

DECREE OF THE PRESIDENT OF THE REPUBLIC OF BELARUS
December 31, 2015, No. 539

ON STATE REGISTRY OF ENCUMBRANCES ON MOVABLE PROPERTY

In order to strengthen the protection of the rights and legitimate interests of participants in civil turnover, I RESOLVE:

1. To create the Registry of Encumbrances on Movable Property (hereinafter – the Registry) for recording, storing and providing information on encumbrances on movable property.

2. To establish that:

2.1. The Registry is an information system containing information on encumbrancers' rights to the encumbered movable property owned by borrowers (hereinafter – the information) which is used, in the case of subsequent encumbrance, to determine the priority of encumbrancers <*> to satisfy their claims in relation to the rights and legitimate interests of other encumbrancers from the same property owned by the borrower;

<*> For the purposes of this Decree, the priority of the encumbrancer shall mean the right of the encumbrancer to satisfy its claim against the movable property owned by the borrower prior to other encumbrancers who have the right to satisfy their claims against this property.

2.2. Access to the Registry shall be provided by the operator and owner of the Registry, 24 hours a day in the Internet;

2.3. Encumbrancer's priority shall be determined by the order of entering information into the Registry, except as provided in subsection 2.9 of this Section;

2.4. Information on any movable property encumbered, which, in accordance with the law, may be subject to encumbrance, except as provided in section 5 of this Decree, shall be entered in the Registry;

2.5. Entering information in the Registry shall not affect the entry into force or validity of the agreement on movable property encumbrance (hereinafter – the encumbrance agreement).

The information shall be entered in the Registry after the occurrence of the encumbrance. When encumbering movable property which the borrower will acquire in the future, the information shall be entered in the Registry after the occurrence of its right of ownership, economic management or operational management of this property. The borrower must inform the encumbrancer in writing not later than one day from the date of occurrence of the right indicating the information referred to in paragraphs six and/or seven of part three of subsection 2.6 of this Section, and shall be liable for losses caused to the encumbrancer by non-fulfillment of this obligation;

2.6. The information shall be entered, changed and deleted from the Registry by encumbrancers free of charge, except as provided in the third part of subsection 2.7 and the second part of subsection 2.8 of this Section.

The consent of the borrower shall not be required to enter, change and delete the information from the Registry, and the consent of the borrower and encumbrancer shall not be required to provide the information from the Registry.

When entering the information in the Registry, the following information shall be specified:

an encumbrancer-physical person (surname, first name, middle name (if any), number of identity document, date of issue of this document and issuing body, and the identification number (if any));

an encumbrancer-legal entity (name, legal address and Tax ID (if any));

borrower-physical person (surname, first name, middle name (if any));

borrower-legal entity (name, legal address and Tax ID (if any));

on the movable property (information, including its name and allowing to identify it by the state registration number, serial (inventory) number, vehicle body (frame) number, the date and number (if any) of the contract for the purchase of the subject of encumbrance or other characteristics that allow to distinguish it from the same property);

on the movable property encumbered, which are assets determined by generic features (information, including its name, generic features and cost);

of the encumbrance agreement (date and number, the condition on the prohibition of subsequent encumbrance (if any)).

Following the entry of the information in the Registry, the encumbrance shall be assigned a registration number.

The encumbrancer shall enter, change and delete the information from the Registry on its own through the website in the Internet or by request to the operator and the owner of the Registry or notary. The corresponding request received by the operator and the owner of the Registry shall be executed no later than two working days from the date of its receipt;

2.7. To enter, change and delete the information from the Registry, the registrant shall create an account online using the registration code sent automatically to the subscriber's number of cellular phone given by this person when creating an account.

The registrant shall be responsible for its completeness and accuracy, including for damages caused to other persons as a result of incomplete and/or false information.

A person who has found in the Registry the information which is untrue and violating its rights and legitimate interests or rights and legitimate interests of other persons shall be entitled to:

enter a notice of objection against the information specified in the first paragraph of this section free of charge and in the manner prescribed in the first part of this subsection;

apply in writing to the operator and the owner of the Registry requesting the change in the information provided in the first paragraph of this part, or its exclusion from the Registry together with the documents confirming the fact of non-compliance of the information with the actual situation, and for the provision to identify the person who has entered such information in the Registry. In this case, the operator and the owner of the Registry must, at no charge, change the information contained in the Registry, or delete it from the Registry not later than two working days from the date of receipt of the respective request and send a notice of this action containing the information allowing to identify the person who entered this information in the Registry (the phone number as specified in the first part of this subsection, IP-address of the device by means of which the information was entered in the Registry, and other available information);

2.8. encumbrancers must provide for:

the change in the information contained in the Registry, in the case of changes in the information specified in the third part of section 2.6. of this Section, not later than two working days from the date when they learnt or should have learnt about the change in this information, and shall be liable for damages caused to other persons by the non-fulfillment of this obligation;

deleting the information from the Registry not later than two working days from the date when they learnt or should have learnt about the termination of the encumbrance, and shall be responsible for damages caused to other persons by the non-performance of this obligation.

