



Islamic Republic of Afghanistan
Da Afghanistan Bank (DAB)

Article One: Regulation on Registration of Securing Charges

Da Afghanistan Bank (DAB) issues for public comment this regulation on the granting of credit secured by movable property.

Preamble

The Law on Secured Transaction in Movable Property of 2009 was enacted to “regulate business and banking transactions that use movable property as security and [to] specify the rights and obligations of the parties.” Its overall policy goals may be summarized as follows:

- Provide a modern law and legal framework
- Encourage credit providers to expand secured lending
- Expand commerce and investment
- Establish consistent and transparent practices and timeframes.

This regulation provides procedures for lenders to follow when extending secured financing. It also provides guidance to explain the policy objectives underlying the Law such as disclosure, fairness, transparency and establishment of a central electronic registry of security interests.

Scope

1. This regulation applies to registration of notices of securing charge for transactions that secure an obligation with collateral, regardless of the form of the agreement or the terminology used.
2. This regulation applies to registration of a notice of securing charge for the sale of accounts receivable and secured sales contracts and to the lease of goods for more than one year.
3. This regulation applies to registration of a notice of lien.



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Part A- General

1.1.1. Authority for the Regulation

This regulation is promulgated under the authority of Article 48 of the Law on Secured Transaction in Movable Property of 2009. The regulation is promulgated by Da Afghanistan Bank (DAB).

1.1.2. Objectives of the Regulation

The primary purpose of this regulation is to provide for registration of:

- Notices of securing charges in movable assets as collateral for loans or other financing
- Notices of lien in all types of movable assets

1.1.3. Definitions

Terms that are defined in the Law shall have the same meaning in this regulation. The following additional definitions shall apply for the purpose of construing this regulation:

- **Fixture** – goods that are fixed or are intended to become fixed to immovable property in a manner that causes a property right to arise in the goods. Building materials and readily removable factory machines, office machines, and domestic appliances are not fixtures.
- **Governor** – the Governor of DAB.
- **The Law** – the Law on Secured Transaction in Movable Property of 2009.
- **Notice of securing charge** – a record registered in the registry to publicize a securing charge. The term includes an initial notice, amended notice, continuation notice, termination notice and notice of objection.
- **Notice of lien** – a record registered in the registry to publicize a lien. The term includes an initial notice, amended notice, continuation notice and termination notice. Except

where the context indicates otherwise, reference in this regulation to a notice of securing charge shall include a notice of lien.

Part B: Establishment of Registry

1. The Registry of Securing Charges in Movable Property (registry) will be established by Da Afghanistan Bank.
2. The registry shall provide electronic means for registration of notices of securing charge and liens, and for searching for notices of securing charge. The electronic records of the registry shall be the official records.
3. The registry is the place to register a notice of securing charge, lien or other interest in movable property that is within the scope of this regulation.

1.2.1. Hours and Place of Operation

The location and hours of the registry are as follow:

1. The location of the registry is Da Afghanistan Bank in Kabul.
2. The hours of operation of the registry are 8:30 a.m. to 4:00 p.m. on Saturday through Wednesday, and 8:30 a.m. to 1:00 p.m. on Thursday, except for official government holidays.
3. A help desk for persons who have questions or problems concerning registration is available during those hours by telephone. The telephone number will be posted on the registry's website.
4. The hours of operation of the registry for registration of documents and searching the database through the registry website are 24 hours per day, seven days per week.

1.2.2. Public Record

Information contained in a registered notice of securing charge is a public record. Indices and other records created by the registry with respect to notices of securing charge are public records. Any person may inspect notices in the registry.

1.2.3. Registration of Initial Notice of Securing Charge

1. An initial notice of securing charge is sufficient if it:
 - i. identifies the chargor by:
 - (a) Taskira number, if a citizen of Afghanistan;

- (b) Tax identification number issued by the Central Business Registry, if a company organized under the laws of Afghanistan or a foreign company registered to do business in Afghanistan; or
 - (c) Passport number, expiration date and country of issue, if a foreigner;
- ii. identifies the chargeholder or an agent of the chargeholder by name and provides an address; and;
 - iii. describes the collateral covered by the notice. If the collateral is a fixture, the notice must describe the immovable property to which a fixture is to be affixed.
2. A description of collateral is sufficient, whether it is specific or general, if it reasonably identifies what is described. A description such as “all equipment” or “all movable property” is sufficient. Reasonable description of consumer goods requires a specific description.
 3. A chargor must authorize the registration of an initial notice of securing charge by signing a securing agreement or other record.
 4. A notice of securing charge may be registered before a securing agreement is concluded or before a securing charge attaches to collateral.
 5. A notice of lien may be registered by a lien holder without the consent of the lienee. A notice of lien on the property of an insolvent company may be registered by the liquidator or conservator. A notice of lien on the movable property of a delinquent taxpayer may be registered by the Ministry of Finance.
 6. A notice substantially complying with the requirements of this chapter is effective unless it is seriously misleading. A notice that does not provide the identification number of the chargor is seriously misleading.

