

# Law for Mortgage on Immovable Property in Banking Transactions

## Chapter 1 General Principals

### Necessity of Creation of Law

#### **Article one:**

This Law is created to regulate business and banking transactions that use Immovable Property as security and specify the rights and obligations of the parties.

### Purpose

#### **Article two:**

The purpose of this law is:

- 1- To secure Debt and contracts using Immovable Property.
- 2- to pave the way for accessibility to negotiable credits by securing Immovable Property
- 3- To provide mutual agreement between parties to a banking transaction.
- 4- To have expansion of commerce, credit, investment and upgrading national economy.

### Definitions

#### **Article three:**

The following definitions shall apply in this Law:

1. **“Debt”** means the amount of money subject to a Mortgage that is owed to a Mortgagee as a result of Financing. Debt may include the cost of Financing, penalties, damages, expenses and other related liabilities.
2. **“Debtor”** means a Person owing a Debt.
3. **“Lender”** means a Person having a right to receive payment of a Debt or performance under a Mortgage. A Lender may be incorporated within or outside Afghanistan and transact the business of banking as defined under the Law of Da Afghanistan Bank or the Law on Banking in Afghanistan.
4. **“Execution creditor”** means a Person who acquired a court decree for a Lien on Mortgaged Property.
5. **“Loan Agreement”** means a written agreement signed by a Mortgagor and Mortgagee to secure one or more transactions.
6. **“Mortgage”** means a registered charge against Immovable Property allowed by a Mortgagor to secure Debt.

7. **“Mortgagor”** means the Person that owns Mortgaged Property and, most of the time, owes Debt subject to a Mortgage. When these are different Persons, the term Mortgagor means the one that owns the Mortgaged Property and the Debtor means the one that owes the Debt.

8. **“Mortgagee”** means a Lender in whose favour a Mortgage is created.

9. **“other” “another” or “any” Mortgagee (s)** means one that holds a Mortgage in the same Mortgaged Property.

10. **“Mortgagee with lower priority”** means one holding a Mortgage that ranks lower than a Mortgagee holding a Mortgage with higher priority.

11. **“Mortgaged Property”** means Immovable Property charged to secure Debt.

12. **“Non-Possessory Mortgage”** means a Mortgage that Mortgagee doesn’t possess the Mortgaged Property but keeps the Document of Title and Mortgagor or Debtor may acquire the Document of Title for the Mortgaged Property while Debt is repaid.

13. **“Mortgage deed”** means the written document signed by the Mortgagor and Mortgagee that describes the Mortgaged Property, the terms of a Mortgage, and the duties and obligations of the parties.

14. **“Property”** means possessions or items capable of ownership and includes Movable and Immovable Property.

15. **“Movable Property”** means tangible items that can be physically moved from one location to another without changes in shape and substance and includes tangible things such as goods and intangible things such as Documents of title, accounts, securities, instruments, copyrights, trademarks and patents.

16. **“Immovable Property”** means tangible items that can not be moved from one location to another without change in shape and substance. Land, homes and buildings are Immovable Property.

17. **“Registry”** means an office that registers a Document of Title and Mortgage transaction on Immovable Property and its related documents and keeps the records.

18. **“Notice of registration”** means the form prescribed by the Registry to register a Mortgage.

19. **“Document of Title”** means a written document prepared in accordance with the law that proves ownership of Immovable Property.

20. **“Finance” or “Financing”** means and includes the amount of Debt and costs that arise from the following:

- An accommodation or facility provided by a Mortgagee or partner on the basis of participation in profit and loss, mark-up or mark-down in price, hire, purchase, equity support, lease, rent-sharing, licensing, charge or fee of any kind, and the

purchase and sale of any Immovable Property. In either case, such accommodation or facility may involve participation in *morabah*, *musawama*, *istisnah* or *modaraba* kinds of Financing;

- A guarantee, letter of credit or any other financial commitment a Mortgagee may give, issue or undertake on behalf of a Mortgagor or client; and

- A credit loan, an advance, an overdraft, a bill of exchange that is discounted and purchased or any other financial commitment provided by a Mortgagee to a Mortgagor or Debtor.

