



WELCOME TO OUR

MAY - JUNE

NEWSLETTER

Under Kenyan law, the distinction between tangible and intangible securities is central to modern secured transactions, particularly following reforms introduced by the Movable Property Security Rights Act, 2017 (MPSRA). This legislation unified the treatment of movable assets whether tangible and intangible as acceptable collateral for credit. While both categories serve the same economic function (securing repayment of obligations), they differ significantly in nature, enforcement mechanisms, and registration requirements.

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**TANGIBLE AND INTANGIBLE
SECURITIES UNDER KENYAN LAW:
DIFFERENCES AND SIMILARITIES
&
FINANCE ACT 2026: WHAT YOU
NEED TO KNOW**



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Legal Framework

Kenya's secured transactions regime is anchored in several statutes, including the **Companies Act (2015)**, **Insolvency Act (2015)**, and most critically, the **Movable Property Security Rights Act, 2017**. The MPSRA explicitly recognizes that a "security right" may encumber **any type of movable asset, whether tangible or intangible**, including future assets, parts of assets, and entire portfolios of a grantor's movable property.

The Companies Act, 2015 additionally recognizes progression in securities by listing goodwill and intellectual property among things capable of being charged.[2] The insolvency Act, 2015 defines property to include choses in action, legal interests, equitable interests, future profits and things in action.

The Act defines:

- **Tangible assets** as "all types of goods," including motor vehicles, crops, machinery, and livestock.
- **Intangible assets** as rights without physical form, such as receivables, deposit accounts, electronic securities, intellectual property rights, and choses in action (rights to sue).

Similarities Between Tangible and Intangible Securities

Despite their physical differences, tangible and intangible securities share several key legal and functional characteristics under Kenyan law:

- **Same Legal Nature as Security Rights**

Both tangible and intangible assets can be used to create a **security right** a property interest granted by agreement to secure payment or performance of an obligation. The law does not distinguish between the two in terms of the fundamental validity of the security interest.

- **Registration Requirement for Third-Party Effectiveness**

For a security right whether over tangible or intangible assets to be effective against third parties (e.g., other creditors, insolvency administrators), **it must be registered** with the **Movable Property Security Rights Registry**. This digital registry provides public notice of the existence of the security interest, solving the traditional "possession dilemma" that favoured tangible collateral.

- **Enforceability Upon Default**

Both categories are enforceable upon the default. The secured creditor may realise the asset through sale, appointment of a receiver, or other remedies provided under the MPSRA and common law, subject to statutory safeguards and notice requirements.

- **Inclusion of Future and Generic Assets**

The MPSRA permits security agreements to **cover future assets** (those not yet in existence or acquired by the grantor) and **generic categories** of assets (e.g., “all inventory” or “all receivables”). This applies equally to tangible and intangible assets, enhancing flexibility in financing arrangements.

- **Discretionary Acceptance by Lenders**

Importantly, the law does **not compel** banks or other lenders to accept either tangible or intangible assets as collateral. The decision remains within the lender’s risk assessment framework, though the legal framework now makes both categories viable.

Key Differences Between Tangible and Intangible Securities

While the legal treatment is largely harmonised, practical and conceptual differences persist:

Physical Existence and Possession

- **Tangible securities** involve physical goods that can be possessed, stored, and physically controlled. Historically, possession was a key method of perfecting security (e.g., pledge of goods).
- **Intangible securities** lack physical form and cannot be possessed in the traditional sense. Their value lies in legal rights (e.g., the right to receive payment under a contract). This made them less attractive as collateral before the advent of electronic registries.

The MPSRA’s digital registry effectively bridges this gap by allowing registration to substitute for **possession** as the method of giving notice to third parties.

Valuation and Risk Assessment

- **Tangible assets** (e.g., vehicles, machinery) are generally easier to value using market comparable, depreciation schedules, and physical inspection.
- **Intangible assets** (e.g., intellectual property, receivables) require more complex valuation methods, often involving cash flow projections, legal enforceability assessments, and market demand analysis. Their value may also be more volatile or contingent on external factors (e.g., licensing agreements, debtor solvency).

Enforcement Mechanisms

- Enforcement against **tangible assets** typically involves physical seizure, auction, or sale.
- Enforcement against **intangible assets** may require legal action to collect receivables, assignment of rights, or court orders to transfer intellectual property. For example, enforcing a security over a patent may involve licensing or sale of the IP right, which is more complex than selling a vehicle.

