

PART VII. Registration

Registry.

47. - (1) There is hereby established a Security Interests Registry.

(2) There shall be a Registrar of Security Interests, who shall be designated as such by the Minister.

(3) The Registrar shall be responsible for ensuring that the Register is maintained in accordance with this Act, and for the performance of the functions assigned to the Registrar by this Act or any other law, which functions may be carried out by any member of staff of the Registry under the direction of the Registrar.

Register.

48. - (1) The Register for the purposes of this Act shall be maintained in electronic form that provides for –

(a) the filing, in an electronic Register of Security Interests, of all registration notices, amendment notices, and termination notices, registered under this Part; and

(b) the assignment of a registration number (which shall be a unique identification number) to each such notice, together with a notation of the date and time of the filing.

(2) A notice mentioned in subsection (1) is registered at the time that a registration number, date and time is assigned to it in the Register, and the Registrar shall thereupon cause to be created a printable written statement bearing that information.

(3) The Registrar shall maintain the Register in a state of availability for public inspection, including the capability to view any registration notice filed in the Register by inputting a search of any of the following data -

(a) the name of the debtor;

(b) the registration number of the registration notice, in a manner that associates the registration notice with all related amendment notices and termination notices;

(c) in the case of a motor vehicle, the serial number of the motor vehicle, if a serial number was provided in the notice in a field prescribed by the Registrar; or

(d) in the case of fixtures, the identification information relating to the land, including in the case of registered land the volume and folium of the Register Book in which the certificate of title is entered under the Registration of Titles Act.

(4) Where the registration of a notice is affected by the failure of the Registrar to observe any requirement mentioned in subsection (1), (2) or (3), the notice remains effective except against a

purchaser of secured property covered by the notice, who gives value in reasonable reliance upon the information available from the Register.

(5) The Registrar shall maintain records of lapsed or terminated registration notices (including all associated amendment, continuation and termination notices) for a period of ten years beyond the date of the lapse or termination, as the case may be.

(6) Registration of a notice in the registry is not constructive notice or knowledge of its existence or contents to any person.

(7) For the purposes of this Part, “registration number” means the number assigned in accordance with subsection (1)(b).

Registration notices.

49. - (1) A registration notice filed for the purposes of this Part shall -

(a) sufficiently identify the debtor, and state the debtor’s business or residential address;

(b) sufficiently identify the secured creditor, and state the secured creditor’s business or residential address; and

(c) describe the secured property covered by the notice.

(2) For the purposes of subsection (1)(c), a registration notice that covers fixtures shall describe the real property where the fixtures are located.

(3) A registration notice may relate to one or more security contracts and may identify more than one debtor or more than one secured creditor.

(4) A registration notice may be registered before or after a security contract has been concluded and before or after the security interest has attached.

(5) A person may register a registration notice under this section only if the debtor concerned authorizes the registration.

(6) For the purposes of subsection (5), authorization by the debtor –

(a) need not be contained in the registration notice;

(b) need not be disclosed to the Registrar;

(c) may be given after registration of the registration notice; and

(d) in any case where the debtor signs a security contract, shall be deemed to have been given to the filing of a registration notice covering –

(i) the secured property described in the security contract; and

(ii) the proceeds of the secured property (whether or not the security contract expressly covers proceeds).

(7) The failure of a person who registers a registration notice in the capacity of agent of a secured creditor to indicate that capacity in the notice, shall not affect the validity of the notice.

(8) A registration notice remains effective with respect to secured property that is sold, exchanged, leased, licensed, or otherwise dealt with, and in which the security interest continues, even if the secured creditor knows of the sale, exchange, lease, license or other dealing.

(9) The registration of an amendment notice or termination notice under this Part by a secured creditor does not affect the rights of any other secured creditor identified in the registration notice concerned.

Sufficiency of identification.

