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INSCRIPTION OF PRIVILEGES AND MORTGAGES ACT

Act 73 of 1946 – 1 April 1952

Proclaimed by [Proclamation No. 3 of 1952] w.e.f. 1st April 1952

As at 20/05/2017

[Amended 20/11 (P19/11 – cio 11.11.11); [Amended by s 10 of Act 26 of 2013 - Proclaimed GN 46/2014 proclamation No. 16 of 2014 cio 19 May 2014] [Amended by s 27 of Act 9 of 2015 P 11/2015 cio 2/7/2015, Amended by Act 4 of 2017 c.i.o20/05/2017]

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INSCRIPTION OF PRIVILEGES AND MORTGAGES ACT

1. Short title

This Act may be cited as the Inscription of Privileges and Mortgages Act.

1A. Interpretation

In this Act—

“applicant” includes a person acting on behalf of the applicant;

[Amended 26/13 (cio 19/5/14).]

“bar code” has the same meaning as in the Registration Duty Act;

[Inserted 26/13 (cio 19/5/14).]

“DCDB” means the Digital Cadastral Database kept and maintained in electronic form by the Ministry responsible for the subject of lands;

[Inserted 26/13 (cio 19/5/14).]

“electronic signature” has the same meaning as in the Registration Duty Act;

[Inserted 26/13 (cio 19/5/14).]

“MIPD” has the same meaning as in the Transcription and Mortgage Act;

[Inserted 26/13 (cio 19/5/14).]

“Receiver” has the same meaning as in the Registration Duty Act;

[Inserted 26/13 (cio 19/5/14).]

“RD DS” has the same meaning as in the Registration Duty Act;

[Inserted 26/13 (cio 19/5/14).]

“signature” has the same meaning as in the Registration Duty Act;

[Added 26/13 (cio 19/5/14); amended 4/17 (cio 20/5/17).]

“summary” has the same meaning as in section 3B of the Transcription and Mortgage Act.

[S. 1A amended by s. 10(a) of Act 26 of 2013 w.e.f. 19 May 2014; s. 10 of Act 4 of 2017 w.e.f. 20 May 2017.]

2. Inscription of privileges and mortgages

The inscription of privileges and mortgages shall be effected in accordance with this Act.

2A. Electronic submission

Any deed or document submitted electronically to the Conservator of Mortgages and saved in the MIPD shall be deemed to meet the requirements and reproduced the contents of the original deed or document, as the case may be, for the purpose of this Act.

[S. 2 inserted by s.27 of Act 9 of 2015 w.e.f. 2 July 2015.]

3. Procedure for inscription

- (1) (a) Subject to paragraph (b), any creditor applying for the inscription of a privilege or mortgage shall –
- (i) cause the deed or judgment or a certified copy of the judgment, as applicable, giving rise to the privilege or mortgage, the memorandum (*bordereau*) referred to in subsection (2) and the summary to be –

[Amended 4/17 (cio 20/5/17).]

- (A) prepared, concluded and saved in the RDDS; or
- (B) scanned and saved in the RDDS; or
- (ii) where, because of lack of facilities or in exceptional or unforeseen circumstances, it is not possible for the creditor to proceed in accordance with subparagraph (i), present the deed or judgment or a certified copy of the judgment giving rise to the privilege or mortgage and the memorandum (*bordereau*) to the Conservator of Mortgages who shall, at the time of presentation, scan and save it in the RDDS.

[Amended 20/11 (cio 11/11/11); repealed and replaced 26/13 (cio 19/5/14).]

- (aa) The Conservator of Mortgages shall, after the documents have been scanned and recorded or saved in accordance with paragraph (a), cause –
- (i) the privilege or mortgage to be inscribed and recorded in the MIPD; and
- (ii) an electronic copy of the deed or judgment or a certified copy of the judgment giving rise to the privilege or mortgage and the memorandum (*bordereau*) on which shall be recorded the particulars specified in section 4(1)(b), saved in the MIPD, to be replicated and saved in the DCDB.

