

[Chap4806]CHAPTER 48:06

## COMMERCIAL CREDITS

### ARRANGEMENT OF SECTIONS

#### SECTION

1. Short title
2. Interpretation
3. Commercial charges on trading assets
4. Effect of fixed charge
5. Effect of floating charge
6. Supplemental provisions as to commercial charges
7. Registration of commercial charges
8. Frauds by business proprietors
9. Regulations

45 of 1970

24 of 1972

An Act to facilitate the borrowing of money by the proprietors of certain businesses on the security of trading assets and for purposes connected therewith and incidental thereto

[10TH DECEMBER 1970]

[Ch4806s1]1. Short title

This Act may be cited as the Commercial Credits Act.

[Ch4806s2]2. Interpretation

In this Act, unless the context otherwise requires—

24 of 1972“business proprietor” means any person (not being an incorporated company or society) who, as the owner or occupier of any premises, carries on trade or business therein as a retailer or wholesaler;

“commercial charge” means a charge under this Act;

“designated institution” means a bank, company, statutory body or society designated by the Minister, by notice published in the Gazette, to be a designated institution for purposes of this Act;

“register” means the register provided for in section 7 and “registered” bears a corresponding meaning;

“trading assets” includes shop goods, stock in trade, plant and utensils used in any trade or business and any money or things in action employed or received in the course of any trade or business but does not include any real property or landlord’s fixtures.

[Ch4806s3]3. Commercial charges on trading assets

(1) It shall be lawful for a business proprietor by instrument in writing to create in favour of a designated institution a commercial charge on all or any of the trading assets belonging to him as security for sums due, or to become due, by him to such institution or advanced or to be advanced to him or paid or to be paid on his behalf by such institution and as security for interest, commission and charges on such sums.

(2) A Commercial charge may be either a fixed charge or a floating charge or both.

(3) The property affected by a fixed charge shall be such property forming part of the trading assets belonging to the business proprietor at the date of the charge as may be specified in the charge but may include, in the case of trading plant, any plant which may whilst the charge is in force be substituted for the plant specified in the charge.

(4) The property affected by a floating charge shall be the trading assets from time to time belonging to the business proprietor or such part thereof as is mentioned in the charge.

(5) The principal sum secured by a commercial charge may be either a specified amount, or a fluctuating amount advanced on current account to, or due and owing for goods and services supplied by, the designated institution not exceeding at any one time such amount, if any, as may be specified in the charge and a charge shall not be deemed to be redeemed by reason only of the current account having ceased to be in debit or by reason only of there being no amount due or owing, as the case may be.

(6) A commercial charge may be in such form and made upon such conditions as the parties thereto may agree and sureties may be made parties thereto.

[Ch4806s4]4. Effect of fixed charge

(1) A fixed charge shall, so long as the charge continues in force, confer on the designated institution the following rights and impose on the institution the following obligations, that is to say—

(a) a right, upon the happening of any event specified in the charge as being an event authorizing the seizure of the property subject to the charge, to take possession of any property so subject;

(b) where possession of any property has been so taken, a right, after an interval of five clear days or such less time as may be allowed by the charge, to sell the property either by public auction, or, if the charge so provides, by private treaty, and either for a lump sum payment or payment by instalments;

(c) an obligation, in the event of such power of sale being exercised, to apply the proceeds of sale in or towards the discharge of the moneys and liabilities secured by the charge, and the cost of seizure and sale, and to pay the surplus (if any) of the proceeds to the business proprietor.

(2) A fixed charge shall, so long as the charge continues in force, impose on the business proprietor the following obligations—

(a) an obligation whenever he sells any of the property, or receives any money in respect of trading assets comprised in the charge, forthwith to pay to the designated institution the amount of the proceeds of the sale or of the money so received, except to such extent as the charge otherwise provides or the designated institution allows; the sums so paid to be applied, except so far as otherwise agreed, by the designated institution in or towards the discharge of moneys and liabilities secured by the charge;

(b) in the event of the business proprietor receiving any money under any policy of insurance on any of the property comprised in the charge, forthwith to pay the amount of the sums so received to the designated institution, except to such extent as the charge otherwise provides or the designated institution allows; the sums so paid to be applied, except so far as otherwise agreed by the designated institution, in or towards the discharge of the moneys and liabilities secured by the charge.

