

## GUIDE TO THE REGISTRATION OF SECURITY OVER TRADE MARKS IN THE BRITISH VIRGIN ISLANDS

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A trade mark that is registered in the British Overseas Territory of the Virgin Islands (the “**British Virgin Islands**”) may be used as security in the same way as any other personal property. Registering security over trade marks is not mandatory. However, failing to register the security interest would make it ineffective as against third parties without notice acquiring a conflicting security interest.

Registration of a security interest does not guarantee priority since priority may be varied by consent between the security holders, or in the case of a floating charge by postponement due to a subsequently registered fixed charge or a negative pledge. An application to register, amend or remove a security interest in the British Virgin Islands must be in **Form TM13** and should be submitted on behalf of the chargee, such as a bank, along with the registration fee of US\$100.00 or US\$75.00 to amend or remove it. A separate application must be made for each security interest, but the same application may be used for several trade marks if they are covered by the same security interest.

The application should also be signed by the chargor, but if it is not possible for the chargor to sign the application form then appropriate documentary evidence of the security interest must be provided with the application. This documentary evidence would include a copy of its register of charges if the chargor is a BVI company, or in any other case an authenticated copy of the charge. The signature of the chargor and chargee, if a body corporate, must be that of a director, secretary or other principal officer of the body corporate unless some other person can satisfy the Registrar of their authorization to sign it.

Where a BVI company is not involved, the security interest attracts ad valorem stamp duty based on the amount secured, including any amendment or removal whether or not the chargor signs Form TM13. Therefore, separate valuation advice of the BVI trade mark is necessary on every security interest created.

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