

COLLATERAL REGISTRY

ALL YOU NEED TO KNOW

[1] BACKGROUND

The Collateral Registry is a body established by Parliament under the Borrowers and Lenders Act, 2008 [Act 773] to principally register charges and collaterals created by borrowers to secure credit facilities provided by lenders. Besides registrations, the Registry also provides information on the existence of relationships between lenders and borrowers as they relate particularly to movable and immovable collateral[s] as well as other ancillary functions.

The new legal and regulatory regime introduced by Act 773 and the mandate of the Collateral Registry are a response to the teething problems in Ghana's credit market which eventually constrain Small and Medium sized Enterprises [SMEs] in particular and the economy as a whole. For instance, lenders currently have no effective means of searching for prior charges if any, on collateral[s] presented to them for credit. The result is the numerous and unending litigations in courts as well as substantial rate of non performing loans recorded in the books of lenders.

This new legal framework for credit improves standards of disclosure of information by borrowers and lenders and prohibits certain credit practices in addition to promoting a consistent credit enforcement framework and related matters.

Under this new regime, apart from immovable properties, lenders are encouraged to accept diverse movable properties as collateral[s] for credit. The mechanisms for enforcing credit agreements have been significantly improved. For example one need not go to court to realize collateral[s] in cases of default. Such collateral[s] can easily be realized upon the delivery of the relevant notices to the borrower and the Collateral Registry.

[2.0] USERS

All universal banks that are already connected to the Central Securities Depository [CSD] platform shall register charges electronically. Rural Banks, Finance Houses, Savings and Loans Companies, Leasing Companies shall also register electronically. All other lenders or representatives shall meanwhile register manually with forms obtained from the Bank of Ghana website hyperlink www.bog.gov.gh or the Collateral Registry.

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

[3.0] OPERATIONS OF THE REGISTRY

The operations of the Registry include the following:

- Registration of Charges and Collaterals
- Honouring of Search Requests
- Processing of Discharges
- Processing of Realization Requests

[3.1] Registration of Charges and Collaterals

Subject to the provisions of Act 773 charges created on both movable and immovable properties or any other property used as collateral shall be registered.

- Act 773 makes it mandatory for a borrower or a lender interested in a charge to register the charge or collateral created by the borrower in favour of a lender with the Collateral Registry within twenty-eight [28] days after the date of creation.
- Section 25 [3] of Act 773 stipulates that a charge which is not registered is of no effect as security to the borrower's obligations for repayment for

the money secured and the money secured shall immediately become payable despite any provision to the contrary in any contract.

[3.1.1] Effectiveness of Registration

- **A registration of a charge is deemed to have taken effect upon;**
 - [a] receipt by the Registrar of the duly completed prescribed form/template and payment of required fees, and**
 - [b] receipt of Acknowledgement of Registration by the lender or the borrower or their representatives.**

Exception

- Where the Registrar makes an error in registration, the date and time of the correction shall not affect the date and time for the original filing or registration.
- Where a filing party makes an error in registration the date and time of the correction of the error shall be the effective date and time of the registration.

[3.1.2] Requirements and Procedure for the Registration of Charges

- It shall be the duty of the lender or the borrower to register a charge. Other persons such as the chargee, lenders' solicitors or other professionals acting on behalf of the chargor or chargee may also present the charge for registration.
- There shall be a prescribed Form/Template which will be completed to capture the summary of the instrument creating the charge.

Specifically the summary will contain the following information:

- [a] Name and address of the borrower
- [b] Name and address of the lender

- [c] The nature of the charge
 - [d] The date of the creation of the charge
 - [e] The amount secured by the charge
 - [f] Short particulars of the property charged
 - [g] In the case of a floating charge, the nature of any restrictions on the power of a borrower or chargor to grant further charges that rank in priority to or with the charge created.
- Registration with the Collateral Registry will lapse upon the expiry of the selected time for the registration which is usually the time of the repayment period of the facility.
 - Expiring registrations may be renewed before the expiry date upon payment of the prescribed fee.
 - The Registrar shall keep with respect to each borrower a register of the particulars of the charge delivered for registration.
 - The Registrar will generate a unique number for each charge that is registered so that it would be maintained and retrieved with ease and certainty.
 - The Registrar shall issue a Certificate of Registration/Acknowledgement to the borrower or the lender or anybody acting on their behalf. The Certificate of Registration/Acknowledgement shall be evidence of the registration of the charge.

[3.1.3] Priority Rules

The basic priority rules under this regime are as follows:

- Unless otherwise determined by law the first registration of a charge shall have priority over any subsequent registrations.

- The date and the time for the receipt of registration shall automatically be recorded on the Registry's database and indicated on the Acknowledgement Form. The date and the time of receipt of the registration and priority among competing interests shall be determined by that date and time.
- Where the Registrar exercises his discretion in appropriate cases to register a charge after the expiry of the statutory 28 days after its creation, such registration would not defeat any interest acquired by a third party prior to the actual registration.
- Borrowers are encouraged to register or cooperate with lenders to register charges created on assets or property used as security for credit facilities.