(3) Subject to compliance with the obligations so imposed, a fixed charge shall not prevent the business proprietor from selling any of the property subject to the charge, and neither the purchaser, nor, in the case of a sale by auction, the auctioneer, shall be concerned to see that such obligations are complied with notwithstanding that he may be aware of the existence of the charge.

(4) Where any proceeds of sale which in pursuance of such obligation as aforesaid ought to be paid to the designated institution are paid to some other person nothing in this Act shall confer on the designated institution a right to recover such proceeds from that other person unless the designated institution proves that such other person knew that the proceeds were paid to him in breach of such obligation as aforesaid, but such other person shall not be deemed to have such knowledge by reason only that he has notice of the charge.

[Ch4806s5]5. Effect of floating charge

A commercial charge creating a floating charge shall have the like effect as if the charge had been created by a duly registered debenture issued by a company:

Provided that—

(a) the charge shall become a fixed charge upon the property comprised in the charge as existing at the date of its becoming a fixed charge—

(i) upon a receiving order in bankruptcy being made against the business proprietor;

(ii) upon the death of the business proprietor;

(iii) upon the dissolution of partnership in the case where the property charged is partnership property;

(iv) upon notice in writing to that effect being given by the designated institution on the happening of any event which by virtue of the charge confers on the designated institution the right to give such notice;

(b) the business proprietor, whilst the charge remains a floating charge, shall be subject to the like obligation as in the case of a fixed charge to pay over to the designated institution the amount received by him by way of proceeds of sale or in respect of trading assets, under policies of insurance and section 4 shall apply accordingly except that it shall not be necessary for a business proprietor to comply with such obligations if and so far as the amount so received is expended by him in the purchase of trading assets which on purchase become subject to the charge.

[Ch4806s6]6. Supplemental provisions as to commercial charges

(1) A commercial charge shall have effect notwithstanding anything in the Bills of Sale Act and shall not be deemed to be a bill of sale within the meaning of that Act.

(2) Commercial charges shall in relation to one another have priority in accordance with the times at which they are respectively registered under this Act. Cap. 48:03

(3) Where a commercial charge creating a floating charge has been made, a commercial charge purporting to create a fixed charge or a bill of sale comprising any of the property comprised in the floating charge shall, as respects the property subject to the floating charge, be void so long as the floating charge remains in force.

(4) Trading assets subject to a commercial charge shall not, for the purposes of section 40 of the Bankruptcy Act be deemed to be goods in the possession, order or disposition of the business proprietor in his trade or business by the consent of the true owner thereof under such circumstances that he is the reputed owner thereof. Cap. 11:01

(5) Where a business proprietor who is adjudged bankrupt has created in favour of a designated institution a commercial charge on any of the trading assets belonging to him and the charge was created within three months of the date of the presentation of the bankruptcy petition the amount which but for this provision would have been secured by the charge shall be reduced—

(a) firstly, by the amount of any debt payable in priority to other debts by virtue of section 35 (1) of the Bankruptcy Act; and

(b) secondly, where such charge operated to secure any sum owing to the designated institution immediately prior to the giving of the charge, unless it is proved that the business proprietor immediately after the execution of the charge was solvent, by the amount so owing to the designated institution immediately prior to the giving of the charge:

Provided that nothing in this section shall prejudice the right of the designated institution to enforce any other security for the amount of any reduction made under this section or to claim payment of such amount as an unsecured debt.

(6) A commercial charge shall be no protection in respect of property included in the charge which but for the charge would have been liable to distress for rent, taxes or rates.

(7) An instrument creating a commercial charge shall be exempt from stamp duty.

