

COLLATERAL REGISTRY

ALL YOU NEED TO KNOW

[1] BACKGROUND

The Collateral Registry is a body established by Parliament under the Borrowers and Lenders Act, 2008 [Act 773] to principally register charges and collaterals created by borrowers to secure credit facilities provided by lenders. Besides registrations, the Registry also provides information on the existence of relationships between lenders and borrowers as they relate particularly to movable and immovable collateral[s] as well as other ancillary functions. The vision of the Registry is to assist in energizing the credit delivery system through the provision of efficient and world class collateral registry services, whilst the mission is to play a key role in creating an enabling environment to ensure easy access to credit.

The enactment of the Borrowers and Lenders Act 2008 [ACT 773] and the establishment of the Collateral Registry by the Bank of Ghana; ushered Ghana into a Secured Transaction Regime (STR) which provides for the Creation, Perfection, Priority and Enforcement of security interest on both movable and immovable property. This legal framework for credit seeks to improve standards of disclosure of information by borrowers and lenders and prohibits certain credit practices in addition to promoting a consistent credit enforcement framework and related matters. Thus the mechanism for enforcing credit agreements has been significantly improved. In the exercise of the right to take possession of property that is subject to a security interest, the lender is not obliged to initiate proceedings in court to enforce the right of possession in the event of a default.

The mandate of the Collateral Registry is a response to the teething problems in Ghana's credit market which eventually constrain or stifles the flow of credit to Small and Medium sized Enterprises [SMEs] in particular and the economy as a whole.

For instance, lenders had no effective means of searching for prior charges if any, on properties presented to them for credit. The result is the numerous and unending litigations in courts as well as substantial rate of non performing loans recorded in the books of lenders. Similarly, members of the general public who wish to procure properties had no effective means of searching to ascertain whether or not the property they intend to procure has been used as a collateral for a credit facility.

[2.0] USERS

All universal banks, Savings and Loans Companies, Rural Banks, Finance Houses, Leasing Companies, Licensed Microfinance and Money Lenders Companies, Secured Creditors (i.e Trade Creditors, Debenture Holders etc) shall patronize the services of the Registry electronically. Representatives (i.e lawyers/law firms, or Consultants) of the aforementioned lending institutions including foreign institutions shall also patronize the services of the Registry electronically. Members of the general public who are only restricted to conducting searches shall do so electronically.

[3.0] THE SET UP

Prospective users shall be required to make a formal application in writing to the Registrar, indicating their willingness to secure their security interest in asset(s) pledged by a borrower for credit. The user will be required to provide the names of two administrators and their email addresses. A LOG-IN Identification and a default password will be sent to these administrators who will subsequently be authorized to set up other users within their institution. For the purpose of billing users for the use of the Registry's services, all universal banks shall be post paid users. The prospective user (bank) shall, by a formal consent in writing, authorize or mandate the Registry to debit their account with the Bank of Ghana at the end of every month as fees charged for the services offered. All other users shall be given the option of being either a pre-paid user or post paid. Pre-paid users shall be required to make a deposit into the Collateral Registry Income Account at the Banking Halls

of the Bank of Ghana head office or any of the Regional Branches. The user shall then notify the Collateral Registry of the payment. The user shall use the services of the Registry until the amount paid is completely depleted. Post paid users shall arrange with their universal bankers, in order that through a formal consent in writing from the bank, authorize or mandate the Registry to debit the said bank's account with the Bank of Ghana at the end of every month as fees charged for the services used by the post paid user. Rural Banks will do same with ARB Apex Bank.

Members of the general public, who are restricted to conducting searches, shall be treated as prepaid users. A link to the Collateral Registry System search engine will be e-mailed into their inbox.

The URL to the Collateral Registry System is www.collateralregistry.gov.gh

The Registry shall enter into an Agreement with users in respect of their dealings with the Registry. The Agreement shall detail the rights and responsibilities of both users and the Registry.

[4.0] OPERATIONS OF THE REGISTRY

The operations of the Registry include the following:

- Registration of Charges and Collaterals
- Registration of Amendments
- Search Requests

[4.1] Registration of Charges and Collaterals

(1) A user (lender, borrower or interested party) is entitled to register a charge in accordance with the Act as well as the rules, terms and conditions of use of the Registry if that user has:

- (a) been identified as the registrant;
- (b) tendered payment for the registration specified in section 8;

- (c) provided the registration information required by the Act and the rules.
- (2) A person is entitled to register a charge electronically by establishing a user account with the Registry or obtain other authorization to submit registrations.
- (3) For the purpose of Registration of a charge, the minimum charge creation amount shall be five hundred Ghana Cedis (GH¢500.00).
- (3) The Act requires a borrower or lender to register the charge or collateral with the Collateral Registry within twenty eight days [28] after the date of creation.
- (3) The Act stipulates that a charge which is not registered is of no effect as security for the borrower's obligations for repayment of the credit and the money shall immediately become payable despite any provisions to the contrary in the credit agreement.

