

Registration of Security Rights in Movable Property

Did you know that you can now create a security over movable property from the comfort of your computer using your e-citizen account? The Movable Property Security Rights Act enacted in May 2017 which is aimed at improving access to finance now enables that. The Act repealed the Chattels Transfer Act and amended sections of The Agricultural Finance Corporation Act, The Stamp Duty Act, The Hire Purchase Act, The Pawnbrokers Act, The Business Registration Services Act, The Companies Act, 2015 and The Insolvency Act, 2015. The Act is effected by the Movable Property Security Rights (General) Regulations, 2017.

The main purpose of the Act is to provide for the use of movable property as collateral for credit facilities. The Act is also aimed at promoting consistency and certainty in secured financing relating to movable assets, enhancing the ability of individuals and entities to access credit using movable assets, establishing a registry to facilitate the registration of security rights notices relating to movable assets and establishing the office of the Registrar of Security Rights.

Creation of a Security Right

The Act defines a Security right as 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 termed 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. A security right also includes the right of the transferee in an outright transfer of a receivable.

A security right is created by a security agreement between the grantor and the secured creditor. The Grantor is the person obtaining a loan while a secured creditor is the person advancing the loan. The grantor ought to have a right in the asset to be used as collateral or the power to use it as collateral. A security agreement can provide for the creation of a security right in a future asset, but the right is only created when the grantor acquires the right to encumber it.

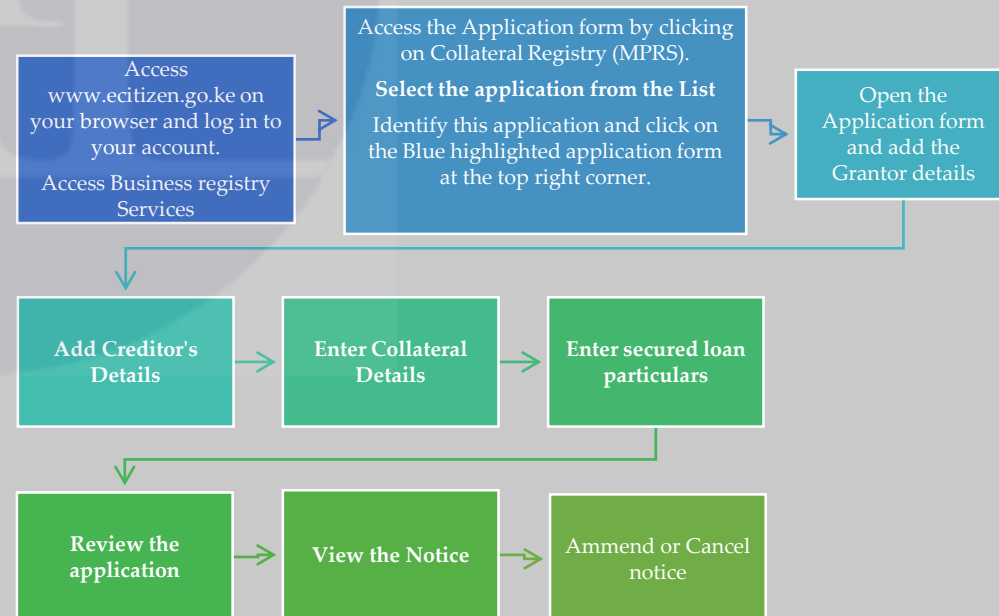
A valid security agreement must be written and signed by the grantor. It should also identify the secured creditor and the grantor, describe the secured obligation (except in the case of an agreement that provides for the outright transfer of a receivable), and describe the collateral in a manner that reasonably allows its identification.

The Securities Registry

The Security Registry, established under Section 3 of the Act, is an online system that allows secured creditors to search for any prior security interests, as well as register their security interests over movable assets provided as security.

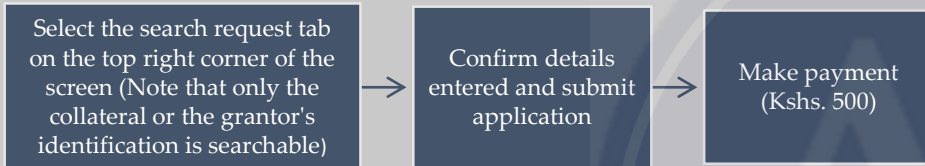
Registration

Once parties have written and signed their security agreement, they can proceed to register a notice. Registration of a notice ensures that the parties have registered their legal obligations and that the security agreement is enforceable. Currently, registration is free. The online registration process is shown in the figure below.



Searches

After the initial notice, an applicant can conduct a search to ascertain the particulars of the notice. The criteria for conducting a search is by using either the grantor's identification or the serial number of the collateral. Once a person enters a search request and pays the requisite fee, the registry conducts the search and issues a search certificate, which contains the date, and time when the search was performed, all information matching the search requirements criterion exactly or an indication that no registered notice contains information matching the search criterion exactly. The resultant search certificate is proof of its contents. A search costs Kshs.500. The online search process is shown below:



Amendment and Cancellation

Once a notice has been registered, it can be amended or canceled by registration of an amendment notice or cancellation notice respectively. The secured creditor

can amend the notice if it contains information that exceeds the scope of the grantor's authorization or if the security agreement has been revised to delete some collateral. Cancellation may be done under the following circumstances:

- i. If the registration of an initial notice was not authorized by the grantor;
- ii. If the registration of an initial notice was authorized by the grantor but the authorization has been withdrawn and no security agreement has been concluded
- iii. If the security right to which the notice relates has been extinguished and the secured creditor has no further commitment to provide value to the grantor.

The movable asset may remain in the grantor's possession or with the secured creditor. The party in possession of the asset has the duty to take reasonable care, to ensure that the asset is maintained in good condition. A secured creditor also has the right to inspect the asset in possession of the grantor or another person.



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