

ACT 51
CHATTELS TRANSFER ACT, 1952

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ACT 51
CHATTELS TRANSFER ACT, 1952(1)

AN ACT to regulate chattels, securities and the transfer of chattels and to provide for related matters.

Instruments

1. Attornment or agreement

(1) An attornment or agreement which is not a mining lease

- (a) where a power of distress is given or agreed to be given by one person to another by way of security for a present, future, or contingent debt or advance, and
- (b) where a rent is reserved or made payable as a means for providing for the payment of interest on the debt or advance, or otherwise only,

is, for the purposes of this Act, an instrument so far as regards the chattels seized or taken under the power of distress.

Registration

2. Registration of instrument is notice

(1) For the purposes of the Act, a person has notice of an instrument and of the contents of the instrument as soon as the instrument is registered as provided by this Act.

(2) Where the registration of the instrument is not renewed pursuant to this Act, prior registration shall not operate as notice after the lapse of the period within which renewal is required by this Act.

3. Mode of registration

The registration of an instrument shall be effected by filing in the office of the registrar the instrument and the schedules endorsed on the instrument annexed to the instrument, or referred to in the instrument, or a true copy of that instrument and the schedules, and an affidavit in the Form 1 set out in the First Schedule.

4. Limitation of time for registration

(1) The period within which an instrument may be registered is six weeks from the day on which it was executed.

(2) When the time for registering an instrument expires on a day when the registrar's office is closed, the registration is valid if made on the next following day on which the office is open.

(3) Where there are more grantors than one, the date of execution of the instrument is, for the purposes of this Act, the date of the execution by the grantor who last executes the instrument.

(4) The day on which the instrument is executed shall not be included in the period for registration, but the instrument may be registered on that day.

5. Book and index to be kept

(1) The registrar

(a) shall assign a number to an instrument registered under this Act, and shall mark on the instrument, or on the filed copy of the instrument, the date of registration and the number, and

(b) shall, at the time of registration, enter in a register to be kept for the purpose in the registrar's office, the particulars of the instrument registered according to the Form 2 set out in the First Schedule.

(2) The registrar shall keep an index of the names of grantors and grantees of instruments and shall refer to the entries in the register of the instruments given by each grantor.

(3) Where an instrument describes the residence of the person making the instrument or the chattels enumerated in the instrument, the registrar shall, within three days after registration, send an abstract of the contents of the instrument to the registrar of the High Court exercising jurisdiction in the area in which the residence is situated.

(4) An abstract sent shall be filed, kept and indexed by the registrar of the High Court.

(5) A person may search, inspect, make extracts from and obtain copies of the abstract registered on the payment of the prescribed fees.

6. Fee on registration

The prescribed fee shall be paid to the registrar on the registration of an instrument.

7. Extension of time for registration

Where

(a) there is an omission to register an instrument or an affidavit of renewal of the instrument

within the time prescribed by this Act, or according to the form or effect required by this Act, or

- (b) the omission or mis-statement in the register or in an affidavit of the name, residence or occupation of a person, or of any other matter,

was accidental or due to inadvertence, the High Court may order the omission or mis-statement to be rectified by extending the time for the registration, or by the filing of a supplementary affidavit, or by the insertion in the register of the true name, residence or occupation, on the terms and conditions specified by the High Court.

Renewal of Registration

8. Registration to be renewed every five years

(1) The registration of an instrument, whether executed before or after the coming into operation of this Act, shall during the subsistence of the instrument, be renewed once in every five years commencing from the day of the registration.

(2) Where the registration is not renewed, the registration shall cease to be of effect at the expiration of a period of five years during which a renewal is not made as required under subsection (1).

(3) The registration of an instrument shall be renewed by filing in the office of the registrar an affidavit in the Form 3 set out in the First Schedule.

(4) The registrar shall

- (a) number the affidavit as if the affidavit were an instrument presented for registration,
- (b) renumber the instrument originally registered in the office, or the filed copy of the instrument, with a similar number,
- (c) mark on the instrument the date of renewal of the registration,
- (d) enter particulars of the instrument in the register as if it were an original registration, and
- (e) enter the date of renewal of registration in the column provided for that purpose in the register.

(5) The prescribed fee shall be paid to the registrar on the renewal of registration of an instrument.

(6) Subsections (3), (4) and (5) of section 5 shall apply, with due alteration to details, to the renewal of the registration of an instrument.

Searches and Office Copies

9. Register and instruments may be searched and viewed

The register and an instrument registered or the filed copy of the instrument, may be searched and viewed during normal office hours of the registrar on the payment of the prescribed fee for every search.

10. Office copies

A person may have an office copy or an extract of an instrument after the payment of the prescribed fees.