[Ch4806s7]7. Registration of commercial charges

(1) Every commercial charge shall be registered under this Act within seven clear days after the execution thereof, and, if not so registered, shall be void as against any person other than the business proprietor:

Provided that the High Court on proof that omission to register within such time aforesaid was accidental or due to inadvertence may extend the time for registration on such terms as the court thinks fit.

(2) The Registrar General shall maintain a register of commercial charges in such form and in such manner as may be prescribed.

(3) Registration of a commercial charge shall be effected by sending by post to the Registrar General at his principal office a memorandum of the instrument creating the charge and such particulars of the charge as may be prescribed, together with the prescribed fee; and the Registrar General shall enter the particulars in the register and file the memorandum.

(4) The register kept and the memoranda filed under this section shall at all reasonable times be open to inspection by any person on payment (except where the inspection is made by or on behalf of a designated institution) of the prescribed fee, and any person inspecting the register or any such filed memorandum on payment (except as aforesaid) of the prescribed fee may make copies or extracts therefrom.

(5) Any person may on payment of the prescribed fee require to be furnished with a copy of any entry in the register or of any filed memorandum or of any part thereof certified to be a true copy by the Registrar General.

(6) Registration of a commercial charge may be proved by the production of a certified copy of the entry in the register relating to the charge and a copy of any entry purporting to be certified as a true copy by the Registrar General shall in all legal proceedings be evidence of the matters stated therein without proof of the signature or authority of the person signing it.

(7) Registration of a commercial charge under this section shall be deemed to constitute actual notice of the charge and of the fact of such registration to all persons and for all purposes connected with the property comprised in the charge as from the date of registration or other prescribed date and so long as the registration continues in force:

Provided that where a commercial charge created in favour of a designated institution is expressly made for securing a current account or other further advances, the institution, in relation to the making of further advances under the charge, shall not be deemed to have notice of another commercial charge by reason only that it is so registered if it was not so registered at the time when the first-mentioned charge was created or when the last search (if any) by or on behalf of the institution was made, whichever last happened.

[Ch4806s8]8. Frauds by business proprietors

If, with intent to defraud, a business proprietor who has created a commercial charge—

(a) fails to comply with the obligations imposed by this Act as to the payment over to the designated institution of any sums received by him by way of proceeds of sale or in respect of other trading assets or under a policy of insurance; or

(b) removes or suffers to be removed from his holding any property subject to the charge, he shall be liable to a fine of five hundred pounds and to imprisonment for three years.

[Ch4806s9]9. Regulations

The Minister may make Regulations for the better carrying out of the purposes and provisions of this Act and without prejudice to the generality of the foregoing such regulations may provide for—

- (a) the form of the register;
- (b) the form and content of any memorandum or other document used for the purposes of this Act;
- (c) inspections and searches under this Act, including the times when they may be made;
- (d) the provision of any copies of any documents under this Act and the certification of such copies;
- (e) the payment of fees for anything done or supplied under this Act;
- (f) anything which in accordance with this Act is to be prescribed.

## SUBSIDIARY LEGISLATION

### COMMERCIAL CREDITS REGULATIONS

#### ARRANGEMENT OF REGULATIONS

##### REGULATION

1. Citation
2. Memoranda of instruments creating commercial charges
3. Registration of memoranda
4. Entry of memoranda
5. Index of grantors
6. Arrangement of index
7. Copy instruments and original instruments, when furnished, to be endorsed
8. Inspection and searches
9. Official search and certificate of search
10. Correction of error in register
11. Index of designated institutions
12. Refusal to register
13. Satisfaction or cancellation of charge
14. Fees

First Schedule

Second Schedule

G.N. 35/1971

31A/2005

## COMMERCIAL CREDITS REGULATIONS

under s. 9

### 1. Citation

These Regulations may be cited as the Commercial Credits Regulations.

### 2. Memoranda of instruments creating commercial charges

A memorandum under section 7 (3) shall be in Form A in the First Schedule and shall be furnished in duplicate.

