

Rules for effective implementation of the Borrowers and Lenders Act, 2008 (Act 773)

These Rules are issued pursuant to Section 7 of the Borrowers and Lenders Act (Act 773) per Bank of Ghana Notice to Banks, Non-Bank Financial Institutions and the General Public: Notice No. BG/GOV/SEC/2012/08 dated 1st June, 2012.

Registry Rules under the Borrowers and Lenders Act

General rules and object of the Registry

Definitions

1. The definitions included in section 38 of the Borrowers and Lenders Act apply also with respect to these rules subject to the following additions:

- (1) “Act” means the Borrowers and Lenders Act;
- (2) “Address” means: (i) a physical address, including a street address and number, city, and postal code; (ii) a post office box number, city, and postal code; or (iii) an address that purports to be a mailing address, and in addition may include fax, email and telephone number;
- (3) “Amendment” means
 - (i) Updates that include (a) the deletion of a lender or borrower where two or more lenders or borrowers are identified in the registration; (b) the addition of the lender or borrower; (c) the addition, deletion or change of charged property, including property identified by a collateral ID number; (d) the change of the name of the borrower; (e) the change of the name of the lender; (f) the change of the address of the borrower or lender; and
 - (ii) Other Amendments that include (a) the extension of the effectiveness of a registration (renewal of a registration); (b) the change in the amount or related interest rate secured by the charge; (c) the assignment of the secured obligation by the lender; (d) the appointment and removal of the receiver or manager; (e) notice of default and its removal; (f) realization without court order; and (g) full or partial satisfaction of debt.
- (4) “Registrant” means the person that enters information specified in section 26(1) of the Act and these rules in a registration form and presents the form for registration;
- (5) “Registrar” means the person appointed under section 24 of the Act;

- (6) “Registration” means information provided in the initial registration and amendment, related to a charge that is entered in the Registry;
- (7) “Registration form” includes an electronic screen and written notice for entering registration information to be submitted to the Registry;
- (8) “Registration number” means a unique number allocated to each registration form by the Registry;
- (9) “Collateral ID number” means:
 - (i) in the case of a motor vehicle, the vehicle identification or chassis number marked or attached to the body frame by the manufacturer;
 - (ii) in the case of an aircraft frame and an aircraft engine, the manufacturer’s serial number;
 - (iii) in the case of a trailer, tractor, railway rolling stock, a boat or a boat motor, the serial number marked on or attached to the property by the manufacturer; and
 - (iv) in the case of immovable property, the plot, land registration or indenture number of the land or building;

The object, role and functions of the Registry

- 2. (1) In addition to the object of the Registry specified in section 22 of the Act, the Registry is established for the purposes of receiving, storing and making available to the public registration information relating to charges in property pursuant to the Act and these rules.
- (2) The Act requires a borrower or lender to register the charge or collateral with the Collateral Registry within twenty-eight days [28] after the date of creation.
- (3) Section 25(3) of the Act stipulates that a charge which is not registered is of no effect as security for the borrower’s obligations for repayment of the credit and the money shall immediately become payable despite any provisions to the contrary in the credit agreement.
- (4) In addition to the functions specified in section 23 of the Act, the Registry shall:
 - (a) Index all registrations according to the name of the borrower pursuant to section 26(3) of the Act;
 - (b) A registration relating to collateral ID property shall be, in addition, indexed according to the collateral ID number of the property;
 - (c) All amendments shall be indexed in a manner that associates them with the initial registration.

- (d) Provide a confirmation of the registration to the registrant and a certificate of the registration to the borrower;
 - (e) Remove registrations from the Registry record that is available to the public upon the expiry of the term of registration or pursuant to a judicial or administrative order;
 - (f) Retain in the registry record registrations with respect to which a full satisfaction of debt was registered and remove it from the registry record after 30 days or 30 days after the expiry of the term of registration; and
 - (g) Archive registrations removed from the Registry record that is accessible to the public.
- (5) Subject to paragraph 3, the Registry shall not change, delete or add any information in the Registry record.
- (6) Where information provided in a registration form is entered in the Registry record by the Registry staff, the Registry may correct errors that it made in the information entered.