11. Unregistered instruments void in certain cases

(1) An instrument, unless registered in accordance with this Act shall, on the expiration of the time for registration, or if the time for registration is extended by the High Court, then on the expiration of the extended time, be considered fraudulent and void as against

- (a) the assignee or trustee acting under an assignment for the benefit of the creditors of the person whose chattels or any of them are comprised in an instrument;
- (b) a person seizing the chattels or a part of the chattels comprised in an instrument, in execution of the process of a Court authorising the seizure of the chattels of the person by whom or concerning whose chattels the instrument was made, and against a person on whose behalf the process was issued.

(2) Subsection (1) applies to the property in, or a right to the possession of a chattel comprised in or affected by the instrument which

- (a) at or after the time of the execution by the grantor of the assignment for the benefit of the grantor's creditors, or of the execution of that process, and
- (b) after the expiration of the period within which the instrument is required to be registered,

are in the possession or apparent possession of the person making or giving the instrument, or of a person against whom the process was issued under or in the execution of which the instrument was made or given.

12. Interest of bona fide purchaser for value without notice

An unregistered instrument comprising chattels is not, without express notice, valid and effectual

- (a) as against a bona fide purchaser or mortgagee for valuable consideration, or
- (b) as against a person bona fide selling or dealing with those chattels as auctioneer or dealer or agent in the ordinary course of that person's business.

Instruments Generally

13. Instrument to be attested

Sealing is not essential to the validity of an instrument, but the execution of an instrument shall be attested by at least one witness, who shall add to the signature the witness' residence and occupation.

14. Instrument to take effect from registration

An instrument is, for the purpose of this Act, made on the day on which it is executed, and takes effect from the time of its registration.

15. Instrument to have inventory of chattels

An instrument shall contain or shall have endorsed on it or annexed to it, a schedule of the chattels comprised in it and unless otherwise expressly provided by this Act, shall give a good title only to the chattels described in the schedule, and is void as against the persons mentioned in sections 11 and 12 in respect of a chattel which is not so described.

16. Instrument void where grantor not owner of chattels

Unless otherwise expressly provided by this Act, an instrument is void as against the persons mentioned in sections 11 and 12 in respect of the chattels which the grantor acquires or becomes entitled to after the time of the execution of the instrument.

17. Instrument subject to defeasance, void in certain cases

(1) Where an instrument is made or given subject to a defeasance, condition or declaration of trust not contained in the body of the instrument, the defeasance, condition or declaration of trust is, for the purposes of this Act, a part of the instrument, and shall be written on the same paper or parchment on which the instrument is written, otherwise the instrument is against the persons mentioned in sections 11 and 12 in respect of the property in, or a right to the possession of, the chattels comprised in or affected by the instrument.

(2) Where a document secures the payment of the moneys or a part of it payable by virtue of an instrument, it shall not be necessary for the purposes of subsection (1) to write the document on the same paper or parchment so long as the date, names of the parties to the document, and the nature of the security are stated in the instrument or in a schedule to the instrument.

18. Saving

Sections 15, 16 and 17 do not render an instrument void in respect of

- (a) growing trees, timber and crops;
- (b) fixtures, plant or trade machinery where the fixtures, plants or trade machinery are used in, attached to, or brought to a place in substitution for any of the like nature described in, or on the schedule to, the instrument.

19. Saving of laws prescribing formalities

This Act does not affect a law

- (a) which prescribes the formalities to be observed on or about the execution of instruments within the meaning of this Act, or
- (b) which confers or secures the rights or claims under or in respect of an instrument.

Form of Instruments

20. Form of instrument by way of security

(1) An instrument for registration under this Act shall be in the Form 4 set out in the First Schedule with the modifications and additions that are expressed in the instrument.

(2) An instrument securing an account current is effective although the grantor may from time to time be in credit on that account.

21. Successive securities given over same chattels

Where

- (a) an instrument is executed after the execution of a prior instrument which has never been registered, and comprises all or any of the chattels comprised in the prior instrument, and
- (b) the subsequent instrument is given as a security for the same debt as is secured by the prior instrument, or for a part of the debt,

the instrument is void, to the extent to which it is a security for the same debt or a part of the debt and so far as respects the chattels comprised in the prior instrument, as against the persons mentioned in sections 11 and 12, unless it is proved to the Court that the subsequent instrument was bona fide given for the purposes of correcting a material error in the prior instrument, and not for the purpose of evading this Act.

22. Security over growing trees

(1) An instrument may be granted over trees described or referred to in the instrument or in the schedule to the instrument where the tree is actually growing on the land mentioned in the instrument.

(2) The grantee of the instrument is entitled to

- (a) the whole of the trees mentioned in the instrument, and
- (b) the timber from the tree, which is not only growing on the land, but when cut or separated from the soil and kept on the land where the tree was grown or on any other land or premises.