### 3. Registration of memoranda

Upon receipt by him of a memorandum under section 7 (3), duly completed, the Registrar General shall, subject to the other provisions of this Act, register the same by entering the particulars given in the memorandum in the register maintained by him for the purpose. Before making such entry, the Registrar General shall satisfy himself as to the completeness of the particulars set out in the memorandum and shall ensure that the required copy of the relevant instrument creating the charge in question is annexed to the memorandum. Where the original of such instrument is furnished with the memorandum and annexed copy instrument, the Registrar General may satisfy himself of the accuracy of the copy by comparing it with the original. In all other cases he shall require the copy of the instrument to be verified by a statutory declaration.

### 4. Entry of memoranda

The Registrar General shall enter the particulars given in memoranda in the register in the order in which the memoranda are accepted for registration and shall number those registered in each year consecutively according to the time and date of their registration. Upon registration of the particulars given in a memorandum the Registrar General shall file it among his records.

### 5. Index of grantors

The Registrar General shall keep an index of all the names of the grantors of all commercial charges referred to in the register with reference to the relevant entry.

### 6. Arrangement of index

The index referred to in regulation 5 shall be arranged in divisions corresponding with the letters of the alphabet so that all grantors whose surnames begin with the same letter, and no others, shall be comprised in one division, save that the arrangement within each subdivision need not be alphabetical:

Provided that where persons in partnership grant a charge each partner will have his name entered in the index in its appropriate alphabetical division with a cross-reference to the other persons with whom he is in partnership.



7. Copy instruments and original instruments, when furnished, to be endorsed

When the original instrument creating a charge has been furnished with a memorandum the Registrar General shall mark both copies of the instrument with a registered number and with particulars of the amount of the fee paid and the date and number of the receipt issued therefor. The Registrar General shall file the copy of the instrument among his records and return the original to the applicant. When the original instrument is not furnished, the Registrar General shall mark the copy instrument with a registered number, endorse it with the particulars referred to in this regulation and file it among his records.

8. Inspection and searches

At any time after 21 days from the commencement of the Act, any person desiring to inspect the register or to make search of any document filed with the Registrar General under these Regulations may apply either in person during normal office hours, or by registered post, to the Registrar General in Form B in the First Schedule. Such person shall, on payment of the prescribed fee, be permitted to inspect the entry or entries in the register to which his application relates and any copy documents relating thereto filed in the office of the Registrar General and to make such copies of, or extracts from, the entry, entries or copy documents as he wishes:

Provided that no fee shall be payable by a designated institution for any inspection or search under this regulation.

9. Official search and certificate of search

At any time after 21 days from the commencement of the Act, a person desiring to obtain a certificate of official search containing the prescribed particulars of all entries relating to unsatisfied commercial charges given by any business proprietor may apply either in person during normal office hours, or by registered post, to the Registrar General in Form C in the First Schedule. The Registrar General shall, on payment of the prescribed fee, search the register and any other relevant document and issue a certificate of official search in Form D in the First Schedule. If the person applying for such search so requests, the Registrar General may also, on payment of the prescribed fee, supply a certified copy of any entry in the register or of all, or any part of, any document relating thereto filed in his office under these Regulations.

10. Correction of error in register

Upon any reasonable belief or information at any time that an entry in the register is incorrect, the Registrar General may consider such evidence as he shall think fit relating to the correctness or otherwise of the entry and, if satisfied that such entry is incorrect, he shall correct the same and, if necessary, amend any endorsement made by him on any instrument.

11. Index of designated institutions

The Registrar General shall maintain an index in such form as he deems fit of all designated institutions so designated by the Minister by notice published in the Gazette.

12. Refusal to register

The Registrar General may, in his discretion, refuse to register any memorandum under these Regulations if it appears to him that—

- (i) all fees for the registration thereof have not been paid;
- (ii) the instrument creating the charge in question has been fraudulently obtained or given or does not have the effect in law which it purports to have;
- (iii) the instrument creating the charge contains any blank space, erasure, alteration or interlineation which is not verified by the signature or initials of the person given the charge;
- (iv) that the charge in question is not given in favour of a designated institution;
- (v) that the memorandum has been presented out of time; and
- (vi) that the grantor of the instrument creating the charge to the best of the knowledge, information or belief of the Registrar General—
  - (a) is an undischarged bankrupt;
  - (b) has had a receiving order in bankruptcy made against him or her; or
  - (c) is proscribed by law from carrying on the trade or business of a retailer in Malawi.