**21. “Default on Payment”** means failure to pay a Debt or its instalment when due stated in the Loan Agreement.

**22. “Default on Performance”** means failure to perform an obligation stated in the Loan Agreement.

**23. “Transferee”** means a Person to whom a Mortgage is assigned.

**24. “Transferor”** means a Person to whom money is owed and who assigns rights under a Mortgage and related documents to a Transferee.

**25. “Lien”** means any security right on Mortgaged Property that secures an obligation.

**26. “Power of Sale”** means the right of a Mortgagee to collect the amount of Debt from the sale of the Mortgaged Property.

**27. “Notice”** means written information delivered regarding the Mortgaged Property to an office headquarters or place where the Person resides or operates. Reasonable means of receipt is required.

**28. “Fixtures”** means Movable Property that is either constructively or permanently affixed to Immovable Property.

**29. “Person”** means a natural or juridical person.

**30. “Sale”** means to convey Immovable Property for a certain price that is subject to a Mortgage between a Mortgagor and Mortgagee.

**31. “Creation of Mortgage”** means creation and registration of a Mortgage in accordance with this Law.

**32. “Mortgagor’s Location”** means a Mortgagor principal place of business, if any, or his residence, if there is no place of business. A corporation is located where it was incorporated.

**Chapter 2**  
**Creation of a Mortgage and Effects**

**Creation of a Mortgage**

**Article four:**

- (1) Immovable Property may be used to create a Mortgage to secure some or all of a Debt.
- (2) More than one Mortgage may be created in the same Mortgaged Property with the same Mortgagor considering the value of the Property.
- (3) A Mortgage is subject to the following specifications:
  - 1- It may relate to more than one Immovable Property;
  - 2- One or more Mortgages may refer to the same Immovable Property;
  - 3- It can be created without delivering possession of the Mortgaged Property to the Mortgagee;
- (4) It can be created on Immovable Property that is jointly owned as defined in the Law.
- (5) Once a Mortgage is created, failure to repay Debt on its specified date may lead to the sale of Mortgage Property in order to repay the Debt in accordance with the provisions of this Law.

**Conditions of Mortgage Creation**

**Article five:**

- (1) A Mortgage can be created under the following conditions:
  - 1- A Mortgage deed that provides an adequate description of the Property shall be signed by Mortgagor and Mortgagee;
  - 2- A Document of Title that demonstrates real ownership and good title over the Mortgaged Property shall be given to the Mortgagee by Mortgagor;
  - 3- The Mortgagor and Mortgagee shall be bound to performance under a Loan Agreement.
  - 4- Registration of the Mortgage must be recorded in the related Registry.
- (2) Identification of Mortgagor, Mortgagee and Debtor should be stated in the Mortgage deed. For natural Persons, reasonable identification shall include name, father and grandfather's name, address, date of birth and Tazkera number. Identification of a legal Person specified based on activity permission and tax identification number.

- (3) The Mortgage deed is valid when it is signed by Mortgagor and Mortgagee, or their authorized representative, and the person who saw the Mortgage deed signed by the Mortgagor (name and date).
- (4) Subject to the provisions of this Law, the Mortgage deed may include other terms and conditions agreed upon by the parties that are not inconsistent with this Law.
- (5) Should a Mortgagor be unable to read or understand the Mortgage deed, the Mortgagee must provide a lawyer to read and explain all covenants, duties, obligations, terms and conditions before the Mortgagor signs the Mortgage deed.

### **Requirements of a Loan Agreement**

#### **Article six:**

- (1) The Loan Agreement must be in writing and signed by a Mortgagor and Mortgagee and state:
  - 1- The name of the Debtor if different from that of the Mortgagor;
  - 2- A clear promise by the Mortgagor to repay the total amount of Debt subject to the Mortgage;
  - 3- When, where and how repayment of Debt or a related installment should occur; and
  - 4- How any installment payments shall be applied to repayment of the Debt. If the Mortgagor is responsible for installment payments at certain dates in the future, the Mortgagee will attach to the Loan Agreement a schedule of such installment payments.
- (2) The same requirements apply for identification, signing and dating the Loan Agreement as shown in clause (2) of Article five of this Law.

### **Combination of Mortgage deed and Loan Agreement**

#### **Article seven:**

The Mortgage deed and Loan Agreement can be combined into one document provided the combined document fulfills the requirements of this Law.