23. Saving rights of landlord or mortgagee

(1) An instrument shall not affect the rights of a landlord or a mortgagee of a land where the tree is growing unless the landlord or mortgagee consents in writing to that instrument.

(2) An instrument which is duly registered shall not be extinguished or affected by a subsequent sale, lease, mortgage or any other encumbrance of or on the land described or referred to in the instrument or in the schedule to the instrument.

24. Trees and timber to be described

(1) Where a growing tree or timber is described or referred to in an instrument or the schedule to the instrument, the tree or timber shall be described or referred to,

- (a) in the case of a growing tree, by a painted mark of identification, and
- (b) in the case of timber, by a stamped mark of identification.

(2) An instrument is void against the persons mentioned in sections 11 and 12 in respect of a growing tree or timber which is not described in accordance with subsection (1).

(3) The land or premises on which the growing tree or timber is, or intended to be kept, shall be described or mentioned in the instrument or in the schedule to the instrument.

25. Security over crops

(1) An instrument may be granted over the crops described or referred to in the instrument or in the schedule to the instrument where the crops are actually sown or growing or planted or to be sown, or grown or planted, in or on a land mentioned in the instrument.

(2) The grantee of the instrument is entitled to

- (a) the whole of the crops mentioned in the instrument, and
- (b) the crops which are not only growing, but to the crops cut or separated from the soil, and stacked or stored on the land where the crops were grown, or any other land or premises, or whether the nature of the crop has been altered by a process of curing, fermenting or manufacture.

26. Saving of rights of landlord or mortgagee

(1) An instrument shall not prejudicially affect the right of a landlord or mortgagee of a land where the crops are growing, unless the landlord or mortgagee consents in writing to the instrument.

(2) A registered instrument shall not be extinguished or prejudicially affected by a subsequent sale, lease, mortgage or any other encumbrance of or on land described or referred to in the instrument or in the schedule to the instrument.

Assignment of Books and Other Debts

27. Instrument may comprise book debts

(1) A book or other debt is, for the purposes of this Act, a chattel situate in the place where the grantor of the instrument comprising the book or other debt longest resided or carried on business during the period of six months before the execution of the instrument.

(2) In an instrument comprising a book or other debt each debt constitutes a separate chattel, and shall be described in the schedule to the instrument by stating

- (a) the name of the debtor or firm of debtors,
- (b) the amount of the debt, and
- (c) the persons by whom the debts are owing,

and the instrument shall be void as against the persons mentioned in sections 11 and 12 in respect of a debt not so described.

(3) This section does not apply to

- (a) a debt secured or charged on land, or
- (b) a floating security granted by a company registered under the Companies Act, 1963 (Act 179), over the assets of the company, where the security is registered in the manner required under that Act, or
- (c) an assignment of a book or a debt included in a transfer of a business made bona fide and for value.

Entry of Satisfaction

28. Memorandum of satisfaction

(1) In the case of an instrument, on the production to the registrar of a memorandum of satisfaction in the Form 5 set out in the First Schedule, signed by the grantee of the memorandum or the attorney of the grantee,

- (a) discharging the chattels comprised in that instrument or a specified part of the instrument from moneys secured or a specified part of the moneys, or
- (b) from the performance of the obligation secured or a specified part of the obligation, and
- (c) on production of that instrument and payment of the prescribed fee,

the registrar shall file the memorandum and make an entry in the register on the page where the instrument is registered.

(2) The execution of the memorandum shall be attested by at least one witness, who shall add to the witness's signature, particulars of the witness's residence and occupation, and shall be verified by the affidavit of that witness.

(3) The registrar may dispense with the production of the instrument on proof by affidavit that the instrument has been destroyed, cannot be found, or cannot be produced.

29. Effect of filing memorandum

After the filing of the memorandum the debt or charge created by the instrument shall be vacated to the extent specified in the memorandum, and the interest of the grantee of the chattels expressed to be discharged shall vest in the person for the time being entitled to the equity of redemption, but so far only as the interest is expressed by the memorandum to be determined, and subject to a lien or an equity affecting the chattels.

30. Public Trustee may sign memorandum in certain cases

Where the grantee of an instrument by way of security is absent from the Republic, and a person in the Republic is not authorised to discharge the same on the grantee's behalf at or after the date appointed for the payment of the moneys secured by the instrument, the Public Trustee may receive the moneys in trust for the person entitled to the moneys, and may sign a memorandum of satisfaction in lieu of that person, and on the filing, the memorandum signed by the Public Trustee shall be as effectual as a memorandum signed by the person entitled to the moneys.

31. High Court may order memorandum to be filed

The High Court may, on an application made for that purpose, order

- (a) a memorandum of satisfaction to be filed in respect of an instrument if it appears that the debt for which the instrument was given as security has been satisfied or discharged, or
- (b) that the obligation for securing the performance of which the instrument was given has been performed,

and the order may be filed by the registrar and entered in the registrar's book as if the order were a memorandum within the meaning of section 28.

