

*(Legislative Supplement No. 37)*

LEGAL NOTICE NO. 121

THE MOVABLE PROPERTY SECURITY RIGHTS ACT

*(No. 13 of 2017)*

IN EXERCISE of the powers conferred by section 88 of the Movable Property Security Rights Act, 2017 the Attorney-General makes the following Regulations—

THE MOVABLE PROPERTY SECURITY RIGHTS (GENERAL)  
(AMENDMENT) REGULATIONS, 2019

1. These Regulations may be cited as the Movable Property Security Rights (General) (Amendment) Regulations, 2019. Citation.

2. The Movable Property Security Rights (General) Regulations, 2017, herein referred to as “the principal Regulations” are amended in regulation 2 by inserting the following new definition in proper alphabetical sequence—  
L.N. No. 86 of 2017.

“confirmation of registration” means a copy of the information contained in the registered notice issued upon registration of that notice”

3. Regulation 5 of the principal Regulations is amended—

- (a) in sub-regulation (1) by deleting the word “person” wherever it appears and substituting therefor the word “registrant”;
- (b) in sub-regulation (2) by deleting the word “person” and substituting therefor the word “registrant”.

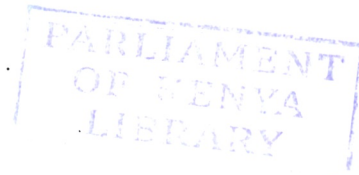
4. Regulation 6 of the principal Regulations is amended—

- (a) in sub-regulation (1) by deleting the word “apply” and substituting therefor the words “submit a search request”; and
- (b) in sub-regulation (2) by deleting the words “an applicant” and substituting therefor the words “the person conducting the search.”

5. Regulation 8 of the principal Regulations is amended—

- (a) in sub-regulation (1) by deleting the word “apply” and substituting therefor the words “submit the initial notice”;
- (b) by deleting sub-regulation (2) and substituting therefor the following new sub-regulation—

“(2) The initial notice under sub-regulation (1) shall contain the following information in the designated field—



- (a) the identifier and address of the grantor in accordance with regulation 9 (1) to (6);
  - (b) the name of the grantor in accordance with regulation 9 (7) and (8);
  - (c) the identifier of the secured creditor or its representative in accordance with regulation 10;
  - (d) a description of the collateral in accordance with regulation 11;
  - (e) an indication if the registration relates to a right of a non-consensual creditor;
  - (f) an indication that the registration relates to a prior security right in accordance with section 89 of the Act, which shall be available until the expiration of the period set out in section 91(2) (b) of the Act;
  - (g) the period of effectiveness of the registration not exceeding ten years;
  - (h) a statement of the maximum amount secured by the security rights; and
  - (i) any other information required by the Registrar for statistical purpose.
- (c) in sub-regulation (3) by inserting the words “confirmation of registration of an initial” immediately after the words “registrant a”; and
- (d) in sub-regulation (4) by deleting the words “the notice issued under sub-regulation (3) shall contain a copy of the information contained in the registered initial notice” and substituting therefor the words “A confirmation of registration of an initial notice under sub-regulation (3) shall include”.

6. Regulation 9 of the principal Regulations is amended—

- (a) in sub-regulation (5) by deleting the words “in the foreign jurisdiction and if the organization is not registered, the valid passport number of the principal officer of the organization” and substituting therefor the words “in Kenya that authorized the foreign unincorporated organization to conduct its activities.”
- (b) by deleting sub-regulation (6) and substituting therefor the following new sub regulation—
  - “(6) Where the grantor is a foreign incorporated organization—
    - (a) the grantor identifier is the registration number in the certificate of compliance issued

to the grantor by the relevant authority in Kenya that authorized the foreign unincorporated organization to conduct its activities; or

- (b) the grantor identifier is the registration number issued to the grantor by the relevant authority in the jurisdiction of incorporation, where the grantor has not been issued with a certificate of compliance in Kenya.”
- (c) in sub-regulation (7) by deleting the words “valid passport, if the natural person is not a citizen of Kenya.”
- (d) by inserting the following new sub regulation immediately after sub- regulation 7—

“(7A) Where the grantor is a natural person who is not a citizen of Kenya, the grantor’s name is the name that appears in grantor’s valid passport.”

7. Regulation 10 of the principal Regulations is amended—

- (a) in sub-regulation (1) by deleting the words the words “valid passport number, if the natural person is not a citizen of Kenya.”
- (b) by inserting the following new sub-regulation immediately after sub-regulation 1—

“(1A) Where the secured creditor or their representative is a natural person who is not a citizen of Kenya, the identifier is their valid passport number.”

- (c) in sub-regulation (2)—
  - (i) by deleting the words “in the foreign jurisdiction and if the organization is not registered, the valid passport number of the principal officer of the organization” appearing in paragraph (c) and substituting therefor the words “in Kenya that authorized the foreign unincorporated organization to conduct its activities.”
  - (ii) by deleting paragraph (d) and substituting therefor the following new paragraph —

“(d) if it is a foreign incorporate organization, the registration number—

- (i) is number in the certificate of compliance issued to the grantor by the relevant authority in Kenya that authorized the foreign unincorporated organization to conduct its activities; or
- (ii) issued by the relevant authority in the jurisdiction of incorporation, where the

secured creditor has not been issued with a certificate of compliance in Kenya.”

8. Regulation 11 of the principal Regulations is amended by deleting sub-regulation (3).

9. Regulation 12 of the principal Regulations is amended—

- (a) in sub-regulation (1) by deleting the words “register an amendment notice shall apply in” and substituting therefor the word “amend an initial notice shall submit an amendment notice”;
- (b) in sub-regulation (2) by deleting the word “application made)” and substituting therefor the words “amendment notice submitted”;
- (c) in sub-regulation (3) by deleting the word “registered notice” and substituting therefor the words “registered initial notice”;
- (d) in sub-regulation (4) by deleting the words “registering an amendment notice, issue to the registrant a notice” and substituting therefor the words “registration of an amendment notice, issue to the registrant a confirmation of registration of an amendment notice”;
- (e) in sub-regulation (5) by deleting the words “The notice issued under sub-regulation (4) shall contain a copy of the information contained in the registered amendment notice” and substituting therefor the words “A confirmation of registration of an amendment notice under sub-regulation (4) shall include”.

10. Regulation 13 of the principal Regulations is amended —

- (a) in sub-regulation (3) by deleting the words “a notice to the secured creditor” and substituting therefor the words “a notification to a secured creditor of grantor’s request for amendment or cancellation”; and
- (b) in sub-regulation (4) by deleting the word “notice” and substituting therefor the word “notification” wherever it appears in this sub-regulation.

11. Regulation 14 of the principal Regulations is amended—

- (a) in sub-regulation (1) by deleting the words “register a cancellation notice shall apply” and substituting therefor the word “cancel an initial notice shall submit a cancellation notice”;
- (b) in sub-regulation (2) by deleting the word “application” and substituting therefor the words “cancellation notice”;
- (c) in sub-regulation (3) by deleting the words “registering a cancellation notice, issue to the registrant a notice” and substituting therefor the words “the registration of a cancellation notice, issue to the registrant a confirmation of registration of a cancellation notice”;

(d) in sub-regulation (4) by deleting the words “the notice issued under sub-regulation (3) shall contain a copy of the information contained in the registered cancellation notice” and substituting therefor the words “confirmation of registration of a cancellation notice under sub-regulation (3) shall include”.

12. Regulation 16 of the principal Regulations is amended by inserting the words “most recent” immediately after the words “through the”.

13. The principal Regulations are amended by deleting the First Schedule and substituting therefor the following new Schedule—

FIRST SCHEDULE

FORMS

FORM 1

(r.6(1))

SEARCH REQUEST

Search criteria:

Grantor Identifier

Type of Grantor

Kenyan Citizen

Foreign Resident

Foreigner

Kenyan incorporated organization

Kenyan unincorporated organization

Foreign incorporated organization

Foreign unincorporated organization

Identifier.....

(ID number/Passport number/Registration number)

Collateral Serial Number:.....

FORM 2

(r. 6(2))

SEARCH CERTIFICATE

Grantor

Identifier .....

(ID number/Passport number/Registration number)

Name: .....

Postal address: .....

Email address: .....

Secured Creditor

Name .....

Postal address: .....

Email address:.....

Collateral

Type: .....

Description of Collateral:.....

Serial Number (if any):.....

Maximum Amount Secured.....  
Date and time of registration:.....  
Date and time of search .....

.....  
(Registrar)  
(r. 8(1))

FORM 3

INITIAL NOTICE

Particulars of Grantor

Type of Grantor

- Kenyan Citizen
- Foreign Resident
- Foreigner
- Kenyan incorporated organization
- Kenyan unincorporated organization
- Foreign incorporated organization
- Foreign unincorporated organization

Details of the Grantor

Grantor 1:

Identifier.....  
(ID number/Passport number/Registration number)  
Name: .....  
Postal address: .....  
Email address: .....  
Telephone/mobile number:.....

Grantor 2:

Identifier.....  
(ID number/Passport number/Registration number)  
Name: .....  
Postal address: .....  
Email address: .....  
Telephone/mobile number:.....

Consensual  
Non-consensual

## Particulars of a Consensual Secured Creditor

## Type of the Consensual Secured Creditor or their representative

- Kenyan Citizen
- Foreign Resident
- Foreigner
- Kenyan incorporated organization
- Kenyan unincorporated organization
- Foreign incorporated organization
- Foreign unincorporated organization

## Details of the Consensual Secured Creditor or their representative

## Consensual Secured Creditor 1 or their representative:

Name: .....

Identifier .....

(ID number/Passport number/Registration number)

Postal address: .....

Email address: .....

Telephone/mobile number: .....

## Consensual Secured Creditor 2 or their representative:

Name: .....

Identifier .....

(ID number/Passport number/Registration number)

Postal address .....

Email address: .....

Telephone/mobile number: .....

## Details of the Collateral

## Type of Collateral

- Motor vehicle/Trailer
- Livestock
- Crops
- Negotiable documents
- Intellectual property
- Securities
- Negotiable instruments
- Deposit/Bank accounts

- Household items
- Equipment or Machinery
- Inventory including stock in trade
- Consumer goods other than household items
- Attachment to immovable property
- All present and after acquired property
- Others

Description of Collateral :

.....  
.....

Serial Number of the collateral .....

Period of effectiveness:.....(days/months/years)

Maximum Amount Secured .....

Has grantor's authorization been obtained?

- Yes
- No

Particulars of a Non-Consensual Secured Creditor

Type of Non-Consensual Secured Creditor

- Official receiver<sup>1</sup>
- Landlord/Representative
- Judgment creditor<sup>2</sup>
- Government agency<sup>3</sup>
- Other (specify)

Details of the Non-Consensual Secured Creditor:

Name: .....

Postal address: .....

Email address: .....

Telephone/mobile number: .....

Details of the Collateral

Type of Collateral

- Motor vehicle/Trailer
- Livestock
- Crops

<sup>1</sup>This may include bankruptcy trustee, liquidator, administrator

<sup>2</sup>This may include judgment on matrimonial property, child maintenance, civil judgments, commercial judgments

<sup>3</sup>This may include land registries, Kenya revenue authority, companies registry etc

- Negotiable Documents
- Intellectual property
- Securities
- Negotiable instruments
- Deposit/Bank accounts
- Household items
- Equipment or Machinery
- Inventory including stock in trade
- Consumer goods other than household items
- Attachments to immovable property
- All present and after acquired property
- Others

Description of the Collateral

.....

.....

.....

Serial number of the Collateral.....

Date of judgment/decreed/order (if any):.....(dd/mm/yyyy)

Amount Owed or Amount Specified In Judgment/Decree/Order:.....(Currency)

FORM 4

(r. 8(3))

CONFIRMATION OF REGISTRATION OF AN INITIAL NOTICE

Registration Number of Initial Notice .....

Particulars of Grantor

Type of Grantor

- Kenyan Citizen
- Foreign Resident
- Foreigner
- Kenyan incorporated organization
- Kenyan unincorporated organization
- Foreign incorporated organization
- Foreign unincorporated organization

Details of the Grantor

Grantor 1:

Identifier .....

(ID number/Passport number/Registration number)

Name: .....  
Postal address: .....  
E-mail address: .....  
Telephone/mobile number: .....

Grantor 2:

Identifier.....

(ID number/Passport number/Registration number)

Name: .....  
Postal address: .....  
E-mail address: .....  
Telephone/mobile number: .....

**PART B**

- Consensual
- Non-consensual

**Particulars of a Consensual Secured Creditor**

Type of the Consensual Secured Creditor or their representative

- Kenyan Citizen
- Foreign Resident
- Foreigner
- Kenyan incorporated organization
- Kenyan unincorporated organization
- Foreign incorporated organization
- Foreign unincorporated organization

**Details of the Consensual Secured Creditor or their representative**

Consensual Secured Creditor 1 or their representative:

Name: .....  
Identifier.....  
(ID number/Passport number/Registration number)  
Postal address: .....  
E-mail address: .....  
Telephone/mobile number: .....

Consensual Secured Creditor 2 or their representative:

Name: .....

Identifier.....

(ID number/Passport number/Registration number)

Postal address:.....

Email address: .....

Telephone/mobile number: .....

Details of the Collateral

Type of Collateral

- Motor vehicle/Trailer
- Livestock
- Crops
- Negotiable Documents
- Intellectual property
- Securities
- Negotiable instruments
- Deposit/Bank accounts
- Household items
- Equipment or Machinery
- Inventory including stock in trade
- Consumer goods other than household items
- Attachments to immovable property
- All present and after acquired property
- Others

Description of Collateral :

.....  
.....  
.....

Serial Number of the collateral .....

Period of Effectiveness:.....(days/months/years)

Has grantor's authorization been obtained?

Yes

No

Particular of a Non-Consensual Secured Creditor

Type of Non-Consensual Secured Creditor

- Official receiver<sup>4</sup>
- Landlord/Representative
- Judgment creditor<sup>5</sup>
- Government agency<sup>6</sup>
- Other (specify)

Details of the Non-Consensual Secured Creditor :

Non-Consensual Secured Creditor:

Name: .....

Postal address: .....

Email address: .....

Telephone/mobile number: .....

Particulars of the Collateral

Type of Collateral

- Motor vehicle/Trailer
- Livestock
- Crops
- Negotiable Documents
- Intellectual property
- Securities
- Negotiable instruments
- Deposit/Bank accounts
- Household items
- Equipment or Machinery
- Inventory including stock in trade
- Consumer goods other than household items
- Attachments to immovable property
- All present and after acquired property
- Others

<sup>4</sup>This may include bankruptcy trustee, liquidator, administrator

<sup>5</sup>This may include judgment on matrimonial property, child maintenance, civil judgments, commercial judgments

<sup>6</sup> This may include land registries, Kenya revenue authority, companies registry etc

Description of Collateral

.....  
.....  
.....

Serial number of the Collateral .....

Date of judgment/decree/order (if any):... (dd/mm/yyyy)

Amount Owed Or Amount Specified In Judgment/Decree/Order:..... (Currency)

Dated this ..... day of ..... 20....

Time .....

.....  
(Registrar)

(r. 12(1))

FORM 5

AMENDMENT NOTICE

1. Registration number of the initial notice: .....

2. Reason for amendment:

registered notice contains information that exceeds scope of the Grantor's authorization;

the security agreement has been revised to delete some collateral;

transfer of a security right to a new secured creditor; or

other

3. Particulars of the amendment.....

(r. 12(4))

FORM 6

CONFIRMATION OF REGISTRATION OF AN AMENDMENT NOTICE

1. Registration number of the amendment notice: .....

2. Reason for amendment:

.....  
.....

3. Particulars of the amendment

.....  
.....

Dated this ..... day of ..... 20....

Time .....

.....  
(Registrar)

FORM 7

(r. 13(1))

GRANTOR'S REQUEST FOR REGISTRATION OF AMENDMENT/CANCELLATION NOTICE

- 1. Registration number of the initial notice.....
- 2. Has request been made to the secured creditor:  
     Yes(attach evidence)  
     No
- 3. Reason for amendment:  
     registered notice contains information that exceeds scope of the Grantor's authorization;  
     the security agreement has been revised to delete some collateral; or  
     other
- 4. Particulars of the amendment \*  
     .....  
     .....
- 5. Reason for Cancellation  
     .....  
     .....

FORM 8

(r. 13(3))

NOTIFICATION TO A SECURED CREDITOR OF GRANTOR'S REQUEST FOR AMENDMENT/CANCELLATION

To:

(Insert name of the secured creditor) .....

(Insert address of secured creditor) .....

TAKE NOTICE that on the ..... day of ..... 20..., (insert identifier and name of Grantor)..... requested amendment/cancellation of the registered notice, registration number(insert registration number of the notice).....and registered on the ..... day of..... 20... pursuant to section 33 (4) of the Movable Property Security Rights Act, 2017.

FURTHER TAKE NOTICE THAT you are required to respond to the grantor's request within fourteen (14) working days of receipt of this notification.

Dated this ..... day of ..... 20...

.....  
(Registrar)

SECURED CREDITORS RESPONSE

Do you consent to the registration of the amendment/ cancellation to the registered notice?