### **Effect on Parties**

#### **Article eight:**

- (1) Debt subject to a Mortgage may be owed by the Mortgagor or by another Person.
- (2) When signing a Mortgage deed or Loan Agreement on a Home, a natural Person residing in such Home can not waive or limit any rights or remedies

provided in this Law. Any such waiver or limitation is not enforceable but shall not, by itself, void other provisions of a Mortgage deed or a Loan Agreement.

**Duties and Obligation of Mortgagor**

**Article nine:**

- (1) In addition to Article five, Mortgagor must agree to the following covenants:
  - 1- An agreement on the maximum amount of Debt expressed in money that is subject to the Mortgage;
  - 2- The Mortgaged Property should be free from other ownership rights;
  - 3- Stabilization and explanations of all rights, remedies, duties and obligations of parties and the remedies which arise from Default on Payment or Default on Performance;
  - 4- An understanding that Default on Payment or Default on Performance may result in the loss of any and all ownership and title rights in the Mortgage Property up to the extent of secured Debt;
  - 5- A promise to keep Mortgaged Property, other than land, insured in a manner consistent with local standards;
  - 6- A promise to make reasonable repairs to Mortgaged Property;
  - 7- Where Mortgaged Property is a home and the Mortgagor is a natural Person, a clear statement is required that the Mortgagor has read and understands all the terms and conditions of the Mortgage deed;
  - 8- To repay all Debt timely and in the agreed manner; and
- (2) Unless otherwise agreed in writing or until all Debt is repaid, the Mortgagor:
  - 1- Will not sell Mortgaged Property without written consent of the Mortgagee;
  - 2- Will not allow encumbrances or Liens filed against the Mortgaged Property;
  - 3- Will allow inspection of the Mortgaged Property by the Mortgagee during business hours;
  - 5- Will pay utilities, taxes and other public charges against the Mortgaged Property.

## **Duties and Obligations of Mortgagee**

### **Article ten:**

- (1) In addition to Article five, Mortgagee must agree to the following covenants:
  - 1- To provide Financing to the Mortgagor or Debtor, or perform any other agreed upon financial undertaking after written request from the Mortgagor;
  - 2- To advance the agreed cash or its equivalent for Financing as requested by the Mortgagor, unless the Mortgagor requests Financing in writing in some other form;
  - 3-legal Persons will maintain normal business hours and natural Persons will make themselves available regularly to receive repayment of the Debt;
  - 4- To apply repayment of the Debt in a manner consistent with the terms stated in the Loan Agreement; and
- (2) No duty or obligation exists for the Mortgagee to advance money for Financing if the Mortgagor has not complied with clause (1) of Article 9 or is in Default on repayment of Debt.
- (3) The Mortgagee will not disturb the quiet enjoyment of the Mortgagor, Debtor or any other Person that lawfully occupies the Mortgaged Property provided the Mortgagor complies with the Mortgage deed and Loan Agreement.
- (4) The Mortgagee will produce a written accounting of how payments are applied toward repayment of total Debt. Such accounting is required on a quarterly basis, unless there is agreement to do so on a more frequent basis.
- (5) The Mortgagee must provide a true copy of the signed Mortgage deed and Loan Agreement to the Mortgagor.

## **Chapter 3**

### **Effect of a Mortgage on Third Parties**

#### **Effect of a Mortgage**

##### **Article eleven:**

- (1) Should another Person repay all Debt subject to a Mortgage, the Mortgagee may transfer Mortgage rights to such Person including benefit of the date the original Mortgage was registered.
- (2) The sale of Mortgaged Property by the Mortgagor without written consent of the Mortgagee does not affect the Mortgagee's rights or remedies with respect to such Mortgaged Property.

### **Priority of Mortgages**

#### **Article twelve:**

- (1) Where more than one Mortgage exists on the same Mortgaged Property, higher priority is determined using this Law.
- (2) Unless stated otherwise in this Law, the higher priority between two or more Mortgages is determined based on the order of registration.
- (3) When a registration has lapsed, or has been terminated either in error or without authorization by the Mortgagee, the Mortgagee must transmit to the Registry a notice of reinstatement not later than 30 days after such lapse or termination and this kind of lapse or termination will not affect the priority of such Mortgage and other Mortgage rights.
- (4) Clause 3 of this article will not apply when, as a result of a legally binding commitment, a competing Mortgage with lower priority secures advances or Financing made, or which must be made, after the lapse or termination but prior to reinstatement.