[4.2] Date and Time of registration

- (1) The Registry shall indicate the date and time and assign a registration number to each registration form.
- (2) The Registry shall index registrations in the order they were received.
- (3) The registration is effective from the date and time it is received and acknowledged by the Registry, and entered into the Registry record so as to be available to searchers.

[4.3] Rejection of a Registration Form

- (1) The Registry may reject a registration form or search request if:
- (a) it is not communicated to the Registry in one of the authorized media and form of communication; or
 - (b) the information in the registration form or the search request is incomplete or illegible; or
 - (c) otherwise does not comply with the requirements of the Act and the rules, including where it is not accompanied by the required fee.
 - (d) the charge creation amount is less than five hundred Ghana Cedis (¢500.00)
- (2) A message and grounds for rejection shall be provided to the registrant or searcher as soon as practicable.

[4.4] Incorrect or Insufficient Information

- (1) A registration is effective only if it provides the borrower's correct name.
- (2) A registration covering a collateral ID number property is effective only if it provides the correct collateral ID number.
- (3) A description of collateral ID number property that is insufficient does not render the registration ineffective with respect to other charged property that is sufficiently described.
- (4) An incorrect or insufficient statement of the information required to be entered in the Registry record does not render the registration ineffective, unless it seriously misleads a reasonable searcher.
- (5) In the case of manual registration, where the Registrar makes an error in a registration that causes the registration not to be disclosed in search, the registration shall be effective and the time of the update that cures the error shall not affect the time of the original registration.
- (6) Where the registrant makes an error in a registration that causes the registration not to be disclosed in search, the registration shall not be effective and the time and date of the update that cures the error shall be the time when the registration becomes effective.

[4.5] Information Required For An Initial Registration Form

To effect an initial registration, a registrant is required to provide in the appropriate field in the registration form the following information:

- (a) the name and address of the borrower, gender and birth date in case the borrower is natural person;
- (b) the name and address of the lender
- (c) description of the charged property
- (d) the nature, any restrictions and the date of creation of the charge;
- (e) the period of time for which the registration is to be effective; and
- (f) the amount secured by the charge.

(g) If the borrower is a natural person, the registrant must indicate the name of the borrower which shall be determined as follows:

- if the borrower was born in Ghana, the name of the borrower is the name as stated in the national ID, driver's license or valid passport;
- if the borrower was not born in Ghana, the name of the borrower is the name as stated in a valid passport issued to the borrower;
- if the borrower that was not born in Ghana does not have a valid passport, the name of the borrower is the name stated in an official document, such as a valid identification card or voter ID.

(h) If the borrower is a legal person, the name of the borrower is the name that appears in the document constituting the legal person.

(i) The name of the borrower includes the abbreviation which is indicative of type of legal person, such as "Ltd", "Inc", "Incorp", "Corp", "Co," as the case may be, or the words "Limited", "Incorporated", "Corporation", "Company."

(j) The registrant shall provide the name of the officer of the lender who authorized the registration.

[4.6] Description of the Charged Property

(1) For the purposes of section 4.5, the description of the charged property, including proceeds in the notice may be specific or generic as long as it reasonably identifies the charged property.

(2) A generic description that refers to all assets within a generic category of movable property or to all of the borrower's movable property includes assets within the specified category to which the borrower acquires rights at any time during the period of effectiveness of the registration.

(3) If the registration covers collateral ID property other than immovable property that is not held by the borrower as inventory, a collateral ID number and the type of collateral ID number property must be indicated in the appropriate field in the registration form.

(4) If the registration covers immovable property, in addition to the collateral ID number and a type, the name of the owner of the immovable property as it appears in the records of the immovable property registry must be indicated.

[4.7] Registration of Amendments

(1) For the avoidance of doubt, "Amendment" means

(i) Updates that include:

(a) the deletion of a lender or borrower where two or more lenders or borrowers are identified in the registration;

(b) the addition of the lender or borrower;

(c) the addition, deletion or change of charged property, including property identified by a collateral ID number;

(d) the change of the name of the borrower;

(e) the change of the name of the lender;

(f) the change of the address of the borrower or lender;

(ii) Other Amendments include

(a) the extension of the effectiveness of a registration (renewal of a registration);

(b) the change in the amount or related interest rate secured by the charge;

(c) the assignment of the secured obligation by the lender;

(d) the appointment and removal of the receiver or manager;

(e) notice of default and its removal;

(f) realization without court order; and

(g) full or partial satisfaction of debt.

