

Statutory Instrument No. of 2016

Published , 2016

THE BORROWERS AND LENDERS ACT, 2014

(ACT No. 13 of 2014)

**Short title. THE BORROWERS AND LENDERS (COLLATERAL REGISTRY)
REGULATIONS, 2016**

In exercise of the powers conferred upon him by section 54 of the Borrowers and Lenders Act, 2014 the Governor hereby makes the following Regulations -

PART I – PRELIMINARY

Interpretation. 1. In these Regulations unless the context otherwise requires-

“Act” means the Borrowers and Lenders Act, 2014 (Act No. 13 of 2014);

“address” means-

- (i) a physical address or a post office box number, city, postal code and country; or
- (ii) an electronic address;

“amendment” means a modification with respect to information contained in a previously registered security interest to which the amendment relates;

“Bank” means the Bank of Sierra Leone established by the Bank of Sierra Leone Act, 2011 (Act No. 15 of 2011);

“designated field” means the space on the registration form designated for entering the specified type of information;

“discharge” means the registration of satisfaction of a secured obligation or a debt, evidenced in a judgment or order in accordance with section 20 of the Act;

“form” means an application form used to enter registration information that is electronically communicated to the Collateral Registry and includes an initial, an amendment and a discharge registration form;

“Governor” means the Governor of the Bank of Sierra Leone;

“registrant” means the person who submits the form to the Collateral Registry;

“Registrar” means the person appointed under subsection (2) of section 15 of the Act, to manage, supervise and administer the operations of the Collateral Registry;

“registration number” means a unique number assigned to an initial form by the Collateral Registry on its registration and permanently associated with that registered form and any related form;

“serial-numbered collateral” means a motor vehicle, a trailer, or a mobile home that have a serial number permanently marked on or attached by the manufacturer; and

“serial number” means the serial number located on the chassis or body frame of a motor vehicle, a trailer, or a mobile home permanently marked on or attached by the manufacturer.

PART II – ESTABLISHMENT OF COLLATERAL REGISTRY.

Establishment of Collateral Registry.

2. (1) Subject to section 15 of the Act, there is hereby established a Collateral Registry as a unit or department within the Bank responsible for the registration of security interests on movable property, judgments and orders issued subject to paragraph (c) of subsection (2) of section 31 of the Act.

(2) Notwithstanding the generality of sub-regulation (1), the Collateral Registry shall-

- (a) not conduct scrutiny of the content of forms or search requests, and shall not make any changes to the content of a form or search request;
- (b) assign a registration number to a registered initial form and associate all amendment and discharge forms which contain that registration number with the initial registered form;
- (c) record information in the forms submitted by registrants into the registry record without delay and in the order in which each form was submitted;
- (d) record the date and time on which information in a form is entered into the registry record;
- (e) not amend or delete information contained in the registry record;
- (f) remove a registered form from the public registry record only upon the expiration of the period of effectiveness;
- (g) archive information removed from the public registry record for 5 years in accordance with subsection (4) of section 30 of the Anti-Money Laundering and Combating of Financing of Terrorism Act, 2012 in a manner that enables the information to be retrieved by the Registrar; and
- (h) preserve information contained in the registry record and reconstruct it in the event of loss or damage.

(3) The Collateral Registry shall allow holders of user accounts to electronically attach files to initial and amendment forms.

(4) Electronic access to the Collateral Registry services shall be available at all times and where the Registrar considers that it is not practical to provide access to the services, the Registrar may -

- (a) refuse access to the Collateral Registry services; or
- (b) otherwise suspend its operation, in whole or in part.

(5) Where the Registrar refuses access to the Collateral Registry services, or otherwise suspends its operation in whole or in part, the Registrar shall publish a notice or otherwise notify the users giving details of the refusal or other suspension of operation.

Appointment of Registrar.

3. (1) Subject to subsection (2) of section 15 of the Act, there shall be a Registrar who shall be appointed by the Bank on such terms and conditions as shall be specified in his letter of appointment.

(2) A Registrar appointed under sub-regulation (1), shall be responsible to manage, supervise and administer the operations of the Collateral Registry.

Fees.

4. (1) The Collateral Registry shall charge for services rendered, such fees as prescribed in the schedule.

(2) No fees shall be paid to the Collateral Registry for the registration of discharge forms.

Registration of security interest.

5. (1) Subject to the Act, a lender may register a security interest covering a collateral created by a borrower in his favour.

(2) A lender who wishes to register a security interest under sub-regulation (1) shall submit a registration form to the Collateral Registry.