Sales

32. Sales

Chattels under this Act may be sold along with, or separately from, land mortgaged to secure payment of the moneys that are secured by an instrument under this Act.

Sale of Grantor's Interest

33. Selling grantor's interest in execution of judgment

(1) Where legal process issues against the chattels of a judgment-debtor for the execution of a judgment of a Court, and the chattels, or any of them, are comprised in an instrument registered under this Act, the officer charged with the execution of the process may, in lieu of seizing and selling the chattels so comprised, sell the right, title and interest of the judgment-debtor in the chattels.

(2) The grantee of the instrument, on receiving notice of the purchase of that right, title and interest, may take possession of the chattels comprised in the instrument.

(3) A grantee who takes possession holds the chattels in trust for the purchaser of the right, title and interest, subject to the payment of the moneys due under the instrument.

(4) Where the chattels are sold under the power of sale expressed or implied in the instrument, and a surplus remains out of the proceeds of the sale after the payment of the moneys due under the instrument, the grantee shall on demand pay over that surplus to the purchaser of the right, title and interest.

(5) Where the grantee defaults, the purchaser may bring an action against the grantee to recover the surplus, as money received to the use of the purchaser.

34. Interpleader process not affected

Section 33 does not affect the right of an execution creditor to test the validity of an instrument by interpleader process.

Implied Covenants

35. Covenants for title

There shall be implied in an instrument, the covenants for title on the part of the grantor stated in the Second Schedule, and the implied covenants shall have the same effect as if the covenants were respectively stated at length in the instrument.

36. Covenant implied in instrument

There shall be implied in an instrument, the covenants, agreements and powers stated in the Third Schedule, or any of them which are applicable; and the implied covenants, agreements and powers shall, subject to the modifications expressed in the instrument and in so far as they are not inconsistent with a provision of an Act, have the same effect as if the same were respectively stated at length in the instrument.

37. Meaning of abbreviated expression

The expressions defined in section 44 or in the Fourth Schedule which are used in an instrument, or in any of the covenants, agreements or powers implied in them by this Act, shall, unless the contrary is expressed in the instrument, or unless manifestly inconsistent with the context, have the meanings given to them in section 44 or the Fourth Schedule, and the meanings shall be implied in the instrument as fully and effectually as if the same were stated in the instrument.

38. Covenants to be several as well as joint

Where there are two or more grantors or two or more grantees of an instrument, the covenants, conditions, agreements and powers expressed in the instrument, or implied in the instrument by this Act, and imposing an obligation on the grantors or grantees or enuring for the benefit of the grantors or grantees, impose for the purposes of this Act, except in so far as a contrary intention appears, the obligations, or confer the benefits, severally as well as jointly.

39. Covenants to bind executors

Except in so far as the contrary intention appears, the covenants, conditions, agreements and powers expressed in an instrument, or implied in the instrument by this Act

- (a) bind the executors, administrators and assigns of the person, or the successors and assigns of a company or corporation, on whom the covenants, conditions, agreements and powers impose an obligation, and
- (b) operate for the benefit of the executors, administrators, and assigns of the person, or the successors and assigns of the company or corporation, for whose benefit the same enures.

40. Covenants may be negated or varied

All or any of the covenants, conditions, agreements, or powers stated in the Second, Third and Fourth Schedules may be negated, modified, or altered, or others may be added to them, by express words in the instrument.

Transfers of Instruments

41. Form of transfer of instrument

An instrument may be transferred by a document in the form set out in the Fifth Schedule, and a transferee, the transferee's executors, the administrators and assigns, shall, in respect of the instrument transferred have the same rights, powers and remedies and be subject to the same obligations, as the transferor.

42. Registration of transfers

A transfer of an instrument may be registered at any time after the execution of the instrument in the same manner as instruments are registered; and,

- (a) in a case where two or more transfers of that instrument are executed, a registered transfer shall have priority over an unregistered transfer, and
- (b) in a case where two or more transfers of that instrument are registered, priority shall be given to the transfers in the order of their time of registration.

Penal

43. Attempt to defraud

A grantor of an instrument under this Act who

- (a) by sale or delivery without the consent of the grantee of any of the chattels comprised in or affected by the instrument, or
- (b) by any other means, defrauds or attempts to defraud the grantee of the chattels or a part of the chattels, or
- (c) directly or indirectly defeats, invalidates or impairs the grantee's security over the chattels or attempts so to do, or
- (d) wilfully aids and abets a person in defrauding or attempting to defraud the grantee by defeating, invalidating, or impairing the instrument or attempting to do so,

commits an offence and is liable on summary conviction to a term of imprisonment not exceeding six months or to a fine not exceeding two hundred penalty units or to both imprisonment and the fine.