Yes

No (give reasons)

FORM 9

(r.14(1))

CANCELLATION NOTICE

1. Registration number of the initial notice.....

2. Reason for cancellation:

registration of the initial notice was not authorized by the Grantor; registration of the initial notice was authorized by the Grantor but the authorization has been withdrawn and no security agreement has been concluded; or

security right has been extinguished and secured creditor has no further commitment.

FORM 10

(r.14(3))

A CONFIRMATION OF REGISTRATION OF A CANCELLATION NOTICE

1. Registration number of the cancellation notice.....

2. Reason for cancellation:

registration of the initial notice was not authorized by the Grantor;

registration of the initial notice was authorized by the Grantor but the authorization has been withdrawn and no security agreement has been concluded; or

security right has been extinguished and secured creditor has no further commitment.

Dated this ..... day of ..... 20....

Time .....

.....  
(Registrar)

Dated the 25th June, 2019.

P. K. KARIUKI,  
Attorney- General.

**EXPLANATORY MEMORANDUM TO THE MOVABLE PROPERTY SECURITY RIGHTS (GENERAL)(AMENDMENT) REGULATIONS, 2019**

**PART I**

**Name of the Statutory Instrument:** The Movable Property Security Rights (General) (Amendment) Regulations, 2019

**Name of the Parent Act:** The Movable Property Security Rights Act, 2017

**Enacted Pursuant to:** Section 88 of LN. NO.13 of 2017

**Name of the Ministry/ Department:** Office of the Attorney General and the Department of Justice, Business Registration Service

**Gazetted on:** 19<sup>th</sup> July, 2019

**Tabled on:**

**PART II**

**1.The Purpose of the Movable Property Security Rights (General) (Amendment) Regulations, 2019**

The purpose of these Regulations is to provide for the proper conduct of the business of the Registry established under Section 19 of the Movable Property Security Rights Act, 2017. The objectives of the regulations are in line with the spirit of the ease of doing business and focuses on the use of movable assets as collateral, to enhance the confidence of lending institutions and create an enabling environment to lend against movable assets as collateral.

The said amendments have been proposed by some of the stakeholders to streamline some regulations to give better effect to the Act.

## **2.Legislative Context**

The Movable Property Security Rights Act, 2017 empowers the Cabinet Secretary to make regulations necessary or convenient for carrying out or giving effect to the Act. The Movable Property Security Rights (General) (Amendment) Regulations, 2019 are therefore issued to provide effective running of the Registry including providing a guideline in relation to the conduct of the business of the Registry and the format of notices to be registered in the Registry.

## **3.Policy Background**

The regulatory framework on secured transactions law and collateral registry is an initiative of the Office of the Attorney General, the National Treasury, Central Bank of Kenya and Kenya Bankers Association with a view of increasing access to credit to firms especially micro, small and medium enterprises (MSMEs).

The Movable Property Security Rights Act, No. 13 of 2017 was enacted and commenced on 16th May, 2017 and thereafter the Movable Property Security Rights Regulations, 2017 were gazetted on 24th May 2017. Further, the collateral registry was created on the E-Citizen portal and has been operational since 25th May, 2017.

Business Registration Service conducted sensitization and capacity building and in line with its mandate, to which they discussed the salient features of the Act and Regulations and an overview of the Collateral Registry (Design and Operations). The expected outcomes were to improve the efficacy of the collateral registry and increasing the number of registrations and searches conducted by the secured creditors.

From these engagements the Service realised the need to amend the regulations in order to streamline some of the regulations to give better effect to the Act.

Currently Kenya is ranked 8/190 on the ease of doing business index under the ‘Getting Credit’ indicator which is an improvement from the previous position 32/189. These reforms seek to

ensure that we meet the best international practices and may intern lead to a further improvement on the ranking.

#### **4. Consultations Outcome**

Movable Property Security Rights (General) (Amendment) Regulations, 2019 have taken into account the views of the key personnel in the Office of the Attorney General and Department of Justice who are versed with the operational aspects of movable property as collateral for credit facilities. The Attorney General in coming up with the regulations has sought the extensive input of the Ag- Director General who is the accounting officer and administrator of the Business Registration Service.

The other key stakeholders are Kenya Bankers Association, Leasing Association of Kenya, the Kenya Association of Manufacturers, Association of Microfinance Institutions, Kenya Private Sector Alliance, Law Society of Kenya, Law Society of Kenya- Nairobi Branch, Central Bank of Kenya, National Treasury, Saccos Societies Regulatory Authority, Ministry of Industry, Trade and Co-operatives State Department for Investment and Industry, Anjarwalla & Khanna Advocates, B.M. Musau & Co. Advocates, Coulson Harney LLP, Iseme, Kamau & Maema Advocates, Kaplan & Stratton, Sisule Munyi Kilonzo & Associates, TripleOKlaw Advocates, Waruhiu K'owade & Ng'ang'a Advocates, MMC Africa Law as well as the Medium and Small Enterprises Authority.

The regulations are expected to streamline and give clarity to the operation of the Registry as contemplated under the Movable Property Security Rights Act.

#### **5. Guidance**

The Business Registration Service will sensitize its officers for adherence to the objectives of accountability and efficiency in the management of the Registry. The Service will also engage key stakeholders whose participation and cooperation remains instrumental in the successful implementation of the key aspects of the Movable Property Security Rights Act, 2017 and the regulations.

## **6. Impact Assessment**

As impact assessment has not been prepared for this Instrument. The instrument is made pursuant to the objectives as operationalised by the Movable Property Security Rights Act.

## **7. Review of the Regulations**

The Ag. Director General shall monitor the application of the Movable Property Security Rights (General) (Amendment) Regulations, 2019. This will be done through the reports prepared at regular intervals. In addition, the implementers of the regulations will carry out regular monitoring and evaluation of the specific provisions of these regulations with the aim of initiating any legislative amendments as may be necessary on an annual basis.

## **8. Contact Person**

The contact person at the Office of the Attorney General is Hon. P. Kihara Kariuki, or Mr. Kenneth Gathuma, Ag- Director General, Business Registration Service.

## SUBMISSIONS TO THE COMMITTEE ON DELEGATED LEGISLATION

### MOVABLE PROPERTY SECURITY RIGHTS (GENERAL) (AMENDMENT) REGULATIONS, 2019

#### INTRODUCTION

Access to low credit especially to the Micro, Small and Medium Enterprises has been a recurring debate in the country for many years. On one hand borrowers complain about high interest rates, hidden charges, nondisclosure of pertinent information by the lenders and unfair denial of access to credit. On the other hand, lenders are worried about high default rates, difficulties on foreclosing on collateral through the courts in case of default and the misapplication of funds by the borrowers. With these conflicting views the Kenyan economy continues to miss out on the huge potential that the Micro, Small and Medium Enterprises have in driving economic growth.

The need to create the ease of doing business and focus on the use of movable assets as collateral is key. The Government of Kenya, through the Office of the Attorney General and Department of Justice (OAG&DOJ) and the National Treasury initiated reforms to the legal and regulatory regime on movable collateral and other instruments in secured transactions.

The overall objectives of the reforms were:

1. To enact a new secured transactions framework and establish an electronic movable assets register; and
2. To have an efficient system that can be used by lenders, businesses and other practitioners in increasing secured transactions, access to credit and other forms of finance.

This led to the enactment of the Movable Property Security Rights Act, 2017 that seeks to provide for the creation of the electronic registry, enhance confidence of the lending institutions and create an enabling environment to lend against immovable property.

Following the coming into force of the Movable Property Security Rights Act, 2017 and the Movable Property Security Rights (General) Regulations, 2017, the Registrar received a number of comments regarding the said sub-legislation and more so regarding the need to streamline some regulations to give better effect to the Act.

## ACTION BY THE REGISTRAR

This being a new law the registry felt the need to sensitize the stakeholders on the new law, the regulations and the online collateral registry. The idea being to establish a basis for creating an enabling and vibrant commercial environment with the country and positively impact on KENYA'S Ranking in the Getting Credit Indicator of the Doing Business Assessment carried out by the World Bank. The expected results would then form a road map for the first round of amendments to the Act and the Regulations therein. The main objectives therefore being –

1. To have a comprehensive review of the MPSR Act and Regulations.
2. To bring the relevant stakeholders together and build on the gains already achieved.
3. To request for recommendations of the stakeholders more so regarding their interaction with the Act and the Registry so far.

This is where the journey to amending the regulation began after the said sensitization workshop that highlighted the need to review the regulation to ensure that it conform with the best international practise.

The Registrar in consultation with the legislative drafting department came up with draft the Movable Property Security Rights (General) (Amendment) Regulations, 2019 that were circulated to the various stakeholders and the licenced insolvency practitioners. The stakeholders included Kenya Bankers Association, Leasing Association of Kenya, the Kenya Association of Manufacturers, Association of Microfinance Institutions, Kenya Private Sector Alliance, Law Society of Kenya, Law Society of Kenya- Nairobi Branch, Central Bank of Kenya, National Treasury, Saccos Societies Regulatory Authority, Ministry of Industry, Trade and Co-operatives State Department for Investment and Industry, Anjarwalla & Khanna Advocates, B.M. Musau & Co. Advocates, Coulson Harney LLP, Iseme, Kamau & Maema Advocates, Kaplan & Stratton, Sisule Munyi Kilonzo & Associates, TripleOKlaw Advocates, Waruhiu K'owade & Ng'ang'a Advocates, MMC Africa Law among other law firms as well as the Medium and Small Enterprises Authority.

The registry conducted various engagements with the public to seek their views on the proposed regulation as per the annexed workshop reports and attendance lists.

It's after incorporating some of the views from the said engagements that the Regulations published.

**CONCLUSION**

The Movable Property Security Rights (General) (Amendment) Regulations, 2019 seek to give effect to the provisions in the Movable Property Security Rights Act, 2017 and basically enhance the use of the registry as well as ensure that we conform to the best international practices.

Currently Kenya is ranked 8/190 on the ease of doing business index under the 'Getting Credit' indicator which is an improvement from the previous position 32/189. These reforms seek to ensure that we meet the best international practices and may intern lead to a further improvement on the ranking.

It is thus our humble submission that you approve the said Amendment regulations to ensure that the intentions of the Act are fulfilled.

**CONTACT PERSON**

The contact person at the Office of the Attorney General is Ag. Director General, Business Registration Service Mr. Kenneth Gathuma and the Acting head of the Collateral Registry Mr. Joseph Onyango, Business Registration Service.

**SUBMITTED BY:**

Kenneth Gathuma- Ag. Director General

Joseph Onyango: Head, Collateral Registry

## THE REPORT OF THE COLLATERAL REGISTRY ON SENSITIZATION WORKSHOP HELD BETWEEN 21<sup>st</sup> November, 2017 AT CROWN PLAZA.

### INTRODUCTION

Joseph Onyango the Ag. Head the collateral department took the participants through the agenda and objectives of the workshop. He gave a summary of what was expected of the participants. His introduction set a tone for the workshop.

The Objectives of the workshop were highlighted as-

1. To familiarise the salient features of the Movable Property Security Right Act, 2017
2. To get the participants input and comments on the collateral registry so far
3. To Identify key issues and gaps that need to be addressed

The workshop should answer the following question as raised by some of the stakeholders –

- 1) What are the salient features which are contained in the Movable Property Security Right Act, 2017?
- 2) Are the Movable Property Security Rights (General) Regulations, 2017 adequate to operationalize the Act?
- 3) What are the duties of the members of staff at the collateral registry with the coming into force of the Movable Property Security Rights Act, 2015?
- 4) How does the service intend on sensitizing the end users and the stakeholders regarding the collateral register?
- 5) Is registration on the eCitizen simple enough to encourage the users use if frequently and with ease?
- 6) How secure is the system?

The consultant Dr. Njaramba a consultant took the participants through the Background and gave an overview of both the Act and the Regulations.

### BACKGROUND

The main objective of the Movable Property Security Right Act, 2017 is to increase access to credit to firms especially micro, small and medium enterprises (MSME's) by developing the appropriate legal and institutional frameworks to allow facilitate the use of movable assets as collateral for loans.

The benefits of a secured transactions system seek to increase access to credit, increase market competition, reduce cost of credit and to promote credit diversification.

### OVERVIEW OF MOVABLE PROPERTY SECURITY RIGHT ACT, 2017

Long Title- AN ACT of Parliament to facilitate the use of movable property as collateral for credit facilities, to establish the office of the Registrar of security rights and to provide for the registration of security rights in movable property.

### Part I–Preliminary

This being the preliminary part covers the following areas-

Definition of terms used in the Act e.g.

a “security right” is defined as —

(a) a property right in a movable asset that is created by an agreement to secure payment or other performance of an obligation, regardless of whether the parties have denominated it as a security right, and regardless of the type of asset, the status of the grantor or secured creditor, or the nature of the secured obligation; and

(b) the right of the transferee in an outright transfer of a receivable

Objects of this Act– as outlined in section 3 include to-

(a) promote consistency and certainty in secured financing relating to movable assets;

(b) enhance the ability of individuals and entities to access credit using movable assets; and

(c) establish a Registry to facilitate the registration of security rights in movable assets.

The Act applies to-

a) every transaction that secures payment or performance of an obligation, without regard to its form and without regard to the person who owns the collateral;

b) without limiting the generality of paragraph (a), a chattel mortgage, credit purchase transaction, credit sale agreement, floating and fixed charge, pledge, trust indenture, trust receipt, financial lease and any other transaction that secures payment or performance of an obligation; and

c) with the exception of Part VII to the Act, an outright transfer of a receivable. (S. 4)

The Act however does not apply to–

a) a security right in book-entry securities under the Central Depositories Act;

b) the creation, lease or transfer of an interest in land, excluding a right to payment that arises in connection with an interest in or a lease of land;

c) a security right in a vessel including a mortgage right subject to the Merchant Shipping Act;

d) a security right in an aircraft subject to the Civil Aviation Act; and

- e) except as otherwise provided in this Act, a lien, charge or other interest created by law.

## Part II- Creation of Securities

The Act under Part II provides that a security right is created by a security agreement, provided that the grantor has rights in the asset to be encumbered or the power to encumber it. (§. 6)

Such a security agreement shall—

- i) be in writing and signed by the grantor;
- ii) identify the secured creditor and the grantor;
- iii) except in the case of an agreement that provides for the outright transfer of a receivable, describe the secured obligation; and
- iv) describe the collateral as provided in section 8 of the Act.

A security right may secure an obligation of any type, present or future, determined or determinable, conditional or unconditional, fixed or fluctuating.

Further a security right may encumber

- (i) any type of movable asset, whether tangible or intangible, including future assets
- (ii) parts of assets and undivided rights in movable assets;
- (iii) generic categories of movable assets; and
- (iv) all of a grantor's movable assets

Such encumbered assets are required under section 8 of the Act to be described in the security agreement in a manner that reasonably allows their identification by-

- (i) specific listing;
- (ii) category;
- (iii) a type of collateral defined in this Act; or
- (iv) quantity.

## Part III- Third-party effectiveness of a security right

A security right in any movable asset is effective against third parties if a notice with respect to the security right is registered with the Registrar (§. 15)

A security right in any proceeds is effective against third parties without any further action of the grantor and the secured creditor if—

- (i) the security right in the original collateral is effective against third parties; and

(ii) the proceeds are in the form of money, receivables, negotiable instruments or rights to payment of funds credited to a deposit account. (S. 16)

If a security right in a negotiable document is effective against third parties, the security right that extends to the asset covered by the document is also effective against third parties (S. 18).

#### Part IV- Registration of Notices relating to Security Rights

This Part establishes the Office of the Registrar with a duty of overseeing the general running of the Registry (S 19).

The function of the Registry are-

- (i) to receive, store and make accessible to the public information on registered notices with respect to security rights and rights of non-consensual creditors;
- (ii) to preserve information contained in the registry records and reconstruct the information in the event of loss or damage;
- (iii) to remove information in a registered notice from its public records only upon the expiry of the period of effectiveness of the registration of a notice;
- (iv) to archive information removed from the public records (for five years) to ensure that the information can be retrieved .

The Registrar and staff are to be appointed by the Business Services Registration Board.

The procedure for registration of notices, access to information by the public, conduct of searches and assigning of unique identifier to grantors and secured creditors are prescribed in the Regulations.

The Information required in an initial notice include

- (i) the identifier and address of the grantor;
- (ii) the identifier and address of the secured creditor or its representative;
- (iii) a description of the collateral in accordance with section 8 or by a serial number for the serial-numbered collateral only that is not held as inventory;
- (iv) the period of effectiveness of the registration; and
- (v) any other information for statistical purposes only. (S. 27)

The information contained in a notice shall be expressed in English except for the names and addresses of the grantor and the secured creditor or their representatives. (S. 28)

Serialization- each registered initial notice shall have a unique registration number which shall be associated with any of its subsequent registered amendment and cancellation notices (S. 29)

The registration of an initial notice is effective for the period of time indicated by the registrant in the designated field of the notice, but shall not in any event, exceed ten years.

This period may be extended only within six months before its expiry by the registration of an amendment notice that indicates in the designated field a new period, in any event not exceeding ten years.