[Inserted- by s 10 (b) of Act 26 of 2013- Proclaimed GN 46/2014 proclamation No. 16 of 2014 cio 19 May 2014]

- (b) The production of such deed or judgment or certified copy of the judgment shall not be required in the case of an application for the inscription of a legal mortgage or of the privilege mentioned in article 2160 of the Code Civil Mauricien.

[Amended by s 10 of Act 26 of 2013 -Proclaimed GN46/2014 proclamation No. 16of2014 cio 19 May 2014]

- (2) The applicant shall annex to such deed, judgment or certified copy of judgment, a memorandum (*bordereau*) in the form set out in the Schedule, which shall contain and have, with respect to the drawing of the memorandum (*bordereau*) requesting the inscription -

- (a) the typeface “Cambria” in regular style and font size of 12 point, printed on A4 size paper of not less than 90 grams;

- (aa) the deed scanned in –

- (i) Portable Document Format (PDF);
- (ii) 300 dots per inch (DPI) Image Resolution; and
- (iii) text-searchable format by applying Optical Character Recognition (OCR);

Inserted by s27 of Act 9/2015 (P 11/2015 cio 2/7/2015)

- (b) every page consecutively numbered on the bottom-right, page 1 of the total number of pages, page 2 of the total number of pages and so on and so forth and any annex thereto numbered on the bottom-right, page 1 of the total number of pages, page 2 of the total number of pages and so on and so forth;
- (c) any date mentioned in format DD/MM/YYYY;
- (d) no abbreviation, interlineation, superscription and any word erased or scratched out has to remain legible;
- (e) on the recto of every sheet, a blank margin of 3 centimetres on the left and one centimetre on the top, right and bottom except that on the first and last sheets, the top margin shall be 10 centimetres;
- (f) on the verso of every sheet, a blank margin of 3 centimetres on the right and one centimetre on the top, left and bottom;
- (g) the marginal entry at the end of the content of the memorandum (*bordereau*);
- (h) all annexes at the end of the deed and numbered consecutively on the bottom-right, page 1 of the total number of pages, page 2 of the total number of pages and so on and so forth; and

[Amended by s 10 of Act 26 of 2013 -Proclaimed GN 46/2014proclamation No. 16 of 2014 cio 19 May 2014]

- (i) where it contains marginal corrections which may be handwritten and words erased or scratched out, a certificate, to which the person filling the deed shall affix his signature or his initials, setting out the number of marginal corrections made and the number of words erased or scratched out.

*Amended Act 26 of 2013 –Amended Proclaimed GN 46/2014 proclamation No. 16 of 2014
cio 19 May 2014]*

(3) The memorandum (*bordereau*) shall –

- (a) where it is scanned and recorded pursuant to subsection (1)(a)(i), be signed electronically or digitally; or

[Amended 9/15 (cio 2/7/15).]

- (b) where it is scanned and saved pursuant to subsection (1)(a)(ii), be signed.

[Subsection (3) repealed and replaced by 20/21 (cio 11.11.11); 26/13 (cio 19/5/14).]

(4) – *Repealed*

[Subsection (4) repealed and replaced by 20/21 (cio 11.11.11); repealed 26/13 (cio 19/5/14).]

- (5) Where the applicant or other person on his behalf fails to comply with subsection (2) or (3) or with the requirement contained in a registered letter sent to him under subsection (4), he shall commit an offence and shall, on conviction, be liable to a fine not exceeding 5,000 rupees.

[Amended 20/11 (cio 11/11/11)]

(6) – *Repealed*

[Subsection (6) repealed and replaced by 20/21 (cio 11.11.11); repealed 26/13 (cio 19/5/14).]