44. Interpretation

In this Act, unless the context otherwise requires,

“chattels” includes a movable property which can be completely transferred by delivery, and machinery, stock and the natural increase of stock, crops, growing trees and timber, but does not include

- (a) title-deeds, things in action, other than a debt, negotiable instruments;
- (b) shares and interests in the stock, funds or securities of a government or local authority;
- (c) shares and interests in the capital or property of a company or any other corporate body; or
- (d) debentures and interest coupons issued by a government, or local authority, or company, or any other corporate body;

“court” means a court of a competent jurisdiction;

“crops” means cocoa beans, coffee berries, sugar cane, wheat, maize, millet, guinea corn and grass, whether for hay or for grain, the produce of oil palm trees and rubber trees, cereal and root crops, fruit and any other crops grown above or below the ground;

“executed” means signed by the grantor or grantor's attorney;

“factory” or **“workshop”** means the premises on which manual labour is exercised by way of trade or for purposes of gain in or about the making, altering, repairing, ornamenting, finishing, or adapting for sale of an article or part of an article;

“grantee” includes the party to an instrument to whom chattels referred to in the instrument or an interest in the chattels are granted or assigned, or agreed so to be, and the grantee's executors, administrators and assigns, and in the case of a company or corporation, the successors and assigns of that company or corporation;

“grantor” includes the party to an instrument who grants or assigns, or agrees to grant or assign, chattels referred to in the instrument or an interest in the chattels, and the grantor's executors, administrators, and assigns, and in the case of a company or corporation, the successors and assigns of that company or corporation;

“instrument” includes an instrument given to secure the payment of money or the performance of an obligation and a bill of sale, mortgage, lien, or any other document that transfers or purports to transfer the property in or right to the possession of chattels, whether permanently or temporarily,

whether absolutely or conditionally, and whether by way of sale, security, pledge, gift, settlement, or lease, and

- (a) inventories of chattels with receipt attached to the inventories;
- (b) receipts for purchase-money of chattels;
- (c) other assurances of chattels;
- (d) declarations of trust without transfer;
- (e) powers of attorney, authorities, or licences to take possession of chattels as security for a debt;
- (f) an agreement, whether intended to be followed by the execution of any other instrument or not, by which a right number to chattels, or to a charge or security on the charge or over the charge, is conferred;

“instrument” does not include

- (a) securities over, or leases of, fixtures, except trade machinery as defined in this Act, when mortgaged or charged apart from the land to which it is attached when mortgaged, charged or leased in a mortgage, charge or lease of a freehold or leasehold interest in a land or building to which they are affixed, and whether or not those fixtures are specially included in the mortgage, charge or lease by mention of the mortgage, charge or lease by mention of the mortgage, charge or lease in separate words;
- (b) assignments for the benefit of the creditors of the person making the assignment;
- (c) transfers of or assignments to transfer instruments by way security;
- (d) transfers or assignments of a ship or vessel or a share of a ship or vessel;
- (e) transfers of chattels in the ordinary course of business of a trade or calling;
- (f) debentures and interest coupons issued by a government or local authority;
- (g) bills of sale of chattels in any foreign parts, or at sea;
- (h) bills of lading, warehouse-keepers' certificates, warrants, or orders for the delivery or chattels, entries in auctioneer's books, or any other document used in the ordinary course of business as proof of the possession or control of chattels, or authorising or purporting to authorise, either by endorsement or delivery, the possessor of that document to transfer or receive the chattels represented;
- (i) debentures and interest coupons issued by a company or any other corporate body and secured on the capital stock or chattels of that company or that other corporate body;
- (j) mortgages or charges granted or created by a company incorporated or registered under the Companies Act, 1963 (Act 179);
- (k) hire-purchase agreements;
- (l) an instrument which is a concession within the meaning of the Concessions Act and which relates solely to chattels comprised in the definition of concession in section 2 of that Act;

“prescribed” means prescribed by the registrar;

“register” means the register in which is recorded the particulars of an instrument filed under sections 3 and 5;

“registrar” means the Registrar-General;

“registration” means the filing of an instrument with schedule or inventories, or a true copy of the instrument, with the affidavit mentioned in the instrument;

“schedule” includes an inventory;

“timber” has the same meaning as in the Trees and Timber Act, 1974;2(2)

“trade machinery” means the machinery used or attached to a factory or workshop as defined in this Act and machinery and plant used in connection with the production, preparation or manufacture of agricultural products, but does not include

- (a) the fixed motive power, such as the water-wheels and steam and any other engines and the steam boilers, donkey engines and any other fixed appurtenances of the motive power;
- (b) the fixed power machinery, such as the shafts, wheels, drums and their fixed appurtenances, for transmitting the action of the motive power to the other machinery, fixed and loose; or
- (c) the pipes for steam, gas and water.

