

In the Name of Allah, the Gracious, the Merciful

The Property Mortgaged to Banks (Sale) Act, 1990

Be it hereby passed, by the National Salvation Revolution Command Council, in accordance with the provisions of the 3rd. Constitutional Decree, 1989, the following Act :-

Chapter I

Preliminary Provisions

Title and commencement

1. This Act may be cited as the, "Property Mortgaged to Banks (Sale) Act, 1990", and shall come into force, as from the date of signature.

Interpretation

2. In this Act, unless the context otherwise requires , :-
 - "Bank", means any bank of the banks working in the Sudan, which has mortgaged property, and the same includes any government financing institution;
 - "Estates", include lands of all types thereof, the benefits arising thereout , and buildings and things fixed thereto, permanently, and include, as well, any type of the types of other facilities;
 - "Governor", means the Governor of the Bank of Sudan;
 - "Manager", means the General Manager of any bank, or whoever he may authorize;
 - "Property", includes estates and movables.

Prevalence of the provisions of this Act

3. The provisions of this Act shall, in case of inconsistency thereby, with the provisions of any other law, prevail to the extent of removing the inconsistency between them.

Application

4. Notwithstanding the provisions of section 1, this Act shall retroactively apply to property mortgaged to banks, even though any of the procedure, pertaining thereto have been commenced before the courts.

Chapter II

Sale of Property Mortgaged to Banks

And Procedure thereof

Property mortgaged to bank sold

- 5.(1) Where the date fixed, for payment of the amount, secured by mortgage, to a bank sets in, and the mortgagor delays in payment thereof, the bank shall be entitled, after warning the mortgagor, in writing , for the period of one month to pay, to sell the mortgaged property, or any part thereof, with such previous mortgages, as may be thereon, after the expiry of the said period of warning.
- (2) For the purposes of sub-section (1), the warning shall be deemed to be received by the mortgagor :-
 - (a) where it has been sent, to the last known work, or residence address thereof, or affixed to the mortgaged estate he resides in; or
 - (b) in case of delivery of the warning to him ,in accordance with the provisions of paragraph (a), being not possible, where it is sent by registered post, with acknowledgement of receipt, and the post does not return the same, for non-delivery.

Procedure of sale of estates

- 6.(1) The bank shall sell the estate mortgaged thereto, with such mortgages, as may be thereon, in implementation of the provisions of section 5, by way of public auction; provided that the basic price of such estate shall be an amount, not less than the value of the amount mortgaged thereon thereto, or such real value, as the bank may specify, in consultation with the competent bodies, whichever is greater.**
- (2) Where no bid, for purchase has been presented, or where the presented bid is less than the basic price, the bank may offer the mortgaged estate, for sale once more, without specifying a basic price.**
- (3) Sale by auction procedure shall cease, at any stage, before termination of auction, in case of payment in cash, by the mortgagor debtor, of the amount of debt, and any other expenses incurred by the bank, in such procedure.**
- (4) Upon completion of sale, in accordance with the provisions of this Act, the Registrar-General of Lands shall amend the register of the mortgaged estate, in the name of the purchaser , with such mortgages, as may be thereon; provided that no mistake of procedure of sale of the estate shall affect the right of the purchaser to transfer ownership thereto.**
- (5) The proceeds of sale of the mortgaged estate shall be disposed of, as follows :-**
 - (a) payment of expenses of sale;**
 - (b) payment of the debt of the bank, within the limits of the value of the registered mortgage;**
 - (c) the balance of the value of sale, if any, shall be delivered to the mortgagor debtor.**
- (6) Where the return of sale is not sufficient, to pay the amount mortgaged thereon, the bank may sue the mortgagor debtor, for the balance of the amount, by way of instituting a civil suit.**

Procedure of attachment and sale of movables

7.(1) In case of mortgaged movables, the following procedure shall be followed, in attachment and sale thereof :-

(a) where the mortgaged movables are fully in possession of the bank, the bank shall sell the same, in the manner specified in this Act, after the expiry of the period of warning, provided for in section 5;

(b) where possession of the mortgaged movables is joint, between the bank and the client, the bank, after the expiry of the period of warning , provided for in section 5, may enter any places, wherein the movables may be found, and attach the same, as to such manner, as it may deem fit, and possess them in full;

(c) where the movables, mortgaged to the bank, are in the full possession of the client, the bank may attach such movables, after the expiry of the period of warning, mentioned in section 5.