Immediately after the registration of a notice, the Registrar shall, in the prescribed form, provide to the registrant, a copy of the information contained in the notice indicating the date and time when the registration became effective and the registration number (S. 31)

Save for the foregoing, also enshrined in Part IV are provisions on when an amendment notice can be registered, search criteria for registry records and appeals from Registrar decisions which i.e. at a court of competent jurisdiction (S. 33)

#### **Part V- Priorities**

Priority of competing security rights created by the same grantor in the same collateral, which is determined according to the time of registration (S. 38)

Section 39 further provides that a security right created by a grantor is subordinate to a security right in the same collateral created by another person if the grantor acquired the collateral subject to the security right created by the other person and made effective against third parties before the grantor acquired the collateral.

Knowledge of the existence of a security right in favour of another person on the part of a secured creditor does not affect its priority under this Act (S. 40).

Also covered under Part V on priorities are rights of consensual creditors (S. 47), subordination of priority of rights under the Act in favour of any existing or future competing claimant (S. 51) among other key priority areas for consideration.

#### **Part VI- Rights and Obligations of the parties and third party obligors**

The obligation to take reasonable care on a collateral in possession of a secured creditor is with the secured creditor. (S. 56)

A secured creditor has the right to inspect the collateral in the possession of the grantor or another person.

The creation of a security right in a receivable does not affect the rights and obligations of the debtor of the receivable, without the debtor's consent.

Any rights of set-off that the institution may have are not affected by any security right that the institution may have in a right to payment of funds credited to a deposit account that it maintains.

#### **Part VII- Enforcement of a Security Right**

Failure of the debtor to pay or otherwise perform a secured obligation, the grantor and the secured creditor may upon issuance of notice exercise any of the following rights (S.67)–

- (i) sue the grantor for any payment due and owing under the agreement;
- (ii) appoint a receiver of the movable asset;
- (iii) lease the movable asset;
- (iv) take possession of the movable asset;
- (v) sell the movable asset; or
- (vi) if the security right has been created under a hire purchase agreement, the secured creditor may enforce its rights only in accordance with the Hire Purchase Act.

*Rights of parties affected by the enforcement of a security right*

Any person whose rights are affected by the enforcement process is entitled to redeem the collateral by paying or otherwise performing the secured obligation in full, including the reasonable cost of enforcement.

This right however, can only be exercised before the collateral is disposed of.

*Priority in enforcing of a security right*

A security right that was first created takes priority over all other security rights. (S. 70)

Despite the fact that another secured creditor or a non-consensual creditor has commenced enforcement, a secured creditor whose security right has priority over that of the enforcing secured creditor or non-consensual creditor is entitled to take over the enforcement process.

*Right of a secured creditor to take possession of the collateral*

A secured creditor is entitled to take possession of the collateral in the following cases; (S.71)

If the grantor has consented in the security agreement to the secured creditor obtaining possession, in which case no court application is required; or

If the grantor has not consented in the security agreement to the secured creditor obtaining possession, but at the time the secured creditor attempts to obtain possession of the collateral, the grantor or any other person in possession of the collateral does not object.

*Issuance of a notice before enforcement of a security right*

A secured creditor is obliged to send a notification of its intention to dispose off a collateral to (S. 73) —

- (i) the grantor and the debtor; and
- (ii) any other secured creditor that registered a notice with respect to the collateral.

The notification is to be sent at least five working days before the sale or other disposition, lease or license takes place.

#### Part VIII-Applicable Law

The law applicable to the mutual rights and obligations of a grantor and a secured creditor arising from their security agreement is; (S. 79)

- (i) the law chosen by the parties; or
- (ii) the law governing the security agreement, in the absence of a choice of law.

The law applicable to the creation, effectiveness against third parties and priority of a security right in a tangible asset is the law of the country in which the asset is located.

The law applicable to the creation, effectiveness against third parties and priority of a security right in an intangible asset is the law of the country in which the grantor is located.

The law applicable to issues relating to the enforcement of a security right is dependent on whether the security created is in a tangible and intangible assets;

- (i) In case of a tangible asset, is the law of the country where the relevant act of enforcement takes place; and
- (ii) In case of an intangible asset is the law applicable to the priority of the security right.

The law applicable to the creation of a security right in proceeds is the law applicable to the creation of the security right in the original collateral from which the proceeds arose.

The law applicable to the relationship between the grantor of a security right in a receivable, negotiable instrument or negotiable document and the debtor of the receivable, the obligor under the negotiable instrument or the issuer of the negotiable document is the law applicable to— (S. 86)

- (i) the relationship between the debtor of the receivable, the obligor under the instrument or the issuer of the document and the holder of a security right in the receivable, instrument or document;
- (ii) the conditions under which a security right in the receivable, instrument or document may be invoked against the debtor of the receivable, the obligor under the instrument or the issuer of the document, including whether an agreement limiting the grantor's right to create a security right may be asserted

by the debtor of the receivable, the obligor under the instrument or the issuer of the document; and

(iii) whether the obligations of the debtor of the receivable, the obligor under the instrument or the issuer of the document have been discharged.

## Part IX-General Provisions

### *Consequential amendments and Repeal*

The enactment of this Act has an impact on the following pieces of legislations;

Agricultural Finance Corporations Act, Companies Act, and the Insolvency Act are amended to align them with the new legislation in terms of the terminologies used.

Stamp Duty Act, Cap. 480, movable properties are stamp duty exempt, under the Act.

Pawn Brokers Act and the Chattels Transfers Act, is repealed.

### OVERVIEW OF MOVABLE PROPERTY SECURITY RIGHT (GENERAL) REGULATIONS, 2017

Section 88 of the Act empowers the Attorney General to make regulations on the following matters:

- (i) conduct of the business of the registry;
- (ii) format of notices to be registered in the registry;
- (iii) payment of fees in respect of any matter under Part IV of the Act;
- (iv) provision of copies of any notices registered in the registry and the certification of the copies; or
- (v) any matter in relation to the Registry.

### Access to Registry

The registry is basically electronic (R. 3).

To access the register the user has to create a user account and enter the required details in the designated fields. (R. 4).

### Search

A person who intends to conduct a search of the registry records shall apply to the Registrar in Form 1 set out in the First Schedule and pay the prescribed fees of Kshs. 500/=.

The Registrar shall issue to an applicant a search certificate in Form 2 set out in the First Schedule, upon being satisfied with the application.

### Registration of an Initial Notice

Registration of an initial notice shall be as prescribed in form 3 in the First Schedule.

This application shall contain the following information:

- (i) the identifier and address of the grantor.
- (ii) the name of the grantor.
- (iii) the identifier of the secured creditor or its representative.
- (iv) a description of the collateral.
- (v) an indication if the registration relates to a right of a non-consensual creditor
- (vi) an indication that the registration relates to a prior security right.
- (vii) the period of effectiveness of the registration. a statement of the maximum amount secured by the security right.

#### **Notice of registration of an initial notice**

The Registrar shall, immediately after registration of an initial notice, issue to the registrant a notice in Form 4 set out in the First Schedule. R 8(3).

Note: No registration fee is chargeable upon issuance of a search certificate .

#### **Grantors identifier and name (R. 9)**

In case of a natural person who is a Kenyan citizen, the identifier is the national identity card number, while foreigners are identified by the person's valid passport number.

In case of an incorporated company in Kenya, the identifier is the registration number in the certificate of incorporation.

In case of an unincorporated organization in Kenya, the grantor identifier is the registration number issued to the grantor by the relevant authority and if the organization is not registered, the identity card number of the Kenyan principal officer of the organization.

#### **Secured Creditor's identifier (R. 10)**

In case of a natural person the identifier is the identity card number or valid passport number.

In case of a company incorporated in Kenya, the identifier is, the registration number in the certificate of incorporation.

In case of an unincorporated organization in Kenya, the registration number issued to the creditor by the relevant authority and if the organization is not registered, the identity card number of the Kenyan principal officer of the organization.

In case of a foreign unincorporated organization, the registration number issued to the creditor by the relevant authority in the foreign jurisdiction and if the organization is not registered, the valid passport number of the principal officer of the organization.

#### **Amendment/ Cancellation of a Notice**

An application to amend a notice shall be as per form 5 in the First schedule.

The application shall contain the following information;

- (i) the registration number;
- (ii) the information to be added or changed; and
- (iii) the reasons for the proposed amendment.

Cancellation of a notice shall be as prescribed in form 9 in the first schedule.

#### **Forms**

The forms to be used in the registration process of a collateral are as prescribed in the First schedule to the regulations

Form 1- Search request.

Form 2-Search certificate.

Form 3-Initial notice.

Form 4-Notice to registrant of the initial notice.

Form 5-Amendment notice.

Form 6- Notice to registrant of an amendment notice.

Form 7-Grantor's request for registration of amendment /cancellation notice.

Form 8-Notice to secured creditor of grantor's request for amendment /cancellation.

Form 9-Cancellation notice.

Form 10-Notice to registrant of cancellation notice.

Larry one of the key personnel who assisted in developing the system gave and over view of the use of the Registry.

#### **ELECTRONIC COLLATERAL REGISTRY**

##### **1. Collateral Registry- Initial Registration process**

###### **1.1. Prerequisites**

1.1.1.Applicant must have an ecitizen account. The type of account could be:

- Citizens Account
- Foreign Residents Account
- Visitors Account(For foreigners)

- Linked Business account on BRS (eBusiness)

## 1.2. Logging In.

- 1.2.1. Applicant will access [www.ecitizen.go.ke](http://www.ecitizen.go.ke) on their browser
- 1.2.2. Enter there username(Id Number/email address)
- 1.2.3. Enter Password
- 1.2.4. Confirm there not a robot
- 1.2.5. Click enter

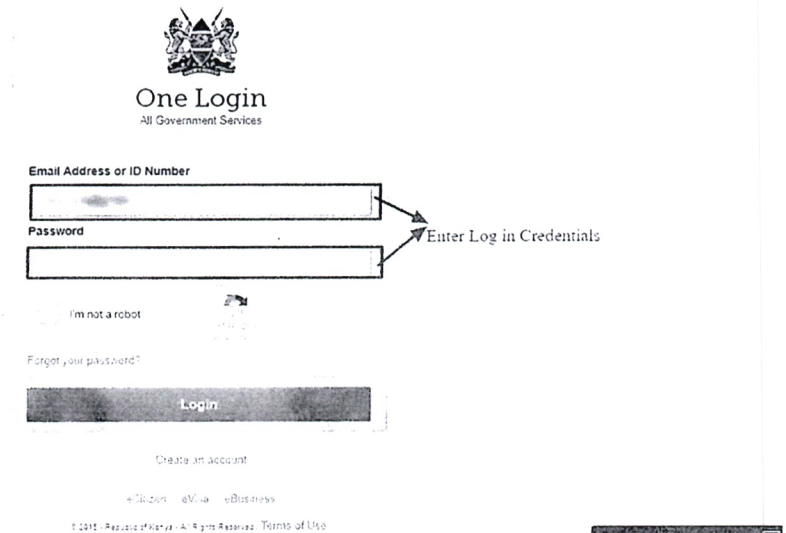


Fig1

## 1.3. Access Business registry Services



Fig 2

#### 1.4. Access the Application form by clicking on Collateral Registry (MPRS).

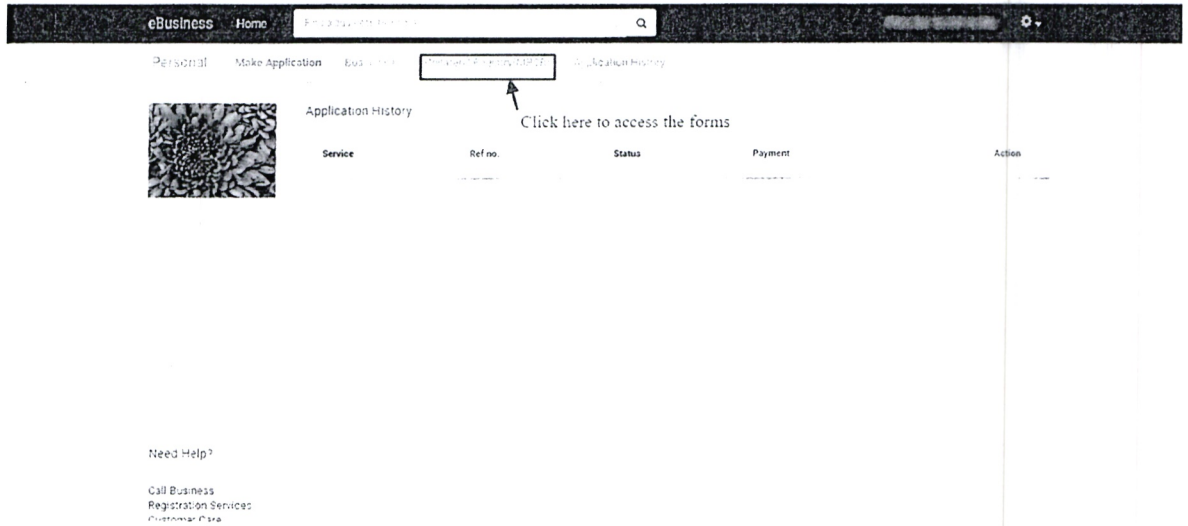


Fig 3

#### 1.5. Select the application from the List

Identify this application and click on the Blue highlighted application form.