13. Satisfaction or cancellation of charge

On the satisfaction or cancellation of any commercial charge in respect whereof an entry has been made in the register, the grantor thereof shall give notice to the Registrar General on Form E in the First Schedule within 30 days from the date of such satisfaction or cancellation. The notification shall be transmitted to the Registrar General either in person or by registered post and upon receiving it he shall endorse the relevant entry accordingly.

14. Fees

The fees specified in the second column of the Second Schedule shall be payable for the things and matters referred to in the first column thereof.

FIRST SCHEDULE

Form A

COMMERCIAL CREDITS ACT, 1970

COMMERCIAL CREDITS REGULATIONS, 1971

(REGULATION 2)

MEMORANDUM OF COMMERCIAL CHARGE

Pursuant to section 7 (3) of the Commercial Credits Act, 1970, I/we supply particulars to the Registrar General of a charge created by me/us, the business proprietor(s) of the business known as .....

.....

my/our address(es) is/are ..... in favour of ..... (name and address of designated institution) designated by the Minister as a designated institution.

The charge is made for the purpose of securingDelete whichever is inapplicable.\*

- (a) Sums due by me/us to the said institution
- (b) Sums to become due by me/us to the said institution
- (c) Money advanced to me/us by the said institution
- (d) Money to be advanced to me/us by the said institution
- (e) Money paid on my/our behalf by the said institution
- (f) Money to be paid on my/our behalf by the said institution
- (g) Interest
- (h) Commission; and
- (i) Charges on such sums.

The charge isDelete whichever is inapplicable.\*

- (a) Fixed charge;
- (b) Floating charge; or
- (c) Both fixed and floating charges.

PARTICULARS

- (1) Date of creation of charge .....
- (2) Amount secured .....
- (3) Nature of charge (fixed or floating).....

- (4) Property secured in short.....
- (5) Name of Business Proprietor(s) whether sole trader or in partnership.....
- (6) Place of business .....
- (7) Name of Designated Institution (state: banker, company, statutory body or society).....
- (8) Gazette Reference to designated institution .....
- (9) Whether first or subsequent charge by same person to same institution .....
- (10) A copy of the instrument creating the charge is annexed hereto and Delete whichever is inapplicable.\*verified by statutory declaration/accompanied by the original thereof.

Presented for filing by .....

Signed.....

For Official Use Registration No ..... Fee paid .....

Date registered ..... Cross-reference to other charges .....

.....Signed .....Registrar GeneralDate satisfaction entered .....Signed .....Registrar General

Form B

COMMERCIAL CREDITS ACT

COMMERCIAL CREDITS REGULATIONS

(REGULATION 8)

APPLICATION FOR INSPECTION/SEARCH

To: The Registrar General,

P.O. Box 100,

Blantyre.

I, the undersigned, hereby apply under regulation 8 of the Commercial Credits Regulations, 1971, to be permitted to inspect the entry or entries in the register maintained by you under the Commercial Credits Act, 1970, relating to the undermentioned person and any documents relating thereto filed in your office.

Name of Person(s) Registered Number of Entry or  
Entries.....  
.....  
.....

Herewith please find search fee of .....

Dated this ..... day of ....., 19.....

Signed .....

Full Name .....

(in block letters)

Address.....  
.....

Application granted

Fee .....

Paid .....

Official Receipt No.....

for Registrar General

Form C

COMMERCIAL CREDITS ACT

COMMERCIAL CREDITS REGULATIONS

(REGULATION 9)

APPLICATION FOR OFFICIAL SEARCH AND CERTIFICATE

To: The Registrar General,

P.O. Box 100,

Blantyre.