(2)(a) The bank shall forthwith sell the mortgaged movables, which have been attached, in accordance with the provisions of sub-section (1), by public auction; provided that the basic price of the movables shall be an amount, not less than the amount mortgaged thereon, or the real value, whichever is greater;

(b) where no bid, for purchase has been presented, or the bid is less than the basic price, the bank may offer the mortgaged movables for sale once more, without specification thereof;

(c) the proceeds of sale shall be disposed of, as follows :-

(a) payment of the expenses of attachment and keeping of such movables;

(b) payment of the value of the due debt;

(c) the balance of the value of sale, if any, shall be delivered to the mortgagor debtor;

- (d) where the return of sale is not sufficient, to pay the amount of mortgage, the bank may sue the mortgagor debtor, for the balance of the amount, by way of instituting a civil suit.
- (3) For the sake of conducting the attachment, provided for in sub-section (1), the Manager, or whoever he may authorize, may enter, by force, accompanied by whoever he may deem the presence thereof necessary, during working hours, any such places, as wherein may be present the mortgaged movables of the person, from whom payment of the debt is required; and the Manager, or whoever he may authorize, as the case may be, may require the police officer in charge, within the jurisdiction of whom, the places wherein the mortgaged movables are present, to enable him to enter the same and conduct attachment, and such officer shall, in this case, respond to the request.
- (4) The bank shall cease the procedure of sale by public auction, at any stage, before termination of auction, in case of payment in cash; by the mortgagor debtor, of the amount of debt, and any other expenses, as the bank may have incurred in such procedure.

Request to refer the dispute to arbitration

- 8.(1) A mortgagor, in case of presence of any dispute between him and the bank, may request in writing, within a period, not exceeding one week, of the date of his receipt of the warning, provided for in section 5(1), reference of the dispute to arbitration.
- (2) Notwithstanding the provisions of section 5(1), the bank shall forthwith cease the procedure of sale, where the mortgagor presents the request, provided for in sub-section (1), pending passing the award of the arbitration tribunal, provided for in section 10(1).

Formation of the arbitration tribunal

- 9.(1) The bank, in agreement with the mortgagor, shall form the arbitration tribunal, within a period, not exceeding one week, of the date of receipt, by the bank, of the request, provided for in section 8(1).
- (2) Every one of the parties shall appoint an arbitrator, and the parties shall agree, upon the appointment of a third arbitrator, to be president of the arbitration tribunal.
- (3) An aggrieved party, where formation of the arbitration tribunal is not possible, as provided for in sub-section (2) , may request the Governor of the Bank of Sudan, to appoint such arbitrators, as the appointment of whom may not have been possible; provided that the Governor shall effect the appointment, within a period, not exceeding one week, of the date of receipt thereby , of the request.

Award of the arbitration tribunal

- 10.(1) The arbitration tribunal shall pass the award thereof, within a period, not exceeding one month, of the date of formation of the same.
- (2) The award of the arbitration tribunal shall be final, and incapable of contest, before the courts.

Request to determine the dispute

- 11.(1) Notwithstanding the provisions of sections 6 and 7, the mortgagor debtor may, in case of presence of any dispute, between him and the bank, with respect to the debt, secured by mortgage, may present, to the Governor, at any time, before completion of the procedure of sale, a written request, to determine the said dispute.
- (2) Where the mortgagor debtor presents the request, provided for in sub-section (1), during the period of warning, provided for in section 5(1), the same shall result in cessation of such period.

- (3) The Governor, forthwith receipt thereby, of the request, provided for in sub-section (1), shall issue an order, to the bank concerned, to cease the procedure of sale, pending determination of the dispute.**
- (4) The regulations shall specify the manner of considering the dispute, mentioned in sub-section (1), and determining the same.**
- (5) The Governor shall determine the dispute, referred to in sub-section (1), by the required speed, and his decision shall be final, and incapable of contest, before the courts.**
- (6) Sale shall be made, in accordance with the provisions of this Act; provided that the period of warning, provided for in section 5(1), shall commence, as from the date of knowledge, by the mortgagor debtor, of the decision.**

Chapter III

General Provisions

Power to make regulations

- 12. The Governor of the Bank of Sudan, upon the approval of the Minister of Finance and Economic Planning, may make such regulations, as may be necessary, for the implementation of the provisions of this Act.**