaz and De la Pena Nuria, *Reforming Collateral Laws to Expand Access to Finance* (1<sup>st</sup> edn, World Bank Publications 2006) p. 10.

<sup>51</sup> *ibid.*

<sup>52</sup> Akingunola (n 48) 83.

<sup>53</sup> Louise Gullifer and Orkun Akseli, *Secured Transactions Law Reform* (Hart Publishing 2016) p.2; Roy Goode, *Commercial Law* (Penguin 1996) p. 28 – 25.

<sup>54</sup> Saunders et al (n 33) 316.

<sup>55</sup> *Knox v. Phoenix Leasing Incorporated* [No. A062177. First Dist., Div. Four. Oct 31, 1994.]

lending.<sup>56</sup> This ensures the creditor's recovery of his interest having advanced a loan and it increases the availability of credit with better terms.

It is essential that the system protects both the interest of the creditor and the debtor. However, if little or no protection is afforded to the creditor, it stifles lending practices and access to finance for SMEs.<sup>57</sup> An efficient secured transactions regime requires a legal framework with well-coordinated institutions like a registry, courts, notaries, trustees, credit information, a well-functioning market and other authorities.<sup>58</sup> Despite attempts made to reform lending practices, the presence of an antiquated legal system will impair such reforms.<sup>59</sup> Thus, the need to refine institutional defects to reflect uniform registry models and expedited enforcement procedures amongst others.<sup>60</sup> Reformed systems like UCC Art 9 and OPPSA are predicated on similar building blocks such as a unitary concept of security interests, public notice filing of security interest, the concept of floating liens and purchase-money security, priority system, enforcement and complementary role of bankruptcy law, consumer protection law, civil procedure and enforcement.<sup>61</sup> The reforms in UCC Art 9 provide clarity in the rules of priority as opposed to its pre-era of segmented security devices with onerous and complex registration requirements.<sup>62</sup> This was achieved through its reform that introduced a unitary functional approach which recognizes a single set of security device and a common approach in the creation and enforcement of security interest.<sup>63</sup> The OPPSA was also complex and required

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<sup>56</sup> Saunders et al (n 33) 316.

<sup>57</sup> *ibid.*

<sup>58</sup> Teresa Rodriguez de las Heras Ballell, 'Digital Technology-Based Solutions for Enhanced Effectiveness of Secured Transactions Law: The Road to Perfection' (2018) 81 *Law & Contemp Probs* 21, 23.

<sup>59</sup> *ibid.*

<sup>60</sup> *ibid.*

<sup>61</sup> Tibor Tajti, *Comparative Secured Transactions law* (Akademiai Kiado, Budapest 2002) pp. 141, 400.

<sup>62</sup> Ziegel (n 6) 686.

<sup>63</sup> *ibid.*

affidavits in the registration process.<sup>64</sup> It's reform adopted UCC Art 9's unitary security device, though with some changes.<sup>65</sup> The reforms of these regimes have stimulated economic growth thus, the essence of an efficient secured transactions law to enhance access to finance for SMEs.<sup>66</sup>

A primary aim of Secured transactions law as evinced under UCC Art 9 is to achieve legal certainty through assembling laws that advance a uniform legal system.<sup>67</sup> Again United Nations Commission on International Trade Law (UNCITRAL) advocates that maximal access to credit must be underpinned by a secured transactions law that mitigates credit risk.<sup>68</sup> This promotes party autonomy and allows parties to exercise contractual autonomy based on the rules that underpin secured lending.<sup>69</sup> It is such that the creditors interest is created over the debtors personal property which the debtor can still utilize whilst ensuring predictable priority rights of the secured creditor against competing claims.<sup>70</sup> This is to ensure that the creditors right can be enforced expeditiously and to notify the public of the security interest created in the debtors asset.<sup>71</sup> Upon default, repayment of the debt is premised on clear rules of priority.<sup>72</sup> The requirement for a collateral mitigates the risk of losing the principal and interest when a

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<sup>64</sup> *ibid.*

<sup>65</sup> *ibid.*

<sup>66</sup> *Iheme* (n 17) 7-9.

<sup>67</sup> Giuliano G Castellano and Marek Dubovec, 'Global Regulatory Standards and Secured Transactions Law Reforms: At the Crossroad between Access to Credit and Financial Stability' (2018) 41 *Fordham Int'l LJ* 531, 542; Karl N. Llewellyn, 'Problems of Codifying Security Law' (1948) 13 *LAW & CONTEMP. PROBS.* 687, 690; Neil B. Cohen, 'Harmonizing the Law Governing Secured Credit: The Next Frontier' (1998) 33 *Tex. INT'L L. J.* 173.

<sup>68</sup> UNCITRAL Legislative Guide on Secured Transactions, 2010.

<sup>69</sup> Castellano and Dubovec (n 67) 546.

<sup>70</sup> *ibid.*

<sup>71</sup> *ibid.*

<sup>72</sup> Grant Gilmore, 'The Secured Transactions Article of the Uniform Commercial Code', (1951) 16 *LAW CONTEMP. PROBS.* 27, 29.

borrower becomes insolvent.<sup>73</sup> It serves as a cushion for secured creditors, in the event that the borrower defaults.<sup>74</sup>

Unlike unreformed countries where only real property is admitted as collateral, reformed countries have facilitated the use of movable assets as collateral to access credit through the instrumentality of effective legal and financial systems.<sup>75</sup> Notably, UCC Art 9 utilizes the term “personal property” which comprise of all property other than real property while the term “movable assets” is used in the Nigerian regime.<sup>76</sup> Both terms are interchangeable, but they entail different scopes under various regimes.<sup>77</sup> The aim of secured lending is to minimize the cost of accessing finance and increase the availability of loans whilst protecting the interest of secured creditors.<sup>78</sup>

Efficient secured lending provides for clear rules of priority that are effective against competing claims of third parties.<sup>79</sup> This is also dependent on clarity in the rules of perfection and the strength of the legal system to enforce contractual rights at insolvency.<sup>80</sup> The practicability of secured transactions law can be hampered by weak enforcement mechanisms and poorly drafted ambiguous rules of priority.<sup>81</sup> Complicated rules of priority can result in non-realization of enforcement at default.<sup>82</sup> As a result, creditors clamor for immovable assets such

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<sup>73</sup> Saunders et al (n 33) 315.

<sup>74</sup> *ibid.*

<sup>75</sup> *ibid* 318.

<sup>76</sup> Tajti (n 61) 42, 55, 92; STMA, s 1.

<sup>77</sup> *ibid.*

<sup>78</sup> Castellano and Dubovec (n 67) 536.

<sup>79</sup> Saunders et al (n 33) 316.

<sup>80</sup> Anthony Saunders, *Financial Institutions Management: A Modern Perspective* (2nd edn, Irwin Series 1997) 176-214.