Access to Registry services

Public access to the Registry services

3. Any person is entitled to have access to the Registry services in accordance with the Act and these rules.

Operating hours of the Registry

4. (1) The Registry is open to the public during the regular business hours.
- (2) Electronic access to the Registry services is generally available 24 hours a day, 7 days a week.
- (3) Notwithstanding paragraphs 1 and 2 of this section, the Registrar may suspend access to the Registry services in whole or in part for maintenance purposes or when circumstances arise that make it impossible or impractical to provide access. Notification of the suspension of access to the Registry services and its expected duration is published as soon as reasonably possible on the Registry's website and posted at the offices of the Registry.

Registration of charges

5. (1) A person is entitled to register a charge in accordance with the Act, these rules and the terms and conditions of use of the Registry, if that person has:

- (a) identified itself as the registrant;
 - (b) tendered payment for the registration specified in section 28 of these rules;
 - (c) provided the registration information required by the Act and these rules.
- (2) A person is entitled to register a charge electronically by complying with the requirements referred to in paragraph 3 of this section or using the required registration form.
- (3) A person that wishes to register a charge electronically shall establish a user account with the Registry or obtain other authorization to submit registrations.

Rejection of a registration form or search request

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

Date and time of registration

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

Registration information

Information required for an initial registration form

8. To effect an initial registration, a registrant is required to provide in the appropriate field in the registration form the following information:
- (a) the name and address of the borrower, as specified in sections 9 and 10 of these rules, and

gender and birth date in case the borrower is natural person;

(b) the name and address of the lender, as specified in section 11 of the rules;

(c) description of the charged property, as specified in section 12 of these rules;

(d) the nature, any restrictions and the date of creation of the charge;

(e) the period of time for which the registration is to be effective; and

(f) the amount secured by the charge.

Borrower name (natural person)

9. (1) If the borrower is a natural person, the registrant must indicate the name of the borrower as specified in this section.

(2) For the purposes of paragraph 1 of this section, the name of the borrower is determined as follows:

(a) if the borrower was born in Ghana, the name of the borrower is the name as stated in the national ID, driver's license or valid passport;

(b) if the borrower was not born in Ghana, the name of the borrower is the name as stated in a valid passport issued to the borrower;

(c) if the borrower that was not born in Ghana does not have a valid passport, the name of the borrower is the name stated in an official document, such as a valid identification card or driver's licence.

Borrower name (legal person)

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

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

Lender name

11. (1) For the purposes of section 8:

(a) if the lender is a natural person, the registrant shall provide the name of the lender in accordance with section 9; or

(b) if the lender is a legal person, the registrant shall provide the name of the lender in accordance with section 10.

(2) If the registrant enters, instead of the name and address of the lender, the name and address of a representative of the lender, paragraph 1 of this article applies to the name of the representative of the lender.

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

Description of the charged property

12. (1) For the purposes of section 8, the description of the charged property, including proceeds in the notice may be specific or generic as long as it reasonably identifies the charged property.

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

(3) If the registration covers collateral ID property other than immovable property as defined in section 1 of these rules that is not held by the borrower as inventory, a collateral ID number and the type of collateral ID number property must be indicated in the appropriate field in the registration form.

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

Incorrect or insufficient information

13. (1) A registration is effective only if it provides the borrower's correct name as specified in sections 9 and 10.

(2) A registration covering a collateral ID number property is effective only if it provides the correct collateral ID number as specified in section 1 of these rules.

(3) A description of collateral ID number property that is insufficient does not render the registration ineffective with respect to other charged property that is sufficiently described.

(4) Except as provided in paragraphs 1 and 2 of this section, an incorrect or insufficient statement of the information required to be entered in the Registry record under section 12 of these rules, or in the manner of its entry, does not render the registration ineffective, unless it seriously misleads a reasonable searcher.

(5) In the case of manual registration, where the Registrar makes an error in a registration that causes the registration not to be disclosed in search, the registration shall be effective and the time of the update that cures the error shall not affect the time of the original registration.

(6) Where the registrant makes an error in a registration that causes the registration not to be disclosed in search, the registration shall not be effective and the time and date of the update that cures the error shall be the time when the registration becomes effective.

Registration of Amendments

Amendment of registration

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

- (a) the initial registration number of the registration to which the amendment relates;
- (b) if information is to be added, the additional information as provided by these rules for entering information of that kind;
- (c) if information is to be changed or deleted, the information to be deleted, and in the case of a change, the current and new information as provided by these rules for entering information of that kind; and
- (d) the name of each lender authorizing the registration.