### **Priority of Mortgages, Other Claims and Future Advances**

#### **Article thirteen:**

- (1) The priority of a Mortgage extends to all money advanced for Financing, present or future, provided such priority for future advances was stated in the Mortgage deed.
- (2) A Mortgage does not have higher priority over the claim of an Execution creditor with respect to money advanced for Financing after the Mortgagee has Knowledge of the Execution creditor.

The following matters are excluded:

- 1- If the money is advanced to someone other than the Mortgagor;
  - 2- If the money advanced is required by the law or court;
  - 3- If the Mortgagee has incurred reasonable expenses for the services of the Mortgaged Property.
- (3) The Mortgagee is not required to advance money for Financing if the Mortgagee has knowledge regarding the right of an Execution creditor on Mortgaged Property.

### **Claims of Material or Service Providers**

#### **Article fourteen:**

- (1) If a Person in the ordinary course of his business furnishes services or materials for Mortgaged Property, a claim exists up to the value of such

services or materials with higher priority over any Mortgage.

- (2) To maintain priority as stated in clause (1) of this Article, a Person with a claim over 25,000 Afghani must undertake the necessary steps to have such claim recorded in the Registry within 180 days from furnishing such services or materials.

### **Subordination Agreement**

#### **Article fifteen:**

A Mortgagee that has higher priority may agree to modify or forego his priority in favor of another Mortgage. This is referred to as a subordination agreement.

A subordination agreement must be in writing and recorded in the Registry in accordance with this Law.

### **Third Party acquiring Mortgaged Property**

#### **Article sixteen:**

The Person acquiring ownership or title to Mortgaged Property will acquire such ownership and title subject to an existing Mortgage unless otherwise stated in this Law.

## **Chapter 4**

### **Transfer of Liability and Obligation**

#### **Transfer of Liabilities of Mortgagor and Debtor**

##### **Article seventeen:**

Unless otherwise stated in this Law, the obligations of a Mortgagor and Debtor regarding Mortgaged Property and Debt can be transferred to another Person, after receiving written consent from the Mortgagee.

#### **Mortgagee Liability**

##### **Article eighteen:**

Acts or omissions of the Mortgagor do not, by itself, impose liability upon a Mortgagee exercising Power of Sale.

#### **Mortgagee acts as Transferor**

##### **Article nineteen:**

Unless otherwise stated in this Law, a Mortgagee may act as a Transferor and transfer rights under a Mortgage to others without the consent of the Mortgagor.

## **Non transfer of a Mortgage Right**

### **Article twenty:**

Transfer of a Mortgage right is not enforceable if:

- 1- under the terms of the Mortgage deed or Loan Agreement the Mortgagee had agreed in writing to forego transfer;
- 2- It is not enforceable under the law;
- 3- It is made within 90 (ninety) days after the death of a Mortgagor; or
- 4- The Debt can not be distinguished from other Debts in the possession of the proposed Transferee.

## **Rights of Transferee**

### **Article twenty one:**

- (1) Unless otherwise stated in a written agreement, the rights of a Transferee against the Mortgagor are subject to:

1- All the terms of the Mortgage or any related agreement between the Transferor and the Mortgagor; and

2- Any other defense or claim the Mortgagor had against the Transferor that existed before the Mortgagor received written notice of the transfer.

A claim of a Mortgagor may be asserted against the Transferee, but only to reduce the amount of the Debt.

- (2) A modification of a contract between the Transferor and the Mortgagor is effective against a Transferee if it is made before any transfer is effective, in good faith, and in accordance with commercially reasonable standards.

## **Decrease in Debt**

### **Article twenty two:**

- (1) A Mortgagor may reduce Debt by paying the Transferor before, but not after, receiving notice that the amount due, or to become due, has been transferred and that repayments should be made to the Transferee. After receipt of such notice, the Mortgagor can only reduce Debt by paying the Transferee, and any payments made to the Transferor are at the Mortgagor's risk.
- (2) The Notice stated in the clause (1) of this article is effective if it is sent to the address of the Mortgagor, it adequately identifies the Mortgage that has been transferred, and it describes the address where future Mortgage payments must be sent.
- (3) If requested by the Mortgagor, the Transferee must furnish, within a reasonable time, written proof that the transfer was made. The Transferee must

comply or the Mortgagor is released from its obligation to pay the Transferee, even if the Mortgagor has received notice of transfer.