<sup>81</sup> Fleisig Heywood, ‘The Power of Collateral: How Problems in Securing Transactions Limit Private Credit for Movable Property’ (1995) World Bank, Public Policy for the Private Sector; Saunders et al (n 33) 318.

<sup>82</sup> Saunders (n 79).

as land to protect their interest.<sup>83</sup> A recognition of the adequacy of movable assets as collateral is sequel to the institution of clear rules for creation (attachment), perfection, priority, enforcement and legal certainty in the event of default by the debtor.<sup>84</sup>

The potential risk of losing the loan advanced offers no protection to creditors and it hampers lending practices.<sup>85</sup> To illustrate this, countries like the US utilize clear rules of perfection, priority and enforcement in secured lending to offer more loan facility at a lower cost while countries like Argentina and Bolivia with complex rules and an inefficient judicial system offer loans at a higher cost with less incentive.<sup>86</sup>

## 1.2 The Objective of the UNCITRAL Model Law & UCC ARTICLE 9

UNCITRAL Model law is designed to assist states in their secured transactions law reforms.<sup>91</sup> Notably, there are International organizations such as European Bank for Reconstruction and Development (ERDB) aimed at improving secured transactions regimes at national levels while the Organization for Harmonization of Corporate Law in Africa ( OHADA) is targeted towards a uniform legal framework for cross border commercial transactions.<sup>92</sup> This paper will focus on the objective of UNCITRAL Model law and UCC Art 9. UNCITRAL Model law provides the legal framework for states to implement clear rules of priority with expedited enforcement procedures which are critical in an efficient secured transactions regime.<sup>93</sup> To achieve

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<sup>83</sup> Saunders et al (n 33) 317.

<sup>84</sup> *ibid.*

<sup>85</sup> *ibid.*

<sup>86</sup> Heywood (n 81).

<sup>91</sup> Claudia M Gross, 'News from the United Nations Commission on International Trade Law (UNCITRAL): UNCITRAL towards the End of 2016' (2016) 21 Unif L Rev 720, 721.

<sup>92</sup> Rodriguez de las Heras Ballel (n 58) 26.

<sup>93</sup> UNCITRAL Model Law on Secured Transactions, 2016 Chapter II, III, V, VI, VII.

uniformity in secured transactions regimes, it governs the creation of security rights over a wide range of assets.<sup>94</sup>

It also clarifies the organization and the operation of the registry system and provides for the adoption of flexibility to recognize legal traditions when states enact their secured transactions reforms.<sup>95</sup> However, it is the prerogative of the enacting state to balance different competing interests in their secured transactions reform.<sup>96</sup> To illustrate this, the STMA departed from UNCITRAL Model law registration provision by recognizing registration under the Companies and Allied Matters Act (CAMA), a state legislation that regulates the registration of charges.<sup>97</sup> UNCITRAL Model law is aimed to mitigate legal obstacles that impede the life span and growth of SMEs especially in developing economies.<sup>98</sup> More so, it fosters reduced capital requirement for SMEs by extending the use of movable asset as acceptable collateral.<sup>99</sup>

UCC Art 9 provides a uniform framework for secured lending with predictable rules of priority and low cost of accessing credit.<sup>100</sup> It utilizes a functional approach that permits parties to exercise autonomy in creating security agreements.<sup>101</sup> Thus, it applies to any transaction irrespective of the form utilized.<sup>102</sup> Both UNICTRAL Model law & UCC Art 9 provide unambiguous and understandable rules that can rectify the defects in antiquated and complicated secured transactions laws.<sup>103</sup> They provide effective rules to clarify competing

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<sup>94</sup> UNCITRAL Model Law, 2016 Art 2(ii), Chapter II.

<sup>95</sup> UNCITRAL Model Law, 2016 Chapter VIII, IX, IV.

<sup>96</sup> Marek Dubovec and Louise Gullifer, *Secured Transactions Law Reform in Africa* (1st end, Hart Publishing 2019) p. 35.

<sup>97</sup> Gross (n 91) 721; Laws of the Federal Republic of Nigeria, Companies & Allied Matters Act, 1990 s179.

<sup>98</sup> Gross (n 91) 724.

<sup>99</sup> Giuliano Castellano and Marek Dubovec, 'Coordinating Secured Transactions Law and Capital Requirements UNCITRAL Congress' (2017) Economic and Social Research Council, Vienna.

<sup>100</sup> William H Lawrence, William H Henning and Wilson R. Freyermuth, *Understanding Secured Transactions* (4th edn, LexisNexis 2009) p.6.

<sup>101</sup> *ibid.*

<sup>102</sup> UCC § 9-102(l)(a).

<sup>103</sup> Dubovec and Gullifer (n 96).

interests and protect weaker parties.<sup>104</sup> These laws further limit the risk of complicated rules of priority and have resulted in efficient legal principles to foster lending practices.<sup>105</sup> UNCITRAL Model law was inspired by UCC Art 9 and has influenced the reforms in developing economies like Nigeria.<sup>106</sup>

### 1.3 Secured Transactions Law and the Functional Approach

The functional approach is a policy choice made by the drafters of UCC Article 9 to recognize the creation of a security interest irrespective of the label of the transaction.<sup>107</sup> Provided that it creates a security interest in the personal property of a debtor in exchange for credit.<sup>108</sup> Thus, it admits a wide range of security devices that perform the same function to address business needs.<sup>109</sup> Its basic feature is that it extends to all consensual security devices that utilize personal property as collateral.<sup>110</sup> To illustrate this, while in English, German and many civil law systems leasing and conditional sales contracts are perceived differently from security agreements such as pledge or chattel mortgage, under UCC Article 9 each of these are covered by the unitary system.<sup>111</sup> Thus, the title and form are irrelevant provided the transaction performs a security function it is subject to the same legal regime.<sup>112</sup> To decide whether a transaction creates a security interest, if it serves as a collateral it is subject to the rules under

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<sup>104</sup> *ibid.* 36.

<sup>105</sup> Castellano and Dubovec (n 67) 548, 551.

<sup>106</sup> Kanda (n 31).

<sup>107</sup> Tajti (n 61) 54.

<sup>108</sup> *ibid.*

<sup>109</sup> Roy Goode, 'Security: A Pragmatic Conceptualists Response' (1989) 15 *Monash U. L. REV.* 361, 362.

<sup>110</sup> Tajti (n 61) 54.

<sup>111</sup> *ibid.*

<sup>112</sup> *Ibid*; Michael G Bridge and Roderick A Macdonald and Ralph L Simmonds and Catherine Walsh, 'Formalism, Functionalism, and Understanding the Law of Secured Transactions' (1999) 44 *McGill L J* 567.