[3.2] Honoring of Search Requests

- Enquiries or searches on a charge or registered collateral[s] shall be made on a prescribed form to the Registrar upon the payment of a prescribed fee and the results shall be communicated to the searcher.
- In addition to the borrower's details the searcher must provide details of collateral[s] in respect of which a search is being conducted. The Registrar may not respond to searches that are done with only the borrower's details.
- Lenders are encouraged to search the Registry's database to ascertain any encumbrances on a collateral[s] presented to secure a credit to enable prudent business decisions to be made.
- The Registrar shall provide adequate information about collateral[s] provided for a facility or transaction to a searcher.

- The burden for ensuring the correctness and the accuracy of a borrower's name and other relevant information about the collateral[s] shall be placed on the filing and searching party.

[3.3] Processing of Discharges [Full or Partial]

- On the payment of a debt the borrower or the lender shall submit an application to the Registrar in the prescribed Form/Template for discharge of his obligations on proof of:

[a] payment in whole or in part of the debt for which the charge was created, or

[b] the release of the whole or part of the property charged.

- The Registrar shall enter a Memorandum of Release of Debt in the register or the database in the event of the release or discharge.
- The Registrar shall specify in the Memorandum of Release whether the charge is released in whole or in part.
- The Registrar shall furnish a copy of the Memorandum of Release to the borrower or the lender.

[3.4] Processing of Realisation Requests

[3.4.1] Realisation by Appointment of Receiver or Manager

- A Receiver or Manager may be appointed by the lender or a court to realize the interest of a lender in collateral[s] where the collateral[s] is the kind that should not or cannot be sold in order to realize his/her interest.
- A Receiver or Manager may be appointed by the lender or a court to realize the interest of a lender in collateral[s] that can be sold.

- Appointment of Receiver or Manager or a person in possession of a charged collateral shall only be after thirty [30] days of receipt of the notice of default by the borrower.
- Upon the Appointment and Entry of a Receiver or a Manager or other person by the lender, the lender shall within ten [10] days of the Appointment and Entry notify the Registrar. The Registrar shall register the Notice of Appointment and Entry of Receiver or Manager or other person in the register/database.
- Upon the Cessation and Exit of the Receiver or the Manager or other person in possession of a charge, the lender shall within ten [10] days notify the Registrar. The Registrar shall register the Notice of Cessation and Exit in the register/database.
- The Registrar shall ensure that copies of the various notices shall be published in the Gazette.

[3.4.2] Realization without Court Order

- A person who intends to realize a security charged and registered by the Registrar without a court order shall notify the Registrar of that intention thirty [30] days after the date of receipt of the notice of default by the borrower.
- The Registrar shall certify the realization process by issuing a certificate to that effect.
- A secured and registered collateral[s] intended to be realized without a court order shall be valued by the appropriate professionals.

- All realizations of collateral[s] by sale shall be by public auction in accordance with the Auction Sales Act, 1989 [P.N.D.C.L. 230] or any other means permitted by law.
- Where a lender faces resistance or is unable to realize collateral[s] in a peaceable manner, the services of the Police may be engaged upon a warrant issued by a court to take possession of the property.
- Where it becomes necessary the Registrar shall provide information to the Police to facilitate the realization process.

[3.4.3] Action by Motion on Notice

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

[3.4.4] Proceeds from the Sale or Realization of Collateral

- In realizing collateral[s] charged and registered, a priority holder shall only take as much as the holder is reasonably entitled to and preserve the interest of any other party as the case may be.
- Where a borrower defaults and any other party interested in the collateral[s] is unwilling, unable, incapable, unavailable among others to share in the proceeds of the collateral[s] sold [according to the priority rankings] the person[s]/company[ies]/institution[s] entitled to realize the said collateral[s] shall take so much as they are entitled to and deposit the remainder of the said proceeds in a bank account directed by the Registrar.

[4.0] DISCLAIMER

- The Registry shall not be held responsible for the authenticity of any data received from a lender on its database and any inaccuracies and misrepresentations that results of searches may reveal.
- The Registry is not responsible for the validity of any agreement between the lender and the borrower.

[5.0] BENEFITS

- The new regime created by the operation of the Registry encourages lenders to accept diverse movable properties as collateral[s] for credit [e.g. accounts receivable, machinery, equipment, vehicles etc.] apart from immovable properties. Likewise SMEs are encouraged to use a variety of their assets to obtain credit for growth.
- The regime provides an avenue for searches to be conducted by lenders on collaterals submitted for credit, to ascertain whether the said collateral[s] have been charged already or not to enable prudent business decisions to be made.
- The regime also facilitates increases in the level of credit to all sectors of the economy.
- The regime ensures a reduction in concentration in the financial system by providing lenders with profitable lending opportunities in the SME sector [so they can expand their activities beyond the corporate level].
- It increases competition for financial services by enabling lending institutions to offer more loans at low interest rates.

- It is expected that lending in general will become less risky with a Collateral Registry regime.

[6.0] EFFECTIVE DATE OF OPERATIONS

- The Registrar shall accept for registration only secured transactions created from **1st February 2010**.
- For the avoidance of doubt Agreements and Transactions created before **1st February 2010** are not eligible and would not be registered by the Registry.

USER FEES

Users of the Registry shall pay the following prescribed fees:

| | | |
|---------------------|---|-----------------|
| Registration | - | GH¢ 7.00 |
| Search | - | GH¢ 5.00 |
| Renewal | - | GH¢ 2.00 |

CONTACT ADDRESS:

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COLLATERAL REGISTRY
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