

General Points on Movable Property Security Right Laws in Ethiopia

Description

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Introduction

This article is about movable property security right. The article provides the movable property security right proclamation, the National Bank of Ethiopia directive on operationalization of movable collateral registry and finally the codification, valuation and registration of movable properties as collateral for credit directive of the National Bank of Ethiopia. A brief conclusion will follow.

1. Movable Property Security Right Proclamation

Movable Property Security Right Proclamation No 1147/2019 (hereafter Proclamation) was done on 7 August 2019, to be effective at the expiry of 12 months after publication in the Negarit Gazette or the commencement of operation of the Collateral Registry Office (CRO), whichever comes first.

The Proclamation is divided into eight parts.

Part One of the Proclamation deals with definitions and scope of application of the Proclamation. For example the Proclamation does not apply to movable assets that require registration in a special register under existing law such as securities traded on exchanges, ships or aircrafts.

Part Two of the Proclamation provides the creation of a security right. A security right is created by a written agreement. The most important elements of this agreement are: identifying the secured creditor and the grantor, listing of the secured obligation and description of the collateral.

Part Three states the effectiveness of a security right against third parties. One requirement to ensure effectiveness against third parties is that the security right should be registered in the CRO by the secured creditor.

Part Four declares the establishment of the CRO. CRO shall be established for the purpose of receiving, storing and making information accessible to the public in registered notices with respect to security right and right of non-consensual creditors.

Part Five provides priority rights of the secured creditor. The secured creditor is entitled to have priority rights over other creditors unless otherwise provided to the contrary by insolvency or liquidation laws.

Part Six lists the rights and obligations of the grantor or secured creditor and also third party obligators.

Part Seven is about enforcement of a security right. The secured creditor whose right is affected by the non-compliance of another person is entitled to apply for relief to a court, including relief in the form of expeditious proceedings.

The last part i.e. Part Eight states miscellaneous provisions. The exemption of the movable security agreements from payment of stamp duty is included. Also the rights and obligations of the Ministry of Transport with respect to matters relating to registration of security rights on vehicles shall be transferred to CRO. Ministry of Construction registry with respect to security rights on construction machinery and equipment and Ministry of Trade registry of security rights on business mortgage and hire-purchase are transferred to CRO.

Enforcement of a prior security right commenced before entry into force of this Proclamation shall continue being enforced by the prior law. CRO shall provide for institutions responsible for providing title deeds for corporal or incorporeal assets whether or not an asset has been free from any pledge before effecting title transfer. Property mortgage or pledge with Banks proclamation no 97/1998 and Business Mortgage Proclamation No 98/1998 are repealed. Until an autonomous CRO is established, National Bank of Ethiopia (NBE) is empowered to establish the CRO.

2. NBE Operationalization of Movable Collateral Registry

The NBE has issued a directive namely Directive No MCR/01/2020 that deals with operationalization of movable collateral registry. The Directive established the CRO housed in the NBE and appointed the first Registrar. Access to the collateral registry shall be electronic and automated. The fees and modes of payment have been listed. The Directive shall come into force 26th of February 2020.

3. NBE Codification, Valuation and Registration of Movable Properties

Similarly the NBE has issued its second directive Directive No MCR/02/2020 coming into force as of 15th September 2020 namely Codification, Valuation, and Registration of Movable Properties as Collateral for Credit. As a result, the Directive details livestock, farm products, land use right, financial instruments, intellectual property rights codification, valuation and registration procedures and processes.

Conclusion

The Movable Property Security Right proclamation set out the right to use movable properties as securities, opening up new regime of properties in the economy. To implement the intentions of the Proclamation, the NBE has formally established the CRO housed under it and provided codification and valuation of different movable assets including livestock, farm products, land use rights, financial instruments and intellectual property rights.

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