UCC Art 9.<sup>113</sup> Thus, it recognizes the substance over the form to mitigate complications that result from novel forms of security agreements and the application of different laws.<sup>114</sup>

UNCITRAL Model law utilizes the functional approach in its creation of security interest to bring all transactions that perform the same functions under the same legal regime.<sup>115</sup> Again, it allows parties to autonomously enter consensual agreements whilst following the common approach of creating, perfecting and enforcing a security instrument to qualify as a security transaction.<sup>116</sup> However, such agreements must conform to the rules of perfection to be effective against third parties.<sup>117</sup>

Again, UNCITRAL Model law is aimed at facilitating the simplicity and clarity of rules that define the rights and obligations of parties in secured transaction.<sup>118</sup> This admits minimal requirements for the creation of security rights as evinced in the requirement of general description for a collateral.<sup>119</sup> It is futile to innovate without recognition of the registration requirements as this renders a security interest invalid.<sup>120</sup> The functional approach promotes predictability in the creation, rules of perfection, priority and enforcement procedure of a security interest all of which promote lending practices.<sup>121</sup>

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<sup>113</sup> Iheme (n 17) 97.

<sup>114</sup> *ibid.* 185.

<sup>115</sup> United Nations, 'Text and Statute: UNCITRAL Model law on Secured Transactions (2016)' <[https://uncitral.un.org/en/texts/securityinterests/modellaw/secured\\_transactions](https://uncitral.un.org/en/texts/securityinterests/modellaw/secured_transactions)> accessed 3 April 2020.

<sup>116</sup> Steven L Harris & Charles W Mooney, *Security Interests in Personal Property: Cases, Problems and Materials* (6th edn, University Casebook Series 2015) 84-85; Anthony J Duggan & Jacob S Ziegel, *Secured Transactions in Personal Property: Cases, Text, and Materials* (6th edn, Emond Montgomery Publications 2013) 20-21.

<sup>117</sup> Castellano and Dubovec (n 67) 546.

<sup>118</sup> *ibid.* 548.

<sup>119</sup> UNCITRAL Model law 2016, Art 6, 9.

<sup>120</sup> Kanda (n 31).

<sup>121</sup> *ibid.*



## 1.4 Terminology of UNCITRAL Model Law & UCC Art 9

Secured transactions law terminology is complex, especially if more legal systems, each with differing nomenclature, is compared.<sup>122</sup> This requires commenting on the meaning of key security devices which will be used in this thesis such as lien, security interest and charges. More so, this thesis will comment on the different steps to create a security interest such as attachment, rules of perfection, priority and enforcement procedure under UNCITRAL Model law and UCC Art 9.

### 1.4.1 Security Device

It is essential to deconstruct the ambiguity of some terms which create an interest and secure the performance of an obligation over personal property.<sup>123</sup>

#### 1.4.1.1 Lien

A lien has a different connotation under English law and US law.<sup>124</sup> Under English Law, it depicts a right to retain interest in a chattel by operation of law.<sup>125</sup> Thus, it is a mere passive right of retention absent of the corresponding right to sell property.<sup>126</sup> The Nigerian system follows English Law and operates on a similar a basis.<sup>127</sup>

Contrarily under US law, UCC Art 9 a security interest is portrayed as a consensual lien not limited to a passive right that is known as a mechanic's lien under Art 9.<sup>128</sup> A lien comprises

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<sup>122</sup> Iheme (n 17) 14-15.

<sup>123</sup> Tajti (n 61) 34.

<sup>124</sup> *ibid* 40.

<sup>125</sup> EBRD, *Law in Transition* (Autumn, 2000) p.27.

<sup>126</sup> *Mulliner v Florence* (1878) 3 QBD 484.

<sup>127</sup> Iheme (n 17) p.13.

<sup>128</sup> Tajti (n 61) 40 - 41; Mechanic's lien is "[a] statutory lien that secured payment for labor or materials supplied in improving, repairing, or maintaining real or personal property, such as a building, an automobile, or the like." See Bryan A Garner, *Black's Law Dictionary* (9<sup>th</sup> edn, Deluxe 2009).

of claims, encumbrances or charges on property to secure the performance of an obligation.<sup>129</sup> The Bankruptcy Code defines it as a common term for charges or interest to secure a debt obligation.<sup>130</sup> The US lien has a wider context under bankruptcy law due to the priority rankings under statutory, judicial or consensual lien which is based on the criterion of how they are created respectively by statute, by court decisions or by agreement of parties.<sup>131</sup>

#### 1.4.1.2 Security Interest

A security interest is a bundle of rights that attaches to the asset of the debtor to secure the performance of an obligation.<sup>132</sup> In other words, it is an in rem right that survives bankruptcy of the debtor and is valid against the entire world. Unless specifically excluded in an agreement, it may extend to all types of personal property. The author is opined that clear rules of perfection, priority and enforcement are essential to promote creditor trust in a secured transactions regime and thus, increase access to finance for SMEs. Consequently, a secured transactions regime that complicates these rules would have confused its objective.<sup>133</sup>

#### 1.4.1.3 Charges

The English charge which is adopted under Nigerian regime is a security interest created over a debtor's asset without the transfer of ownership rights or possession to the creditor.<sup>142</sup> Under both regimes, charges are restricted to incorporated companies.<sup>143</sup> Although, in English law priority is determined by the date of creation while the Nigerian regime recognizes the date of

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<sup>129</sup> Tajti (n 61) 41; UCC s 1-201 (37).

<sup>130</sup> US Bankruptcy Act § 101 (37).

<sup>131</sup> Tajti (n 61) 41.

<sup>132</sup> Tajti (n 61) 22-23; UCC s 1-201(37).

<sup>133</sup> Castellano and Dubovec (n 67) 550.

<sup>142</sup> Tajti (n 61) 91.

<sup>143</sup> Aina Kunle, 'Procedure for Registration of Charges in Nigeria - Need for Urgent Reforms' (2015) <https://ssrn.com/abstract=2605196> accessed 19 May 2020.

registration.<sup>144</sup> There are two types of charges, the floating charge and the fixed charge.<sup>145</sup> A floating charge is one that covers both present and future assets that have a changing nature and can be used in the ordinary course of a business.<sup>146</sup> On the other hand, under a fixed charge, the debtor cannot exercise control over the assets.<sup>147</sup> At the event of default, the floating charge crystalizes into a fixed charge which terminates the debtors right of control over the assets.<sup>148</sup> Case law established the creation of a charge over after-acquired property without the need for a new act of registration.<sup>149</sup> This extends the priority ranking of the creditor over the after-acquired property of the debtor.<sup>150</sup>

Under US law, the concept of a floating lien is in use.<sup>151</sup> This gives the creditor exclusive control over all the debtors present and future asset.<sup>152</sup> It is such that it can be problematic for an insolvent debtor as it advances into the future yields of a business.<sup>153</sup>

#### 1.4.2 Steps to make a Security Interest

These are the key elements to create a valid security interest. They include attachment, rules of perfection, the rules of priority and enforcement.