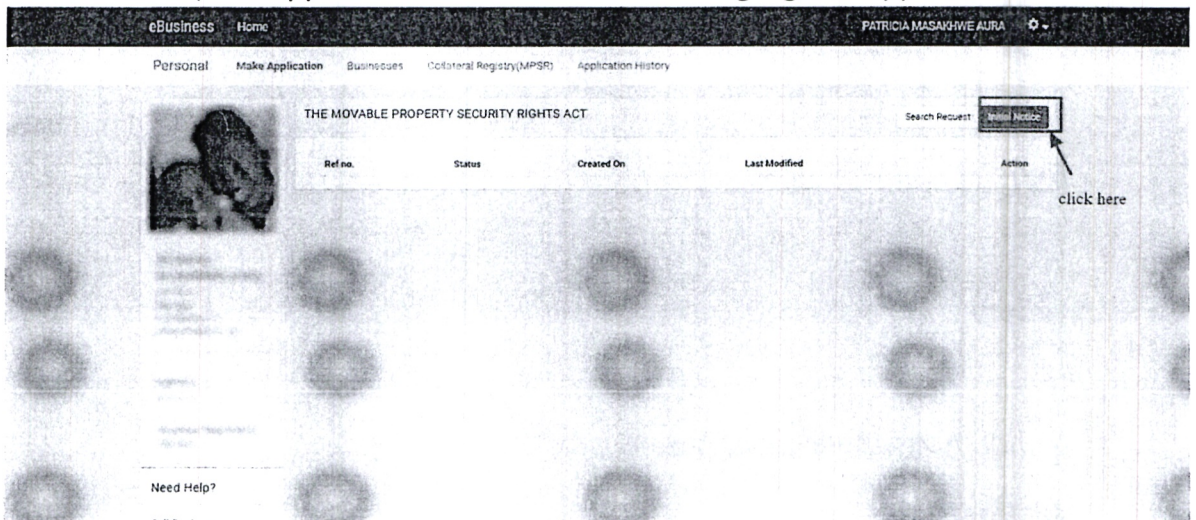


Fig 4

#### 1.6. Open the Application form and add the Grantor details

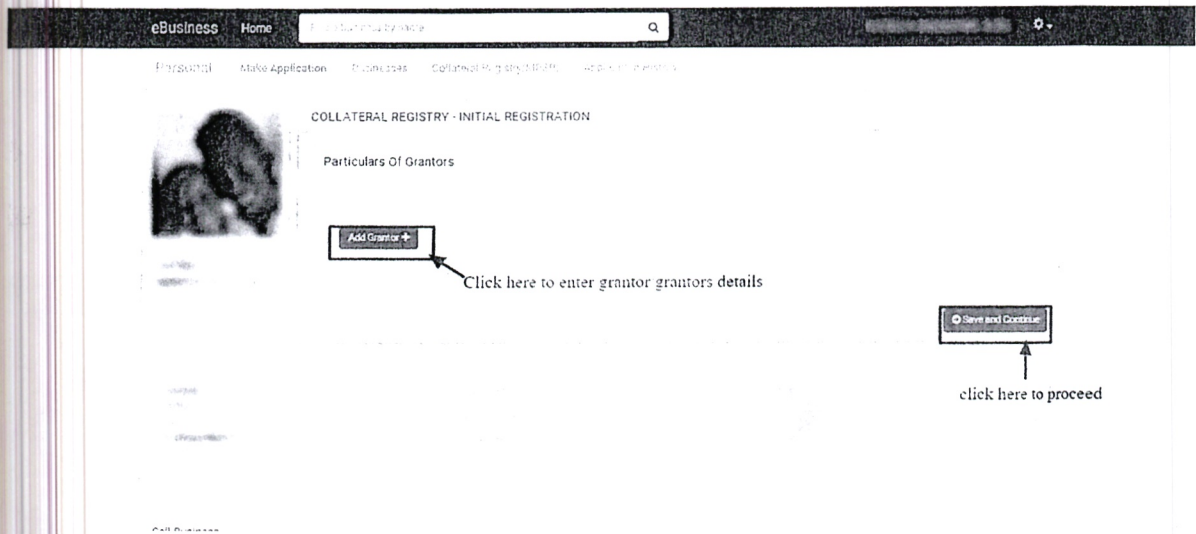
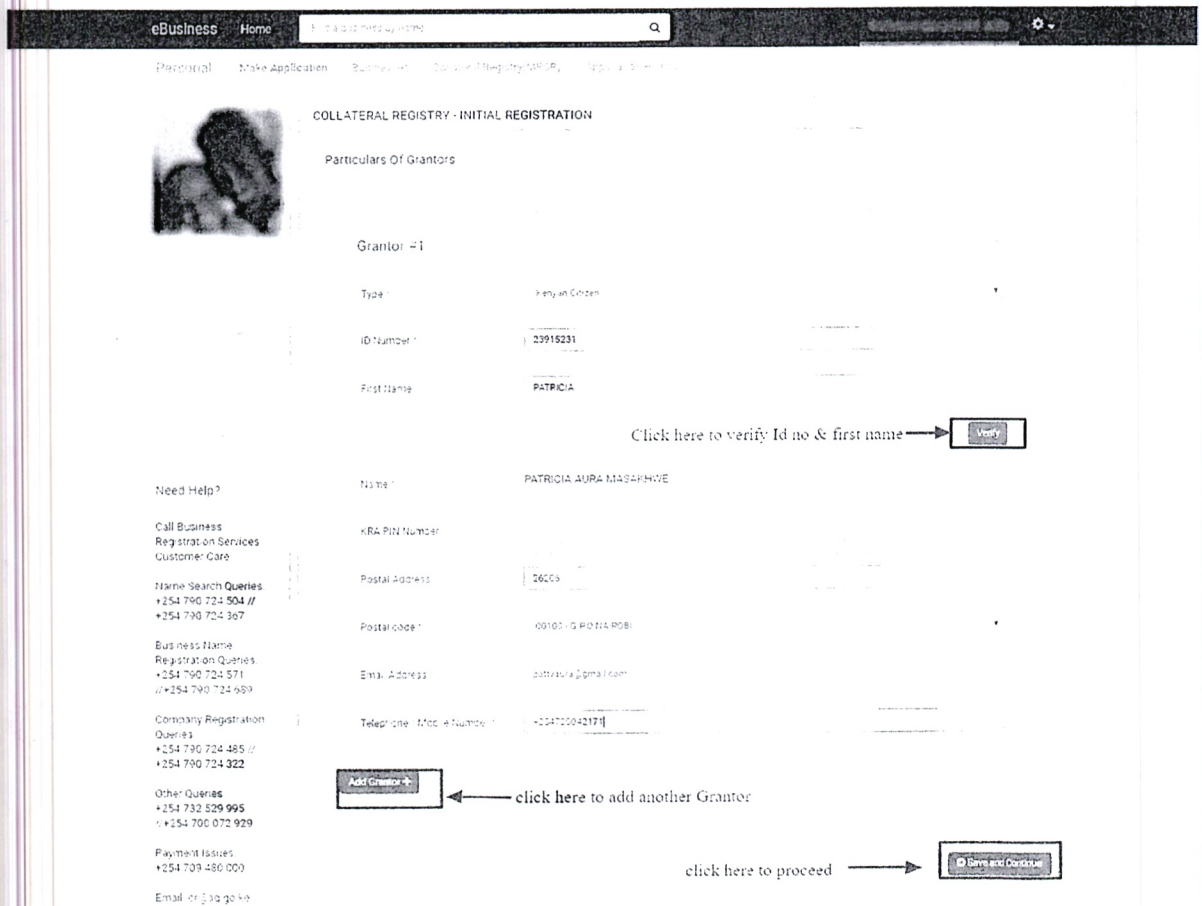


Fig 5

## 1.7. Add Grantors Details

Important points to note:

- 1.7.1. A grantor could be of several types to choose from; select what is appropriate from the drop down menu
- 1.7.2. In Case of a Kenyan Citizen or a Foreign Resident the ID number and name will be verified against the IPRS database. See Fig 5.1





## 1.9. Enter Collateral Details

Important Point to note.

1.9.1. There are several types of collateral to choose from; choose what is appropriate from the drop down list.

The screenshot shows the 'MPSR-NVQUDW COLLATERAL REGISTRY-INITIAL REGISTRATION' page. The page is divided into several sections:

- Navigation:** eBusiness Home, Find a business by name, and a menu with Personal, Make Application, Businesses, Collateral Registry (MPSR), and Account History.
- Header:** MPSR-NVQUDW COLLATERAL REGISTRY-INITIAL REGISTRATION.
- Particulars Of Grantors:**
  - Grantor #1:**
    - Type: Kenyan Citizen
    - ID Number: [Empty field]
    - First Name: [Empty field]
    - Name: [Empty field]
    - KRA PIN Number: [Empty field]
    - Postal Address: 25176
    - Postal code: 01000-0 P.O BOX 19081
    - Email Address: umyera@gmail.com
    - Telephone / Mobile Number: +254720042171
  - Buttons:** 'Verify' (with 'Click here to verify' label), 'Add Grantor' (with 'click here to add more grantors' label), and 'Proceed to Details' (with 'Click here to proceed' label).
- Need Help?:**
  - Call Business Registration Services Customer Care: +254 790 724 504, +254 790 724 367
  - Name Search Queries: +254 790 724 504, +254 790 724 367
  - Business Name Registration Queries: +254 790 724 571, +254 790 724 689
  - Company Registration Queries: +254 790 724 485/7, +254 790 724 922
  - Other Queries: +254 732 829 995, +254 700 072 929
  - Payment Issues: +254 709 480 000
  - Email: cr@ag.go.ke

Fig 7

1.9.2. The type of information entered below will depend on the type of collateral selected below examples shows that of motor vehicle

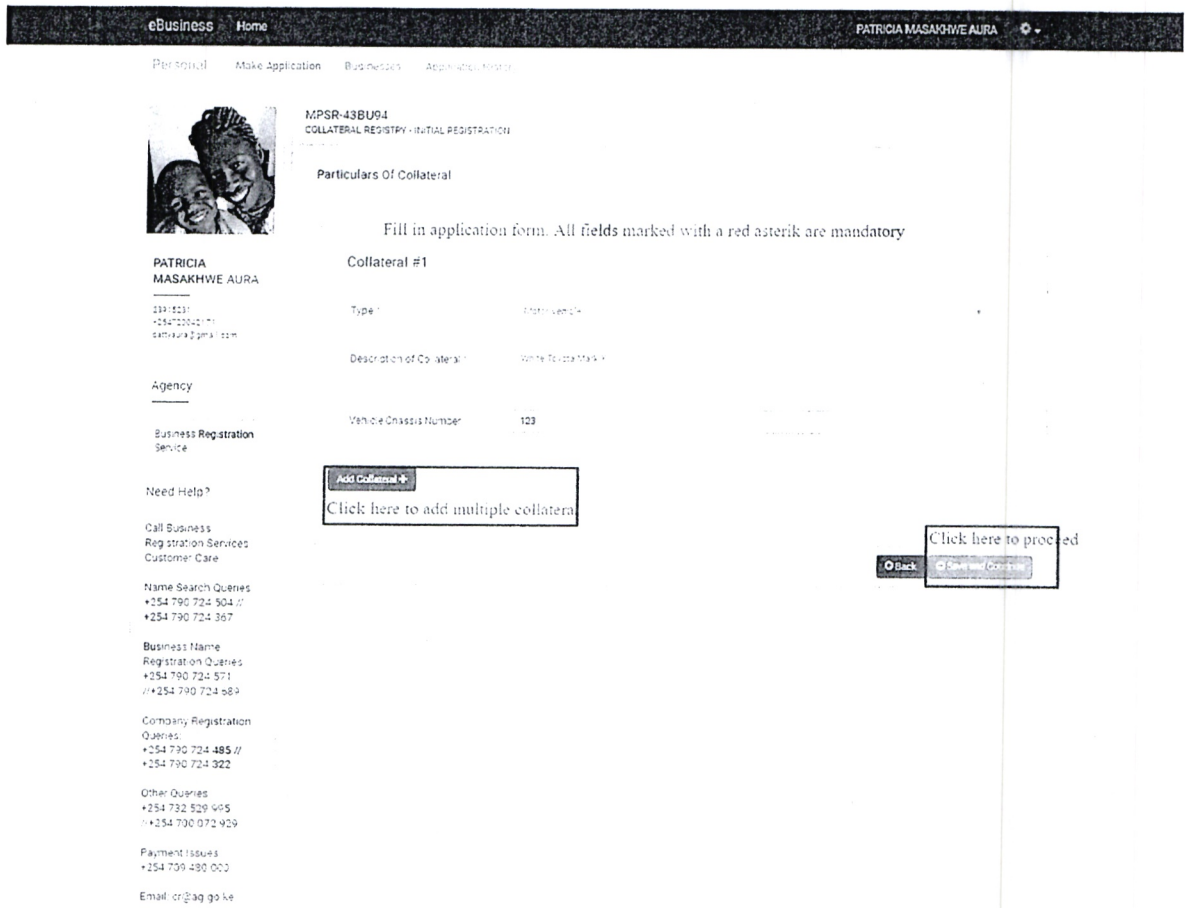


Fig 8

### 1.10. Enter secured loan particulars

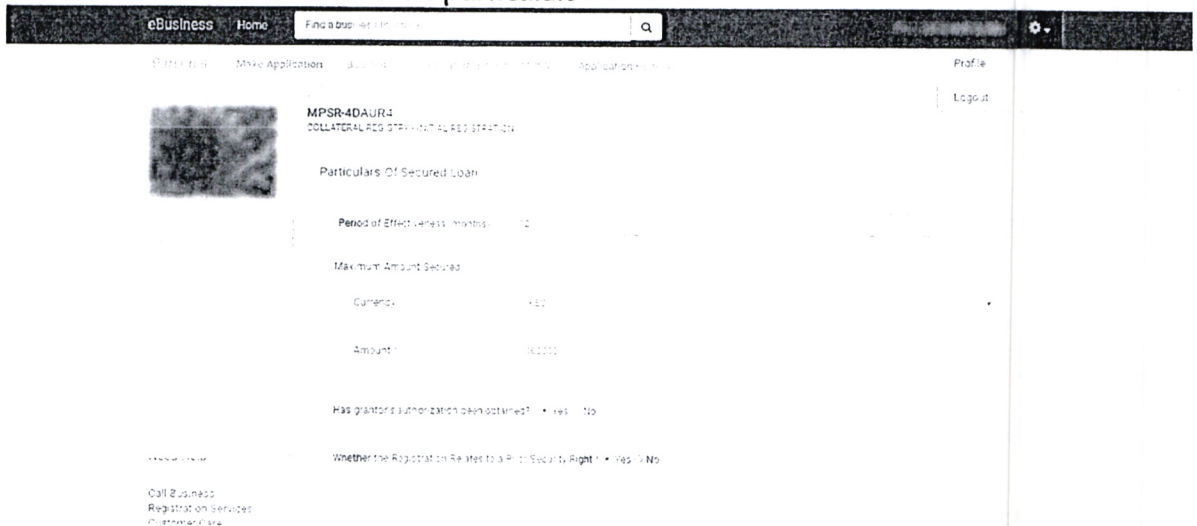



Fig 8

### 1.11. Review the application

Select the tabs to allow you to navigate across the details entered on the application forms as depicted in figures 9-9.3

eBusiness Home Find a business or service

Personal Make Application Businesses Collateral Registration (MRP) Application Details



### Review your Application Details

Grantors Creditors Collateral Documents Details

**Grantors**


1	Type	Kenyan Citizen
	Name	PATRICIA AURA MASAKHWE
	Identifier	23912231
	KRA PIN number	N/A
	Postal address	26209
	Postal Code	00100-KPO NAIROBI
	Email address	patyaura@gmail.com
	Telephone/Mobile number	+254720042171

Need Help?  I hereby confirm that I have provided all the information as required by the Registrar in regard to this application

Fig 9

eBusiness Home Find a business or service

Personal Make Application Businesses Collateral Registration (MRP) Application Details



### Review your Application Details

Grantors **Creditors** Collateral Documents Details

**Creditors**


1	Type	Kenyan Citizen
	Name	PATRICIA AURA MASAKHWE
	Identifier	23912231
	KRA PIN number	N/A
	Postal address	26209
	Postal Code	00100-KPO NAIROBI
	Email address	patyaura@gmail.com
	Telephone/Mobile number	+254720042171
	Category of Secured Creditor	Consensual

Need Help?  I hereby confirm that I have provided all the information as required by the Registrar in regard to this application

Fig 9.1

eBusiness Home Find a business or service PATRICIA MASAKHWE AURA

Personal Make Application Businesses **Collateral Registration (MRP)** Application Details



### Review your Application Details

Grantors Creditors **Collateral** Documents Details

**Collateral**

1	Type of Collateral	Motor Vehicle
	Description of Collateral	TOVOTA DEED
	Serial Number of Collateral	1234567891234567
2	Type of Collateral	Documents of Title
	Description of Collateral	TITLE DEED
	Serial Number of Collateral	N/A

Need Help?  I hereby confirm that I have provided all the information as required by the Registrar in regard to this application

Fig 9.2

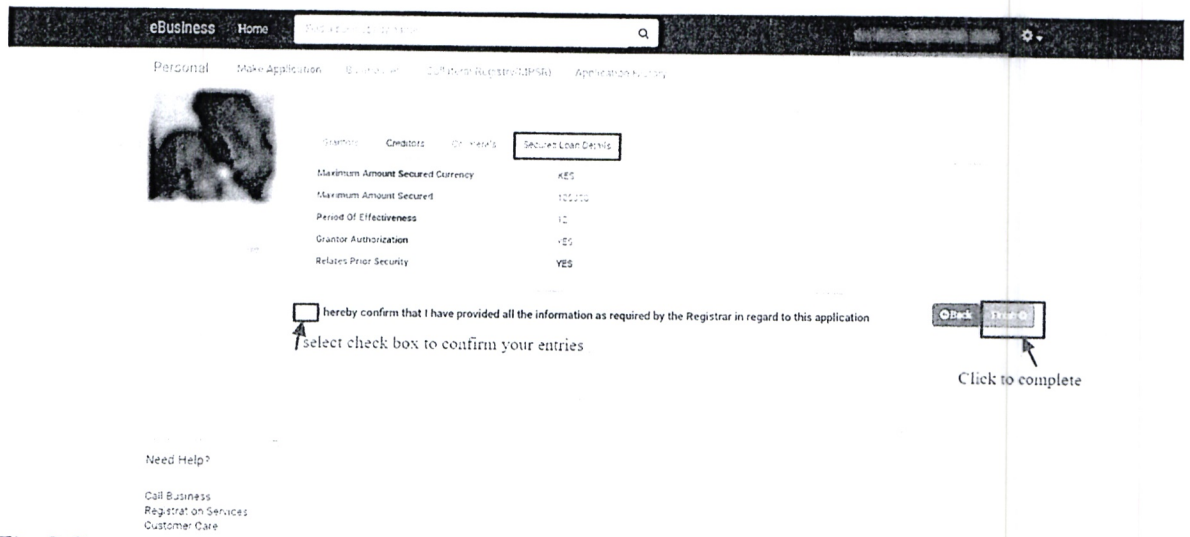


Fig 9.3

## 1.12. View the Notice

eBusiness Home

[Home](#) | [My Application](#) | [Business](#) | [Collateral Registry\(MPSR\)](#) | [Application](#)

Success! Application submitted successfully!

Application Details [Transfer Application](#)

**COLLATERAL REGISTRY - INITIAL REGISTRATION**  
**REF:MP SR-4DAUR4** SUBMITTED  
7 JUL 2017 03:10 PM

[Status](#) [Complete](#)

[Grants](#) | [Debtors](#) | [Collateral](#) | [Secured Loan Details](#)

Grants

1.	Type	Kenyan Citizen
	Name	PATRICIA AURA MASAKWE
	Identifier	23915231
	KRA PIN number	N/A
	Postal address	23
	Postal Code	00103 - G PO NAIROBI
	Email address	yipn_d@ipn.co.ke
	Telephone/Mobile number	+25470942171

Need Help?