(2) In order to amend a registration, a registrant shall select the relevant amendment registration form and provide in the appropriate field the following information:

a) the initial registration number of the registration to which the amendment relates;

(b) if information is to be added, the additional information as provided by these rules for entering information of that kind;

(c) if information is to be changed or deleted, the information to be deleted, and in the case of a change, the current and new information as provided by these rules for entering information of that kind; and

(d) the name of each lender authorizing the registration.

(3) If the purpose of the amendment is to disclose an assignment of the secured obligation, the registrant shall provide the name of the assignor and assignee.

(4) Amendments that purport to delete all borrowers and fail to provide the name of a new borrower, delete all lenders and fail to provide the name of a new lender or delete all charged property and fail to provide new charged property are ineffective.

(5) An amendment that adds a new borrower and additional charged property is effective from the date and time when it was entered into the Registry record so as to be available to searchers.

[4.8] Duration and Renewal of the Period of Effectiveness of Registration

(1) A registration is effective for the period of time indicated in the registration.

(2) The period of effectiveness of a registration may be renewed for an additional period of time indicated in the amendment extending the effectiveness of the registration.

[4.9] Priority Among Registrations

(1) Unless otherwise determined by the Act and the rules, or other laws a registration with an earlier date and time of registration shall have priority over any later in time registration.

(2) The date and time of registration is generated automatically by the Registry.

(3) Where the Registrar exercises the authority under section 28 of the Act, the Registrar's approval shall be the date and time of registration. Such registration shall not defeat any charge or interest acquired by a third party prior to the actual registration effected upon approval of the Registrar.

(4) Charges created before the effectiveness of the Act may be registered, subject to the Registrar's approval pursuant to paragraph 3 of this section. With the

exception of registration, other provisions of the Act shall not apply to such charges.

[4.10] Registration of Notice of Default and its Removal

(1) The lender shall register a notice of default and indicate the date when default actually occurred and the date when the borrower received a notice of default.

(2) The lender shall register a removal of the notice of default if the borrower cured default within thirty [30] days after receipt of notice of default.

[4.11] Registration of Satisfaction of Debt

(1) To register a memorandum of satisfaction of a debt, the registrant shall provide in the registration form the following information:

(a) the initial registration number of the relevant registration;

(b) the borrower's name who satisfied the debt as provided in the registration;

(c) whether the charge is released in whole or in part, and the property that is released from the charge; and

(d) the name of the lender authorizing the registration.

(2) The Registry shall provide a copy of the memorandum of satisfaction of debt to the borrower.

[4.12] Registration of Appointment or Removal of Receiver or Manager

(1) A receiver or manager may be appointed by the lender or a court.

(2) The lender that appoints a receiver or manager shall register an amendment related to the appointment of the receiver or manager within 10 days after the date of appointment.

(3) To register a notice of appointment, the registrant shall provide in the registration form the following information:

(a) the initial registration number of the relevant registration;

(b) the name and address of the receiver or manager;

(c) a short description of the transaction and grounds on which the receiver or manager was appointed;

(d) the name of the borrower and the lender in whose favour the charge under which the receiver or manager is appointed was created; and

(e) the effective and appointment date.

(4) When a receiver or manager ceases to act as such, the lender shall register a notice of removal within 10 days of the occurrence of the events specified in section 30(3) of the Act.

(5) To register a notice of removal of the receiver or manager, the registrant shall provide in the registration form the same information as specified in paragraph 3 of this section, other than sub-section c, and indicate the reason for removal.

[4.13] Realisation Without Court Order

(1) The lender that intends to realize a charge registered at the Collateral Registry without a court order shall register a notice of that intention thirty [30] days after the day of receipt of the notice of default of the borrower.

(2) The Registrar shall certify the realization process by issuing a certificate to that effect.

(3) All realizations of charges shall be made in compliance with the Auction Sales Act, 1989 (P.N.D.C.L. 230) and other applicable laws.

(4) An action brought to realize a security shall be by motion on notice under Order 19 of the High Court [Civil Procedure] Rules 2004 [C.I.47].

[4.14] Distribution of Proceeds After Realisation

(1) A lender who has sold collateral shall, before applying the net proceeds of the sale towards the satisfaction of the debt or other obligation secured by the charge of the lender, apply the net proceeds of the sale towards the reasonable costs and expenses of the sale incurred by the lender, and to the extent provided for in a credit agreement, reasonable legal expenses.

(2) The lender shall pay the following persons the amount of any surplus in the following order:

(a) any persons who have a subordinate charge in the order of their priority;

(b) any other person who has given the lender notice that that person claims an interest in the collateral; and

(c) the borrower.