(7) (a) Subject to paragraph (b), the memorandum (*bordereau*) shall contain –

- (i) in respect of each creditor –

- (A) his first name or first names, in small letters, followed by his surname in capital letters, his National Identity Card Number, where available, in format XXXXXXXXXXXXXXXX (14 characters) and, where applicable, a scanned image of a recent passport-sized photograph of him, printed thereon;
- (B) his occupation and the postal address of his residence;
- (C) his date of birth in format DD/MM/YYYY, with a reference to the registered number of his birth certificate in format Birth Certificate No./Year of Registration of Birth and the Civil Status Office where the birth was registered;

- (D) where applicable, his date of marriage in format DD/MM/YYYY, with a reference to the registered number of the marriage certificate in format Marriage Certificate No./Year of Marriage, the Civil Status Office where the marriage was registered and the matrimonial regime applicable to him at the time of the transfer;
 - (E) where applicable, his business registration number under the Business Registration Act in format XXXXXXXXXX (9 characters); and
 - (F) where the creditor is a partnership, société, company or body corporate, its trade name or corporate name, its principal place of business and the domicile elected by the creditor;
- (ii) in respect of each debtor –
- (A) his first name or first names, in small letters, followed by his surname in capital letters, his National Identity Card Number, where available, in format XXXXXXXXXXXXXXXX (14 characters) and, where applicable, a scanned image of a recent passport-sized photograph of him, printed thereon;
 - (B) his occupation and the postal address of his residence;
 - (C) his date of birth in format DD/MM/YYYY, with a reference to the registered number of his birth certificate in format Birth Certificate No./Year of Birth and the Civil Status Office where the birth was registered;
 - (D) where applicable, his date of marriage in format DD/MM/YYYY, with a reference to the registered number of the marriage certificate in format Marriage Certificate No./Year of Marriage, the Civil Status Office where the marriage was registered and the matrimonial regime applicable to him at the time of the transfer;
 - (E) where applicable, his business registration number under the Business Registration Act in format XXXXXXXXXX (9 characters);
 - (F) where the inscription is to be known in respect of the property of a deceased person, such designation of that person as will enable the Conservator of Mortgages to ascertain who he was; and
 - (G) where the debtor is a partnership, société, company or body corporate, its trade name or corporate name, and its principal place of business;
- (iii) the date and nature of the title deed giving rise to the privilege or mortgage, or, where the applicant is exempted by law from the obligation of producing a title deed, the ground and nature of the claim;
- (iv) the amount of the claim in principal and accessories, in format Rs X, and the date when it becomes due, and unless the applicant is exempted by law, an estimate of the annuities, charges and undetermined rights, and where the rights are contingent or conditional, a brief indication of the event or the condition upon which the claim depends; and

- (v) an indication of the nature and situation of the property over which the applicant intends maintaining his privilege or mortgage –
 - (A) the address of the property, the Parcel Identification Number (PIN) where available;
 - (B) the area of land mortgaged or charged in format Xm2 up to 2 decimal places and the nature and description of the building, if any, on it; and
 - (C) the title of ownership of the property mortgaged or charged, in the format TV xxxx/xxx or TV xxxxxx/xxxxxx.

Amended by s27 of Act 9/2015 (P 11/2015 cio 2/7/2015).

- (b) (i) Paragraph (a)(i)(E) shall not apply in the case of a legal mortgage.
- (ii) Unless there is an agreement to the contrary, a legal mortgage, when inscribed, shall comprise, and apply to, all the immovable property of the debtor.

[Subsection (7) repealed and replaced by 20/21 (cio 11.11.11).]

- (8) (a) An inscription shall not be null and void by reason only of the omission from the memorandum (*bordereau*) of any particulars specified in subsection (7) or in section 6 unless third parties have been prejudiced by such omission.

[Amended 20/11 (cio 11/11/11)]

- (b) No person other than a person who may be prejudiced by such omission shall move that the inscription be set aside, and, on any such motion, the Court may set aside the inscription or restrict its effect, according to the nature and extent of the prejudice.

- (9) The reference in articles 2196 to 2203 of the Code Civil Mauricien to the registers of the Conservator of Mortgages shall be construed as a reference to the memorandum (*bordereau*) as is mentioned in this section.

[Amended 20/11 (cio 11/11/11).]

