

NO. 13 OF 2017

MOVABLE PROPERTY SECURITY RIGHTS ACT

SUBSIDIARY LEGISLATION

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MOVABLE PROPERTY SECURITY RIGHTS (GENERAL) REGULATIONS, 2017

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**MOVABLE PROPERTY SECURITY
RIGHTS (GENERAL) REGULATIONS, 2017**

[L.N. 86/2017, L.N. 121/2019.]

1. Citation

These Regulations may be cited as the Movable Security Rights (General) Regulations, 2017.

2. Interpretation

In these Regulations unless the context otherwise requires—

"Act" means the Movable Property Security Rights Act, 2017;

"address" includes a physical address and electronic address;

"confirmation of registration" means a copy of the information contained in the registered notice issued upon registration of that notice;

"designated field" means a space on notice or search request for entering the specified type of information;

"grantor" has the meaning assigned to it under section 2 of the Act;

"Registrar" means the person appointed under section 19 of the Act to supervise and administer the operations of the Registry;

"Registry" means the Registry established under section 19 of the Act; and

"user account" means an online account created by a user to allow access or submission of information in the Registry.

[L.N. 121/2019, r. 2.]

3. Registry

(1) The Registry shall be electronic.

(2) The submission of a notice and a search request to the Registrar shall be by electronic means.

4. Access to Registry

A person may access the Registry if that person has—

(a) established a user account; and

(b) entered the required information in the designated fields.

5. Submission of a notice

(1) A registrant may submit a notice to the Registrar, if that registrant has complied with regulation 4.

(2) The Registrar shall register a notice to a registrant who complies with these Regulations.

[L.N. 121/2019, r. 3.]

6. Request for search

(1) A person who intends to conduct a search of the registry records shall submit a search request to the Registrar in Form 1 set out in the First Schedule and pay the prescribed fees.

(2) The Registrar shall issue to the person conducting the search a search certificate in Form 2 set out in the First Schedule.

[L.N. 121/2019, r. 4.]

[Subsidiary]

7. Notices that don't require authorization of grantor

(1) The registration of a notice with respect to a right of a non consensual creditor in accordance with section 46 of the Act shall not require the authorization of the grantor.

(2) The registration of an amendment notice to add the transferee as the new grantor in accordance with section 37 of the Act shall not require the authorization of the transferee.

8. Information required in an initial notice

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

(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.

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

(4) A confirmation of registration of an initial notice under sub-regulation (3) shall include, the date and time when the registration became effective and the registration number of the initial notice.

[L.N. 121/2019, r. 5.]

9. Grantor identifier and name

(1) Where the grantor is a natural person who is a citizen of Kenya, the identifier of the grantor is their identity card number.

(2) Where the grantor is a natural person who is not a citizen of Kenya, the identifier of the grantor is the person's valid passport number.

(3) Where the grantor is incorporated in Kenya, the grantor identifier is the registration number in the certificate of incorporation.

(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 identity card number of the Kenyan principal officer of the organization.

(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 Kenya that authorized the foreign unincorporated organization to conduct its activities.

(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.

(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.

(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.

(8) Where the grantor is not a natural person, the grantor name is the name as it appears in the relevant official document that indicates the grantor's identifier determined under sub-regulations (3), (4), (5) and (6).

[L.N. 121/2019, r. 6.]

10. Secured creditor

(1) Where the secured creditor or their representative is a natural person who is a citizen of Kenya, their identifier is their identity card number.

(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.

(2) Where the secured creditor or their representative is not a natural person, their identifier is—

- (a) if incorporated in Kenya, the registration number in the certificate of incorporation;
- (b) if it is 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;
- (c) if it is a foreign unincorporated organization, the registration number issued to the creditor by the relevant authority in Kenya that authorized the foreign unincorporated organization to conduct its activities; and
- (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.

(3) Where the secured creditor or their representative is a natural person who is a citizen of Kenya, the creditor's name is the name that appears in their identity card or valid passport, if the natural person is not a citizen of Kenya.

(4) Where the secured creditor or their representative is not a natural person, the creditor name is the name as it appears in the relevant official document that indicates the grantor's identifier determined under sub-regulation (2).

[L.N. 121/2019, r. 7.]

11. Description of collateral in a notice

(1) The description of collateral specified in a notice shall be in accordance with section 8 of the Act.

(2) An item used as collateral that has a serial number shall be described by the serial number, the make, and the name of manufacturer.