Call Business Registration Services Customer Care

Name Search Queries:  
 +254 790 724 504 //  
 +254 790 724 367

Business Name Registration Queries:  
 +254 790 724 571 //  
 +254 790 724 639

Company Registration Queries:  
 +254 790 724 485 //  
 +254 790 724 322

Other Queries  
 +254 732 529 995 //  
 +254 700 072 929

Payment Issues  
 +254 739 480 000

Email: [cr@ag.go.ke](mailto:cr@ag.go.ke)

Downloads

Service	Action
Initial Registration Notice	<a href="#">Click here to download official notice</a> <input type="button" value="Download"/>

Fig 10

Below is a sample of the notice



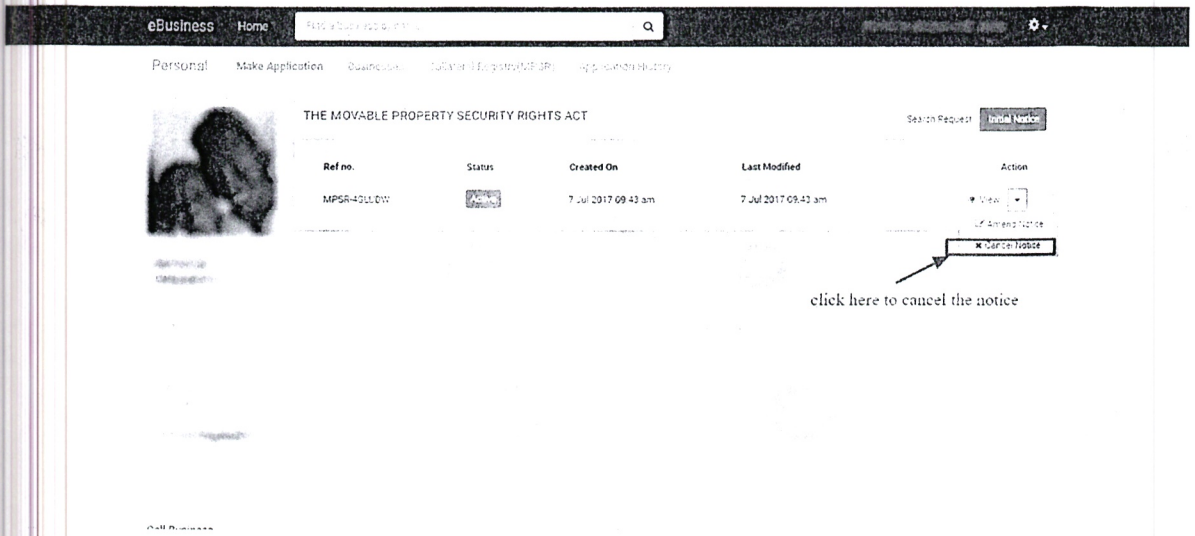


Fig 11.1

### 3. Search Request

3.1. After the Initial notice an applicant may conduct a search by selectin the search request tab as shown below.

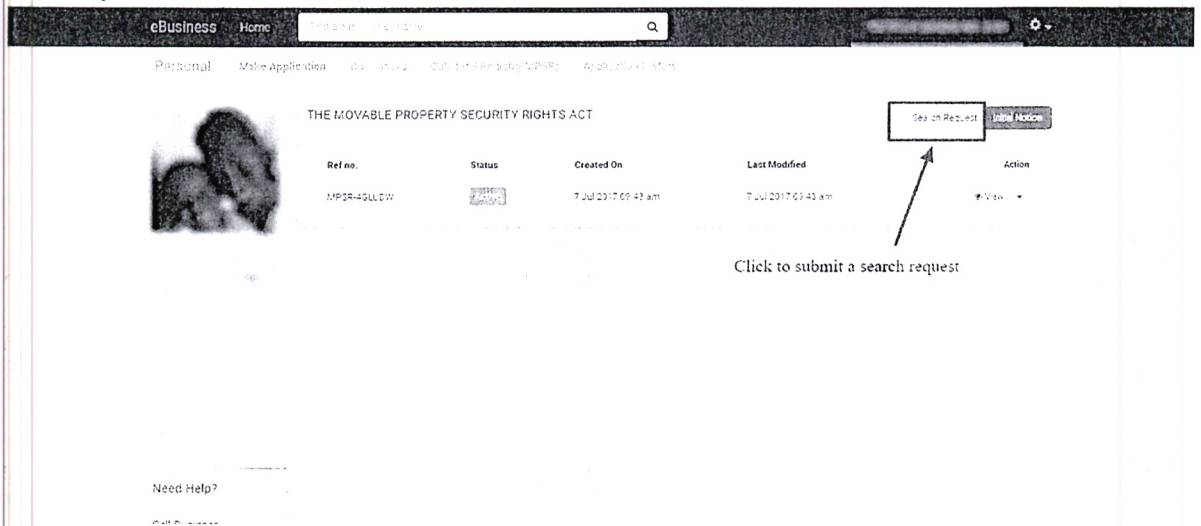


Fig 12

### 3.2. Select the Search Criteria

**\*\*\*Important point to note!! Only the grantors Identification and Motor vehicle are searchable\*\*\***

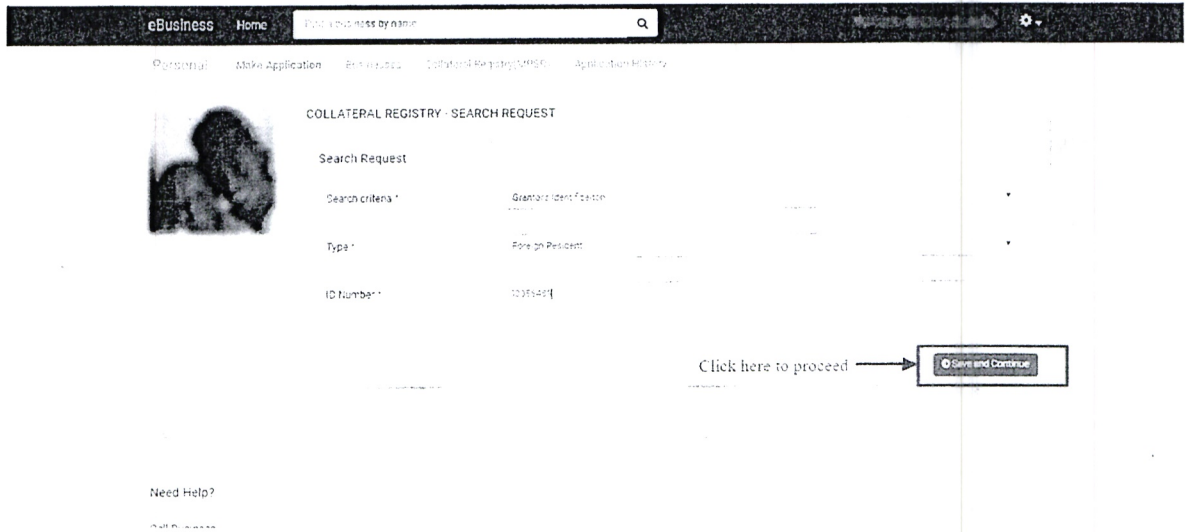


Fig 12.1

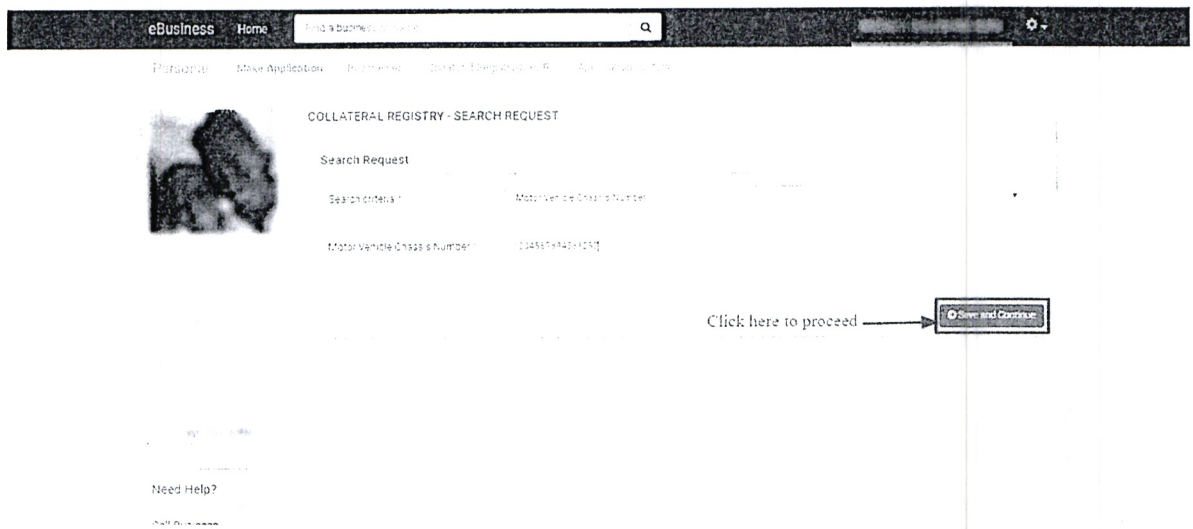


Fig 12.2

### 3.3. Confirm details entered and submit application

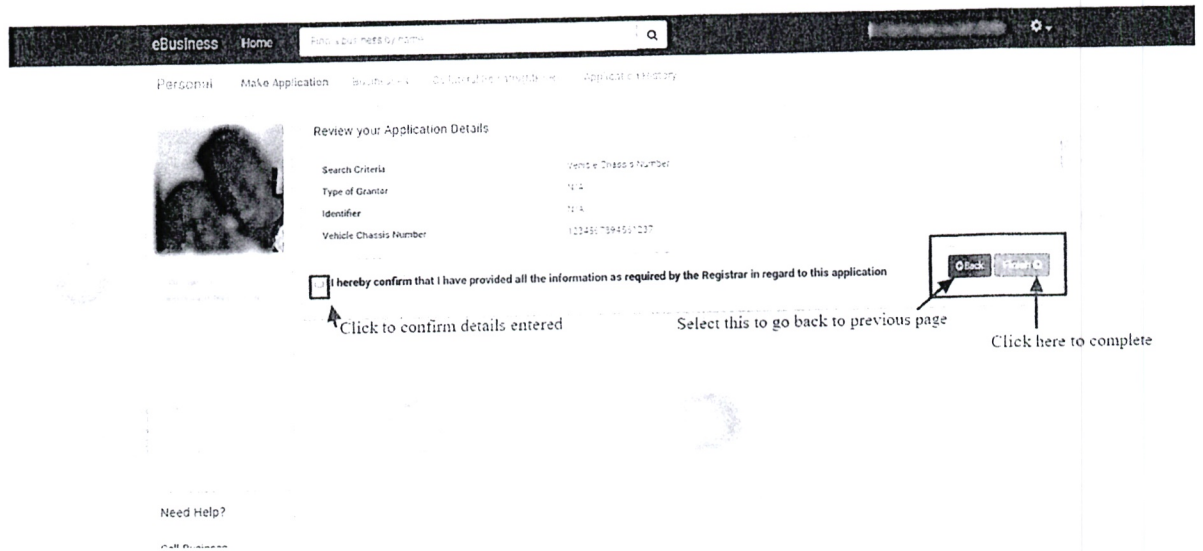


Fig 12.3

### 3.4. Make Payment

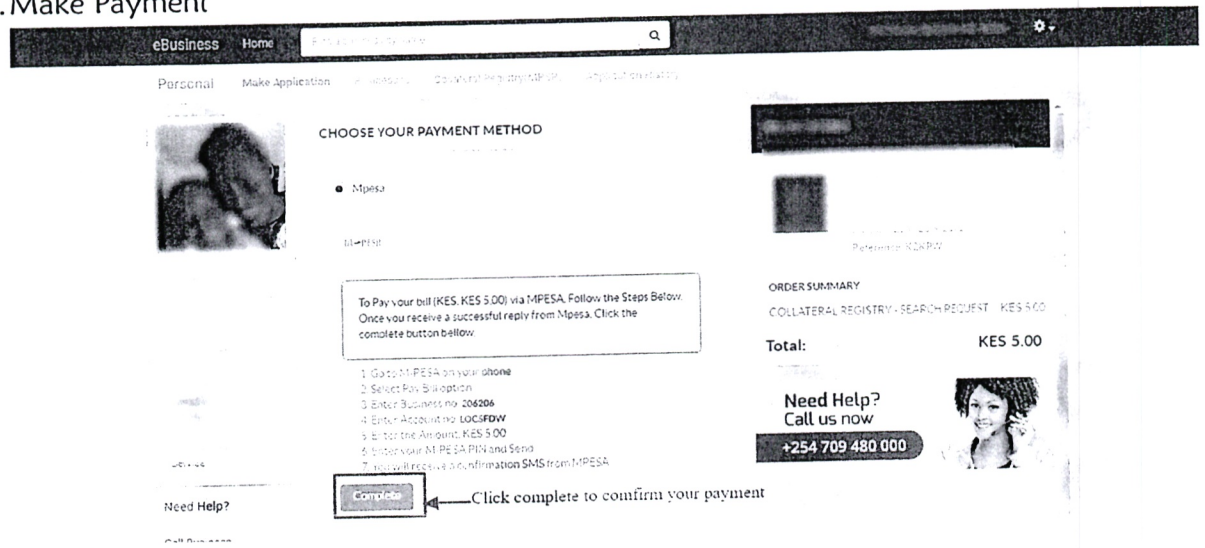


Fig 13

## 4. Search Application

You may have several notices or search requests within your account. The below screen shot depicts how you can use a search criteria to quickly locate existing applications.

Search criteria is as follows:

1. Application number
2. Collateral Serial

3. Grantor identifier
4. Date
5. Status(Archived, cancelled)
6. Amended (Amended, not amended)

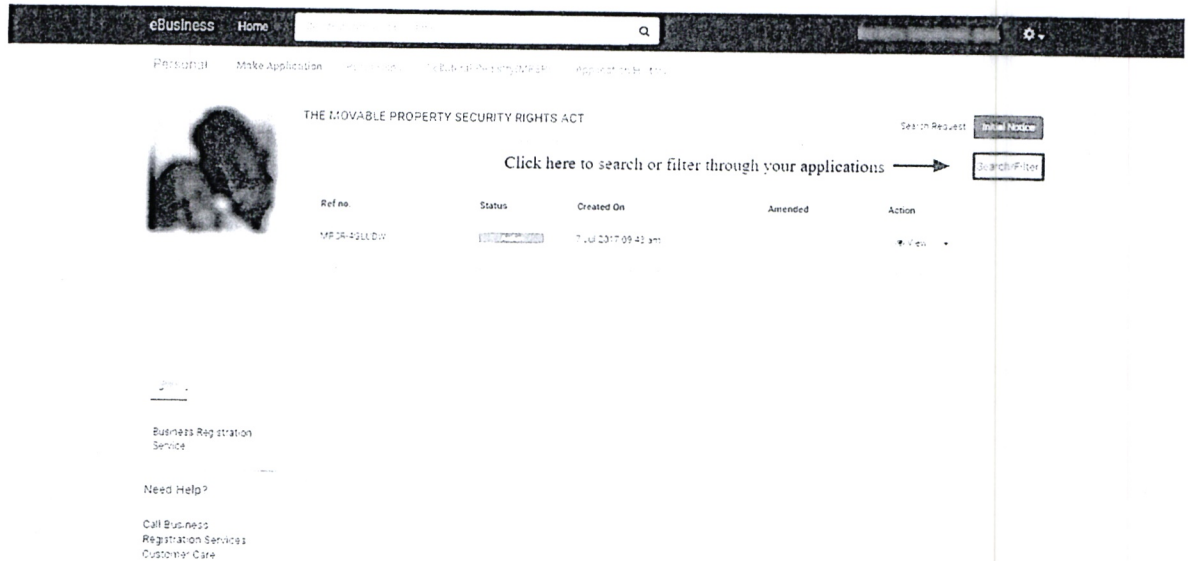


Fig 14

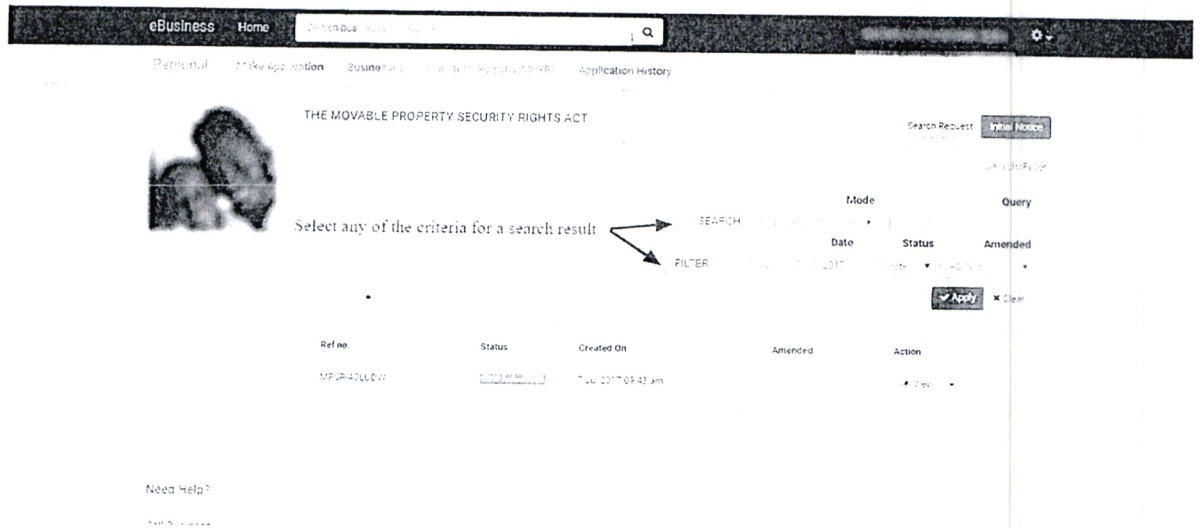


Fig 14.1

## CHALLENGES

1. The major stakeholders such as Kenya Women Microfinance Bank are yet to start registering, sighting downtime when registering.
2. With the Bulk number of registrations, the institutions have, it becomes cumbersome to make the online registrations one by one.

