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**REPUBLIC OF
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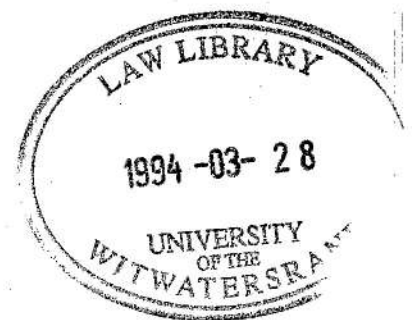
No. 16

DEPARTMENT OF THE COUNCIL OF STATE

GOVERNMENT NOTICE No. 8 OF 1994

It is hereby notified that the Chairman of the Council of State has assented to the following decree which is hereby published for general information:-

**SECURITY BY MEANS OF MOVABLE PROPERTY DECREE, 1994
(Decree No. 4 of 1994)**



COUNCIL OF STATE — REPUBLIC OF CISKEI

SECURITY BY MEANS OF MOVABLE PROPERTY DECREE, 1994

DECREE

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 amend the Insolvency Act, 1936 and to provide for incidental matters.

[English text signed by the Chairman of the Council of State. Assented to on 3 February 1994.]

BE IT DECREED by the Council of State of the Republic of Ciskei, as follows:-

1. Legal consequences of special notarial bond over movable property. - (1) If a notarial bond hypothecating corporeal movable property which is specified and described in the bond in a manner which renders it readily recognizable is registered after the commencement of this Decree 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 the bond mentioned in subsection (1) the mortgagee shall, at the request of the mortgagor, furnish free of charge to the mortgagor 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) which was registered before the commencement of this Decree shall upon the insolvency of the mortgagor, whether 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 Decree, paid out to concurrent creditors in terms of a confirmed account.

(5) If at the commencement of this Decree, 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 as contemplated in section 1(1), is in the possession of a person other than the mortgagee, or

(b) to which an instalment sale transaction as defined in section 1 of the Credit Agreements Act, 1980 (Act 75 of 1980) relates, shall not be subject to the landlord's tacit hypothec.

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

3. 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 Decree 23 of 1992. - Section 2 of the Insolvency Act, 1936 is hereby amended by the substitution for the definition of "special mortgage" of the following definition:

SECURITY BY MEANS OF MOVABLE PROPERTY DECREE, 1994

“‘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 Security by Means of Movable Property Decree, 1993 but does not include any other mortgage bond hypothecating movable property;”.

4. **Savings.** - Nothing in this Decree 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 from public funds, or

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

5. **Short title.** - This decree shall be called the Security by Means of Movable Property Decree, 1994.

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