##### 1.4.2.1 Attachment of a Security Interest

Attachment signifies the first of the steps taken to create a security interest through a security agreement.<sup>154</sup> However, such an interest is only valid against the two contracting parties

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<sup>144</sup> *ibid.*

<sup>145</sup> *ibid.*

<sup>146</sup> *Re Spectrum Plus Ltd* [2005] 2 AC 680 [99].

<sup>147</sup> *ibid* 107.

<sup>148</sup> Roy M. Goode, *Commercial Law* (2<sup>nd</sup> edn, Sweet & Maxwell 1995) p. 714 – 15.

<sup>149</sup> *Holroyd v Marshall* (1862) 10 HL Cas 191.

<sup>150</sup> *ibid.*

<sup>151</sup> *Tajti* (n 61) 91.

<sup>152</sup> *ibid.*

<sup>153</sup> *Gilmore* (n 10) 360.

<sup>154</sup> *Tajti* (n 61) 33.

involved as third parties are not privy to the agreement.<sup>155</sup> This creates an unperfected security interest, which ranks equally with general claims in bankruptcy proceedings.<sup>156</sup> A security interest only attaches when all necessary steps have occurred.<sup>157</sup> The following are prerequisites for a security interest to attach. There must be an agreement, with a given consideration and a collateral which the debtor has a right to.<sup>158</sup> The collateral is to mitigate the related risk of the transaction.<sup>159</sup> The attached collateral connotes the recognized rights a creditor has at default of the debtor.<sup>160</sup> However, a security interest can only be enforced against third parties when it has been perfected following either of the rules of perfection such as possession, notice filing or automatic perfection.<sup>161</sup>

#### 1.4.2.2 Rules of Perfection

In the Nigerian regime a security interest can be perfected through control, possession, notice-filing and automatically.<sup>162</sup> The rules of perfection are aimed to make security rights effective against third parties.<sup>163</sup> UNCITRAL Model law provides for rules of perfection to notify the public that a security interest has been created on the encumbered asset.<sup>164</sup> It recognizes perfection through registration, possession, control or registration.<sup>165</sup> It is paramount for such rules to be transparent to achieve clarity in the rules of priority. As such, a notice filing approach using a standardized form with general information will serve as sufficient notification against

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<sup>155</sup> *ibid.* 37-38.

<sup>156</sup> *ibid.* 38.

<sup>157</sup> Tajti (n 61) 38.

<sup>158</sup> *ibid.*

<sup>159</sup> *ibid.* 33.

<sup>160</sup> *ibid.* 34.

<sup>161</sup> *ibid.* 40.

<sup>162</sup> STMA, 2017 s 8(2).

<sup>163</sup> Rodriguez de las Heras Ballel (n 58) 28.

<sup>164</sup> Castellano and Dubovec (n 67) 547.

<sup>165</sup> UNCITRAL Model Law 2016, Art 18(1), 26.

third parties.<sup>166</sup> UNCITRAL Model law advances the use of a uniform and centralized registry system.<sup>167</sup> Being that an efficient registry is central to every secured transactions regime as it provides for proper disclosure and validity in the notification process of encumbered assets to future creditors.<sup>168</sup>

#### 1.4.2.3 Priority

The priority rules' primary function is to fix the ranking of security interest, both within and outside the context of bankruptcy proceedings.<sup>169</sup> This is of importance to show how creditors will rank based on whether a creditor is secured or unsecured. Under UNCITRAL Model law, it means "the right of a creditor in an encumbered asset in preference to the right of competing claims".<sup>170</sup> Legal title offers a higher priority ranking as compared to an equitable interest.<sup>171</sup> Under US law, priority is determined by the first in time rule.<sup>172</sup> The order of creation determines priority.<sup>173</sup>

#### 1.4.2.4 Enforcement

The US system is a cumulative enforcement system, such that both court and out of court enforcement methods are recognized.<sup>174</sup> UCC Art 9 provides for efficient enforcement procedure through a bailiff system, execution system, self-help procedures such as repossession, disposition and foreclosure and through provisional measures that enhance the creditors position.<sup>175</sup> Self-help repossession rules make the US system outstanding, though the

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<sup>166</sup> UNCITRAL Model law 2016, Art 18.

<sup>167</sup> Kanda (n 31) 888.

<sup>168</sup> *ibid.*

<sup>169</sup> *ibid.*

<sup>170</sup> UNCITRAL Model law 2016, Art 2(aa).

<sup>171</sup> Goode (148) 706.

<sup>172</sup> Tajti (n 61) 164.

<sup>173</sup> Goode (148) 706.

<sup>174</sup> Tajti (n 61) 182.

<sup>175</sup> *ibid.*

enforcement method is rejected by civil law systems.<sup>176</sup> US law applies without breach of peace standard to balance both the interests of the debtor and creditor.<sup>177</sup> More so, creditor enhancing devices are used such as a cognovit where the debtor consents to an ex-parte judgement without possible defense.<sup>178</sup> More so, an acceleration clause is used to expedite the time for the loan repayment.<sup>179</sup> These procedures ensure quick and speedy enforcement of the creditors interest whilst protecting the interest of the debtor.

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<sup>176</sup> Tibor Tajti, A Holistic Approach to Extra Judicial Enforcement and Private Debt Collection – A Comparative Account of Trends, Empirical Evidences, and the Connected Regulatory Challenges (2019) X (2) *Pravni Zapisi* 275, 279.

<sup>177</sup> *Williams v. Ford Motor Credit Company* 674 F.2d 717 (8th Cir. 1982).

<sup>178</sup> *D. H. Overmyer Co., Inc. v. Frick*, 405 U.S. 174 (1972)

<sup>179</sup> *K.M.C. Co. v. Irving Trust Co.* 757 F.2d 752. (6th Cir. 1985)

## Chapter 2: A Framework of the Nigerian Regime (Secured Transactions in Movable Assets Act)

### 2.1 A Case for SME Financing in the Nigerian Regime

SMEs constitute over 80% of Nigeria's businesses and are crucial to the economy.<sup>180</sup> However, they are dependent on access to finance to perpetuate their life span.<sup>181</sup> Finance institutions in Nigeria, prefer the use of immovable asset as adequate collateral as opposed to movable property.<sup>182</sup> Thus, the enactment of the Secured Transaction in Movable Asset Act which is also referred to as Collateral Registry Act to facilitate the use of movable assets and stimulate access to finance for SMEs.<sup>183</sup> The STMA, alongside the Credit Reporting Act are to stimulate lending practice and address the issue of ostensible ownership to curtail information asymmetry.<sup>184</sup>

The world bank recognises the preference of financial institutions to accept immovable collateral which constitute, however, merely 22% of the assets of SMEs.<sup>185</sup> Thus, the reforms under the STMA to promote the use of movable asset as collateral.<sup>186</sup> Nigeria has over 37 million SMEs which operate on a limited life-span due to lack of adequate collateral to access

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<sup>180</sup> LEPAD 'Review of the Secured Transaction in Movable Asset Act 2017: challenges and recommendations' (15 March 2019) <<http://ledapnigeria.org/review-of-the-secured-transaction-in-movable-asset-act-2017-challenges-and-recommendations/>> accessed 18 April 2020.