- (4) A Mortgagor that has received notice of transfer is entitled to a written release from any further obligation to the Transferor, if there is no outstanding expenses owed, and if the Transferor has no commitment to provide more Financing or to incur an obligation.

### **Remedies for Mortgagor**

#### **Article twenty three:**

Remedies available to the Mortgagor are limited to those stated in this law.

## **Chapter 5**

### **The Consequences and Effect of Default**

#### **The Exercise of Rights and Duties**

##### **Article twenty four:**

- (1) In case of Default the Mortgagor and Mortgagee will exercise rights, duties and obligations arising from a Mortgage or a related agreement in accordance with this Law provided that such an exercise is performed in a commercially reasonable manner.
- (2) No Person can enforce rights or remedies from other laws on a Mortgage created in accordance with this Law.

#### **Notice of Default and Enforcement Actions**

##### **Article twenty five:**

- (1) Upon Default on Payment or Default on Performance, the Mortgagee will send written Notice to the Mortgagor describing the Default and demanding that the Mortgagor remove such Default within thirty-five (35) days, or a longer time period if one is stated in the Mortgage deed or Loan Agreement.
- (2) For a Mortgage on a home where the Mortgagor is a natural Person, the time period stated in the clause (1) of this Article shall be not less than sixty (60) days, or a longer time period if one is stated in the Mortgage deed or Loan Agreement.
- (3) Should the Mortgagor fail to remove a Default during the time period described in Clause 1 or 2 of this Article, the Mortgagee has the right to take the following action:
  - 1- Sell the Mortgaged Property under a Power of Sale, without intervention by a court
  - 2- Collect all rents, profits or other payments related to the Mortgaged Property and the Debtor or Mortgagor is responsible for delivering such payments to the Mortgagee; and

3- Provide notice to any tenant or Person occupying the Mortgaged Property to pay directly to the Mortgagee any rents, profits or other payments related to the Mortgaged Property.

- (4) Any rents, profits or other payments received by the Mortgagee pursuant to the parts 2 and 3 of clause (3) of this Article shall be applied by the Mortgagee to payment of the Debt in accordance with the Mortgage deed or Loan Agreement. The Mortgagee is responsible for providing an accounting of how such payments are applied.

### **Right to Redeem Mortgaged Property**

#### **Article twenty six:**

- (1) At any time before the Mortgagee executes a Power of Sale of the Mortgaged Property, the Mortgagor or any other Mortgagee may redeem the Mortgaged Property by paying all unpaid Debt to the Mortgagee. In this case the Person that redeems the Mortgaged Property is responsible to pay the Mortgagee reasonable expenses for seizing, holding, repairing and preparing the Mortgaged Property for sale.
- (2) Should another Mortgagee elect to redeem Mortgaged Property, written Notice must be given to the Mortgagor and to other Mortgagees .
- (3) The Mortgagor may provide a written waiver of his right to redeem Mortgaged Property only after Default.

### **Power of Sale**

#### **Article twenty seven:**

- (1) The Mortgagee must apply to the court for a Power of Sale over Mortgaged Property. The court must approve the application after reviewing the following documents for compliance with this Law:
  - 1- An original or certified copy of the Mortgage deed and Loan Agreement including any attachments that describes instalment payments
  - 2- A signed copy of the Notice of Default delivered by the Mortgagee to the Mortgagor
  - 3- A signed statement by an authorized official of the Mortgagee that the Default still exists and was not removed within the time period stated in Article twenty five .
  - 4- Other documents submitted by the Mortgagee
- (2) The Mortgagee is authorized to proceed and complete a Power of Sale without court approval if the court does not rule on the application within 20 days.