3. Difficulties in accessing information about the electronic collateral registry.
4. The public have no idea about the Movable Property Security Rights Act, 2017 no do they know about the online registration of collaterals

#### WAY FORWARD

1. Participants were encouraged to continually give their view to ensure that the collateral registry is efficient and as simple as possible by December, 2017 before the lapse of the nine-month period.
2. From the interaction with the participant it was agreed that the Movable Property Security Rights Act, 2017, Movable Property Security Rights (General) Regulations, 2017, the Movable Property Security Rights Manual should be uploaded on the e-Citizen portal by 29<sup>th</sup> September, 2017.
3. Key challenges raised were with regards to customer service. It was suggested that the Collateral Registry should have a call centre to answer queries by the public. It was agreed that the extension line numbers should be added on the e-citizen portal.
4. Participants highlighted the need to review of the MPSR general regulations.
5. Participants pointed out the need to have Bulk Registration. Its was suggested that there should be develop a system to push bulk applications to the collateral registry.

**MOVABLE PROPERTY SECURITY RIGHTS SENSITIZATION  
WORKSHOP HELD ON 21ST NOVEMBER, 2017 AT CROWN PLAZA  
NAIROBI**

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MOVABLE PROPERTY SECURITY RIGHTS SENSITIZATION  
WORKSHOP HELD ON 21ST NOVEMBER, 2017 AT CROWN PLAZA  
NAIROBI

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MOVABLE PROPERTY SECURITY RIGHTS SENSITIZATION  
WORKSHOP HELD ON 21ST NOVEMBER, 2017 AT CROWN PLAZA  
NAIROBI

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MOVABLE PROPERTY SECURITY RIGHTS SENSITIZATION  
WORKSHOP HELD ON 21ST NOVEMBER, 2017 AT CROWN PLAZA  
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**MOVABLE PROPERTY SECURITY RIGHTS SENSITIZATION  
WORKSHOP HELD ON 21ST NOVEMBER, 2017 AT CROWN PLAZA  
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MOVABLE PROPERTY SECURITY RIGHTS SENSITIZATION  
 WORKSHOP HELD ON 21ST NOVEMBER, 2017 AT CROWN PLAZA  
 NAIROBI

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MOVABLE PROPERTY SECURITY RIGHTS SENSITIZATION  
WORKSHOP HELD ON 21ST NOVEMBER, 2017 AT CROWN PLAZA  
NAIROBI

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MOVABLE PROPERTY SECURITY RIGHTS SENSITIZATION  
WORKSHOP HELD ON 21ST NOVEMBER, 2017 AT CROWN PLAZA  
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**WORKSHOP FOR AMENDMENTS OF THE MOVABLE PROPERTY SECURITY RIGHTS (GENERAL) REGULATIONS 2017**  
**25TH JANUARY, 2018**

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# AMENDMENTS TO THE MOVEABLE PROPERTY SECURITY RIGHTS (GENERAL) REGULATIONS 2017

Abstract

This is a report on the workshop on amendments to the moveable property security rights (general) regulations 2017 held on 25th January, 2018 at Sarova Panafric hotel, Nairobi.

## THE MOVEABLE PROPERTY SECURITY RIGHTS ACT, 2017

### REPORT ON THE WORKSHOP FOR AMENDMENT OF THE MOVEABLE PROPERTY SECURITY RIGHTS (GENERAL) REGULATIONS, 2017 HELD ON 25<sup>TH</sup> JANUARY, 2018.

VENUE: SAROVA PANAFRIC HOTEL, NAIROBI

The Movable Property Security Rights Act, 2017, (hereinafter the “Act”), came into effect on 16th May, 2017. The Act facilitates the use of movable property as collateral for credit facilities by establishing an office of the Registrar and an electronic collateral registry for security rights over movable assets (the e-Collateral Registry) where security rights in movable assets may be registered.<sup>1</sup>

The Act basically expands the scope of collateral that can be used to secure a facility by *inter alia* providing a broader definition of “Movable Assets” to include tangible assets (meaning all types of goods and including motor vehicles, crops, machineries and livestock) and intangible assets (include receivables, choses in action, deposit accounts, electronic securities and intellectual property rights).<sup>2</sup>

In exercise of the powers under section 88 of The Act’s, the Attorney-General made the Movable Property Security Rights (General) Regulations 2017 which were gazetted on 24th May 2017. The regulations basically give the procedure for conducting searches, registering notices, creation of user accounts amongst other matters procedural.

#### Regulation 2

- Definition of “user account”

Marek sought a clarification as to whether a “user account” as defined particularly in relation to a search meant that one needs a user account/ e citizen account to search through the collateral registry database or that a search can simply be done by anyone regardless of whether they have such an account or not. He suggested that the practice in more developed jurisdictions was that a search in the collateral registry database could simply be done by anyone regardless of whether one has a user account or not.

Ms. Shighadi Mwakio clarified that indeed to conduct a search, one must have a user account whereupon it was agreed that to that extent the definition of “user account” as given was satisfactory.

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<sup>1</sup> Legal Alert | Kenya | New Movable Property Security Rights Act May Require Re-Registration of Existing Securities, available at <http://www.africalegalnetwork.com/legal-alert-kenya-new-movable-property-security-rights-act-may-require-re-registration-existing-securities/> accessed on 29<sup>th</sup> January 2018.

<sup>2</sup> Ibid.

### Regulation 3.

- 3(1) – The Registry shall be electronic

Isaac raised a concern about a situation where such an electronic registry would fail but Marek assured the members that such a scenario was highly unlikely because of how the system was designed.

### Regulation 4.

- 4(A)(b) – A person may access the Registry if that person has paid the prescribed fee

Marek sought a clarification on the regulation where it states that a person may access the registry if that person has paid the prescribed fee. Beatrice Asicho reported that the CS had suggested removing such fees in an effort to enhance the ease of doing business. Mbage Ng'ang'a suggested that instead, the wording of the regulation be amended to read "prescribe fees, if any". Isaac opined that 5.23 of the Act gave the registrar the power to charge prescribed fees and thus it was perfectly in order for him to do so.

A query was also raised about the number of searches that were conducted under the system vis-à-vis the fees that were levied. Ms. Shighadi Mwakio gave the statistics on the number of searches that had been conducted which were relatively low especially by the custodians like the banks who are the primary lenders and therefore ought to have been the ones who have conducted the most searches. Mbage Ng'ang'a opined that Banks should be at the forefront of conducting searches specifically for due diligence purposes and recommended that such information should be brought to the attention of Kenya Bankers Association.

### Regulation 5.

- 5(2) - The Registrar shall register a notice or issue a search certificate to a person who complies with these regulations.

Marek raised a concern that the wording of the section gives an impression that the Registrar is the one who does the actual registration while in actual sense it is the system that actually registers the notice. He opined that the wording gives an impression that the system is manual as opposed to the electronic registry system that it actually is.

Marek suggested that instead, the wording should read or encompass such words to the effect that:

“A notice shall not be registered if that person has not complied with these regulations”

### Regulation 6.

- 6(1) - A person who intends to conduct a search of the registry records shall apply to the Registrar in Form 1 set out in the First Schedule.

Marek submitted on and members agreed that a person is in effect tot applying to the Registrar but submitting a search request. Members therefore agreed that the wording should be amended to the effect that:

“A person who intends to conduct a search of the registry shall submit an application”

Members also agreed that the wording suggested that the application was manual using a statutory form whereas the application was submitted online through a system generated form.

#### Regulation 8.

- 8(1) - A registrant who wishes to register an initial notice shall apply in Form 3 set out in the First Schedule.

Marek submitted that the wording of the regulation should be changed to omit the word “apply” and instead use “submit” as the system is online.

- 8(2) - The application under sub-regulation (1) shall contain the following information in the designated field

Marek submitted that the application is the notice and it contains all the information.

Marek raised a query on regulation 8(2)(h) whereby it provides that information to be contained in the designated field to include:

“a statement of the maximum amount secured by the security right”

Ms. Shighadi Mwakio submitted that the need for the statement of the maximum amount secured was purely for statistical reasons. Marek suggested that instead the amendments should merge 8(2)(h) and 8(2)(i) to read:

“any other information required by the Registrar for statistical purposes including the maximum amount secured by the security right.”

Members also agreed that we have some laws which limit the amounts of the priority in that the priority is limited to the amounts secured but could be more.

Isaac raised an issue about how a search could reveal the priority in security rights given that searches have to be conducted from multiple databases. Marek responded that consequent to the gazettment of the regulations, all registration transitioned to the collateral register including hire purchase.

He averred that as it stands, a user must search both the collateral registry and the car registry for instance up until the transitional period for the regulation lapses. Thereafter, the priority will not continue until it has been registered. He further submitted that upon expiry of the transitional period, due diligence will become much easier as the search will be conducted under a single platform.

- The Registrar shall, immediately after registration of an initial notice, issue to the registrant a notice in Form 4 set out in the First Schedule.

Marek questioned the choice of words in the regulation i.e. using “notice”. He also suggested that the role of the registrar would be to issue a copy of the information contained in the notice or confirmation of registration as the registration of initial notice is done online.

Marek also suggested a change in wording of regulation 8(4) which seems to suggest that the registrar issues the notice while in actual sense it is the system which generates it.

#### Regulation 9

- 9(4) - Where the grantor is an unincorporated organization in Kenya, the grantor identifier is the registration number issued to the grantor by the relevant authority and if the organization is not registered, the valid passport number of the principal officer of the organization.

Mbagge Ng’ang’a opined that Kenya has many small businesses that have not been incorporated. He gave the example of the “chamas” which have no laws governing the sector. He further submitted that Chama’s get their recognition by simply registered at the Ministry of Interior and coordination of National Government.

Marek also raised a query on the use and meaning of “relevant authority” as used in regard to the unique identifier number. He gave a scenario where on one end an organization is registered using the tax number as the unique identifier number and another using the registration number.

- 9(5) - Where the grantor is a foreign unincorporated organization, the grantor identifier is the registration number issued to the grantor by the relevant authority in the foreign jurisdiction and if the organization is not registered, the valid passport number of the principal officer of the organization.

Marek raised a concern about foreign organizations particularly on what constitutes the identifier. Ms. Shighadi Mwakio replied that foreign organizations are registered in Kenya either as a branch or a Foreign Company and assigned a unique registration number. Marek opined that we do not need a secured creditor's identifier number but that a name would simply suffice.

- 9(7) – Where the grantor is a natural person who is a citizen of Kenya, the grantor's name is the name that appears in their identity card or valid passport, if the natural person is not a citizen of Kenya.

Marek submitted and members agreed that the regulation makes reference to both a Kenyan citizen and a foreigner. It was agreed that if the regulation should be broken into two to cater for the two categories.

#### Regulation 10.

- 10(1) – Where the secured creditor is a natural person who is a citizen of Kenya, their identifier is their identity card number or valid passport number, if the natural person is not a citizen of Kenya.

Marek emphasized that secured creditors simply need a name and not identifiers or identity card numbers for example the IFC which extends credit.

#### Regulation 11.

- 11(1) – The description of an item used as a collateral in a notice shall be in accordance with section 8 of the Act.

Marek queried on the need to have the description of an item that is used as a collateral but it was submitted that it was as well used for statistical purposes only and that it doesn't affect the category.

- 11(3) – The Registrar may provide specific categories of the collateral

Marek suggested that there should be an amendment to the regulation so as to the effect that it reads:

“The notice may require the registrant to select one or more of different categories of collateral”

He further submitted that the regulation as it stands implies that the registrar is the one who provides for the categories of collateral implying that the system could as well be manual.

#### Regulation 12.

- 12 (1) – A registrant who wishes to register an amendment notice shall apply in Form 5 set out in the First Schedule.

Members agree that the wording of the regulation should be changed to omit “shall apply” and substitute with “shall submit” given that the application is online.

Marek also sought to differentiate an amendment notice vis-à-vis an initial notice and whether such has been incorporated into the system.

- 12(4) – The Registrar shall immediately after registering an amendment notice, issue to the registrant a notice in Form 6 set out in the First schedule.

Members agree that the wording of the regulation should be changed to read:

“Upon registration of an amendment notice, a confirmation of the amendment shall be issued to the registrant”

- 12(5) – The notice issued under sub regulation (4) shall contain a copy of the information contained in the registered amendment notice, the date and time when the registration became effective and the registration number of the amendment notice.

Marek submitted that the sub regulation should be amended by deletion of the last part of it i.e. “...and the registration number of the amendment notice.” He also raised a concern on whether the registration number on the initial notice will continue to be used or there will be a different number issued to the amendment notice.

### Regulation 13

- 13(3) – If the Registrar determines that the grantor has grounds to request an amendment or cancellation, the Registrar shall issue a notice to the secured creditor in Form 8 set out in the First Schedule.

Members agree that the sub regulation should be amended to read:

“...the Registrar shall notify the secured creditor...”

- 13(4) – The notice issued under sub regulation (3) shall require the secured creditor to respond to the request within fourteen days of receipt of the notice.

Members agreed that the sub regulation should be amended to read:

“...within fourteen days upon receipt of the notification.”

### Regulation 14.

- 14(1) - A registrant who wishes to register a cancellation notice shall apply in Form 9 set out in the First Schedule.

Members agreed that sub the regulation should be amended to replace the words “...shall apply” with “...shall submit”

- 14(2) – The application under sub regulation (1) shall contain the reason for cancellation.

Members agreed that the sub regulation should be amended to replace the words “The application...” with “The cancellation notice...”

- 14(3) – The Registrar shall, immediately after registering a cancellation notice, issue to the registrant a notice in Form 10 set out in the First Schedule.

Members agreed that the sub regulation should be amended by deletion of the words “...issue to the registrant a notice in Form 10 set out in the First Schedule.” and insertion of the words “...issue to the registrant a confirmation notice.”

- 14(4) – The notice issued under sub regulation (3) shall contain a copy of the information contained in the registered cancellation notice, the date and time when the registration becomes effective and the registration number of the cancellation notice.

Members agreed that the sub regulation be amended by insertion of the words “...confirmation notice...” and as well deletion of the words “...and the registration number of the cancellation notice.”

Regulation 16.

- 16 – Any notification shall be through the address provided in the initial notice.

Members agree that the sub regulation should be amended by insertion of the words “...most recent electronic address...”

## SCHEDULES

### FORM 1

### SEARCH REQUEST

Members agreed that in accordance with regulation 9(3), the search request parameters of “Business/Company/Limited Liability Partnership” should be amended to instead provide for “incorporated body/entity” and that the former be used as descriptive notes of the same.

## FORM 2

Under Form 2, it members agreed that the parameter for the “maximum amount secured” should be deleted from the query list.

## FORM 3

- INITIAL NOTICE

It was agreed that the parameter therein on “date of birth/registration” should be removed especially as related to the date of birth of a company e.g. IFC which may not know the date on which they were registered.

It was also agreed that they remove the “identifier” for the grantor as only the name of the grantor would suffice.

- DETAILS OF COLLATERAL

It was agreed that the parameter for “motor vehicle” be amended to include “motor vehicle/trailer.” Marek also suggested and it was agreed that the parameter on “future proceeds” be deleted, that the parameter “furniture” be deleted and replaced with “equipment” and lastly that the parameters of “stock in trade” and “inventory” be merged into “stock in trade/inventory.”

Under part B which is description of Collateral, Marek suggested and it was agreed that the words “... (including serial number if any)” should be deleted. It was further agreed that there be introduced a subsection C where the serial number of the collateral can be keyed in.

- PART C

It was suggested that there be a review of the parameters of “bank account/money” for consistency purposes. Marek also suggested that parameter 12 i.e. “If other, specify” should be deleted.

## FORM 4

Marek suggested that the wording of the title of the form i.e. “notice to registrant of the initial notice” should be changed indicate “confirmation of registration”.

## FORM 7

Marek suggested that the parameter 3 on “Reason for amendment” should be amended by deleting the third option i.e. “transfer of a security right to a new secured creditor”

He also suggested that there be introduced an extra section on “reasons for cancellation” in accordance with section 33(1) & (2) of the Act. This is justified by the fact that the title of the form 7 reads “Grantor’s request for reregistration of amendment/cancellation notice” and thus far for 7 only provides for amendment of the notice and not cancellation of the same as envisaged by the title.

#### **FORM 8**

Marek suggested that they amend the title of the form from “notice to secured creditor of grantor’s request for amendment/cancellation” to “communication from registrar to creditor.

It was also suggested that the same notice ought to be sent simultaneously to the secured creditor informing them that the registrar has received a request for amendment/cancellation from the grantor and if possible attach and provide them with an electronic copy of the same request. As well there should be a part to be played by the secured creditor in that upon receipt of the copy of the cancellation request, they could be given the option to consent or not to such a request.

Lastly, the words of the notice should be amended by deletion of the words “...and filed on the...” and replaced with the words “...and registered on the...”

#### **CONCLUSION**

The meeting was concluded with an agreement that the proposed amendments be incorporated into the regulations and a draft of the same be sent to members for review and further action.

# REPORT ON THE MOVEABLE PROPERTY SECURITY RIGHTS WORKSHOP

## Abstract

This is a report on the workshop on the Moveable Property Security Rights Act, 2017, The Moveable Property Security Rights (General) Regulations 2017 and collateral e-registry held on 26 April, 2018 at Trade Mark hotel, Nairobi.