<sup>181</sup> *ibid.*

<sup>182</sup> Titilola Oludimu, It appears SMEs still cannot use movable assets to secure loans in Nigeria ( *Techpoint.Africa* , 31 October 2018) <<https://techpoint.africa/2018/10/31/implementing-movable-assets-act/>> accessed 18 April 2020.

<sup>183</sup> STMA, 2017 s 1.

<sup>184</sup> Oludimu (n 182).

<sup>185</sup> World Bank, 'Secured Transactions, Collateral Registries and Movable Asset-Based Financing' <<http://documents.worldbank.org/curated/pt/193261570112901451/pdf/Secured-Transactions-Collateral-Registries-and-Movable-Asset-Based-Financing.pdf>> accessed 22 April 2020 p.3.

<sup>186</sup> STMA 2017 s 1.

finance.<sup>187</sup> Over 89 % of loan applications to banks require a collateral<sup>188</sup> yet most firms are rejected due to inadequate collateral.<sup>189</sup> Obviously for more reasons, in 2017, the amount of loans given to SMEs declined from 0.099% to 0.067%.<sup>190</sup> Undoubtedly one of the key factors that lead to such undesirable result were the deficiencies of the legal system and specifically of the secured transactions.

With over 37 million micro, small and medium-sized companies, less than third of SMEs have access to credit from financial institutions and consequently they have no other option but to rely on personal savings or the informal sector as source of finance.<sup>191</sup> Thus, the short lifespan of SMEs owing to impeded access to capital.<sup>193</sup> The practice of credit rationing excludes some businesses from accessing loans where burdensome collateral requirements are imposed.<sup>194</sup> Consequently, some choose not even to apply.<sup>195</sup> The National Collateral Registry (NCR) was established to facilitate a credit reporting system in Nigeria and to spur access to credit using movable collateral.<sup>196</sup> In the World bank ease of doing business report 2020 which

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<sup>187</sup> Ifeanyi Ndiomewese, Why credit and financing still remain the bane of SMEs in Nigeria, ( *Techpoint.Africa*, 15 March 2018) <<https://techpoint.africa/2018/03/15/poor-implementaion-bane-of-sme-finance/>> accessed 19 April 2020.

<sup>188</sup> The World Bank. 'Nigeria Enterprise Survey (ES) 2014' <<https://www.enterprisesurveys.org/content/dam/enterprisesurveys/documents/country-profiles/Nigeria-2014.pdf>> accessed 22 April 2020.

<sup>189</sup> Heywood et al (n 50).

<sup>190</sup> Akande (n 3).

<sup>191</sup> World Bank, 'Nigeria: New Credit Infrastructure to Improve Access to Credit and Financial Inclusion' (14 March 2017) <<https://www.worldbank.org/en/news/feature/2017/03/14/nigeria-new-credit-infrastructure-to-improve-access-to-credit-and-financial-inclusion>> accessed 22nd April 2020.

<sup>193</sup> Heywood et al (n 50) 7.

<sup>194</sup> Ibid 90.

<sup>195</sup> Ibid 90.

<sup>196</sup> The World Bank (n 185).



measures the impact of business regulations in 190 countries, Nigeria was ranked 131.<sup>197</sup> The country's least developed area of reform is getting credit which is evident in the challenge of financing SMEs.<sup>198</sup>

## 2.2 Nexus Between the Secured Transaction in Movable Asset Act and the need for Credit in Nigeria

Impediments to accessing credit can stifle economic growth.<sup>199</sup> As it was understood by Macleod in the 19<sup>th</sup> century, "credit is the life blood of every economy".<sup>200</sup> It is through credit that households, college education, businesses and other ventures are funded.<sup>201</sup> The essence of credit to an economy cannot be over – emphasized as it is the precursor of economic growth.<sup>202</sup> The importance of credit to SMEs in the Nigerian regime is evinced in the legal framework of the STMA.<sup>203</sup> To foster lending practices, predictability of the lenders right in a given legal regime is key.<sup>204</sup> Lack of credit predicated on inadequate collateral has repressed the existence of many SMEs.<sup>205</sup> This has led the vulnerable populace to resort to fraudulent investments such as Ponzi schemes.<sup>206</sup> To exemplify this, replications of the MMM Ponzi scheme which had promised high returns but ultimately failed is still actively operational in

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<sup>197</sup> World Bank Group 'Doing Business 2020: Comparing Business Regulation in 190 Economies (24 October 2019) <<https://openknowledge.worldbank.org/bitstream/handle/10986/32436/9781464814402.pdf>> accessed 12 December 2020. p.4.

<sup>198</sup> *ibid* 8, 113, 114.

<sup>199</sup> Ozekhome (n 4) 3.

<sup>200</sup> Henry D MacLeod *The Principle of Economical philosophy* (Longmans 1872) VIII.

<sup>201</sup> *ibid*.

<sup>202</sup> Ozekhome (n 4).

<sup>203</sup> *ibid*. 5.

<sup>204</sup> Tibor Tajti, 'The law finance technology nexus in 21st Century; Is there a need to rethink the limits of law?' (2015) 37 *Society & Economy in Central and Eastern Europe*, 47.

<sup>205</sup> Ozekhome (n 4) 9.

<sup>206</sup> *ibid*. 9.

Nigeria.<sup>207</sup> These schemes also run a systemic risk to the banking sector as a large number of deposits are withdrawn to invest in such schemes.<sup>208</sup> Besides Ponzi schemes, other consequences of lack of credit are mirrored in high crime rate and low life expectancy.<sup>209</sup>

In order to foster access to credit, the STMA introduced the use of movable property as collateral.<sup>210</sup> Notably, the passage of the STMA was a step in the right direction as over 70% of assets owned by SMEs represent movable asset and the objective of the STMA is to simplify lending practices by admitting the use of movable asset as collateral.<sup>211</sup> This mirrors UNCITRAL Model law's scope of application to the use of movable assets as collateral.<sup>212</sup> In this respect, the STMA regulates the transfer of acquired rights in the movable asset from the debtor to the creditor pending the discharge of the debt.<sup>213</sup>

It provides the relevant framework for SMEs to access finance as it addresses the challenge of burdensome collateral requirements.<sup>214</sup> Again, it addresses issues of unfavourable loan terms devised by lenders to mitigate the risk of a default such as high interest rate and short repayment periods.<sup>215</sup> As iterated in the objectives of the act, it regulates and structures lending practices to enhance credit for SMEs.<sup>216</sup>

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<sup>207</sup> *ibid* 10 -11.

<sup>208</sup> *ibid*.

<sup>209</sup> *ibid*.

<sup>210</sup> STMA 2017 s 1.