## **Notice of Power of Sale**

### **Article twenty eight:**

- (1) Before a Mortgagee can proceed with a Power of Sale over Mortgaged Property, he must provide:
  - 1- Specific written Notice to the last known address of the Mortgagor, other Mortgagee (s), Execution creditors and Lien holders as indicated in the Registry;
  - 2- General notice by publication in the local language in at least one reputable daily newspaper with wide circulation in the village, city, district or province where the Mortgaged Property is located. Where such publication is not feasible, any other available means of general notice to the local public is acceptable.
- (2) Notice indicated in Clause (1) of this Article shall contain:
  - 1- A description of the Mortgaged Property;
  - 2- The unpaid amount of the Debt;
  - 3- The amount of the applicable expenses or, where the amount of the expenses has not been determined, a reasonable estimate;
  - 4- A statement that, upon paying the amounts stated in parts 2 and 3 of clause (2) of this Article, a Person responding to general or specific notice may buy or redeem the Mortgaged Property; and
  - 5- The day, time and place of any public auction.
- (3) For a Person entitled to specific Notice, such Notice must include a statement that, unless the Mortgaged Property is redeemed, it will undergo Power of Sale and the Mortgagor or Debtor shall be liable for any unpaid Debt after such sale.

## **Court Protection of Parties**

### **Article twenty nine:**

- (1) A Mortgagor or any other Person with rights to the Mortgaged Property may apply to the court to:
  - 1- Stop a Power of Sale because:
    - Default has not occurred,
    - Notice of Default was not given or;
    - Adequate time was not provided for the Mortgagor to remove a Default as described in this law;

2- Temporarily or permanently suspend a Mortgagee from executing a Power of Sale for non-compliance with this Law;

3- Declare the Mortgagee's rights and remedies null and void because:

- All Debt was repaid or;
- No Mortgage exists;

4- Direct a Mortgagee or any Person with rights to enforcement to comply with this Law.

- (2) The Court will inform the Mortgagee of the application stated in clause (1) of this Article; Mortgagee must respond and act within 7 (seven) days from the date of notice.
- (3) If the Mortgagee doesn't respond the notice or act on the application, the court must rule against the application in accordance with clause (1) of this Article within (7).
- (4) Once a Court has ruled against an application described in clause (1) of this Article, the same Person can not file another application until it has deposited with the Court an amount equal to the greater of Afghani 250,000 or 50% of the unpaid Debt subject to the Mortgage.

### **Sale by Auction**

#### **Article Thirty:**

Subject to Articles twenty six, twenty seven, twenty eight, twenty nine, thirty , thirty one and thirty two of this law, a Power of Sale over Mortgaged Property may take place by public auction or private sale at any time or place under commercially reasonable conditions. Also, the Mortgagee may elect to lease the Mortgaged Property to a third party or purchase the Mortgaged Property at a public sale.

### **Value of Purchase Price under a Power of Sale**

#### **Article thirty one:**

- (1) The Mortgagee may not accept a price for the Mortgaged Property that is less than 75% of the value of comparable Immovable Property.
- (2) If the Mortgagee is unable to sell Mortgaged Property at a value indicated in the clause (1) of this article, the Mortgaged Property may be sold at a lesser value provided the Mortgagee:
  - 1- Holds at least two public auctions in accordance with this Law; and
  - 2- Establishes by documentation that neither auction produced a price as required under Clause (1) of this Article.

**Application of Funds Received from Power of Sale**

**Article thirty two:**

Funds received from a Power of Sale or lease of Mortgaged Property shall be paid in the following order:

- 1- To pay reasonable expenses of the Mortgagee, including cost of insurance, taxes and costs for taking, holding, repairing or preparing the Mortgaged Property for sale or lease. Other expenses may include those stated in the Mortgage deed or Loan Agreement;
- 2- Payment of all Debt owed to the Mortgagee;
- 3- Payment of Debt owed to Mortgagees with lower priority and of obligations owed to Lien holders. Priority is determined by the order of registration; and
- 4- Payment of any remaining funds to the Mortgagor.