(3) A lender shall not submit a registration form under sub-regulation (2) unless he has -

- (a) established a user account with the Collateral Registry; and
- (b) paid the prescribed fees.

(4) The Registrar shall prepare and keep an index of registered security interests in the Collateral Registry as public records.

(5) The Registrar shall issue a certificate of the registration which shall be evidence of registration in any court proceedings.

(6) The Registrar shall, upon request and payment of the prescribed fee, issue a printed search result in the form of a certificate which shall be irrefutable evidence of the existence of information in the Registry as of the date and time of its issuance.

**Right to
search.**

6. (1) For the purposes of requesting a search or obtaining a search certificate under sub-regulation (2) of Regulation 7, a person may submit a search request to the Collateral Registry.

(2) A search request shall not be submitted to the Collateral Registry under sub-regulation (1) unless it –

- (a) is in the prescribed form; and
- (b) contains information that provides an identity of the borrower required under Regulation 12 or a serial number as prescribed under sub-regulation (3) of Regulation 14.

**Search
results.**

7. (1) Upon receipt of a search request submitted under Regulation 6 the Registrar shall-

- (a) provide a search result that indicates the date and time when the search was performed;
- (b) set forth all information in each registered form that contains information matching the search criterion exactly; or
- (c) indicate that no registered form contains information matching the search criterion exactly.

(2) The Registrar shall issue a certificate of the registration or a printed search result in accordance with subsections (4) and (5) of section 16 of the Act.

PART III – EFFECTIVENESS OF REGISTRATION

Period of effectiveness of registered collateral.

8. (1) A registered security interest under these Regulations shall be effective for the period of time indicated in the designated field in the registration form.

(2) The period of effectiveness of a registered security interest may be extended at any time before its expiration, by the registration of an amendment form that indicates a new period in the designated field.

(3) The registration of an amendment form under sub-regulation (2) shall extend the period of effectiveness of the registration for the period indicated in the amendment form, beginning from the time the current period would have expired if the amendment had not been registered.

(4) The period of effectiveness of a registered security interest may be extended multiple times.

Copy of registered form.

9. (1) The Registrar shall, without delay, after the registration of an initial, amendment or discharge form, provide to the person identified as the lender, a copy of the registered form indicating-

(a) the date and time when the registered form became effective; and

(b) the registration number.

(2) The lender shall within 15 working days provide a copy of the registered form to the person identified as the borrower, in the manner prescribed in the credit agreement or other authorisation, unless the borrower has waived his right in writing.

(3) Failure to meet the obligations under sub-regulation (2) may not result in the invalidation of the registration of a security interest.

Borrower's authorisation for registration.

10.(1) The registration of an initial form under these Regulations shall be ineffective unless authorised in writing by the borrower.

(2) Registration of an interest of a judgment creditor under subsection (1) of section 31 of the Act, shall be authorised by the judgment or order.

(3) The registration of an amendment form that adds collateral, other than proceeds not included in the credit agreement or which increases the maximum amount secured by the security interest shall be ineffective unless authorised by the borrower in writing.

(4) A written credit agreement, executed pursuant to subsection (1) of section 9 of the Act, shall be sufficient evidence of the borrower's authorisation.

(5) The Collateral Registry shall not require evidence of the existence of the borrower's authorisation.

Information.

11. (1) The information contained in a registration form of a security interest shall be expressed in English with the exception of the names and addresses of the borrower, the lender or the lender's representative.

(2) Subject to subsection (2) of section 16 of the Act, a registration form of a security interest shall contain the following information in the relevant designated field-

- (a) the identity of the borrower, that is a number determined subject to regulation 12 and the name of the borrower;
- (b) the identity of the lender determined subject to regulation 13;
- (c) a description of the collateral subject to section 11 of the Act;
- (d) a statement of the maximum amount secured by the security interest;
- (e) an indication, if the registration relates to interest of a judgment creditor;

- (f) an indication that the registration relates to a prior security interest subject to section 52 of the Act;
- (g) the period of effectiveness of the registered security interest; and
- (h) any other information required by the Registrar.

PART IV – DESCRIPTION OF REGISTRANT AND ASSET

Borrowers identity.

12. (1) Where the borrower is a natural person who is a citizen of Sierra Leone, the identity of the borrower shall be the Taxpayer Identification Number assigned under section 99 of the Goods and Services Tax Act, 2009.

(2) Where the borrower is a natural person who is not a citizen of Sierra Leone, the identity of the borrower shall be the number on his valid passport.

(3) Where the borrower is a legal person formed under the laws of Sierra Leone, the borrower's identity shall be the Taxpayer Identification Number assigned under section 99 of the Goods and Services Tax Act, 2009.