<sup>211</sup> World Bank (n 185); *ibid*.

<sup>212</sup> UNCITRAL Model law 2016, Art 1.

<sup>213</sup> STMA 2017 s 2 (a) (b).

<sup>214</sup> Heywood et al (n 50) 1.

<sup>215</sup> *ibid*. 3.

<sup>216</sup> STMA 2017 s 1.

## 2.3 The Approach of Security Creation Under the Nigerian Regime

### 2.3.1 Attachment and Scope of Acceptable Collateral

The STMA was enacted by the Nigerian national assembly in May 2017.<sup>217</sup> The act defines Security Interest from a functional approach, such that its form does not preclude the performance of a security obligation.<sup>218</sup> The scope of the act applies to all movable assets provided the elements of a valid security interest are met.<sup>219</sup> Movable assets comprise of “tangible or intangible property other than real property”.<sup>220</sup> Tangible movable assets include “goods, farm products, inventory, equipment, and consumer goods”.<sup>221</sup> However, IP rights are presumably excluded due to the fact that the law on IP rights, regardless of the form is at stake, is underdeveloped and suffers from numerous deficiencies.<sup>222</sup>

For a security interest to be valid, it can be perfected by control, possession or notice filing at the collateral registry.<sup>223</sup> As perfection ensures the priority of the creditor over competing claims.<sup>224</sup> A conflicting aspect of the act is its provision for the creation of a floating charge which is regulated under the Companies and Allied Matters Act (hereinafter: CAMA) established by the Corporate Affairs Commission ( hereinafter : CAC).<sup>225</sup>

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<sup>217</sup> Dubovec and Gullifer (n 67) 151.

<sup>218</sup> STMA 2017 s 63(1).

<sup>219</sup> STMA 2017 s 2(1).

<sup>220</sup> STMA 2017 s 63(1).

<sup>221</sup> Ibid.

<sup>222</sup> Femi Olubanwo and Oluwatoba Oguntuase, Strengthening Intellectual Property Rights And Protection In Nigeria (*Mondaq* , 11 March 2019) <<https://www.mondaq.com/nigeria/trademark/788714/strengthening-intellectual-property-rights-and-protection-in-nigeria>> accessed 19 April 2020.

<sup>223</sup> STMA 2017 s 8.

<sup>224</sup> STMA 2017 s 23.

<sup>225</sup> CAMA 1990 S 179, 197; Ozekhome (n 4) 33; STMA s2(3).

CAMA mandates the registration of floating charge in CAC registry for it to be valid.<sup>226</sup> The continued recognition of a floating charge complicates the rules of priority as it is uncertain whether the CAC or the Collateral registry will have priority. The act requires a statement and an indemnity cover that a floating charge has been created on the debtor's asset.<sup>227</sup> This imposes an additional cost on the debtor, notwithstanding that an indemnity cover can be beneficial for the creditor. The act recognises the use of jointly owned collateral for the satisfaction of debt based on the extent of the debtor's interest.<sup>228</sup> This is advantageous as it reduces the cost of accessing credit.

It also provides a search facility where creditors can verify if the debtor's asset is encumbered by an existing interest.<sup>229</sup> However, in the Nigerian regime it is difficult to consolidate credit information due to multiplicity of identification information.<sup>230</sup> The MD of the Credit Bureau asserted to the poor credit reporting system in Nigeria.<sup>231</sup> Being that the information from electricity companies and telco operators is used as data to build credit data to depict a reliance and responsibility to repay. Asset Management Corporation of Nigeria (Hereinafter: AMCON) also provides a list of bad debtors and loans cannot be advanced to them. The absence of a unique identification affects access to credit for SMEs as creditors lack trust in a system that lacks optimal means of identifying debtors who can evade the system.<sup>232</sup>

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<sup>226</sup> Ibid.

<sup>227</sup> Ibid.

<sup>228</sup> STMA 2017 s 4(1).

<sup>229</sup> STMA 2017 s 22.

<sup>230</sup> Tunde Popoola, Multiple government issued identifiers affecting access to credit in Nigeria ( *The Insight*, 23 March 2020) < <https://www.theinsightng.com/money-market/multiple-government-issued-identifiers-affecting-access-credit-nigeria-popoola>> accessed 25 May 2020.

<sup>231</sup> Ibid.

<sup>232</sup> Ibid.

This question the efficiency of the search facility in ensuring that the creditor is not defrauded by the debtor? More so, it raises the need for policing requirement used under the Benedict Ritual to curtail unfettered dominion of the debtor.<sup>233</sup> The Benedict Ritual entails checking the debtor's affairs through a request for full disclosure at any time, examining the books or requesting for remittance of the receivables daily.<sup>234</sup> Despite the repeal of the Benedict Ritual by UCC Art 9, it is beneficial to infuse the policing requirements in a security agreement to ensure that the debtor does not engage in opportunistic activities which can defraud the creditor.<sup>235</sup> Given that secured transactions is not fully understood by lenders in Nigeria owing to its novel stance, if policing of debtors was plausible in a successful secured transactions regime as the US then same can apply in Nigeria a fortiori.<sup>236</sup>

### 2.3.2 Rules of Priority

What both the UNCITRAL Model Law and UCC Article 9 clearly show is that clear rules of priority are essential to establish the ranking of secured creditors and unsecured creditors. More so, to determine the potential for recovery and the risk accruing to a security interest.<sup>237</sup> The STMA stipulates that "Nothing in the act shall prevent the creation of security interest in the form of charges by companies registered under the companies and allied matters act".<sup>238</sup> It recognizes the creation of charges under the companies register pursuant to CAMA.<sup>239</sup> This complicates the rules of priority if charges are to be registered in both the collateral registry

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<sup>233</sup> *Benedict v Ratner* 268 U.S. 353 (1925).

<sup>234</sup> *Ibid.*

<sup>235</sup> UCC s 9-201, 9-204 & Comment 2; Grant Gilmore, 'The Good faith Purchase Idea and the Uniform Commercial Code: Confessions of a Repentant Draftsman' (1981) 15 Georgia Law Review 605, 727.

<sup>236</sup> Gilmore (n 233).

<sup>237</sup> Heywood et al (n 50) 30.

<sup>238</sup> STMA 2017 s2(3).

<sup>239</sup> *Ibid.*

and CAC, it begs the question which registry has priority? Would registration in one and not the other lead to an invalid charge?<sup>240</sup> What happens to the interest of the creditor at insolvency? How is priority decided? This clause confuses and complicates the rules of priority. Even more both registries utilize different rules in their priority regime.