1.2.4. Effectiveness of Notice

1. A notice of securing charge is effective at the time it is discoverable on the records of the registry.
2. A notice of securing charge is effective for the period specified in the notice, unless a continuation notice is registered before the period lapses. The period specified must be stated in a whole number of years, and the period may not exceed 10 years.
3. Upon lapse, a notice of securing charge becomes ineffective, and the securing charge that was completed by the notice becomes uncompleted unless it is completed by another means.
4. Information in a notice of securing charge will be entered in English.

1.2.5. Amendment of Notice

1. An initial notice of securing charge may be amended. An amended notice must:
 - i. identify the initial notice by its registration number;

- ii. Identify each chargeholder who authorizes the amendment; and
 - iii. Provide all of the information required for an initial notice.
2. An amended notice that adds collateral or adds a chargor must be authorized by the chargor by signing the securing agreement or other record.
 3. An amended notice is effective only as to each chargeholder who authorizes it.
 4. An amended notice that adds collateral or a chargor is effective as to the added collateral or chargor from the date of registration of the amended notice.
 5. An amended notice that changes the passport number of a foreign chargor is effective as to the new passport number from the date of registration of the amended notice.

1.2.6. Continuation of Effectiveness of Notice

1. The period of effectiveness of a notice of securing charge may be continued by registering a continuation notice that:
 - i. identifies the initial notice by its registration number;
 - ii. identifies each chargeholder who authorizes the continuation notice; and
 - iii. indicates the period of continuation, stated as a whole number of years, not to exceed 10 years.
2. A continuation notice may be registered only within six months before the expiration of the initial period of the notice of securing charge.
3. Upon registration of a continuation notice, the effectiveness of the initial notice is extended for the specified number of years as to each authorizing chargeholder.

1.2.7. Termination of Effectiveness of Notice

1. The effectiveness of a notice of securing charge may be terminated by registering a termination notice that:
 - i. identifies the initial notice by its registration number;
 - ii. Identifies each chargeholder who authorizes the termination notice; and
 - iii. Indicates that the initial notice is no longer effective with respect to each chargeholder who authorized the termination notice.
2. Within 20 days after the chargeholder receives a written demand by the chargor, a chargeholder shall register a termination notice if:
 - i. there is no outstanding secured obligation and no commitment to make an advance or otherwise give value; or
 - ii. the chargor did not authorize registration of the initial notice.
3. A termination notice terminates effectiveness of the initial notice of securing charge as to each authorizing chargeholder.

1.2.8. Maintenance of Terminated Notice

Notwithstanding that a termination notice may have been registered, the notice record will be maintained in the registry as if it were an effective notice until the normal lapse date of the notice.

1.2.9. Objection to Registration of Notice

1. A person may register a notice of objection to a notice of securing charge that identifies the person as a chargor if the person believes that the notice is inaccurate or was wrongfully registered.

2. A notice of objection must:

- i. identify the notice of securing charge to which it relates by its registration number;
- ii. name the person who registers the notice of objection; and
- iii. provide the basis for the person's belief that the notice of securing charge is inaccurate or was incorrectly or wrongfully registered.

3. Registration of a notice of objection does not affect the effectiveness of a notice of securing charge.

1.2.10. Refusal to Register Notice

1. The registry may refuse to register a notice of securing charge because:

- i. in the case of an initial notice, it does not identify a chargor as required by Article 8 [, or it does not state a period of effectiveness of 10 years or less];
- ii. in the case of an amended notice, it does not identify a chargor as required by Article 8, it does not provide the registration number of the initial notice, it identifies an initial notice whose effectiveness has lapsed, or it does not identify an authorizing chargeholder;
- iii. in the case of a continuation notice, it does not provide the registration number of the initial notice, it does not state a number of years of 10 or fewer for which effectiveness is to be continued, it was not presented within the permitted six-month period, or it does not identify an authorizing chargeholder;
- iv. in the case of a termination notice, it does not provide the registration number of the initial notice, it relates to an initial notice that has lapsed, or it does not identify an authorizing chargeholder;
- v. in the case of a notice of objection, it does not provide the registration number of the initial notice, or it does not name the person who registers the notice; or

- vi. less than the full registration fee is tendered, or no arrangement has been made for payment of fees by other means.
2. The registry will not inspect a notice to determine whether it is legally sufficient. A notice will be refused only as determined by logic in the registry software, which is based on the criteria set out in this regulation.
3. If the registry refuses to register a notice, it shall promptly communicate the fact of and reason for its refusal to the person who presented the notice.