**Effect of Power of Sale on Mortgaged Property**

**Article thirty three:**

- (1) A Power of Sale over Mortgaged Property in accordance with this Law terminates the Mortgage, any Mortgage or Lien with lower priority and the Mortgagor's interest in the Mortgaged Property.
- (2) A Person who occupies a Mortgaged Property, or any part thereof, under a lease will not be forced to vacate the Property until such lease expires. The Mortgagee or buyer of Mortgaged Property is allowed to negotiate compensation to the lessee to terminate such lease.
- (3) The Mortgagee shall give a written accounting of the following information to the Mortgagor and, upon request, to other Mortgagees and Lien holders indicated in the Registry:
  - 1- The amount of funds received;
  - 2- The amount applied to costs and expenses;
  - 3- The amount applied to the Mortgagee's Debt;
  - 4- The amount of any funds paid to other Mortgagees or Lien holders;
  - 5- The amount of any funds paid to the Mortgagor.

**Mortgagee Retaining Mortgaged Property**

**Article thirty four:**

- (1) Should the Mortgagor fail to remove the Default on Payment or Performance within the specified time period, the Mortgagee may propose taking possession of the Mortgaged Property or a portion of it, in satisfaction of all or

a portion of the Debt. The Mortgagee must give written Notice of this proposal to:

- 1- The Mortgagor;
  - 2- Any Mortgagee who, prior to the day on which such notice is given to the Mortgagor is registered in the Registry.
- (2) Any objection to this proposal by Persons shown in clause (1) of this Article shall be sent to the Mortgagee within 15 (fifteen) days after receiving Notice.
  - (3) If no objection is given, the Mortgagee is, at the expiration of period stated in clause (2), considered to have irrevocably elected to take the Mortgaged Property in satisfaction of the Debt as shown in the proposal and is entitled to hold or sell such Mortgaged Property free of any rights of the Mortgagor, and free of any rights of a Mortgagee with lower priority that was given notice.

#### **Mortgagee as Attorney in Fact**

##### **Article thirty five:**

- (1) Should a Mortgagee retain Mortgaged Property or execute a Power of Sale in accordance with this Chapter, the execution and registration of the Document of Title over Mortgaged Property may be performed by the:
  - 1- Mortgagor, or
  - 2- Mortgagee, who is hereby deemed the duly authorized representative or agent to act on behalf of the Mortgagor;
- (2) The related Registry will accept and register documentation of sale and ownership executed by any of the Persons stated in clause (1) of this Article.

#### **Protection after Power of Sale**

##### **Article thirty six:**

Upon sale of Mortgaged Property in accordance with this Chapter, a buyer:

- 1- Acquires the Mortgaged Property free from the rights or claims of the Mortgagor, a Mortgagee or Lien holder with lower priority ; and
- 2- May apply to the court to void a lease created after the date of the Mortgage if it appears to the court that such lease was created to adversely affect the value of the Mortgaged Property or to prejudice the rights and remedies of the Mortgagee.

## **Chapter 6**

### **Miscellaneous provisions**

#### **Exclusions**

##### **Article thirty seven:**

The provisions of this Law do not apply to:

- 1- A transfer of a right to payment under a charge or similar interest in Movable Property or a right to payment under a lease of Immovable Property;
- 2- A transfer of a right represented by a Court decree, other than a one taken on payment of a Debt that was subject to a Mortgage; or
- 3- A transaction governed by another enforced law, or international convention or treaty, which governs the creation, completion, priority, or enforcement of a Mortgage created by Afghanistan.

#### **Registry**

##### **Article thirty eight:**

- (1) A Mortgage is not enforceable unless it complies with this Law and is registered in the related Registry.
- (2) Any amendment, cancellation or assignment of a Mortgage shall be registered in the Registry by Mortgagee.

#### **Settlement of disputes**

##### **Article thirty nine:**

Claims and disputes regarding priority of a Mortgage and remedies will be resolved by authorized court.

#### **Retrospective Effects of this Law**

##### **Article forty:**

- (1) The Law does not apply to a Mortgage executed before this Law comes into force.
- (2) Parties to an existing non-possessory Mortgage are free to sign new documentation consistent with this Law and Register such Mortgage accordingly.

#### **Creation of Procedures**

##### **Article forty one:**

For the purpose of better implementation of the provisions of this Law, Da Afghanistan Bank may establish appropriate procedures and regulations.

**Priority between Provisions**

**Article forty two:**

If any other provisions of law conflict with provisions contained in this Law, the provision of this Law shall be preferred.

**Effective Date**

**Article forty three:**

This Law shall enter into force when signed and shall be published in the Official Gazette as of the effective date