Types of Assets Covered

- **Tangible:** Motor vehicles, agricultural produce, equipment, livestock, inventory.
- **Intangible:** Book debts, bank accounts, electronic securities (e.g., shares held in dematerialised form), trademarks, patents, copyrights, contractual rights.

Perfection and Priority Rules

While both require registration, **priority rules** may differ slightly in practice. For example, a security right in a **deposit account** (intangible) may involve additional steps such as obtaining control agreements with the bank, whereas a security over machinery may only require registration and possibly physical marking.

Practical Implications for Borrowers and Lenders

The recognition of intangible assets as viable collateral has been transformative, especially for **Micro, Small, and Medium Enterprises (MSMEs)** that often lack immovable property but hold valuable receivables, inventory, or intellectual property.

However, adoption remains uneven. Many lenders still prefer tangible collateral due to familiarity, ease of valuation, and straightforward enforcement. The full potential of intangible securitisation particularly in sectors like technology, creative industries, and services depends on greater market confidence and refined valuation/enforcement practices.

Conclusion

Under Kenyan law, tangible and intangible securities are **legally equivalent** in their capacity to secure obligations, thanks to the harmonising effect of the Movable Property Security Rights Act, 2017.

Both require registration for third-party effectiveness, cover future and generic assets, and are enforceable upon default. However, they differ in **physical nature, valuation complexity, enforcement pathways, and lender perception.**

The digital registry has been pivotal in elevating intangible assets to parity with tangible ones, though cultural and practical biases persist. As Kenya's economy becomes more knowledge and service-oriented, the efficient securitisation of intangibles will be critical to unlocking credit for innovation-driven enterprises.

Although Kenya has made some commendable progress by overhauling the collateral legislative framework, the credit market needs to embrace the new collateral system which allows collateralization of intangible assets.

THE FINANCE ACT 2026: WHAT YOU NEED TO KNOW

The Finance Act 2026 has brought with it a raft of changes to Kenya's taxation framework with significant implications for businesses, employers, investors and the general public. This commentary provides key highlights that will be consequential in the coming fiscal year 2026/2027.

- **LENDERS**

Banks and other financial lending institution can now heave a sigh of relief. This relief has been occasioned by the amendment of Section 15 of the Income Tax Act which now stipulates that a debt that has become bad in accordance with the guidelines issued by the Commissioner shall include the principal, interest and any other amount relating to that debt. A bad debt is defined as an irrecoverable debt. Prior to the above amendment the provision only allowed for the interest to be deducted from the corporate income tax with the principal loan amount being excluded. The amendment thus allows banks and other lending institutions to include the principal loan amount from the irrecoverable debt and not just interest for the purpose of deductions.

- **CREDIT CARDS**

In addition to that, the Finance Act has amended the definition of management or professional fees by inserting the words, "and includes interchange fees and merchant service fees arising from transactions that use a card as a means of payment." Interchange or merchant service fees is a fee paid by the acquiring merchant bank to the issuing bank for each card transaction. Card transactions usually involve four individuals the cardholder, merchant, issuing bank and acquiring bank. The issuing bank is the bank that issued the card to the card holder while the acquiring bank is the bank acquiring the transactions on behalf of the merchant/service provider. The cardholder is the customer or purchaser while the merchant is the seller. When the cardholder wants to make a purchase using their card money will move from their bank account to the merchant's account.

A service fee is paid to the issuing bank on every transaction made by the card holder. The amendment by the Finance Act now mandates that this service fee is to be taxed. This means that the cost of making card transactions is bound to increase.

- **PROPERTY**

The Finance Act has amended the definition of **immovable property** as provided for under Section 2 of the Income Tax Act. It has substituted the word "**and**" with "**or**" appearing immediately after the word's immovable property.

The previous use of the word **“and”** implied that the items listed as immovable property had to be linked. This means that the two limbs were operating as cumulative requirements. The use of the word **“or”** now implies that each listed item can independently qualify as immovable property. The two limbs of the definition will now operate as alternatives rather than cumulative requirements. The consequence is that transactions involving mining rights even when there is no actual transfer of land will be considered transfer of immovable property for Capital Gains Tax purposes.

