

## INSCRIPTION OF PRIVILEGES AND MORTGAGES ACT

Act 73 of 1946 – 1 April 1952

### ARRANGEMENT OF SECTIONS

#### SECTION

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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 an applicant;

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

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

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

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

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

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

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

“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 (a) 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 reproduce the contents of the original deed or document, as the case may be, for the purpose of this Act.

[S. 2A inserted by s. 27 (a) 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—
  - (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.

(aa) The Conservator of Mortgages shall, after the documents are 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.

(b) The production of a 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 referred to in article 2160 of the Code Civil Mauricien.

(2) The applicant shall annex to the deed, judgment or certified copy of the 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 grammes;
- (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);
- (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
  - (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.
- (3) The memorandum (*bordereau*) shall—
- (a) where it is scanned and recorded pursuant to subsection (1) (a) (i), be signed electronically or digitally; or
  - (b) where it is scanned and saved pursuant to subsection (1) (a) (ii), be signed.
- (4) —
- (5) Where the applicant 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.
- (6) —

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

- (i) in respect of every creditor—
  - (A) his first name or 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 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 XXXXXXXXX (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 on 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 Xm<sup>2</sup> 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.

(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.

(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 that omission.

(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*) referred to in this section.

[S. 3 amended by Act 37 of 1990; s. 12 of Act 20 of 2009 w.e.f. 19 December 2009; s. 14 (a) 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 (b) of Act 9 of 2015 w.e.f. 2 July 2015; s. 10 (b) of Act 4 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 cause the documents referred to in section 3 (1) (aa) (ii) to be forwarded to the creditor through the RDDDS 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.

(1A) —

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

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

[S. 4 amended by s. 14 (b) 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).

(2) Each memorandum (*bordereau*) shall contain—

- (a) the first name or 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);
- (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 in respect of 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.

[S. 6 amended by s. 14 (c) of Act 20 of 2011 w.e.f. 11 November 2011.]

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**SCHEDULE**

[Section 3]

**FORM OF MEMORANDUM OF INSCRIPTION**

(FRONT)

Volume no. ....  
Date .....  
Number of Register .....  
Number of pages .....  
Repertory no. ....

Margin not  
to be writ-  
ten upon

Contents of  
memoran-  
dum

(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

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