(4) Where the borrower is a legal person formed under a foreign law, the borrower's identity shall be the Taxpayer Identification Number issued to the borrower by the relevant authority in the jurisdiction where it is legally formed.

(5) The name of the borrower is the name that is associated with the applicable type of identity referred to in sub-regulations (1) to (4).

Lenders identity.

13. (1) Where the lender is a natural person, the lender's identity shall be the name of the lender or his representative that appears in any relevant official document issued to that person.

(2) Where the lender is a legal person, the lender's identity shall be the name of the lender or his representative as it appears in the most recent document constituting the legal person.

**Description
of collateral.**

14. (1) The assets encumbered or to be encumbered by a security interest shall be described in a manner that adequately allows their identification.

(2) A description which indicates that the collateral consist of all of the borrower's movable assets within a particular category, shall satisfy the standard referred to in sub-regulation (1).

(3) A serial-numbered collateral shall be described by its serial number and the name of the manufacturer.

PART V – AMENDMENTS

**Right to
amend
registration.**

15. (1) Subject to sub-regulation (2), a person identified as the lender in a registered form of a security interest may register an amendment relating to that registration.

(2) The person identified as the lender in an amendment form under sub-regulation (1), shall be the only person eligible to register an amendment where there is a change replacing the person originally identified as the lender.

(3) The registration of an amendment shall be ineffective unless authorised by the person identified in the registered amendment form as the lender.

**Information
required in an
amendment
form.**

16. (1) An amendment form shall contain in the relevant designated field-

(a) the registration number; and

(b) the information to be added or deleted.

(2) An amendment form may relate to one or more items of information.

(3) An amendment form may identify a person appointed as a receiver or manager under section 50 of the Act.

17. (1) A lender shall register an amendment form to a registered security interest where-

(a) the amendment exceeds the scope of the borrower's authorisation; or

**Compulsory
registration
of amendment.**

- (b) the credit agreement has been revised to delete some collateral or to reduce the maximum amount indicated in the registered form.

(2) Where a lender fails to comply with the borrower's written request within 15 working days after his receipt of the request, the borrower shall be entitled to initiate legal proceedings for an order for the compulsory registration of the amendment.

(3) A lender shall not charge or demand any fee for complying with his obligations under paragraph (a) of sub-regulation (1).

(4) An amendment form under sub-regulation (2) shall be registered by the Collateral Registry without delay upon receipt of the form with a copy of the relevant order.

PART VI – DISCHARGE

Right to register

18. (1) Subject to sub-regulation (2), a person identified as the lender in a registered security interest may register a discharge relating to that registered security interest.

(2) The registration of a discharge shall be ineffective unless authorised by the person identified in the initial or amendment form as the lender.

Information required in discharge form.

19. A discharge form shall contain the registration number in the relevant designated field.

Compulsory registration of discharge.

20. (1) A lender shall register a discharge of a registered security interest where the registration was authorised by the borrower but the authorisation has been withdrawn and no security agreement has been concluded.

(2) Pursuant to section 20 of the Act, a lender shall register a discharge form within 15 working days after receipt of request from the borrower if the security interest has been extinguished by performance of all obligations under the credit agreement.

(3) If a lender does not comply with the borrower's written request within 15 working days after his receipt of the request, the borrower shall be entitled to initiate legal proceedings for an order for the compulsory registration of the discharge form.

(4) A lender shall not charge or demand any fee for complying with his obligation under sub-regulation (1).

(5) A discharge of a registered security interest under sub-regulation (4) shall be registered by the Collateral Registry without delay upon receipt of the form with a copy of the relevant order.

PART VII – MISCELLANEOUS

Error in borrower's identity.

21. (1) Subject to subsection (3) of section 17 of the Act, an error in the borrower's identity shall render the registration of a security interest ineffective.

(2) An error in the borrower's identity shall not render the registration of a security interest ineffective with respect to other borrowers correctly identified.

(3) An error in the serial number of a serial-numbered collateral shall render the registration of a security interest ineffective as against a buyer or lessee of that asset for value.

(4) An error in the description of some collateral shall not render the registration of a security interest ineffective with respect to other collateral sufficiently described.

(5) Subject to subsection (2) of section 17 of the Act, a defect, an irregularity, an omission or an error in required information other than the borrower's identity shall not render the registration of a security interest ineffective unless the defect, irregularity, omission or error would mislead a searcher.

Change in borrower's identity.