Part C: Registration Process

1. The registry will provide for registration of notices of securing charge electronically through its website.
 - i. Notices will be registered electronically and will be entered into the database and be effective immediately upon acceptance by the registry software.
 - ii. The registry software will detect whether the data that are entered for the notice of securing charge contain sufficient information to be registered, and will generate a notice of defect to the user when the user attempts to submit a notice of securing charge that does not meet the minimum registration requirements. The notice will not be registered until it meets the minimum data requirements for registration, as defined by this regulation.
 - iii. When the information necessary to register a notice of securing charge is entered, the registry software will accept the registration and generate a confirmation of registration that the user may print as proof of registration. The confirmation will include the date and time of registration, the registration number assigned by the registry and all information that was included in the registered notice.
2. For each notice of securing charge registered, the registry shall:
 - i. generate a unique registration number for each record that is created, whether it is an initial notice or a subsequent notice related to an initial notice of securing charge. The number will have a fixed number of digits, including leading zeroes;
 - ii. for an initial notice, generate an additional two digits that will be appended to the end of the registration number and become a part of it. The additional digits are computed mathematically from the digits of the unique number, and are later used to validate that the number is entered correctly by users on subsequent notices related to the initial notice;
 - iii. create a record that bears the number assigned to the initial notice and the date and time of registration; and
 - iv. maintain the record for public inspection.
3. For each amended notice, continuation notice, termination notice and notice of objection, the registry software will validate the registration number of the initial notice as follows:

- i. When the registration number of the initial notice is entered, the registry software will determine what the last two digits should be by computing them from the preceding digits. The software will compare them with the last two digits of the registration number that was entered. If the numbers are not identical, the number has been entered incorrectly.
 - ii. If the initial notice registration number is determined by the computation to be correct, the registry software will determine if the record identified by the number is effective.
 - iii. If the initial notice's registration number is not entered, if the number entered is determined to be incorrect, or if the record identified by the number is not effective, the registry software will cause the new notice to be refused and will notify the person who entered the data of the reason for refusal.
4. The registry shall index notices by the tax identification number, company registration number or passport number (if a foreigner) of the chargor, and, for notices containing a serial number of a motor vehicle, by serial number.
 5. The registry shall return a copy of the electronic record of the notice, to include the registration number and the date and time of registration.
 6. The registry shall maintain the capability to retrieve a record by the tax identification number, company registration number or passport number (if a foreigner) of the chargor, by the registration number assigned to the initial notice and, for notices containing the serial number of a motor vehicle, by serial number.
 7. The registry shall maintain records of lapsed notices for a period of ten years beyond the date of lapse.
 8. The duties of the registry are merely administrative. By registering a notice or refusing to register a notice, the registry does not determine the sufficiency, correctness, authenticity, or validity of any information contained in the notice.

1.3.1. Assignment of Securing Charge

If a chargeholder assigns a completed securing charge, a notice need not be registered under this regulation to continue completion of the securing charge, though an amended notice may be registered if the assignee so chooses.

1.3.2. Lapse of Effectiveness of Notice

When a registration period lapses as a result of a failure to register a continuation notice by the lapse date, completion of the securing charge also lapses, unless completion is achieved by another means prior to the lapse.