(3) The lender may pay the surplus into court if there is a question as to whom or in which order an interested party is entitled to receive distribution.

[4.15] Searches

Any user may conduct a search and request a search certificate without having to provide any reasons for conducting the search or requesting the search certificate.

A user may conduct a search by using one of the following search criteria:

(a) The name of the borrower and/or;

(b) The collateral ID number; or

(c) The registration number.

(1) A search result shall either indicate that no registrations were retrieved against the specified search criterion or return all registrations that exists in the Registry record with respect to the specified search criterion at the date and time when the search was conducted.

(a) A search result indicates registrations in the registry record that match exactly the search criterion provided by the searcher.

(b) Upon request made by a user who has paid the specified fee, the Registry issues a search certificate on the basis of one of the criteria specified in this section. The search certificate should reflect the search result.

(2) A search certificate is admissible as evidence in court proceedings. In the absence of evidence to the contrary, a search certificate is proof of the registration to which the search result relates, including the date and time of registration.

[5.0] COPY OF INITIAL REGISTRATION AND AMENDMENT

(1) When an initial registration or amendment is registered electronically, the registry shall provide to the registrant an electronic copy of the registration as soon as it is entered into the Registry record.

(2) Where an initial registration or amendment is registered otherwise than electronically, the Registry shall promptly provide a copy to the registrant.

(3) The Registry shall provide to each person identified in the registration as a borrower, within fifteen days after the registration is effected, a certificate of the registration and a copy of the memorandum of satisfaction of debt.

[6.0] COMPULSORY REGISTRATION OF AMENDMENT OR MEMORANDUM OF SATISFACTION OF DEBT

(1) The lender shall register a memorandum of satisfaction of debt if:

(a) the credit agreement has been concluded between the lender and the borrower;

(b) the charge to which the registration relates has been satisfied by payment or otherwise;

(c) the registration was effected fraudulently or without authorization of the borrower; or

(d) the property is no longer charged, in whole or in part.

(2) No fee or expense shall be charged or accepted by the lender for compliance with the demand received under paragraph 1 of this section.

(3) If the lender does not comply in a timely manner, the borrower is entitled to request the Court to order the registration of a memorandum of satisfaction of debt.

(4) The Court shall notify the lender identified in the relevant registration at the address specified in the registration of the demand of the borrower. The lender shall have 15 days after receipt of the notification to send a response to the Court.

(5) When the Court finds that the borrower's demand is legitimate under paragraph 1 of this section, it shall order registration of the memorandum of satisfaction of debt.

[7.0] BORROWER'S RIGHT TO DEMAND ADDITIONAL INFORMATION

(1) The borrower may demand in writing that the lender:

(a) confirm in writing whether or not there exists a credit agreement between the borrower and the lender as of the date of the demand;

(b) approve or provide a list of the charged property as of the date of the response;
and

(c) approve or provide a statement indicating the amount secured by the charge to which the registration relates, including the amount needed to satisfy the secured obligation as of the date of the response.

(2) The borrower may instruct the lender to deliver its response to a designated third person.

(3) The lender shall send a response within 15 days after receipt of the demand.

[8.0] FEES FOR REGISTRY SERVICES

(1) The following fees are payable for the Registry services:

(a) initial registrations: GH¢10.00;

(b) renewals: GH¢5.00; and

(c) searches and search certificates: GH¢5.00

(2) The Bank shall determine the fees and methods of payment for the purposes of these rules by Notice pursuant to section 7 of the Act.

[9.0] DISCLAIMER OF RESPONSIBILITY

(1) The Registrar shall not be held responsible for the authenticity of any information received from registrants.

(2) The Registrar shall not be held responsible for any inaccuracies or misrepresentations revealed in a search of the Registry record by a user.

(3) The Registrar shall not be responsible for the validity of any agreement between the lender and the borrower.

[10.0] BENEFITS

1. The enactment of the Borrowers and Lenders Act 2008 [ACT 773] and the establishment of the Collateral Registry will stimulate the use of movable property as security interest in order to increase Small Medium Enterprises' access to credit. [e.g. accounts receivable, machinery, equipment, vehicles etc.]

2. An avenue has been created for searches to be conducted by users on property submitted for credit, to ascertain whether or not a property is encumbered; and the extent of encumbrance.
3. One can conduct a search at the Collateral Registry on a property which one intends to buy in order to ascertain whether the said property has been used as collateral for credit.
4. It is expected that lending in general will become less risky with this Secured Transaction Regime.
5. Clarity in Priority status and the Enforcement of rights in security interest has significantly been enhanced.

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