(3) Deleted by L.N. 121/2019, r. 8

[L.N. 121/2019, r. 8.]

12. Information required in an amendment notice

(1) A registrant who wishes to amend an initial notice shall submit an amendment notice Form 5 set out in the First Schedule.

[Subsidiary]

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

- (a) the registration number;
- (b) the information to be added or changed; and
- (c) the reasons for amendment.

(3) An amendment notice may relate to one or more items of information contained in a registered initial notice.

(4) The Registrar shall, immediately after registration of an amendment notice, issue to the registrant a confirmation of registration of an amendment notice in Form 6 set out in the First Schedule.

(5) A confirmation of registration of an amendment notice under sub-regulations (4) shall include, the date and time when the registration became effective and the registration number of the amendment notice.

[L.N. 121/2019, r. 9.]

13. Procedure for the compulsory amendment and cancellation

(1) The grantor may, in accordance with section 33(5) of the Act, request the Registrar to register an amendment or cancellation notice in Form 7 set out in the First Schedule.

(2) The request under sub-regulation (1) shall contain sufficient evidence to enable the Registrar to determine whether the grantor is entitled to the amendment or cancellation.

(3) If the Registrar determines that the grantor has grounds to request an amendment or cancellation, the Registrar shall issue a notification to a secured creditor of grantor's request for amendment or cancellation in Form 8 set out in the First Schedule.

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

(5) If the secured creditor does not respond in accordance with sub-regulation (4), the request shall be granted.

(6) If the secured creditor disputes the grounds for granting the request, the Registrar shall refuse to grant the request.

[L.N. 121/2019, r. 10.]

14. Information required in a cancellation notice

(1) A registrant who wishes to cancel an initial notice shall submit a cancellation notice in Form 9 set out in the First Schedule.

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

(3) The Registrar shall, immediately after the registration of a cancellation notice, issue to the registrant a confirmation of registration of a cancellation notice in Form 10 set out in the First Schedule.

(4) Confirmation of registration of a cancellation notice under sub-regulation (3) shall include, the date and time when the registration became effective and the registration number of the cancellation notice.

[L.N. 121/2019, r. 11.]

15. Fees for the use of the Registry services

The fees payable under these Regulations shall be as provided in the Second Schedule.

16. Mode of delivery of notices

Any notification shall be through the most recent electronic address provided in the initial notice.

[L.N. 121/2019, r. 12.]

FIRST SCHEDULE

L.N. 161/2019, r. 13.]

FORMS

FORM 1

[Reg. 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

[Reg. 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)

[Subsidiary]

FORM 3

[Reg. 8(1).]

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

Movable Property Security Rights

[Subsidiary]

Particulars of a Non-Consensual Secured Creditor

Type of Non-Consensual Secured Creditor

- Official receiver¹
- Landlord/Representative
- Judgment creditor²
- Government agency³
- 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
- 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

.....

.....

¹This may include bankruptcy trustee, liquidator, administrator

²This may include judgment on matrimonial property, child maintenance, civil judgments, commercial judgments

³This may include land registries, Kenya revenue authority, companies registry etc

Serial number of the Collateral

Movable Property Security Rights

[Subsidiary]

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

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

FORM 4

[Reg. 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

Movable Property Security Rights

[Subsidiary]

- 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:

Identifier:

(ID number/Passport number/Registration number)

Postal address:

E-mail 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:

Movable Property Security Rights

[Subsidiary]

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 receiver⁴

Landlord/Representative

Judgment creditor⁵

Government agency⁶

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

⁴This may include bankruptcy trustee, liquidator, administrator

⁵This may include judgment on matrimonial property, child maintenance, civil judgments, commercial judgments

⁶This may include land registries, Kenya revenue authority, companies registry etc

Movable Property Security Rights

[Subsidiary]

Description of 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)

Dated this day of 20

Time

.....
(Registrar)

FORM 5

[Reg. 12(1).]

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

FORM 6

[Reg. 12(4).]

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)

[Subsidiary]

FORM 7

[Reg. 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

[Reg. 13(3).]

NOTICE 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)

[Subsidiary]

FORM 9

[Reg. 14(1.)]

CANCELLATION NOTICE

1. Registration number of the initial notice

2. Reasons 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

[Reg. 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)

SECOND SCHEDULE

FEES PAYABLE TO THE REGISTRAR

[Reg. 15.]

On submission of a Search Request — KSh. 500