In the case of non-performance by encumbrancers of the obligations provided for in the first part of this subsection, borrowers shall have the right to:

enter in the Registry a notice of objection to the information that is not modified or excluded by the encumbrancer, free of charge and in the manner provided for in the first part of subsection 2.7 of this Section;

apply in writing to the operator and the owner of the Registry requesting the change in the information contained in the Registry, or its exclusion from the Registry together with the documents confirming the validity of such changes or exceptions. The operator and the owner must, at no charge, change the information contained in the Registry, or delete it from the Registry no later than two working days from the date of receipt of the request of the borrower with the notice of this action;

2.9. The encumbrancers who failed to enter the information to the Registry or entered the information that does not meet the requirements of part three of sub-item 2.6 of this Section (except technical errors), and/or false information shall have the right, following the procedure established in the law, to satisfy their claims from the respective assets of the borrower after the satisfaction of claims of the encumbrancers who entered complete and accurate information to the Registry.

The priority of settling claims of encumbrancers who failed to enter the information to the Registry or entered incomplete and/or false information with the corresponding property of the borrower shall be determined by the date of the encumbrance agreement or occurrence of any other circumstances that, under the laws or agreement, lead to the occurrence of the encumbrance;

2.10. The information contained in the Registry shall be provided by the operator and owner of the Registry on a contractual basis for a fee to the interested individual or legal person by providing

access to the website or by making a corresponding request to the operator and the owner of the Registry, which is subject to execution within two working days from the date of its receipt. The amount of the fee shall be determined by the operator and owner of the Registry based on economically justified costs to perform the functions specified in Section 4 of this Decree, with the profitability margins of not more than 30 percent.

When providing the information from the Registry in the event of the presence of encumbered movable property, the following information is specified:

surnames, first names, middle names (if any), company names, legal addresses and Tax identification number (if any) of the borrower and the encumbrancer;

information provided for in paragraphs six-eight of part three of subsection 2.6 of this Section;

the registration number of the encumbered movable property;

marks referred to in paragraph two of part three of subsection 2.7 and paragraph two of part two of subsection 2.8 of this Section (if any);

2.11. The information contained in the Registry shall be provided free of charge to courts of general jurisdiction, tax authorities, bodies conducting operative investigation, prosecution, the State Control Committee, the Investigative Committee, the National Bank, and other state bodies in the cases stipulated by legislative acts, to encumbrancers and notaries, as well as to officers of the court based on executive documents in respect of the movable property, information on encumbrance of which is included by these encumbrancers and notaries in the Registry through access to the website or making the relevant requests to the operator and the owner of the Registry to be executed not later than two working days from the date of their receipt.

3. The creation, maintenance, and operation of the Registry and access to it shall be provided following the procedure established by the Council of Ministers of the Republic of Belarus and the National Bank.

4. the Research and Engineering Republican Unitary Enterprise “Institute of Applied Software Systems” shall act as the operator and the owner of the Registry and shall:

create the Registry and put it into operation;

provide software and technical support to the Registry;

provide for the implementation of the requirements for data protection, including during its receipt, transfer, collection, processing, accumulation, storage and delivery, in the process of creation and operation of the Registry;

provide interested parties with services connected with the provision of the information contained in the Registry, entering, changing and deleting information from the Registry.

5. The present Decree shall not apply to relations regulated by the budget, tax laws, and the laws on:

customs regulation;

securities;

encumbering property rights.

6. The activities for the establishment and operation of the Registry shall be carried out without their inclusion in the national, sectoral and regional programs of computerization.

7. The present Decree shall apply to relationships in connection with the encumbrances created before the entry of this Decree into force and existing on the date of its entry into force. Encumbrancers under such a relationship shall be required to enter the information to the Registry by March 1, 2017.

The fulfillment by encumbrancers of the obligation provided for in the first part of this paragraph, within the time required, shall lead to assigning priority to the encumbrancer based on the date of signing the encumbrance agreement or the occurrence of any other circumstances leading to the occurrence of the encumbrance under the law or the contract.

The failure by encumbrancers to fulfill the obligation provided for in the first part of this paragraph shall, within the corresponding period, lead to the loss of priority of the encumbrancer against the encumbrancers who entered the information in the Registry.

If there are valid reasons for non-fulfillment of the obligation provided for in the first part of this paragraph the court may decide to resume the priority of the encumbrancer and apply the provisions stipulated in the second part of this paragraph to the encumbrancer.

Item 8 entered into force after the official publication (subsection 11.1. of Section 11 hereof).

8. By September 1, 2016, the Council of Ministers of the Republic of Belarus and the National Bank shall ensure bringing the acts of legislation in conformity with the present Decree and take other measures for its implementation.

Paragraph 9 entered into force after the official publication (subparagraph 11 of paragraph 11.1 hereof).

9. By September 1, 2016, the National Bank shall provide for creating the Registry from the funds of the operational budget and capital investments for 2016 of the National Bank, approved by the Board of the National Bank in agreement with the President of the Republic of Belarus, in the amount not exceeding 2,451,294,311 Belarusian rubles.

Item 10 came into force after the official publication (subsection 11.1. of Section 11 hereof).

10. The Research and Engineering Republican Unitary Enterprise “Institute of Applied Software Systems” shall establish the Registry by September 1, 2016.

Item 11 came into force after its official publication.

11. This Decree shall take effect as follows:

11.1. Sections 8-10 and this section shall become effective after the official publication of this Decree;

11.2. other provisions of this Decree – on September 1, 2016.

President of the Republic of Belarus

Alexander Lukashenko