22. (1) If a borrower's identity changes after a security interest is registered and the lender registers an amendment indicating the new identity of the borrower within 60 days after the change, the registered security interest shall remain effective against third parties and retain its priority.

(2) If a lender registers an amendment after the expiration of the time indicated in sub-regulation (1), -

- (a) a security interest of another lender registered after the change in the borrower's identity but before the registration of the amendment has priority over the security interest to which the amendment relates; and

- (b) a buyer of the collateral after the change in the borrower's identity but before the registration of the amendment acquires its rights free of the security interest to which the amendment relates.

**Post-
registration
transfer.**

23. (1) A security interest in collateral that has been registered remains effective against third parties and retains its priority notwithstanding a transfer of the collateral.

(2) Where a lender transfers the security interest or a part of it, an amendment may be registered disclosing the transfer.

(3) Where an interest in part of the collateral is transferred, the amendment form shall contain a description of the collateral in which the interest is transferred.

(4) The failure to register an amendment disclosing a transfer under sub-regulations (1) and (2) does not affect the third-party effectiveness or priority of the security interest.

**Priority of
security
interest.**

24. (1) A security interest in serial-numbered collateral made effective by registration contrary to subsection (2) of section 10 of the Act, that otherwise satisfies the requirements of these Regulations, shall be effective against third parties other than buyers and lessees of that collateral for value.

(2) A security interest in movable assets that is made effective against third parties by registration in the Collateral Registry before the time when the movable assets are affixed to immovable property, has priority with respect to the goods over a claim made by a person with an interest in the immovable property.

(3) A lender who has the right to remove goods from immovable property shall exercise this right of removal in a manner that causes no greater damage or injury to the immovable property and to other properties situated on it than is necessarily incidental to the removal of the goods.

(4) A security interest in crops, whether grown, growing or to be grown, made effective against third parties by registration in the Collateral Registry shall have priority with respect to the crops claimed by a person with an interest in the immovable property.

(5) The knowledge of the existence of a security interest on the part of a lender shall not affect its priority under the Act or these Regulations.

(6) The priority of a security interest shall extend to all movable assets covered by a registered security interest, irrespective of when they are acquired by the borrower or come into existence before or after the time of registration.

**Search
criteria.**

25. (1) Subject to subsection (3) of section 16 of the Act, the Registrar shall maintain an index of registered security interests that may be searched according to-

- (a) the identity of the borrower; or
- (b) the serial number of the collateral.

(2) The Registrar may provide other types of searches to users for information purposes only and the results retrieved under any of these other types of searches shall not have any legal effect under the Act or these Regulations.

**Right to
request
information.**

26. (1) The borrower, a person with an interest in the collateral or an authorised representative may require the lender to send or make available the information specified in sub-regulation (2) to the person making the demand or, if the demand is made by the borrower, to any person specified by the borrower.

(2) The information that may be demanded pursuant to sub-regulation (1) may be one or more of the following -

- (a) a statement in writing of the amount of the indebtedness as of the day specified in the demand; or
- (b) a written approval or correction of an itemised list of collateral as of the day specified in the demand.

(3) Where a demand is made in accordance with this Regulation and the lender claims a security interest in—

- (a) all of the movable property of the borrower;
- (b) all the movable property of the borrower other than a specified kind or item of property; or

- (c) all of a specified kind of movable property of the borrower,

the lender may indicate this in lieu of approving or correcting the itemised list of the movable property.

(4) A lender shall reply to a request referred to in sub-regulation (2) not later than ten (10) working days after its receipt.

(5) Where, without reasonable excuse a lender fails to comply with a request within the time referred to in sub-regulation (4) or provides a reply that is incomplete or incorrect, the person who made the demand, in addition to any other remedy, may apply to the court for an order requiring the lender to comply with the request.

(6) The person to whom a request is made pursuant to this Regulation may require payment in advance of a fee in the amount prescribed for each request, but the borrower is entitled to a reply without charge once every six (6) months.

**Limitation
of liability of
Collateral
Registry.**

27. The Collateral Registry is not liable for loss or damage caused to a person by an error or omission in its administration or operation.

Penalty.

28. Any person who fails to meet his obligations under these Regulations commits an offence and shall be liable to a fine not exceeding ten million Leones.

SCHEDULE

ITEMS	FEES
Initial registration	Le 50,000.00
Registration of an amendment	Le 20,000.00
Searches	Le 10,000.00
Issuance of search certificates and printed search results.	Le 10,000.00

MADE this 29th day of April, 2016



Kaifala Marah (Dr)
Governor, Bank of Sierra Leone

FREETOWN
SIERRA LEONE