

**EXPLANATORY MEMORANDUM TO THE MOVABLE PROPERTY SECURITY
RIGHTS (GENERAL) REGULATIONS, 2017**

PART I

Name of the Statutory Instrument: The Movable Property Security Rights (General) Regulations, 2017

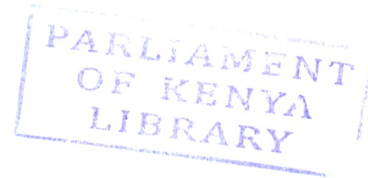
Name of the Parent Act: The Movable Property Security Rights Act, 2017

Enacted Pursuant to: Section 88 of LN. NO.13 of 2017

Name of the Ministry/ Department: Office of the Attorney General and the Department Of Justice, Business Registration Service

Gazetted on: 24th May, 2017

Tabled on:



PART II

1. The Purpose of the Movable Property Security Rights (General) Regulations, 2017

The purpose of these Regulations is to provide for the proper conduct of the business of the Registry established under Section 19 of the Movable Property Security Rights Act, 2017. The objectives of the regulations are in line with the spirit of the ease of doing business and focuses on the use of movable assets as collateral. The regulations further create the electronic registry, enhance the confidence of lending institutions and create an enabling environment to lend against movable assets as collateral.

2.Legislative Context

The Movable Property Security Rights Act, 2017 empowers the Cabinet Secretary to make regulations necessary or convenient for carrying out or giving effect to the Act. The Movable Property Security Rights (General) Regulations, 2017 are therefore issued to provide effective running of the Registry including providing a guideline in relation to the conduct of the business of the Registry, the format of notices to be registered in the Registry and the payment of fees.

3.Policy Background

The regulatory framework on secured transactions law and collateral registry is an initiative of the Office of the Attorney General, the National Treasury, Central Bank of Kenya and Kenya Bankers Association with a view of increasing access to credit to firms especially micro, small and medium enterprises (MSMEs).

The former legal framework that governed interests in different securities was manual, fragmented, outdated, and cumbersome to use, by both lenders and borrowers. A survey of countries that have embraced such regulations shows that they have; increased access to finance, lowered interest rates, longer maturities, increased ability to finance working capital especially for MSMEs, lessened legal complexity, certainty and have reduced risks due to its transparency. Secured transaction is a strategic area in Kenya which looks to create a sound financial infrastructure environment to address the access to finance constraints faced by the MSME sector in Kenya.

Further, these regulations will significantly improve Kenya's ranking on the ease of doing business index under the 'Getting Credit' indicator. Currently Kenya is ranked 32/189 in the 'Getting Credit' indicator which is an improvement from the previous position and this is attributed to the reforms that have been done in the Credit Reference Bureaus.

4. Consultations Outcome

Movable Property Security Rights (General) Regulations, 2017 have taken into account the views of the key personnel in the Office of the Attorney General and Department of Justice who

are versed with the operational aspects of movable property as collateral for credit facilities. The Attorney General in coming up with the regulations has sought the extensive input of the Ag-Director General who is the accounting officer and administrator of the Business Registration Service.

The other key stakeholders from the National Treasury and Central Bank of Kenya (CBK) were also involved in the drafting of these regulations noting the constant interactions between the Law Society of Kenya (LSK), Kenya Bankers Association (KBA), Leasing Association of Kenya, Association of Microfinance Institutions (AMFI), Kenya Association of Manufacturers (KAM), Kenya Private Sector Alliance (KEPSA), the Micro and Small Enterprises Authority (MSEA) and the Office of the Attorney General.

The regulations are expected to streamline and give clarity to the operation of the Registry as contemplated under the Movable Property Security Rights Act. The regulations will be subjected further to the end users for their input before they are tabled in the National Assembly.

5. Guidance

The Business Registration Service will sensitize its officers for adherence to the objectives of accountability and efficiency in the management of the Registry. The Service will also engage key stakeholders such as Parliament and the Ministry of Industry, Trade and Co-operation whose participation and cooperation remains instrumental in the successful implementation of the key aspects of the Movable Property Security Rights Act and the regulations.

6. Impact Assessment

As impact assessment has not been prepared for this Instrument. The instrument is made pursuant to the objectives as operationalised by the Movable Property Security Rights Act.

7. Review of the Regulations

The Ag. Director General shall monitor the application of the Movable Property Security Rights (General) Regulations. This will be done through the reports prepared at regular intervals. In

addition, the implementers of the regulations will carry out regular monitoring and evaluation of the specific provisions of these regulations with the aim of initiating any legislative amendments as may be necessary on an annual basis.

8. Contact Person

The contact person at the Office of the Attorney General is Hon. Githu Muigai, EGH, SC Attorney General or Mr. Kenneth Gathuma, Ag- Director General, Business Registration Service.