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

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

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

Duration and renewal of the period of effectiveness of registration

15. (1) A registration is effective for the period of time indicated in the registration.
- (2) The period of effectiveness of a registration may be renewed for an additional period of time indicated in the amendment extending the effectiveness of the registration.

Priority among registrations

16. (1) Unless otherwise determined by the Act and these rules, a registration with an earlier date and time of registration shall have priority over any later in time registration.
- (2) The date and time of registration is generated automatically by the Registry according to section 7 of these rules.
- (3) Where the Registrar exercises the authority under section 28 of the Act, the Registrar's approval shall be the date and time of registration. Such registration shall not defeat any charge or interest acquired by a third party prior to the actual registration effected upon approval of the Registrar.
- (4) Charges created before the effectiveness of the Act may be registered subject to the Registrar's approval pursuant to paragraph 3 of this section. With the exception of registration, other provisions of the Act shall not apply to such charges.

Registration of notice of default and its removal

17. (1) The lender shall register a notice of default and indicate the date when default actually occurred and the date when the borrower received a notice pursuant to section 32 of the Act.
- (2) The lender shall register a removal of the notice of default if the borrower cured default within thirty [30] days after receipt of notice of default.

Registration of satisfaction of debt

18. (1) To register a memorandum of satisfaction of a debt, the registrant shall provide in the registration form the following information:
- (a) the initial registration number of the relevant registration;
 - (b) the borrower's name who satisfied the debt as provided in the registration;

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

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

(2) The Registry shall provide a copy of the memorandum of satisfaction of debt to the borrower pursuant to section 27 of the Act.

Registration of appointment or removal of receiver or manager

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

(2) The lender that appoints a receiver or manager pursuant to section 29 of the Act shall register an amendment related to the appointment of the receiver or manager within 10 days after the date of appointment.

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

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

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

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

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

(e) the effective and appointment date.

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

(5) To register a notice of removal of the receiver or manager, the registrant shall provide in the registration form the same information as specified in paragraph 2, other than sub-section c, and indicate the reason for removal.

Realisation without court order

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

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

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

Distribution of proceeds after realisation

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

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

- (a) any persons who have a subordinate charge in the order of their priority;
- (b) any other person who has given the lender notice that that person claims an interest in the collateral; and
- (c) the borrower.

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

Copy of initial registration and amendment

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

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

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

Obligations of the lender

Compulsory registration of amendment or memorandum of satisfaction of debt

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

- (a) no credit agreement has been concluded between the lender and the borrower;

- (b) the charge to which the registration relates has been satisfied by payment or otherwise;
 - (c) the registration was effected fraudulently or without authorization of the borrower; or
 - (d) the property is no longer charged, in whole or in part.
- (2) No fee or expense shall be charged or accepted by the lender for compliance with the demand received under paragraph 1 of this section.
- (3) If the lender does not comply in a timely manner, the borrower is entitled to request the Court to order the registration of a memorandum of satisfaction of debt.
- (4) The Court shall notify the lender identified in the relevant registration at the address specified in the registration of the demand of the borrower. The lender shall have 15 days after receipt of the notification to send a response to the Court.
- (5) When the Court finds that the borrower's demand is legitimate under paragraph 1 of this section, it shall order registration of the memorandum of satisfaction of debt.

Borrower's right to demand additional information

24. (1) The borrower may demand in writing that the lender:
- (a) confirm in writing whether or not there exists a credit agreement between the borrower and the lender as of the date of the demand;
 - (b) approve or provide a list of the charged property as of the date of the response; and
 - (c) approve or provide a statement indicating the amount secured by the charge to which the registration relates, including the amount needed to satisfy the secured obligation as of the date of the response.
- (2) The borrower may instruct the lender to deliver its response to a designated third person.
- (3) The lender shall send a response within 15 days after receipt of the demand.

Searches

Right to search

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

Search criteria

26. A person may conduct a search by using one of the following search criteria:

- (a) The name of the borrower and/or;
- (b) The collateral ID number; or
- (c) The registration number.

Search results

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

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

(3) Upon request made by a person that has paid the fee specified in section 28, the Registry issues a search certificate on the basis of one of the criteria specified in section 26. The certificate reflects the search result.

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

Fees

Fees for Registry services

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

- (a) initial registrations: GH¢7.00;
- (b) renewals: GH¢2.00; and
- (c) searches and search certificates: GH¢5.00

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

*Liability***Disclaimer of responsibility**

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

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

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