Under CAMA, priority of a charge is determined as the first chargee to create the charge, while under the STMA it is the first creditor to register the charge.<sup>241</sup> Notably the floating charge is subordinate to a fixed charge.<sup>242</sup> If the creditor registers the collateral in both registries it is questionable which registry will take priority at insolvency? The author opines that on the one hand, this complicates the efficiency of the STMA through complex rules of priority. On the other hand, it recognizes the economic reality of the Nigerian regime as company charges are mandatorily registered at CAC.<sup>243</sup> This is contrary to the objective of UNCITRAL Model law to provide clear rules of priority.<sup>244</sup> However, the act provides that priority between perfected security interests in the same collateral shall be determined by the order of registration.<sup>245</sup>

### 2.3.3 Rules of Perfection

The STMA instituted an electronic collateral registry and requires other registries to synchronize their operations with the collateral registry.<sup>246</sup> It is commendable that this creates an enabling environment to streamline the process of registration and it advances the use of

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<sup>240</sup> Heywood et al (n 50) 31.

<sup>241</sup> STMA 2017 S 24(1); CAMA 1990 S 179.

<sup>242</sup> CAMA 1990 s 179.

<sup>243</sup> CAMA 1990 S 197.

<sup>244</sup> UNCITRAL Model Law 2016, Art 29.

<sup>245</sup> STMA 2017 s 23.

<sup>246</sup> STMA 2017 S 2 (1) (c).

technological solutions in the Nigerian regime.<sup>247</sup> However, the use of multiple registries can complicate the rules of priority.<sup>248</sup> Even so, this does not eliminate the red tapes and bottlenecks in the economic reality of the Nigerian regime.<sup>249</sup>

Empirical evidence on secured lending in connection with the collateral registry show increased lending practices in some jurisdictions.<sup>250</sup> To illustrate this, in china 84% of SMEs have secured loans using movable assets. In Mexico, the use of movables to secure loans increased by 4 times. The goal of the Central Bank of Nigeria was to increase lending secured by movable assets from 0.067% to 10% in the near future. The Governor of CBN, in a press briefing asserted to improvements in secured lending practices as "136 Financial institutions, 22 commercial banks, 106 microfinance banks, one non-bank financial institution, three merchant banks, three development finance institutions and one non-interest bank have registered approximately 16, 236 financing statements for 20,0684 moveable assets in the NCR valued at N392 billion".<sup>251</sup>

However, secondary sources show that the secured transactions law lacks implementation as the only movable asset that is accepted by banks are cars in addition to a fixed property.<sup>252</sup> This is corroborated by the statement of the Managing Director of the Credit Bureau who reference poor credit information system as an impediment to access to credit.<sup>253</sup> This contradicts the statement of the CBN Governor on the upsurge of lending practices in Nigeria. Though the

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<sup>247</sup> Bolarinwa Levi Pius, 'Inclement Business Regime in Nigeria: Removing Persistent Legal and Bureaucratic Bottlenecks' (2018) 4(4) International Journal of Business and Applied Social Science 15.

<sup>248</sup> Heywood et al (n 50). 39 – 40.

<sup>249</sup> Pius (246) 12.

<sup>250</sup> Akande (n 3)

<sup>251</sup> Ibid.

<sup>252</sup> Oludimu (n 182).

<sup>253</sup> Popoola (n 229).

data provided by CBN is statistically, there is need for empirically oriented research on lending on the impact of the STMA in improving access to finance for SMEs in Nigeria.

Notably, despite the development of electronic collateral register, the public is restricted from accessing it. A secured transactions regime that restricts public access to credit information enables ostensible ownership.<sup>254</sup> This disincentives creditors from advancing loans as they cannot efficiently learn of existing encumbrances in the asset advanced as a collateral.<sup>255</sup> Thus, it requires creditors to take additional steps before access can be granted to the registry.<sup>256</sup> In reformed systems, the database of the collateral registry can be accessed anywhere through the Internet.<sup>257</sup>

The presence of poor internet facility, shortage in electricity and administrative bottlenecks in the system results in the ill performance of technological infrastructure like the collateral registry.<sup>258</sup> The act provides for perfection using a financing statement that is registered in the collateral registry.<sup>259</sup> Also, the act permits possession, but does not recognize it as a form of perfection.<sup>260</sup> The act further provides for perfection of after-acquired property if the proceeds are described in the financing statement.<sup>261</sup> It also provides that “proceeds in form of money, accounts receivables, negotiable instruments and bank accounts” are regarded as perfected.<sup>262</sup> It equally recognizes commingled assets provided the proceeds can be traced.<sup>263</sup>

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<sup>254</sup> *Twyne’s Case* (1601) 76 ER 809.

<sup>255</sup> *Heywood et al* (n 50) 38.

<sup>256</sup> *Ibid.*

<sup>257</sup> *Ibid* 39.

<sup>258</sup> *Pius* (n 246) 16.

<sup>259</sup> STMA 2017 s 8(1).

<sup>260</sup> STMA 2017 s 8(2).

<sup>261</sup> STMA 2017 s 9(1)(a).

<sup>262</sup> STMA 2017 s 9(1)(b).

<sup>263</sup> STMA 2017 s 9(2); *Heywood et al* (n 50) 34.



### 2.3.4 Enforcement Procedures

For enforcement to be effective, it ought to provide a procedure that is fast and quick.<sup>264</sup> Being that slow enforcement procedures can affect the liquidity of movable assets such as farm produce and computer gadgets which depreciate with upgraded versions.<sup>265</sup> In unreformed systems, enforcement is conducted through lengthy court procedure which can depreciate the value of an asset and poses a risk to the interest of the creditor.<sup>266</sup>

The STMA provides that a security interest can be enforced through other laws governing the security transaction.<sup>267</sup> It is arguable that this poses the problem of uncertainty regarding the applicable governing enforcement procedure. Again, it can be problematic and lead to excessive cost of litigation.<sup>268</sup> This also complicates which law should be followed in deciding priority. Thus, if enforcement is not determined following the STMA, it creates a leeway for the debtor to default in the guise of uncertainty of the applicable enforcement procedure. In such an instance, the creditor's right of enforcement will be delayed with the added cost of legal action with the added cost of legal action.<sup>269</sup> This clause does not contemplate the importance of expedited enforcement procedures to benefit creditors which also accelerates lending practices. Rather, it will diminish the trust of creditors in the secured transactions regime and result in few advanced loans with a higher amount of interest.<sup>270</sup> This clause does not provide for protection of the creditor's interest and quick realization of his loan.<sup>271</sup> It rather

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<sup>264</sup> Heywood et al (n 50) 42.

<sup>265</sup> Ibid.

<sup>266</sup> Ibid 43.

<sup>267</sup> STMA 2017 s 39 (3) (4).

<sup>268</sup> Heywood et al (n 50) 43.

<sup>269</sup> STMA 2017 s 39(1) (b).

<sup>270</sup> Heywood et al (n 50) 43.

<sup>271</sup> STMA 2017 s 39(1) (b).

provides an avenue for the debtor to avert payment. As the creditor will institute court actions to determine which law should determine the applicable enforcement procedure. This extends the process of enforcement and places the debtor in a strategic position to delay repayment of debt in regimes where the judicial system is inefficient in delivering justice timeously.