[S. 3 amended by Act 37 of 1990; s. 12 of Act 20 of 2009 w.e.f. 19 December 2009; s. 1 of Act 20 of 2011 w.e.f. 11 November 2011; s. 10(b) of Act 26 of 2013 w.e.f. 19 May 2014; s. 27 of Act 9 of 2015 w.e.f. 2 July 2015; s. 4 of Act 10 of 2017 w.e.f. 20 May 2017.]

4. Duties of Conservator of Mortgages

- (1) (a) Where a privilege or mortgage is inscribed under section 3(1)(aa)(i), the Conservator of Mortgages shall be responsible for the production of the deed or judgment through the RDDS or to be delivered to him in person.
- (b) The particulars referred to in section 3(1)(aa)(ii) shall be –
- (i) the time and date of registration and inscription;
 - (ii) the title number;
 - (iii) the amount of duty paid;
 - (iv) the signature of the Receiver; and
 - (v) the bar code.
- (c) The deed or judgment or a certified copy of the judgment giving rise to the privilege or mortgage and the memorandum (*bordereau*) on which are recorded the particulars specified in paragraph (b) and forwarded or delivered under subsection (1)(a) shall constitute proof of registration and inscription.

[Subsection (1) repealed and replaced by 20/11 (cio 11.11.11); 26/13 (cio 19/5/14).]

(1A) – *[Subsection (1A) inserted by 20/11 (cio 11.11.11); repealed 26/13 (cio 19/5/14).]*

(1B) The Conservator shall be responsible for the filing of every memorandum (*bordereau*) in the manner specified in section 3.

[Subsection (1B) inserted by 20/11 (cio 11.11.11); amended 26/13 (cio 19/5/14).]

(2) The date on which the memorandum (*bordereau*) is recorded in the RDDS under section 3(1)(a)(i) or presented under section 3(1)(a)(ii) shall be taken to be the date of inscription.

[Repealed and replaced 26/13 (cio 19/5/14).][S. 4 amended by s. 14 of Act 20 of 2011 w.e.f. 11 November 2011; s. 10(c) of Act 26 of 2013 w.e.f. 19 May 2014.]

5. Change of domicile

An applicant or his representatives, or his assigns by authentic deed, may change, at the Mortgage Office, the domicile elected by him in such inscription, subject to his or their selecting and indicating another domicile.

6. Inscription of legal mortgages

(1) A legal mortgage shall be inscribed on the production to the Conservator of Mortgages of a memorandum (*bordereau*) which shall, unless otherwise provided in any enactment, satisfy section 3 (2) and (3).

[Amended 20/11 (cio 11/11/11)]

- (2) Each memorandum (*bordereau*) shall contain—
- (a) the first name or first names of the creditor in small letters followed by his surname in capital letters, his occupation and domicile and the domicile elected by him or for him, if any, drawn up in the manner described in section 3(7)(a)(i);
[Repealed and replaced by 20/21 (cio 11.11.11).]
 - (b) a description of the debtor in the manner described in section 3 (7) (a) (ii);
 - (c) particulars of the nature of the rights to be preserved and the amount of their value as respects matters which have been determined, without it being necessary to fix such value as respects things which are conditional, eventual, or undetermined.
- (3) Any memorandum (*bordereau*) which does not satisfy a requirement of this section may be rejected by the Conservator of Mortgages.

7. Article 2108 of the Code Napoleon

The reference in article 2108 of the Code Napoleon to the register of the Conservator of Mortgages shall be construed as a reference to a memorandum (*bordereau*) as is mentioned in section 3.

Schedule

[Section 3]

FORM OF MEMORANDUM OF INSCRIPTION

(FRONT)

Volume No.

Date

Number of Register

Number of pages

Repertory No.

Margin not
to be written
upon

Contents of
memorandum

(Margin reserved for Conservator) (Applicant shall not, under
any circumstances, write in this margin)

(BACK) Contents of memorandum

I, the undersigned
(names, surname, profession, domicile)
certify that the 2 copies of this
Schedule have been duly collated.

Signature