1.3.3. Search of Registry for Notices of Securing Charge

1. The registry shall communicate the following information to any person who requests it:
 - i. whether there are in the registry any effective notices that designate a particular registration number, chargor or vehicle serial number;
 - ii. the registration number, and the date and time of registration of each notice;
 - iii. the tax identification number, company registration number or passport number (if a foreigner) of each chargor and the name and address of each chargeholder on each notice;
 - iv. all of the information contained in each notice.
2. If requested, the registry shall issue a certified report of the results of a search that is an official record of the registry and shall be admissible into evidence in the courts without extrinsic evidence of its authenticity.
3. The registry shall provide internet access to all effective records in the database through the registry website. Any person may have access to the database for searching and viewing records of notices of securing charge. The registry may provide access to a PC in the registry or offices of DAB for persons who do not otherwise have access to the internet if resources are available and the Governor so orders.
4. The registry shall provide a certified report of search on a registration number, chargor tax identification number, company registration number or name (if a foreigner), or a serial number of a motor vehicle upon request. The person who requests the certified search report will log in to the registry website, select the option to generate a certified search report, and conduct the search of the database.
5. The search report will include a certificate of authenticity with the facsimile signature of the registrar and a unique certified search report number. If the person is a client whose account balance is insufficient for the fee, or if the person is a non-client whose unused bank receipt balance is insufficient for the fee, the certified search report will not be issued, and the person will be informed of the reason.
6. The registry shall keep a record of the certified search report, which will include the date and time of the search and the criterion on which the search was conducted. If the authenticity of a certified search report is questioned in a judicial proceeding, the report may be retrieved by its certified search report number and reproduced and authenticated by the registrar. The record shall be retained in electronic form.
7. The purpose of information provided by the registry is only to give notice of the possible existence of a securing charge in collateral. For more complete information, the person who requested the information may inquire of the chargeholder. The chargeholder may, in its sole discretion, disclose terms of the securing agreement, more detailed description of the collateral, and the nature and amount of the secured obligation, notwithstanding contrary provisions of other laws.

Part D: Fee Payment

1. The fee for registering an initial notice of securing charge, amended notice, continuation notice, termination notice, notice of objection, or for the preparation of a certified search report shall be 100 Afghanis.
2. DAB will periodically review the revenues of the registry to determine if they are sufficient to cover the costs of operation of the registry. If they are found to be either too low or too high, the Governor may amend this regulation to adjust the fees to cover costs of operation.
3. There is no fee for a search conducted by any person using the electronic services of the registry.
4. There shall be no fees for registration of notices of lien and related notices by courts, government entities or insolvency liquidators, or for other services provided by the registry.
5. An individual or entity that regularly uses registry services may establish with the registry a pre-paid client account to which it may charge the fees for registrations and certified search reports.
 - i. The individual or entity will complete an application form on the registry's website to become a client of the registry. When accepted by the registry, the application constitutes an agreement that the client is responsible for control of passwords used by individual users authorized by the client and is responsible for all transactions done by its individual users.
 - ii. The registry will accept an application when it is established that the applicant is registered with the Central Business Registry and has not been the owner of a prior or active account that has defaulted on payment of fees.
 - iii. The registry will create a client account record for each client. Information in the record will include the name, address, contact information of the client, and the user name and password combination of each authorized user of the client's account. The registry will provide to the client its client account number, which it will use in combination with individual user ID's and passwords to identify its account and charge fees. The client account record will also include a history of all transactions for which fees are charged to the account.
 - iv. As the client conducts transactions, the registry will charge the fees to the account.
 - v. The registry will generate a monthly statement for each client. Statements will be posted in the client's account record, and may be viewed or downloaded by authorized users of the client account.
 - vi. To pay on the client account, the client will pay to the registry's account in DAB by interbank transfer to the registry's account in DAB. The client account number must be included in the interbank transfer information.
 - vii. When a client makes a payment on the account, the registry will add the amount to the account balance and enter the payment in the transactional history in the client account record.

- viii. If the client account is inactive for a period of one year, the registry may close it for inactivity.
6. A person who does not have a client account may use the registry's website to register notices and request certified search reports as follows:
- i. The person may find the fees for the desired services on the registry's website.
 - ii. The person will make payment of the fee to the registry's account by one of the following methods, depending on which of them is provided by DAB as determined by the Governor:
 - (a) Pay through any branch of DAB. The branch will verify the person's identity, enter the payment into the registry system and return a receipt to the person; or
 - (b) Pay by interbank transfer to the registry's account in DAB. The interbank transfer will identify the payor and will include the receipt number issued to the payor by the bank through which payment is made. The interbank transfer will be made overnight, so the person may log in using the receipt number on the following day.
 - iii. The person will then log in to the registry using the screen for non-clients, and will enter the necessary contact information and the bank receipt number.
 - iv. After the registry's technology system validates the bank receipt number and the amount of the payment, the person may register notices or request certified search reports.
 - v. If the amount of the bank receipt is insufficient to cover all of the services attempted, the registry will not permit further transactions after the amount is exhausted, and will inform the person that the payment was insufficient to proceed.
 - vii. If the amount of a bank receipt is greater than the total of fees, the person may use the balance for future transactions. If an amount is not used within one year after the date of the payment, the unused amount will be forfeited to the registry.

