

Legal Alert June 2007 **Bills of Sale Law**

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Business Quote for the Month

"Employ your time in improving yourself by other men's writings so that you shall come easily by what others have laboured for" ? By Socrates.

Legal News

The Nigerian Extractive Industries Transparency Initiative (NEITI) Bill has been signed into Law in late May 2007. This Law gives legal effect to the quest for probity, accountability and transparency in the management of Nigeria's oil, gas and other mineral/natural resources. You can find more information about this Law and the regulating institution in the web site www.neiti.org

The increase in the VAT rate from 5% to 10% and the further increase in the prices of petroleum products in Nigeria led to strike actions in the middle of June, 2007. The Nigerian government has as a result of the strike actions reverted the VAT rate to 5% with a marginal concession made to the price of fuel which is also known in some countries as petrol. It remains our view that with proper public enlightenment, legislation and efficient restructuring of the tax collecting systems in Nigeria, a graduated increase in indirect taxes like VAT, especially for luxury goods, with an equally graduated reduction in the current direct taxes like Personal Income Tax, would expand equitably and significantly the tax collection base and revenues of the Nigerian government.

Another legal news in this month is the Lagos State Government's recent announcement of the establishment of a Bills of Sale Registry in Lagos, Nigeria. This Alert is an exposition of what the Bills of Sale Law means to you and your business.

Legal Alert ? Bills of Sale Law

Introduction

A Bills of Sale Registry now exist in Lagos, Nigeria. This is in furtherance of the provisions of the Bills of Sale Law which makes provision for the execution, registration and effecting of Bills of Sale instruments.

Most business people and legal practitioners are however not very conversant or familiar with the practicalities of the provisions of the Bills of Sale Law. This Legal Alert is meant to be an

introduction and a working guide to the provisions of the Bills of Sale Law of Lagos State with the necessity highlighted that you ensure that all Bills of Sale relating to your business are registered if they are to be upheld as applicable and enforceable legal instruments.

What is a Bill of Sale?

A Bill of Sale is a written instrument showing the voluntary transfer of a right or interest or title to personal property, either by way of security or absolutely, from one person to another person or persons without the actual physical possession of the property leaving the owner and being delivered to the other party.

A good example of a Bill of Sale is where a creditor gives a loan and has transferred to himself as collateral or security for the loan, the title of the goods or other personal property of the debtor. A creditor can in the event of a default in receiving payment seize the collateralised goods with the registered Bill of Sale as his authority for seizing the goods.

Applicability of Bills of Sale

The provisions of the Bills of Sale Law are only applicable to debtors who are private individuals. Creditors with debtors who are corporations or limited liability companies can not avail themselves of the protection of this Law.

A Bill of Sale remains a security for creditors against private individual debtors. This is because relief against debtors who are corporations or limited liability companies is already provided for in the Companies and Allied Matters Act which requires that all legal debentures ? as opposed to Bills of Sale ? must be registered at the Corporate Affairs Commission before they can be recognised as registered collaterals.

Non Applicability of Bill of Sale

Not all legal instruments are registrable under the Bills of Sale Law. Legal instrument that are used in the day-to-day ordinary cause of business are not accorded the status and protection of the Bills of Sale Law. Example of such instruments include marriage settlement instruments, assignment or transfer or lease of any ship or vessel or of any share in this kind of maritime property, bills of sale of goods in foreign countries or at sea, bills of lading, warrants or order for the delivery of goods or any documents used in the ordinary cause of business as proof of possession or control of goods.

Legal Form of Bills of Sale

A Bill of Sale is not necessarily required to be in a particular form although the law requires that it must be in writing and information that title to the described property has been transferred as collateral for credit must be stated in the Bill of Sale. Oral transactions are not accorded the protection of this Law as all Bills Of Sale must be in writing.

Registration of Bills of Sale

To prevent the secret transfer of property, fraud, and to promote confidence in commercial activities, the Bills of Sale Law mandatorily requires that all Bills of Sale must be registered. This is because non registration would amount to the Bill being declared null and void and of no effect. Instruments recognised for registration under the Bills of Sale Law include all instruments assigning title to personal chattel, all transfers or declaration of trust without an actual transfer of possession, receipt of purchase of goods, power of attorney on chattel as security for a debt, any agreement by which a right in equity to any personal chattel or any charge or security on these chattel is conferred.

Most Bills of Sale are mandatorily required to be in writing, attested and registered with the Bills of Sale Registry within seven days after the execution of the Bill and its arrival in Lagos, where the Bill is posted from outside Lagos. With the exception of Bills of Sale as security for the payment of money, all other Bills of Sale must be attested to by a legal practitioner.

Any person is entitled, at reasonable times of the day, to search the Register at the Bills of Sale Registry on the payment of the prescribed fee for such information as he or she requires. Such a person is equally entitled to obtain an extract of any and every Bill of Sale registered upon the payment of the prescribed fees.

The registration of a Bill of Sale must be renewed at least once every five years.

Enforcement of Bill of Sale

The statutory grounds under which the personal chattel of a debtor covered by a Bill of Sale may be seized include:-

- a. Default by the debtor in the payment of the sum owed under the Bill.
- b. The debtor is declared bankrupt or insolvent and his assets detained by his creditors or such similar persons.
- c. A Judgement is executed against the debtor and his goods.
- d. The debtor fraudulently removes or permits the goods to be removed from the premises mentioned in the Bill of Sale without the consent or authority of the creditor.
- e. The debtor, without reasonable excuse, fails to produce evidence of his last receipt(s) for rent, rates and taxes of the grounds and or the premises where the goods or chattel are harboured.

Goods that are seized under any of the above mentioned circumstances are not legally allowed to be disposed off for another five days after they are seized. This is to allow the grantor of the Bill of Sale the opportunity to challenge the seizure of its/his/her chattel on good grounds or to otherwise remedy the situation cumulating in the seizure.

Mutual Satisfaction

The application and possible enforcement of a Bill of Sale is extinguished whenever the parties mutually execute and file a memorandum of satisfaction which must be verified by a sworn affidavit attesting to the fact that the parties have discharged the terms and conditions of the Bill. Where however the consent of either party cannot be obtained to the discharge, a summons with proof of service of the summons on the opposite party may be heard by the Registrar of the Bills of Sale Registry, who may grant the relief on the summons and order if satisfied, that the memorandum of satisfaction be entered against the registered Bill of Sale and the encumbrance removed from the Register.

Conclusion

Bills of Sale are still not very familiar legal instruments because of the very long absence of a Bills of Sale Registry in Nigeria and also because of the onerous statutory restrictions and requirement for registration. While other legal forms are being used to secure these kinds of contracts, the risks of non-registration are now highlighted as a Bills of Sale Registry now exists in Lagos State. It is expected that with the existence of a functional registry, more awareness of the procedures would lead parties, their legal counsel and the Courts to look more closely at legal instruments that are Bills of Sale and declare such instruments void where they do not comply with the provisions of the Bills of Sale Law of Lagos State.

It is also expected that in the foreseeable near future, the Bills of Sale Law would be amended to among other things accommodate modern electronic business practices and remove technicalities in language and application.

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