# REPORT ON MOVABLE PROPERTY SECURITY RIGHTS WORKSHOP HELD ON 26<sup>TH</sup> APRIL 2018 AT THE TRADEMARK HOTEL

## OPENNING REMARKS

### SHIGHADI MWAKIO

The meeting began by Shighadi Mwakio a state counsel welcoming guests on behalf of Business Registration Service. Shighadi explained that Business Registration Service is established under the Business Registration Service Act of 2015 as a semi-autonomous body under the Office of the Attorney General and Department of Justice. That in carrying out its mandate, through the efforts led by the Attorney General, the Service spearheaded the enactment of the Movable Property Security Rights Act, No. 13 of 2017 which commenced on 16<sup>th</sup> May, 2017 and thereafter the Movable Property Security Rights (General) Regulations, 2017 gazetted on 24<sup>th</sup> May 2017. Further, the collateral registry on the Ecitizen portal was operationalized on 25<sup>th</sup> May, 2017.

These reforms are in line with the spirit of the Ease of Doing Business, and they main aim at enhancing the confidence of lending institutions and creating an enabling environment to lend against movable assets as collateral.

Shighadi stated that the Electronic Collateral Registry is now a fully developed and functional registry that runs on the government's service single sign-on platform of e-Citizen. The registry has over 75740 Notices which have been lodged by various lenders with secured credit amounts running into billions of shillings.

She emphasised that this is a positive indicator of improving access to credit in the economy which in turn improves the ease of doing business.

## SECURED TRANSACTIONS AND COLLATERAL REGISTRIES GLOBAL OVERVIEW

### ELAINE MACEACHERN

Elaine Elaine MacEachern a World Bank Group FCI Global specialist on secured transactions began her presentation by giving an overview on secured transactions & collateral registries that existence globally and more so in terms of the benefits that have been achieved so far.

The presentation focused on the challenges of access to finance for small businesses hence informing the need for secured transactions. She pointed out that there is a challenge on access to finance especially for SME's as the lenders were not ready to extend credit primarily because of the risks associated with lending to the SME's. Additionally, she explained that currently, there is a clear mismatch of what banks will take as collateral vis-a-vis and what the typical SME's have to offer.

Elaine in her presentation tried to establish why the World Bank Group focuses on secured transactions. She noted that there are 162 million formal Micro, Small And Medium Enterprises (MSMEs) in developing countries yet 65 million or 40% of the formal MSMEs in developing countries have unmet financing needs. MSME finance gap in developing countries is estimated to be \$5.2 trillion - 1.4 times the current level of MSME lending. Women-owned businesses comprise 28% of MSMEs and account for 32% of the MSME finance gap.

She emphasized the need for Legal and institutional framework to facilitate the use of movable property as collateral for both business and consumer credit, which envisions a secured transaction system that includes bank accounts, accounts receivable, inventory and raw goods, intellectual property rights, industrial and agricultural equipment, durable consumer goods and agricultural produce vehicles.

#### Impact of moveable collateral

There is an expanding evidence base on the importance of collateral in credit markets, including recent work on impact of collateral reforms in developing countries. In many instances the research analyzes the overall importance of secured lending and does not distinguish between fixed and moveable collateral. A few studies, however, do look at the impact of moveable collateral on lending markets. Impact findings both from studies focused solely on moveable assets, and from those analyzing moveable and fixed collateral.

She further stated that survey has shown that the financial institutions are not willing to take movable property as collateral because of the following–

#### Lack of legal Framework

- Restrictions on types of assets
- Lack of clear creditor priority
- Enforcement issues

#### Lack registry of security interests in movables

- Dysfunctional Registry/No Registry
- Lack of publicity
- No transparency

#### Lack of interests

- Not their type of business
- No competition in the lending markets
- Revenue from other sources (TB)

#### Lack of know-how on movable asset lending

- No experience with this type of financing
- Do not have staff with necessary skills

Elaine stated the benefits of a solid secured transaction system to include–

- (1) Broader and fairer access to credit:

Decrease information asymmetries between borrowers and lenders; expand access to credit and lower the costs of credit for good borrowers

(2) Better performing loans:

Allow lenders to accurately evaluate risks and improve portfolio quality

(3) Prevent over-indebtedness:

Allow lenders to assess an applicant's total indebtedness and thereby calculate a borrower's capacity to service debt (with 'positive data')

(4) Improve profitability:

Support introduction of credit scoring and automated underwriting; lower lenders' operational costs in retail & SME lending, improve their margins, capital adequacy, and provisioning requirements ; diversification of credit portfolio

(5) Stability in the financial sector:

Positive economy wide effects; supports banks supervision and systemic risk monitoring; Increased competition; responsible financial practices.

Elaine stated the potential effect of intervention in secured transaction to include–

(a) Improved legislative framework governing secured transactions which are more transparent, efficient and comprehensive.

(b) A new registry with robust platforms, proper capacity and wide usage.

(c) Increase capacity of financial institutions to design and offer new products where movable assets are used as collateral

The end result would be greater access to credit to SMEs, more jobs created and increased competition in the financial market place which will ultimately lead to an improvement in getting credit indicator from doing business project.

<http://www.doingbusiness.org/data/exploretopics/getting-credit>

Elaine ended the presentation by giving the global statistics on the collateral registry projects that have undertaken courtesy of the World Bank thus far to included countries like Colombia, China, Vietnam, Mexico, Ghana, Liberia, Malawi, Costa Rica, Indonesia, Uzbekistan, Belarus, Egypt and Jordan.

## SALIENT FEATURES OF THE MOVABLE PROPERTY SECURITY RIGHTS ACT

### • DR. NJARAMBA GICHUKI

Dr. Njaramba Gichuki a key resource person who has been instrumental at policy stage and in the implementation the MPSR Act gave a presentation on the Salient features of the MPSR Act, 2017. He began by giving a historical perspective on the laws that were in existence before of the MPSR Act which necessitated enactment of the MPSR Act and the registration system for moveable property as collateral. He explained that the Act repeals the Chattels Transfer Act (Cap.28) and Pawn Brokers Act (Cap 529) and that Act further amends certain provisions of the Agricultural Finance Corporation Act (Cap 322), the Stamp Duty Act (Cap 480), the Hire Purchase Act (Cap 507), the Business Registration Service Act (No. 15 of 2015), the Companies Act (No. 17 of 2015) and the Insolvency Act, No. 18 of 2015.

He pointed out that the MPSR Act is both a substantive and procedural law that provides for the creation and existence of an electronic collateral register. He also averred that the whole collateral registry system is founded on the principle of registration which in effect guarantees the right of priority. That is to say a security right created by a grantor is subordinate to a security right in the same collateral created by another person if in the same collateral created by another person if the grantor acquired the collateral subject to the security rights created by the other person made effective against third parties before the grantor acquired the collateral.

He also submitted that the framework provides for the use of both tangible (which include: motor vehicles, crops, machineries and livestock) and intangible assets (which include receivables, deposit accounts, electronic securities and intellectual property rights).

He also highlighted that the Act provides that a security right can encumber the following:-

- i. any type of movable asset, whether tangible or intangible, including future assets (a moveable asset which does not exist or which the grantor does not have rights in or power to encumber at the time the security agreement is made;
- ii. parts of assets and undivided rights in movable assets;
- iii. generic categories of movable assets;
- iv. all of a grantor's movable assets; and
- v. chose in action.

The assets encumbered or to be encumbered ought to be described in the security agreement in a manner that reasonably allows their identification.

Dr. Njaramba emphasised that the Registrars mandate is receiving, storing and making accessible to the public information on registered notices with respect to security rights and the general running of the registry. That is to say that the registrar shall not, on the Registrar's own motion, amend or delete information contained in the registry records except in instances where the Act provides otherwise.

The Act provides for the right of redemption whereby if a collateral is not sold in exercise of the power of sale by a lender, then the grantor can make the payments due and proceed to recover the security.

### LINK BETWEEN MOVABLE PROPERTY SECURITY RIGHTS, COMPANIES ACT AND INSOLVENCY ACT

- **PROF. WALTON**

Prof. Walton presented on the link between secured transactions, Companies Act and insolvency law in Kenya. He explained that the insolvency regime comes in when someone who has borrowed under the MPSR Act cannot repay their debt.

## Companies Act, 2015

Section 890 of the Act provides that a company shall keep a copy of every document creating a charge that is required to be registered under Part xxxii of the Act and a security right created under the Movable Property Security Rights Act.

Section 878 which provides that a company that creates a charge shall before the deadline for registration register it. The section further provides that registrable charges include a charge on land or any interest in land ... a charge on the company's book debts ... a floating charge on the company's property or undertaking.

Section 889 provides that if a company creates a charge or a security right, the charge (in so far as any security on the property or undertaking of the company is conferred by it) or a security right is void against—

- (a) a liquidator of the company;
- (b) an administrator of the company; and
- (c) a creditor of the company, unless the requirements of the applicable laws for the charge or security right to become effective against third parties have been satisfied.

Movable Property Security Rights Act 2017 applies to security rights in movable assets including ... floating and fixed charges.

Security right in any movable asset is effective against third parties if registered under MPSR Act.

Priority determined by the time of registration.

## Insolvency Act, 2015

The appointment of a Receiver may be by a Holder of Qualifying Floating Charge.

A floating charge over the whole or substantially whole of the company's property which is enforceable and which states that the statutory power applies to it and purports to give the power to appoint an administrator.

The qualifying floating charge must be enforceable in order to make the appointment. A qualifying floating charge holder may not appoint an administrator out of court unless it has given at least three days' notice to the holder of any prior floating charge.

Section 65 of the MPSR Act after the failure of the debtor to pay a secured obligation the secured creditor may exercise any right provided under Part VII of the MPSR Act, in the security agreement or under any other written law.

Section 67 of the MPSR Act provides that if there is a default with respect to any obligation, the secured creditor shall serve notification on the grantor a notification to pay and if the grantor fails to pay the secured creditor may pursue the available remedies.

Therefore, as long as floating charge over any movable assets is registered under MPSR Act it will be effective against third parties and once default has occurred there is nothing to prevent appointment of administrator by holder of qualifying floating charge (created after the commencement of the Insolvency Act).

The other provisions of the Insolvency Act appear to remain unaffected by the MPSR Act therefore the administration moratorium preventing enforcement of a security by a creditor (without consent of the administrator or the court) remains effective.

- **BARTOL LOUISE**

Bartol presented on the need and importance of an effective credit reporting system. He emphasised that a solid financial infrastructure is the basis for a strong, modern and inclusive economy.

Bartol explained that an efficient credit reporting system reduces information asymmetry lowers cost of credit (hence increasing access to credit) and improves borrower discipline.

He outlined on the types of credit reporting system which are the government owned credit registry (which assist in banking supervision while at the same time improving the quality and availability of data for supervised financial intermediaries) and the privately owned/ private-public owned credit reporting systems (which enhance data quality and availability for lending decision-making by consolidating data from different creditors and other sources). He explained the need increase the availability of credit to consumers and MSMEs by supporting stakeholders to develop robust credit reporting systems to support informed lending decisions and improve risk management by lenders.

In conclusion he emphasised that there is need to–

- (i) standardized data templates and data quality checks which will reduce the variance in the data held by bureaus;
- (ii) provide retroactive score exercises are produced by CRBs for the financial institutions to design pricing strategies;
- (iii) have efficient tools for regulators to monitor the industry (compliance and performance)

#### “LINK A BUSINESS”

- **AGNES NYAMBURA**

Agnes presented on the link business concept, particularly on the rationale and procedure for linking.

She stated that in the implementing the statutory mandate of maintaining registers, data and records on registries, the Service has introduced a process known as “*link a business*” as part of a records clean-up exercise and an audit trail. This will help eliminate the issue of missing files and reflection of wrong information to the Registry. The application is a

free service done by the proprietor of a business, a director of a company or the company secretary. Link a business has further made the process of obtaining the “CR 12” easier since it has been automated.

She further explained that what “link a business” does for an individual who has already registered a business entity is to make sure his/her records are already up to date, enable easier access to the Registry and ensure that their records are protected against double registration, or fraudulent activities. The director or company secretary uploads the current status of the company as they know it. From the back end, the companies registry counter checks with the information they have in the registry and if it matches it is approved and uploaded into the system. If it not a match then the individual can visit the companies registry to verify the information and update the same accordingly.

### OVERVIEW OF THE COLLATERAL e-REGISTRY

- **LARRY AGORO**

Lastly, Larry Agoro presented on the practicality of the entire e citizen system. He began by taking members through the various procedures involved from the creation of an account, link business, conducting a search on the collateral e-registry and the registration of the Notices (Initial, amendment and cancellation). He also gave a demonstration on how the e-business feature works and especially for big lenders like the banks.

### QUESTIONS AND ANSWER SESSION

Upon the last presentation, the floor was opened for questions from members:

- A question was raised on how Information and Technology (IT) firms can be of help in assisting customers to understanding the system.

Dr. Njaramba Gachuki responded that the system has been designed in such a way that is simple and user friendly and thus he explained that as long as one has access to the internet, then they can be able to access the system and use the system effectively.

Bartol on the other hand responded that the government is the driver of the MPSR reform process and so in this light such IT firms can only but lobby the government for software solutions provision slots.

- A question was raised on the element of valuation in relation to the creation of the security agreement which he averred that would work to increase the cost of the services and which in effect would defeat the whole purpose of affordable credit to SME's.

The panelists responded that over time the banks and lenders will have standardised agreements and there will be a reduction in valuation costs as more and more transactions are concluded.

- A question was raised on the effect of section 890 of the Companies Act 2015 which provides for registration of charges on companies on one hand while the collateral registry also provides for registration of collateral under the MPSR Act. She submitted the same would result in the duplicity in registers with the effect that one will have to search on both registers to effectively confirm securitization, a situation which would work against ease of doing business.

Ms Beatrice responded that the issue had come to their attention and that they were working to solve it by coming up with a singular of registration.

- A question rose about the risks that a lender faces in lending against crops and livestock yet crops or livestock which can easily be destroyed in any particular year. This he submitted would make it difficult to realize such security.

Dr. Njaramba responded that such an outcome will depend on the security agreement in that the parties will agree on the effects of such destruction and further that in such a case, the debtor still has the right to pay.

- A question was raised on the issue of valuation of Intellectual Property (IP) for purposes of securing credit against it.

Dr. Njaramba responded that the enforcement of Intellectual Property (IP) rights is provided for under the IP laws in Kenya where one can either acquire the substantive rights, the proceeds there from or both. He averred that one can use the avenue of the Kenya Industrial Property Institute (KIPI) to be registered as the new owner in the event that of the owner defaults.

- A question was raised on the fate of securities that were created under the prior laws. Another concern was raised on the fact that such a registration was limited to 10 years meaning that one has to keep renewing the same.

Larry replied that most of the concerns raised have been incorporated in a second version of the software which is under testing and will be unveiled soon.

#### **SUGGESTED IMPROVEMENTSON THE MPSR COLLATERAL REGISTRY SYSTEM**

1. On the cancellation notices it was suggested that a confirmation dialogue is not enough; that there must be a way of informing both the grantor and the lender that the notice has been cancelled. As well, the grantor should also be able to see on his dashboard as to all the notices that have been lodged.

2. It was also suggested that the system should incorporate other nationalities especially those within the East African Community (EAC) bracket.

3. The issue of unincorporated bodies used as the grantor or lender, it was suggested that a proper register be maintained, both for incorporated and unincorporated bodies which should be assigned unique numbers that will be identifiable to the system.
4. Under the link business feature, it was suggested that the process be further be streamlined to ensure efficiency and accuracy in the same.
5. In addition to USD other foreign currencies should be accommodated within the registry, particularly the major currencies i.e. European Euro (EUR), Japanese Yen (JPY), British Pound (GBP), Swiss Franc (CHF), Canadian Dollar (CAD), Australian/ New Zealand Dollar (AUD/NZD) and South African Rand (ZAR).
6. When lawyers act on behalf of Banks to register Debentures, they do so using their own profiles. Whilst there is a mechanism for the record to be transferred to the Bank later, there is no screen that first gives the Bank an opportunity to review details of the record before accepting. We recommend that a screening mechanism should be availed.
7. The system has no Reports that the Bank can make use of. For example the Bank may want to know which Notices have their periods of effectiveness expiring within say 3 months.
8. There are no Maker/Checker processes within the registry for financial institutions.
9. The introduction of automated email notifications to the grantors whenever their records are updated.
10. Addition of the name of the Grantor in the Application History for Initial Notices. This would make it easier to retrieve records.
11. Each Grantor should have a dashboard under their profile that shows them a list of the Notices created by their Creditors. This way the Grantors will have a full overview of the existing encumbrances against their assets. This is especially important where for one reason or the other the Grantor failed to get notified of the Initial Notice.
12. The Downloaded/ Printed Initial Notices do not have a timestamp on them. This is a crucial element of the Notice and needs to be evident on the form itself.

#### **CLOSING REMARKS**

Kenneth Gathuma the Acting Director General of Business registration Service ended the meeting by submitting that the system is at its infancy stages and will have the long term effect of enhancing access to credit.

He reiterate that the collateral registry has since inception managed to record over 75740 Notices and the secured credit amounts is in excess of two trillion shillings which goes to show the potential that the system has.

He averred that BRS has sights of what needs to be done to streamline the business registration sector in the country and is aware of the ways of getting there. He promised to constantly develop and improve system to ensure efficiency and accuracy.