The act also provides for the appointment of a private receiver by the largest floating charge holder.<sup>272</sup> Being that receivers are debt enforcers for floating chargees it is arguable that the use of receivers is problematic as their primary duty is to realize the interest of the appointing secured creditor.<sup>273</sup> More so, upon appointment they become the alter - ego of the company and the power of the director is divested.<sup>274</sup> This is contrary to the objective of the STMA which is to promote lending practices for SMEs to perpetuate their lifespan.<sup>275</sup> Although, this deviates from UNCITRAL Model law's provision on the other hand it reflects the economic realities of the Nigerian regime which utilizes the appointment of receivers under CAMA to address complex and uncertain rules of priority.<sup>276</sup>

The STMA also provides for enforcement through repossession.<sup>277</sup> Extra-judicial repossession can be through the help of the Nigerian police at an added cost to the creditor.<sup>278</sup> The police is to provide help with peaceful repossession.<sup>279</sup> Being that the STMA is a novel law, there is lack of empirical evidence on how this works in practice. Though, pre- STMA judges had

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<sup>272</sup> STMA 2017 s 39 (5); CAMA s 390(1)

<sup>273</sup> CAMA 1990 s 393(1) and (2).

<sup>274</sup> CAMA 1990 s 11.

<sup>275</sup> STMA 2017 s1.

<sup>276</sup> Gregory Esangbedo, 'Receiverships and the reform of personal property security law in Nigeria' (2019) 45(1) Commonwealth Law Bulletin p. 4.

<sup>277</sup> STMA 2017 S 40 (4).

<sup>278</sup> STMA 2017 s 40(5).

<sup>279</sup> STMA 2017 s 40 (6).

condemned the use of self-help repossession.<sup>280</sup> It was later endorsed in the exercise power of sale of mortgage.<sup>281</sup> Under the STMA, a creditor can also declare the collateral inoperative if the asset cannot be easily moved from its storage.<sup>282</sup> It also recognizes the use of the cognovit rule, a contractual provision where a party agrees to an ex-parte judgement and waive his right to a defense if he defaults.<sup>283</sup>

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<sup>280</sup> *Ojukwu v Military Governor of Lagos State* (1985) 2 NWLR (part 110) 806; *Civil Design Construction Nigeria Ltd v SCOA Nig Ltd* [ 2007] 6 NWLR (Pt 1030) 300.

<sup>281</sup> *Awojugbagbe Light Industries Ltd v Chinukwe* [ 1995] 4 NWLR (part 390) 379.

<sup>282</sup> STMA 2017 s 42.

<sup>283</sup> STMA 2017 s 40(4)(b).

### Chapter 3: Recommendations for Gaps in the Nigerian Regime with reference to UNCITRAL Model Law and UCC Article 9

Based on the above analysis some systemic gaps in the STMA are connected to the economic realities in the Nigerian regime and the issue of implementation.<sup>284</sup> Being that claims of improved lending practices by CBN raise questions of legitimacy.<sup>285</sup> As the Managing Director of Credit Bureau asserts that lending practice is still on a stand still.<sup>286</sup> This questions the efficiency of the reforms in addressing the impediments of financing SMEs.

Another gap in the implementation of the act, is its lack of reach to rural areas comprising 60 million unbanked Nigerians without access to credit.<sup>287</sup> Statistics show a limited number of financial institutions in rural areas.<sup>288</sup> As a result, the SMEs prevalent in such areas lack access to credit. It is critical for the law to contemplate remedies that will account for the un-banked population which largely resort to the unregulated informal sector to access finance.

The STMA lacks a uniform methodology in its creation and enforcement of security interest as it poorly contemplates the necessity for predictability in the rules of priority, perfection and enforcement procedure which will minimize the risk of non-repayment, inspire creditors trust in the system and reduce the cost of lending. Again, the issue of poor credit information presents a high risk to creditors such as financial institutions who still prefer immovable assets

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<sup>284</sup> Okonjo-Iweala (n 30).

<sup>285</sup> Oludimu (n 182).

<sup>286</sup> Popoola (n 229).

<sup>287</sup> 'Paga is supporting over 2000 SMEs at Techpoint SME Clinic 2020' ( *Techpoint.Africa*, 10<sup>th</sup> February 2020) < <https://techpoint.africa/2020/02/10/paga-sme-clinic-sponsor/>> accessed 19 April 2020; Danjuma Ahmad, 'Can Introduction of Collateral Registries for Movable Assets Spur Firms' Access to Credit in Nigeria?' (2018) 5 (12) International Journal of Research and Scientific Innovation (IJRSI) p.104.

<sup>288</sup> Danjuma (n 284).

as collateral.<sup>289</sup> This perpetuates lack of access to credit for SMEs lacking in immovable property.<sup>290</sup>

The third systemic problem is a lack of incentive given to lenders as banks accept fewer forms of collateral than the law permits. Though the act defines collateral as tangible and intangible movable property where movable properties are assets other than real properties.<sup>291</sup> However, only few banks admit movable property in the form of cars in addition to fixed asset.<sup>292</sup> This is evidence of lack of trust in the system to protect their interest through transparent rules of priority and expedited enforcement procedures. Thus, banks in Nigeria do not routinely accept movable property from SMEs as collateral.<sup>293</sup> Banks have adopted more conservative measures to limit exposure, leading to lower - risk lending and higher costs for borrowers.<sup>294</sup> Essentially, while recognising the economic realities in the Nigerian regime it is paramount for the drafters to contemplate remedies that make the system less ambiguous, more transparent and concise following the examples in UCC Art 9 and UNCITRAL Model law.<sup>295</sup>

### 3.1 Conclusion

This paper has shown the importance of secured transactions in financing SMEs, it has further shown the rationale for secured lending. Using UNCITRAL Model law and UCC Art 9, this paper has shown the objective and functional approach of secured lending. It has also provided the terminology for secured lending referring to the above regimes.

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<sup>289</sup> Danjuma (n 284) 106.

<sup>290</sup> Ibid 105.

<sup>291</sup> STMA 2017, s 63.

<sup>292</sup> Oludimu (n 182).

<sup>293</sup> Danjuma (n 284) 106.

<sup>294</sup> Oludimu (n 182).

<sup>295</sup> Katharina Pistor and Chenggang Xu, 'Incomplete law' (2003) 35 NYU Journal of International Law & Politics 931, 932-933.

Drawing from the conclusions and remedies recommended or provided by UNCITRAL Model law and UCC Art 9 respectively, this paper has shown lessons for the policy makers to consider. To achieve this, it has dealt with the deficiencies of the STMA, by analyzing the four steps of creating a security interest. My hypothesis has shown the gaps in the creation, the rules of priority, perfection and enforcement procedure of a security interest. For the STMA to function efficiently these four areas must be transparent to achieve the objective of stimulating lending practices for SMEs in Nigeria.

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