50. - (1) A person or entity is sufficiently identified in a notice for the purposes of this Part if –

(a) in the case of an individual who is a citizen of Jamaica, the notice states the name of the individual;

(b) in the case of an individual who is not a citizen of Jamaica, the notice states the name of the individual as stated in the individual's passport;

(c) in the case of an entity established by the Constitution of Jamaica or under any other enactment, the notice states the name of the entity as provided by the Constitution or other enactment;

(d) in the case of a company incorporated under the Companies Act, the notice states the name of the company as stated in its certificate of incorporation, being the most recent certificate as amended to reflect any change of name;

(e) in the case of a company not domiciled in Jamaica, the name of the company as depicted in the appropriate registry where the company is domiciled.

(2) A notice that sufficiently identifies a person or entity under subsection (1) is not rendered ineffective by the presence or absence of a trade name or other name of that person or entity.

(3) A notice that provides the trade name of a person or entity but does not comply with subsection (1) does not sufficiently identify that person or entity.

Amendment notices.

51. - (1) Subject to subsection (3), a registration notice may, with written authorization signed by any of the secured creditors concerned, be amended by the registration of one or more amendment notices in accordance with this section.

(2) An amendment notice for the purposes of subsection (1) shall –

(a) identify the registration notice concerned by registration number and state that it is an amendment to that registration notice;

(b) identify the secured creditor who authorizes the amendment; and

(c) provide all of the information required for a registration notice, by completely restating the registration notice in a manner that reflects the amendment.

(3) Written authorization signed by the debtor concerned is required –

(a) to add secured property to a registration notice; or

(b) to add the name of that debtor to a registration notice already registered under this Part.

(4) For the purposes of subsection (3), authorization by the debtor –

(a) need not be contained in the amendment notice;

(b) need not be disclosed to the Registrar; and

(c) may be given after the registration of the amendment;

(d) in any case where the debtor signs a security contract that adds secured property to a security interest, shall be deemed to have been given to the registration of an amendment notice covering –

(i) the secured property described in the security contract; and

(ii) the proceeds of the secured property (whether or not the security contract expressly covers proceeds); and

(e) shall be deemed to have been given to the registration of an amendment notice that identifies that debtor, in any case where that debtor signs a security contract in respect of property covered by a registration notice already registered under this Part and identifying another debtor.

(5) An amendment notice that –

(a) adds secured property to a registration notice is effective, as to the secured property added; or

(b) adds a debtor to a registration notice is effective, as to the debtor added, only from the date of registration of the amendment notice.

(6) An amendment notice that purports to delete the identification of –

(a) all the secured creditors, without providing sufficient identification of one or more additional secured creditors; or

(b) all the debtors, without providing sufficient identification of one or more additional debtors,
shall be void and of no effect.

(7) The registration of an amendment notice shall not have the effect of extending the duration of a registration notice.

Effect of defects, irregularities, etc.

52. - (1) The validity of the registration of a notice under this Part is not affected by any defect, irregularity, omission, or error, in the registration form unless the defect, irregularity, omission or error is materially misleading.

(2) Without limiting the circumstances in which a registration is invalid under subsection (1), the registration of a notice is invalid if there is a materially misleading defect, irregularity, omission or error in –

(a) the name of any of the debtors identified in the notice, other than a debtor who does not own or have rights in the secured property; or

(b) the serial number of the secured property described in the notice, if the secured property is a motor vehicle.

(3) Within twenty-one days after the date on which a secured creditor has knowledge of any change in circumstances which would render a registration notice materially misleading, the secured creditor shall file an amendment notice in respect of the change, and where the secured creditor fails to do so, the registration notice becomes invalid upon the expiration of the aforementioned twenty-one days.

(4) Except as provided in subsection (3), a registration notice that is not materially misleading at the time of registration remains effective if after the notice is registered a change of circumstances renders the registration notice materially misleading.

(5) For the purposes of this section, in order to establish that a defect, irregularity, omission, or error is materially misleading, it is not necessary to prove that any person was actually misled by it.

Duration.

53. - (1) A registration notice, unless terminated under any provision of this Act, shall be effective for the duration of the period that the secured obligation remains outstanding.

(2) Within twenty-one days after the satisfaction of the secured obligation, the secured creditor concerned shall file a termination notice in accordance with section 54.

(3) A secured creditor who fails to comply with subsection (2) shall be liable to compensate any person who suffers loss as a result of the failure.

Termination notices.