# THE MOVABLE PROPERTY SECURITY RIGHTS ACT, 2017

Workshop on the Collateral Registry

April 2018, Trademark Hotel, Village Market, Nairobi

Hosted by:-

Business Registration Service (BRS)

Office of the Attorney General & Department of Justice (OAG & DOJ)

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20/4/2018

## THE MOVABLE PROPERTY SECURITY RIGHTS ACT, 2017

Workshop on the Collateral Registry

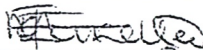

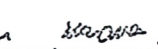


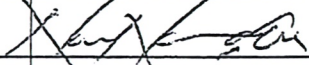





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REPORT ON MOVABLE PROPERTY SECURITY RIGHTS WORKSHOPS HELD ON 9<sup>TH</sup> NOVEMBER, 2018 AT ACACIA PREMIER HOTEL, KISUMU, 12<sup>TH</sup> NOVEMBER, 2018 AT ALBA HOTEL, MERU, 14<sup>TH</sup> NOVEMBER, 2018 AT MERICA HOTEL, NAKURU and 16<sup>TH</sup> NOVEMBER, 2018 AT ENGLISHPOINT HOTEL, MOMBASA

Introduction

The Movable Property Security Rights Regulations, 2017 were gazetted on 24<sup>th</sup> May 2017. As part of its programme on sensitization and capacity building and in line with its mandate, the Business Registration Service with help Financial Sector Support Program, Worlds Bank conducted four well attended stakeholder workshops Kisumu, Meru, Nakuru and Mombasa on 9th November, 2018, 12th November, 14th November, 2018 and 16th November, 2018 respectively.

With the help of Dr. Marek, the Service prepared a draft of the Movable Property Security Rights (General) Regulations, 2018 herein enclosed.

These workshops were necessary due to the fact that the Statutory Instruments Act, 2013 provides that public participation is a mandatory requirement in the process of making legislation including subsidiary legislations. Further the Committee on delegated Legislation is always keen to ensure that proper consultations are carried out with persons who are likely to be affected by a proposed instrument before acceding to the gazetted instruments.

The participants from the said workshops were drawn from key relevant stakeholders and will include the Banks, Medium and Small Enterprises and the Legal Profession.

Presentations

The Presentations were tailored to ensure that the public not only get to know about the proposed regulations but to also understand the salient features of the Act, review of the Collateral Registry, to get inputs and comments on the e-registry so far, identification of issues and gaps that will need to be addressed.

**SHIGHADI MWAKIO**

The meeting began by Shighadi Mwakio a state counsel welcoming guests on behalf of Business Registration Service. Shighadi explained that Business Registration Service is established under the Business Registration Service Act of 2015 as a semi-autonomous body under the Office of the Attorney General and Department of Justice. Further in carrying out its mandate, through the efforts led by the Attorney General, the Service spearheaded the enactment of the Movable Property Security Rights Act, No. 13 of 2017 which commenced on 16<sup>th</sup> May, 2017 and thereafter the Movable Property Security Rights (General) Regulations, 2017 gazetted on 24<sup>th</sup> May 2017. Further, the collateral registry on the Ecitizen portal was operationalized on 25<sup>th</sup> May, 2017.

These reforms are in line with the spirit of the Ease of Doing Business, and they mainly aim at enhancing the confidence of lending institutions and creating an enabling environment to lend against movable assets as collateral.

Shighadi stated that the Electronic Collateral Registry is a fully developed and functional registry that runs on the government's service single sign-on platform of e-Citizen. The registry has over 120,000 Notices which have been lodged by various lenders with secured credit amounts running into trillion of shillings.

She emphasised that this is a positive indicator of improving access to credit in the economy which in turn improves the ease of doing business.

## BEATRICE OSICHO

She gave an overview of the Movable Property Security Rights Act, 2017. She explained that the development process was led by Office of Attorney General and National Treasury to modernize legal regime for movable property and secured transactions. The aim being to increase access to finance, credit and enact an updated law, and create an electronic registry; efficient and effective system.

The Act repealed the Chattels Transfer Act (Cap.28) and Pawn Brokers Act (Cap 529). It further amended the Agricultural Finance Corporation Act (Cap 322), the Hire Purchase Act (Cap 507), the Business Registration Service Act (No. 15 of 2015), the Companies Act (No. 17 of 2015) and the Insolvency Act, No. 18 of 2015 to align them with the new legislation in terms of the terminologies used. And lastly the Stamp Duty Act (Cap 480) to exempt movable properties from paying stamp duty exempt.

She explained that the Act also borrows from international standards , conventions, such as UNCITRAL Legislative Guide and Registry Guide on Secured Transactions (Model Law) World Bank's Doing Business Report, Strength of the legal rights criteria as well as the IFC Toolkit for Secured Transactions Systems and Collateral Registries

She pointed out that the aim of this policy change includes–

- (a) Increasing access to finance, and overall financial inclusion mainly due to the simplification, modernization and unification of the legal framework hence Improving legislative framework governing secured transactions which are more transparent, efficient and comprehensive
- (b) Lessening the legal complexity by minimizing the requirements for agreements and registrations this intern leads to an increase in capacity of financial institutions to design and offer new products where movable assets are used as collateral.
- (c) Reducing cost of financing making the registry inexpensive
- (d) Enhancing transparency that reduces risk by enabling the registration for all property rights in movable assets
- (e) Ensuring Certainty because the whole collateral registry system is founded on the principle of registration which in effect guarantees the right of priority.

Beatrice pointed out that the end result is greater access to credit to SMEs, more jobs created and increased competition in the financial market place which will ultimately leads to an improvement in getting credit indicator from doing business project.

### Scope

She further explained the this law applies to Lenders who are both licensed and unlicensed, borrowers may be any business, whether registered or not, and consumers.

The encumbered property could be any movable, tangible (which include: motor vehicles, crops, machineries and livestock) and intangible assets (which include receivables, deposit accounts, electronic securities, intellectual property and attachments to immovable property) however excluding property like land, vessels, aircraft, and book-entry securities.

She highlighted that the Act provides that a security right can encumber the following:-

- i. any type of movable asset, whether tangible or intangible, including future assets (a moveable asset which does not exist or which the grantor does not have rights in or power to encumber at the time the security agreement is made;
- ii. parts of assets and undivided rights in movable assets;
- iii. generic categories of movable assets;
- iv. all of a grantor's movable assets; and
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The assets encumbered or to be encumbered ought to be described in the security agreement in a manner that reasonably allows their identification.

She pointed out that the MPSR Act is both a substantive and procedural law that provides for the creation and existence of an electronic collateral register. She emphasized that the whole collateral registry system is founded on the principle of registration which in effect guarantees the right of priority. This means that a security right created by a grantor is subordinate to a security right in the same collateral created by another person if in the same collateral created by another person if the grantor acquired the collateral subject to the security rights created by the other person made effective against third parties before the grantor acquired the collateral.

Beatrice stated that the Registrars mandate is to receive, store and make accessible to the public information on registered notices with respect to security rights and the general running of the registry. That is to say that the registrar shall not, on the Registrar's own motion, amend or delete information contained in the registry records except in instances where the Act provides otherwise.

#### **LARRY AGORO**

Lastly, it's clear that the Movable Property Security Rights (General) Regulations, 2017 basically deal with the operations of the registry hence it was unanimously agreed that Larry Agoro should present on the practicality of the entire e-citizen system. He began by taking members through the various procedures involved from the creation of an account, link business, conducting a search on the collateral e-registry and the registration of the Notices (Initial, amendment and cancellation). He also gave a demonstration on how the e-business feature works.

#### **SHIGHADI MWAKIO**

Lastly, Shighadi sorted the comments of the participants regarding the The Movable Property Security Rights (General) (Amendment) Regulations, 2018 earlier circulated. She explained that the amendments were not substantive as they only sought to ensure that they conform to the best international practices.

## QUESTIONS, CLARIFICATION AND RECOMMENDATIONS SESSION

### Kisumu

1. One of the participants sought the clarification on future Assets?

**BRS Response :** A security right may secure one or more obligations of any type, present or future, determined or determinable, conditional or unconditional, fixed or fluctuating. Therefore what the Act means is that future assets mean a movable asset, which does not exist or which the grantor does not have rights in or the power to encumber at the time the security agreement is concluded.

2. How secure is the Collateral Registry being an entirely online registry?

**BRS Response:** The site developers have taken security measures to ensure the data on the server are secure.

3. How will the commingled goods be dealt with when there is default in payment?

**Response:** A security right in an encumbered asset extends to its identifiable proceeds. Where proceeds in the form of money or funds credited to a bank account are commingled with other assets of the same kind:

(a) The security right extends to the commingled money or funds, notwithstanding that they have ceased to be identifiable;

(b) The security right in the commingled money or funds is limited to the amount of money or funds immediately before they were commingled; and

(c) If at any time after the commingling, the amount of the commingled money or funds is less than the amount of the money or funds immediately before they were commingled, the security right in the commingled money or funds is limited to the lowest amount between the time when the money or funds were commingled and the time when the security right is claimed.

4. Does the collateral registry accept to register a security document with alterations?

**Response:** Initial notice is what is lodged stipulating the terms of the security agreement but not the security document itself.

5. How can the proposed amendments as well as Information and Technology (IT) firms help in assisting customers to understanding the system

**Response:**The system has been designed in such a way that is simple and user friendly and thus as long as one has access to the internet, then they can be able to access the system and use the system effectively. Government is the driver of the MPSR reform process and so in this light such IT firms can only but lobby the government for software solutions provision slots.

6. A concern was raised regarding the risks that a lender faces in lending against crops and livestock in that crops or livestock which can easily be destroyed in any particular year. This he submitted, would make it difficult to realise such security.

**Response:** In such an outcome this will depend on the security agreement in that the parties will agree on the effects of such destruction and further that in such a case, the debtor still has the right to pay.

## Meru

- 1) Suggestion for creation in the system a field for that the grantor is notified upon registration of a collateral against their assets.  
Response: This will be taken into consideration during the second phase of updating the system.
- 2) A request for the provision of a field to upload the security agreement.  
Response: The Registry is not required by law to keep the security agreement (Privity of contract), the law only provides for the prerequisites.
- 3) What's your take on the description of the collateral?  
Response: In the description of the collateral, you should provide a general description that can pinpoint to the said collateral. It was highlighted that the encumbered assets and secured obligations must be described in the security agreement in a manner that reasonably allows their identification.
- 4) A clarification as to whether one can search using the unique identifier in the system after registration of the initial notice?  
Response: Yes. One can search by the Reference number or by the unique identifier. The developer gave a demonstration on how to go about it.
- 5) There was a suggestion that in stead of the secured creditor (especially the banks) repeating the secured creditors information there should be a an auto fill option that allows them autopopulate that information because this will save their time while making these applications  
Response: The next upgrade of the system will feature it.
- 6) Is the system Case sensitive?  
Response: the system supports lowercase and upper case.
- 7) Proposal for incorporating the feature within the system for generating Reports pertaining the Initial notices lodged as per the selected period of time.  
Response: the developer can at the moment populate that information on request. The request of the bank to having this access is something that will be considered during the upgrade.

## Nakuru

- 1) Must the security agreement be termed as a Security Agreement?  
Response: It is not a must so long as the description of the agreement captures the elements stated under MPSR Act, 2017.
- 2) Do we do away with debentures?  
Response: No because debentures are still covered under Companies Act, 2015. The registry is working on a way of ensuring that once a debenture is registered under one registry under BRS it reflects on the other.
- 3) What happens in an instance where the borrower is a foreign company not registered in the register of foreign companies held by Registrar of companies?  
Response: In this case, from the drop down you choose "unincorporated bodies" and proceed with the lodgement of the initial notice.
- 4) Who initiates the discharge?  
Response: The lender initiates the discharge and if upon full payment of the loan advance the lender does not comply with this requirement the grantor is required to request the lender to do so, should the lender not comply with this request the Registrar can be informed so as to communicate with the lender.

- 5) How will the lodgement of the initial notices be ranked in relation to priority?  
**Response:** The Collateral Registry system is designed so that on lodgement of the initial notice, there is Time stamp/ Date Stamp which will assist when it comes to priority.
- 6) What happens where a lender failed to register under the Chattel Transfer Act, can one register under MPSR and make a claim against it?  
**Response:** If you failed to register under the old regime, after the transitional period, you lose priority but you can still register on the Collateral Registry.
- 7) If there is an existing loan, do you get consent from the 1<sup>st</sup> lender?  
**Response:** The secured lender has to do due diligence hence to be aware of the order of priority and the risk of issuing the facility as a lender who does not have the 1<sup>st</sup> priority.
- 8) Currency issue in the system; it does not support decimals. We propose the inclusion of decimal numbers for foreign currency.  
**Response:** this was noted and will be incorporated in the second phase.
- 9) Proposal for addition of multi-currency for multiple facility under the same collateral.  
**Response:** this was noted and will be incorporated in the second phase.
- 10) What's the maximum period for the loan facility?  
**Response:** The Law set it at 120 months in the system however this can always be amended. The developers are working to ensure that a notification is sent to the secured creditor a few month before the expiration of the 12 months so that they can amend the notice to amend the notice if need be to incorporate the remaining period as per the agreement.

#### Mombasa

- 1) Is the Stamp Duty with regards to the registration of the Initial duty automatic in the system or one has to apply for an exemption?  
**Response:** It is an automatic exemption.
- 2) One of the participants sought clarification on transfer of receivables:  
**Response:** "receivable" means a right to payment of a monetary obligation, excluding a right to payment evidenced by a negotiable instrument, a right to payment of funds credited to a deposit account and a right to payment under security;  
 A brilliant example would be when you have an LPO, you may use the LPO as Security. In the event of default, you can enforce it.
- 3) How should the default notices be served?  
**Response:** Section 67 of MPSR Act deals with relief for non-compliance. In case of default, the secured creditor serves on the grantor in writing or in other form agreed between the parties to pay the owing money or perform and observe the agreement as the case may be.
- 4) Which notices are to be served to the grantor?  
**Response:** Under the Act, several notices need to be served upon the grantor including:
  - a) A copy of registered notice (stipulating the date and the time when the registration became effective and the registration number) –Section 31 of the MPSR Act
  - b) Notification for non-compliance under Section 67 of the MPSR Act.

- c) Notification of secured creditor's intention to dispose of the collateral under Section 73 of MPSR Act.
- 5) What happens when there are multiple security interests?  
Response: It depends with the lender. Of essence, the lender conducts an official search on the portal then from the search results, the lender to make a decision.
- 6) Is there is a stipulated format for the default notice?  
Response: The prescribed format not provided but a guideline as to the contents of the said notice is provided in Section 67(2) of the Act.
- 7) How do you register other assets apart from Motor Vehicles?  
Response: Larry showed the participant the procedure for registering the other collaterals in his presentation.
- 8) Request for inclusion of the use of vehicle registration number  
Response: As at the moment, the system uses the chassis number as the unique identifier but there are ongoing talks with NTSA so as to integrate with the TIMS.

### Conclusion

Arising from the deliberation and fruitful engagements with the participants the Service has come up with a final draft and the same has been forwarded to the drafting department for consideration.

Title of the meeting: Workshop on the Collateral Registry and the Movable Property Security Rights (General)(Amendment) Regulations, 2018

Venue: Acacia Premier Hotel, KISUMU

Office of the Attorney General and  
Department of Justice, Business Registration Service



Date: 09.11.2018

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Title of the meeting: Workshop on the Collateral Registry and the Movable Property Security Rights (General)(Amendment) Regulations, 2018

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Title of the meeting: Workshop on the Collateral Registry and the Movable Property Security Rights (General)(Amendment) Regulations, 2018

Venue: Acacia Premier Hotel, KISUMU

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Title of the meeting: Workshop on the Collateral Registry and the Movable Property Security Rights (General)(Amendment) Regulations, 2018

Venue: Alba Hotel, MERU

Office of the Attorney General and  
Department of Justice, Business Registration Service



Date: 12.11.2018

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Title of the meeting: Workshop on the Collateral Registry and the Movable Property Security Rights (General)(Amendment) Regulations, 2018

Venue: Alba Hotel, MERU

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Title of the meeting: Workshop on the Collateral Registry and the Movable Property Security Rights (General)(Amendment) Regulations, 2018

Venue: Merica Hotel, NAKURU

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Title of the meeting: Workshop on the Collateral Registry and the Movable Property Security Rights (General)(Amendment) Regulations, 2018

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Title of the meeting: Workshop on the Collateral Registry and the Movable Property Security Rights (General)(Amendment) Regulations, 2018

Venue: Merica Hotel, NAKURU

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Title of the meeting: MOVABLE PROPERTY SECURITY RIGHTS (GENERAL) REGULATIONS, 2018

Venue: Merica Hotel- NAKURU

Office of the Attorney General and  
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Title of the meeting: Workshop on the Collateral Registry and the Movable Property Security Rights (General) (Amendment) Regulations, 2018

Venue: Englishpoint Hotel, MOMBASA

Office of the Attorney General and  
Department of Justice, Business Registration Service



Date: 16.11.2018

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Title of the meeting: Workshop on the Collateral Registry and the Movable Property Security Rights (General) (Amendment) Regulations, 2018

Venue: Englishpoint Hotel, MOMBASA

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Title of the meeting: Workshop on the Collateral Registry and the Movable Property Security Rights (General) (Amendment) Regulations, 2018

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