1.4.1. Conflict of Laws

1. If there is a conflict between a provision of this regulation and a provision of any law or other regulation, this regulation shall be construed to be consistent with the law or other regulation to the maximum extent possible.
2. If this regulation and a law cannot be construed to be consistent with each other, this regulation shall be applied in all respects that are not specifically in conflict with the law.
3. If this regulation conflicts with another regulation, this regulation shall prevail unless the other regulation specifically cites or amends the conflicting provision of this regulation.

1.4.2. Transition of Prior Transactions

This article applies to transactions concluded prior to the effective date of this regulation that would be subject to this regulation if it had been in effect at the time the transactions were

concluded. In this article, such a transaction is referred to as a “prior transaction.” A chargeholder in a prior transaction may register a notice of the interest in the same manner as provided for a notice of securing charge. If the chargeholder registers a notice, it shall deliver a copy of the notice to the chargor.

Part E: Guidance to Lenders

1.5.1. General

To have rights and protections under the Law, a lender (chargeholder) must have:

- a) a contract to provide finance to a debtor (chargor), and
- b) a securing charge on movable property (collateral).

A transaction that meets these rules is within the scope of the Law.

Special rules apply to creation of a securing agreement and a securing charge as well as the rights and duties of a chargeholder. Lenders are expected to know and comply with these rules.

Lenders are encouraged to develop standard documents for secured transactions that comply with the minimum requirements of the Law, are clear and easily understood, and are consistent with international best practices. Developing standard documents will enhance compliance and consumer understanding.

Lenders should:

- a) Train bank officers in secured lending and in the requirements of the Law;
- b) Create and have in each credit file a “secured lending checklist” for large loan exposures which:
 - at a minimum summarizes requirements under Chapter 2 and 3 of the Law
 - identifies the responsible officer and date when each requirement is met
 - provides an explanation for each requirement that was waived or not met;
- c) Have policies and standards in place to monitor compliance with execution of loan contracts and securing agreements and to register a notice of the charge; and
- d) Have reliable methods to verify collateral value against the amount financed for a secured transaction. External valuations by recognized professionals are advisable for large loan exposures. The burden is on the bank to demonstrate that collateral valuation methods, policies and procedures are prudent.

1.5.2. Completion of charge

Timely completion of a securing charge offers a chargeholder the most protection from third party challenges over collateral. Completion of a securing charge is generally by registration of a notice of securing charge with the electronic registry as described in this regulation.

Lenders must have an effective process for:

- a) Tracking and ensuring completion of a securing charge;

- b) Identifying pre-existing notices in the electronic registry for the same collateral;
- c) Tracking collateral that comes into possession of the chargor at a future time (after acquired collateral described in Article 8 of the Law) or from future advances;
- d) Identifying providers of materials or services as described in Article 19 of the Law;
- e) Tracking the location of collateral and “proceeds collateral” as described in Chapter 3 of the Law; and
- f) Creating all other operational and bookkeeping functions that will protect a lender’s collateral position.

1.5.3. Transfer of rights

Lenders may act as a transferor or transferee of secured loans. Such transfers are often referred to as assignments. Transfer negotiations normally occur after due diligence by the transferee that may include review of the credit files and the collateral.

Before acting as a transferee for value, a lender must perform a proper due diligence review of the loan portfolio that will include:

- a) Analysis of the asking price in relation to the loan amounts outstanding
- b) Reasonable audit procedures to confirm amounts outstanding
- c) Analysis of repayment records and schedules and the time value of money
- d) Financial strength of debtors
- e) Condition and valuation of collateral for large loan exposures
- f) Enforceability of legal documents
- g) Results of standard searches, i.e. on collateral and on debtors
- h) Existence of legal action against debtors.

As a transferee, lenders must have in place a loan monitoring system to protect against paying value for loans that later become substandard because of problems with credit quality, loan documentation or collateral. Moreover, lenders that engage in transfers must establish a process and standards that comply with notice requirements of Article 28 and with other rules stated in Chapter 4.

1.5.4. Default guidance

The Law offers a lender a choice following default:

- Direct enforcement of rights or “self help”, or
- Application to the court for enforcement as provided in Article 42 of the Law.

A perhaps better approach is to negotiate a compromise with the debtor. Many times this approach will resolve problem loans without resorting to self help or the courts. This approach is most appropriate for individual debtors who:

- Suffer unexpected cash flow problems, and
- For whom the loss of the collateral is destructive of their livelihood.

Efforts to settle defaults through a restructuring or another workout arrangement may save a lender from the expense and risk of enforcement.

Part F: Effective Date

This regulation shall be effective immediately upon adoption by the Supreme Council of DAB, and shall be published in DAB website.