SCHEDULES

First Schedule

FORMS

[Section 3]

FORM 1

Affidavit on Registration of Instrument

In the matter of the Chattels Transfer Act, 1952.

I, (full name of deponent), of (place of residence or business), in Ghana (occupation), make oath and say as follows:

1. The paper and writing annexed and marked “A” is a true copy of an instrument under the above-mentioned Act, and of every schedule or inventory endorsed on it or annexed to it or referred to, and of every attestation of the execution thereof, as made and given and executed by (full name of grantor).

2. The instrument was made and given by the (full name of grantor) on the day of, 20

3. I was present, and saw (full name of grantor) duly execute the instrument on the .. day of, 20, at (state place where instrument executed).

4. (The full name of grantor) resides at (place of residence), and is (occupation).

5. The name subscribed to the instrument as that of the witness attesting the due execution of the instrument by (name of grantor) is in the proper handwriting of me, this deponent.

6. I am (occupation) and reside and reside at (place of residence).

.....E.F.

Sworn at the day of, 20

Before me G.H.

N.B.—If the grantor is absent from Ghana and executes the instrument by an attorney, it shall be sufficient if the deponent states deponent’s belief as to the present address of the grantor. In the case of a company the registered office should be stated instead of the place of residence.

Where the original instrument is filed, the first paragraph of this affidavit should be struck out, and the second and third paragraphs will require some alterations.

FORM 2

[Section 5 (1)]

Registrar’s Book

No.	BY WHOM GIVEN			TO WHOM GIVEN			Nature and date of instruments	Date and time of registration	Date of renewal	Satisfy
	Name	Residence	Occupation	Name	Residence	Occupation				

FORM 3

[Section 8 (3)]

Affidavit on Renewal of Registration of Instrument

In the matter of Chattels Transfer Act, 1952

I, (full name of deponent), of (place of residence or business), in Ghana, (occupation), make oath and say as follows:

1. I am the grantee of the instrument registered under this Act, as No....,and made between (state names of parties to instrument, their residences and occupations, as appearing in the instrument; also names of the parties to the instrument, their residences and occupations at the time of the making of the affidavit).

(If the affidavit is made by an agent, a clerk, or servant of the grantee or grantor, state that fact, and also state briefly how the deponent has become acquainted with the facts deposed to.)

2. The instrument was registered on the day of, 20

3. The registration of the instrument was last renewed on the day of, 20

(This paragraph is inapplicable where registration of the instrument is being renewed for the first time).

4. The first instrument is still subsisting, and in full force and effect.

..... C.D.

Sworn at this day of, 20

Before me G.H.

FORM 4

[Section 20 (1)]

Instrument

A.B., of (*state residence and occupation*), being owner of the chattels mentioned in the schedule to the instrument (*where a schedule is necessary*), in consideration of the sum of cedis lent and advance to by C.D., of (*state residence and occupation*), (*or, if consideration not an advance of money, state any other consideration for which mortgage is given*), do assign and transfer the same to C.D. by way of mortgage to secure the payment of the sum of cedis on the day of, 20with interest on it in the meantime, and so long as the same or any part thereof remains unpaid, at the rate of *per centum* per annum by payments on the day of the months of and in each year.

(Implied covenants, powers and provisions may be varied or negated.)

In witness where A.B. has subscribed his name, this day of, 20

.....

A.B.

Signed by the above-named A.B. in the presence of

.....

E.F.

(*Residence and occupation*)

FORM 5

[Section 28 (1)]

Memorandum of Satisfaction

I, C.D. consent to a memorandum of satisfaction being written upon the instrument (*or registered copy of the instrument*) given for securing the sum of cedis, bearing the date the day of, 20 and made between and and registered on the day of, 20 as No. under the Chattels Transfer Act, 1952, the moneys for which the instrument was given as security having been satisfied.

Dated this day of, 20

.....
C.D.

(Grantee or Assignee)

Witness E.F.

(Residence and occupation)

Second Schedule
COVENANTS FOR TITLE

[Section 35]

1. That the grantor has good right and full power to assign to the grantee the chattels purporting to be assigned; and that they are free and clear from encumbrances other than those encumbrances mentioned in this Schedule.

2. That the grantor will also pay interest on any further advances that may be secured by this instrument, computed from the time of making the same respectively, at the rate and on the dates mentioned for the payment of interest in this instrument.

3. That the grantor will not, at any time while any moneys remain owing on this security, do or allow an act or a deed where the chattels assigned shall or may become prejudicially affected, and will at all times, while any moneys remain owing on the grantor's security, duly pay the rents from time to time coming due in respect of the lands or premises on which any of the chattels assigned are for the time being situate.