54. - (1) The effectiveness of a registration notice may be terminated by the registration of a termination notice in accordance with this section.

(2) A termination notice shall –

- (a) identify, by registration number, the registration notice concerned;
- (b) identify the secured creditor, identified in the notice, who authorizes the registration of the termination notice; and
- (c) state that the registration notice is no longer effective with respect to the interest of the secured creditor who authorizes the registration of the termination notice.

(3) A termination notice registered in accordance with this part terminates the effectiveness of a registration notice with respect to a secured creditor identified pursuant to subsection (2)(b) only if that secured creditor authorizes, in writing signed by that secured creditor, the registration of the termination notice.

Notice of interest of execution creditor.

55. - (1) The Court may, upon the application of an execution creditor -

- (a) at the time when judgment is entered for the execution creditor or any time thereafter, in the case of a judgment for the payment of money; or
- (b) at the time of the filing of a bankruptcy petition or a petition for winding-up (as the case may be), by the execution creditor direct that a notice under this section be entered in the Register.

(2) A notice under this section shall –

- (a) identify the execution creditor concerned;
- (b) identify the person owing payment or performance of an obligation to the execution creditor; and
- (c) describe the property against which the execution creditor claims, or may claim, a right.

Refusal of registration.

56. - (1) The Registrar may refuse registration of a notice under this Part if -

- (a) in the case of a registration notice, the notice does not identify a debtor;
- (b) in the case of an amendment notice, the notice does not identify a debtor, does not provide the registration number of the registration notice concerned, or purports to amend a registration notice that has been terminated;
- (c) in the case of a termination notice, the notice does not provide the registration number of the registration notice concerned, or the notice purports to terminate a registration notice that has been terminated with respect to each secured creditor identified in the notice; or
- (d) the applicable registration fee has not been paid in full.

(2) Where registration of a notice is refused other than on any of the grounds specified in subsection (1), the notice is effective except as against a purchaser of secured property that gives value in reasonable reliance on the absence of the notice in the Register.

(3) Where registration of a notice is refused in any case, the Registrar shall forthwith communicate the fact of, and reason for, the refusal to the person who submitted the notice for registration.

Cancellation of clerical errors, etc.

57. - (1) The Registrar shall restore a registration if it appears to the Registrar that, due to a clerical error made by the Registrar, the registration has been incorrectly cancelled or removed.

(2) A registration restored under subsection (1) shall be regarded as having continued in force throughout the period during which it was incorrectly cancelled or removed (as the case may be), as if it had not been so cancelled or removed.

(3) The Registrar may, with the consent of the secured creditor, correct any clerical error or omission made by the Registrar in a registration.

Provision of information by Registrar.

58. - (1) The Registrar shall provide, upon payment of the prescribed fee, the following information to any person upon the request of that person –

(a) whether there is any registration notice that identifies a particular debtor, or describes a motor vehicle by serial number, and that has not terminated with respect to all secured creditors identified in the notice;

(b) the registration number, and the date and time of registration, of the registration notice;

(c) the name and address of each debtor and each secured creditor identified in the notice; and

(d) all of the information contained in the notice.

(2) Subject to subsection (3), the Registrar may determine the form in which the information mentioned in subsection (1) is provided.

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(a) whether there is any registration notice that identifies a particular debtor, or describes a motor vehicle by serial number, and that has not terminated with respect to all secured creditors identified in the notice;

(b) the registration number, and the date and time of registration, of the registration notice;

(c) the name and address of each debtor and each secured creditor identified in the notice; and

(d) all of the information contained in the notice.

(2) Subject to subsection (3), the Registrar may determine the form in which the information mentioned in subsection (1) is provided.

(3) If requested to do so, and upon payment of the prescribed fee, the Registrar shall issue a certified search report, or such other report certified by the Registrar, as may be reasonably required.

(4) A certified report issued by the Registrar under subsection (3) shall be admissible in evidence in any court without further evidence of its authenticity.

(5) The Registrar may provide information about some or all registration notices to interested persons from time to time, on terms determined by the Registrar, which terms may include payment by such persons of a reasonable fee for the provision of the information.

(6) Nothing in this section precludes any right of inspection free of cost under section 48(3).