You are hereby requested under regulation 9 to search in the name of the following person(s) to ascertain whether any commercial charge or charges which are still unsatisfied are the subject of any entry or entries on the register maintained by you under the Commercial Credits Act, 1970 and to supply the prescribed information relating to such entry or entries, if any.

Name of Person(s)

.....  
.....  
.....  
.....  
.....

Herewith please find search fee of .....

Dated this ..... day of ....., 19.....

Signed .....

Full Name .....

(in block letters)

Address.....

Fee .....

Paid .....

Official Receipt No. ....

Certificate issued

for Registrar General

Form D

COMMERCIAL CREDITS ACT

COMMERCIAL CREDITS REGULATIONS

(REGULATION 9)

CERTIFICATE OF OFFICIAL SEARCH

Fee paid.....

Official Receipt No. ....

Name and Address of Business Proprietor(s)	Place of business	Date charge created	Regd. No.	Date
Regd.	Amount secured	Nature of security	Property secured	In favour of (Designated Institution)
				Date due for satisfaction
Remarks				

Certified true particulars of all entries in the Register of Commercial Charges relating to unsatisfied charges executed by ..... of .....

Signed .....

Registrar General

Date .....

Form E

COMMERCIAL CREDITS ACT

COMMERCIAL CREDITS REGULATIONS reg. 13

NOTICE OF SATISFACTION OR CANCELLATION

I, the undersigned, hereby give notice to the Registrar General that a Commercial Charge registered number ..... created by me, was on the ..... day of....., 20.....

Delete whichever is inapplicable \*satisfied/cancelled.

Signature: .....

Full Name: .....

(in block letters)

Address:.....

.....

Dated this ..... day of ....., 20.....

To: The Registrar General

P.O. Box 100

Blantyre.

SECOND SCHEDULE reg. 14, G.N. 31A/2005

FEES PAYABLE

Kt1.For registration of a commercial charge1,000002.For searching any one entry in the register and any document or documents relating to such entry filed in the office of the Registrar General under these Regulations1,000003.For Certificate of Official Search under regulation 9500004.For typewritten copy of any document referred to in paragraph 2 hereof for every 100 words1,000005.For photographic copy of

any one sheet of any document referred to in paragraph 2 hereof500006.On certification of any copy under paragraphs 4 and 5 hereof10000

[Chap4807]CHAPTER 48:07

COMMERCIAL ADVERTISING (TRADITIONAL MUSIC)CONTROL

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Recording of traditional music or dancing
4. Use of recordings of traditional music or dancing for advertising
5. Regulations

An Act to provide for the control of the recording and reproduction for commercial advertising purposes of Malawi traditional music and dancing performed as an integral part of any official or public celebrations and for matters incidental thereto or connected therewith

[31ST MARCH 1978]

[Ch4807s1]1. Short title

This Act may be cited as the Commercial Advertising (Traditional Music) Control Act.

[Ch4807s2]2. Interpretation

In this Act unless the context otherwise requires—

“Malawi traditional music or dancing” means any music, dancing, singing or drumming performed in the Malawi customary manner by ceremonial performers or by members of the public as an integral part of, or in connexion with, any official or public celebration or act of public acclaim of the President or of any other notable person or visitor to Malawi.

[Ch4807s3]3. Recording of traditional music or dancing

Any person who, for purposes of use in commercial advertising, records or causes to be recorded, by any method of sound, cinematographic or photographic recording capable of reproduction,



any Malawi traditional music or dancing shall be guilty of an offence and liable to a fine of two thousand Kwacha or to imprisonment for a term of one year.

[Ch4807s4]4. Use of recordings of traditional music or dancing for advertising

Any person who publishes or causes to be published any sound, cinematographic or photographic record of any Malawi traditional music or dancing for the purpose of or in connexion with or as background to any advertising of any commercial enterprise or business or of any offer to the public of any sale, letting or hiring of any lands, goods or services shall be guilty of an offence and liable to a fine of two thousand Kwacha or to imprisonment for a term of one year.

[Ch4807s5]5. Regulations

The Minister may, by notice published in the Gazette, make regulations for the better carrying out of the provisions of this Act.