4. (1) That the grantor will at all times, while any moneys remain owing on this security, keep and maintain the chattels assigned in the good order and condition in which they are at the date hereof.

(2) Where any of the chattels are damaged or destroyed, or cease to exist, the grantor will repair the damage, or replace the chattels so destroyed or ceasing to exist with other chattels of a like nature.

(3) The grantor will, if required so to do by the grantee, execute an instrument that may be necessary

to give to the grantee security over chattels replacing the chattels which have been destroyed or have ceased to exist.

Agreement Implied in Instruments

5. It is hereby declared and agreed that,

- (a) until the grantor makes default in the payment of any moneys secured, or in the observance or performance of a covenant, condition, or an agreement expressed or implied in the instrument, and to be observed and performed by the grantor, or
- (b) until the grantor becomes bankrupt, or
- (c) until execution is levied against the goods of the grantor and the execution is not stayed or satisfied within ten days,

the grantor may retain possession and use of the chattels assigned.

6. (1) The giving by the grantor to the grantee of a bill of exchange or promissory note for the whole or a part of the money secured shall not, until the bill or note is honoured or met, be considered as payment of or on account of the moneys secured by this instrument, or in any way affect or alter the rights or powers of the grantee by virtue of this instrument.

(2) A promissory note or bill of exchange which before, at, or at any time after the execution of this instrument may be given by the grantor to the grantee for the whole or a portion of the moneys secured or, the remedy thereon of the grantee or of the holder thereof, shall not merge in the covenants expressed or implied in the instrument.

Powers Implied in Instruments

7. (1) It is hereby declared and agreed that,

- (a) if default is made by the grantor in the payment of any of the principal or interest moneys covenanted to be paid on the day on which the money ought to be paid according to the terms or in the observance or performance of any of the covenants, conditions or agreements expressed or implied, and on the grantor's part to be observed and performed, or
- (b) if the grantor becomes bankrupt, or if at any time execution is levied against the goods of the grantor and the execution is not stayed or satisfied within ten days,

the grantee, either personally or by the grantee's agent or servants may immediately or at any time thereafter, without a further by the grantor, and without giving to the grantor a notice, or waiting any time, and despite a subsequent acceptance of a payment of the money due on this security,

- (c) enter upon the lands or premises where the chattels for the time being subject to this security may be, and
- (d) take possession of the chattels, and sell or dispose of the chattels or a part of the chattels by private sale or public auction, separately or together.

(2) The sale or creation shall be in the lots and generally in a manner in every respect that the grantee considers expedient, with power

- (a) to allow time for payment of purchase money, or
- (b) to buy in the chattels or a part of the chattels at that auction, and
- (c) to rescind or vary the terms of a contract or sale, and

- (d) to resell without being answerable for any loss or expense occasioned by the sale, and
- (e) to execute the assurances and do the things for giving effect to a sale as may be necessary or proper.

(3) The receipt of the grantee or the grantee's agent shall be a sufficient discharge to a purchaser at the sale of any of the purchase money.

(4) On a sale purporting to be made in exercise of the powers herein expressed or implied a purchaser shall not be bound to inquire as to the propriety or regularity of that sale, or be affected by notice express or constructive that the sale is improper or irregular.

(5) It is declared and agreed that the grantee shall stand possessed of the proceeds of a sale upon trust, after paying the costs, charges and expenses of and incidental to the taking possession, sale, and the preparation and registration of this instrument, to apply the proceeds in reduction of the moneys then owing on the security of this instrument, including the moneys covenanted to be paid though the same may not then have become due, or that any promissory notes or bills of exchange may then be current for the same, and to pay the balance to the grantor.

Power to be Implied in Instruments over Crops, Growing Trees or Timber

8. (1) If the grantor does not pay to the grantee the moneys secured, with interest and commission on the money as mentioned, at the time mentioned for payment of the moneys, the crops, growing trees or timber, hereby assigned

- (a) shall be gathered or cut, carried away, and made marketable either by the grantor or by the grantee at the option of the grantee, but in either case at the expense of the grantor, and
- (b) shall, if gathered or cut by the grantor, be delivered by the grantor to the grantee or grantee's order at the place of delivery herein mentioned or, if a place is not mentioned in the instrument, at the place that the grantee directs.

(2) The grantee may

- (a) sell the same in Ghana, in one or more lots, by public auction or private contract, or partly in the one way and partly and otherwise as the grantee thinks fit, or
- (b) subject to the law relating to the export of crops or timber, may cause the same to be shipped or exported to a place out of Ghana, to be sold by grantee's agents in the manner and on the terms aforesaid, without being responsible for the loss or deficiency occasioned by the shipment of the crops or timber or by a sale of the crops or timber whether in Ghana or elsewhere, or by the act, neglect, or default of any agent, broker, or other person.