- **RENTAL INCOME TAX**

Further, the Finance Act has amended the Income Tax Act by inserting Section 6B where the income of a non-resident accrued or derived from the use or occupation of property situated in Kenya shall pay a tax to be known as a non-resident rental income tax. The amendment further requires a non-resident person to open an account for purposes of the above tax. The amendment creates a specific final tax regime for non-residents earning rental income from property situated in Kenya. This makes compliance easier where a non-resident landlord receives rent directly and does not have a resident withholding agent or collection agent. However, a key implementation gap remains. The Act states that the rate will be as specified in the Third Schedule, but the Third Schedule amendments in the Act do not appear to prescribe a specific non-resident rental income tax rate. This may create uncertainty on the applicable rate until the law is further amended or administrative guidance is issued.

- **TRUSTS**

The Finance Act has also amended the Income Tax Act by repealing Section 11 and replacing it. The new section now stipulates that income received by a person in their capacity as trustee, executor or administrator shall be deemed to be the income of that trustee, executor or administrator. Further any dividend or interest which is included in the said income shall not be subject to further taxes under the Income Tax Act. Further the said income when received by a beneficiary shall not be subjected to further taxation. This amendment simplifies taxation of trusts and estates by stipulating that dividends and interests included in the income shall not be subject to further taxation and that beneficiaries shall not be taxed on income received from the trustee that had already been taxed.

This reduces double taxation risks and makes management of estates and trusts much more convenient by reducing cost. In addition to that and beneficial to the management of trusts. The Finance Act has amended the First Schedule of the Income Tax Act by exempting pension benefits arising due to death and capital gains relating to Real Estate Investment Trusts registered by the Commissioner under Section 20(1) from taxation.

The consequence of the amendment is that pension benefits payable to the beneficiaries or estate of a deceased member of a pension scheme will not be subject to taxation thereby reducing costs in management of estates and trusts. Further where property is transferred into a Real Estate Investment Trust it will be exempted from paying capital gains tax. A move that will encourage the pooling of real estate assets and their efficient allocation within the real estate sector.

- **TAX REPORTING**

The Finance Act has amended Section 52(b) thus shifting the tax reporting and assessment requirements. The Kenya Revenue Authority now requires individuals to file their returns four months after the end of the accounting period while companies need to file the same within six months after the end of the accounting period. In addition to that KRA will now require individuals and companies to provide self-assessment reports on what amount they think is due as tax to the authority. These changes are geared towards making tax compliance easier and efficient to avert the quick rush often exhibited at the end of the deadline in June. Previously the Act merely required the filing to be done within a reasonable time.

MAY – JUNE HIGHLIGHTS & MOMENTS



Members of our team had the pleasure of attending The Exchange – A Tsavo Wealth Dinner Experience hosted by Tsavo Lifestyle on the 14th of May 2026, an engaging evening dedicated to financial education, wealth creation, and building investments that create lasting value across generations!

On the 3rd of June, our team recently participated in a cybersecurity awareness training facilitated by Fortinet, equipping us to navigate an increasingly dynamic cyber landscape. As cyber threats continue to evolve, staying secure requires more than vigilance, it demands continuous advancement of expertise. By investing in our cybersecurity infrastructure, we strengthen our digital resilience, protect our clients' information assets, and reaffirm our commitment to security, integrity, and trusted service delivery.



Our team was privileged to attend the 2nd IHS Kenya Affordable Housing Conference on the 11th of June 2026, which brought together industry leaders to explore innovative financing and collaborative solutions to advance affordable housing in Kenya.

LEGAL MAXIM OF THE MONTH

FIAT JUSTITIA RUAT CAELUM

“LET JUSTICE BE DONE THOUGH THE HEAVENS FALL”

THIS MAXIM REMINDS US THAT JUSTICE MUST BE UPHELD IMPARTIALLY, REGARDLESS OF PRESSURE, PUBLIC OPINION, OR POLITICAL CONVENIENCE. IN KENYA'S CURRENT LEGAL LANDSCAPE, WHERE THE RULE OF LAW, CONSTITUTIONALISM, AND ACCOUNTABILITY REMAIN AT THE FOREFRONT, IT REINFORCES THE PRINCIPLE THAT JUSTICE MUST ALWAYS PREVAIL.

TAKEAWAY: THE STRENGTH OF THE RULE OF LAW LIES IN ADMINISTERING JUSTICE FAIRLY AND CONSISTENTLY, EVEN IN THE MOST CHALLENGING CIRCUMSTANCES.

DISCLAIMER

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