(3) The grantor may from the proceeds pay the grantee personally the moneys secured, and the rent payable to the grantee personally the moneys secured, and the rent payable to a person who the grantee may be compelled to pay in order to protect the grantee's security over those crops, trees or timber, and the costs, mercantile, and the other charges, and expenses incurred in and about the harvesting, cutting, sale, shipment and carrying away of those crops, trees or timber, and their storage and freight, or any other account connected with the realisation thereof, and shall pay over the balance to the grantor.

[Section 37]

1. The words, “**on demand**” means on demand being made by notice in writing, signed by the person entitled to make the demand, or any agent or clerk or servant of that person, served on the person on whom the demand is to be made, personally or by posting the notice in a duly registered letter addressed to that person at the person’s usual or last-known place of abode in the Ghana.

2. The words “**further advances**” includes a sum of money that may be advanced or paid by the grantee to the grantor after the execution of this instrument, and the sum of money that may become owing by the grantor to the grantee during the continuance of this security for goods supplied, for bills and notes discounted and paid, and for other loans, credits and advances that may during the continuance of this security be made by the grantee to or for the accommodation or at the request of the grantor.

3. (1) The words “**will, on demand, pay the balance due on the account current between them**” mean that the grantor will, on demand, pay to the grantee the balance on the account current of the grantor with the grantee for the time being owing for and on account of the moneys advanced on the execution this instrument, or intended to be hereby secured, and for further advances as defined by the Chattels Transfer Act, 1952, and for interest, commission, and other lawful charges from the day of that demand being made till the actual payment at the rate mentioned in this instrument without any deduction.

(2) It is hereby declared and agreed that

- (a) that account current shall be made up with half-yearly rests on the half-yearly days mentioned for that purpose in this instrument, in each year or, if those days are not mentioned in the instrument, then on the 31st day of March and the 30th day of September in each year, until the final balance of account is fully paid; and
- (b) that this instrument shall be a continuing security for the moneys for the time being owing by the grantor to the grantee, although the account current between them may have at any time been in credit by payments, settlement of account, or otherwise; and
- (c) that on the half-yearly day interest shall be considered as converted into principal, and the balance shall be chargeable with interest as mentioned as on further advances; and
- (d) that in making up that account interest at the rate specified in this instrument shall be calculated on the daily debtor balances; and
- (e) that, on a demand as mentioned, the bills of exchange or promissory notes given by the grantor to the grantee and then current may, at the option of the grantee, and shall in case of entry into possession or sale by the grantee, be considered as matured or become due, subject to a rebate of interest on the amount for the time during which the same have to run, to be calculated at the rate at which interest is payable under this instrument; and
- (f) that the amount of the bills or promissory notes, subject to the rebate, may be charged to the grantor in the account at the time of making that demand.

4. (1) The words “**will insure**” mean that the party liable to insure will insure and during the period that this instrument remains in force will keep insured against loss or damage by fire the chattels comprised in the instrument of a nature of kind capable of being insured against loss or damage by fire.

(2) The insurance shall be effected in the name of the other party to this instrument and in a public insurance office to be approved of by that person, shall be for the full amount specified or, if an amount is not specified then for the full insurable value of those chattels.

(3) The party liable to insure will, at the request of the other party, hand over to and deposit with the

party the policy of the insurance, and produce and deliver to the party the receipt or receipts for the annual of other premiums payable on account of the insurance.

(4) The moneys received under the insurance shall, in the event of loss or damage by fire, be laid out and expended, so far as the same extend, in making good the loss or damage or, if the instrument is given by way of security, in discharging the moneys secured, if the other party so elects.

(5) There default this made in the observance or performance of this covenant, the other party may, without prejudice to and concurrently with the powers granted to the other party by this instrument or otherwise by law, insure those chattels, and may recover the costs and charges of the insurance from the party liable to insure in like manner as if the same had been advanced by way of loan on the security of this instrument.

Fourth Schedule
TRANSFER OF INSTRUMENT
[Section 41]

I, C.D. of (*state residence and occupation of transferor*), the grantee of the instrument registered in the office of the Registrar-General as No., under the Chattels Transfer Act, 1952, do in consideration of (*state consideration*), hereby transfer to X.Y. of (*state residence and occupation of transferee*) all my rights, title, estate and interest in and to the chattels comprised in the instrument.

As witness to my hand this day of, 20
..... C.D.

Signed by C.D. in the presence of
..... E.F.
(*Residence and occupation*)

Endnotes

1 (Popup - Footnote)

1. The Act was enacted as the Chattels Transfer Ordinance, 1952 (No. 51 of 1952). It was assented to on the 22nd day of October, 1952.

2 (Popup - Footnote)

2. [N.R.C.D. 273](#).