

# **Law on Mortgage of Immovable Property in Banking Transactions**

## **Chapter One**

### **General Provisions**

#### **Necessity of Creation of Law**

##### **Article 1:**

This law is created to regulate the affairs relating to mortgage of immovable property in banking transactions and to determine the rights and obligations of the parties.

#### **Purpose**

##### **Article 2:**

The objectives of this law are as follows:

1. Secure debt and contracts through mortgage of immovable property
2. Facilitate access to negotiable bank credits through the mortgage of immovable property
3. Ensure mutual trust among individuals involved in banking transaction
4. Expand trade and credit, attract investment and promote the economic growth.

#### **Terms**

##### **Article 3:**

The following terms in this law denote the following meanings:

1. Debt: The sum of money owed by Debtor (mortgagor) due to financing of the mortgage. Debt could be subject to financing, penalties, indemnities and other related liabilities.
2. Debtor: A Person who owes a debt
3. Lender: A Person who in accordance with the provisions of De Afghanistan Bank Law and Banking Law is engaged in banking affairs inside or outside the country and has due financial rights and enforceable obligations over another Person .
4. Execution creditor: A Person who has obtained the court order for seizure or Lien on mortgaged property

5. Loan Agreement: A written agreement between the Mortgagor and the Mortgagee to secure one or more transactions
6. Mortgage of immovable property: The registered right to immovable property that is transferred by its owner to the Mortgagee for their use to secure the debt.
7. Mortgagor: A Person that owns the Mortgaged Property and, most of the time, owes Debt subject to a Mortgage. If the owner of the Mortgaged Property and the Debtor are not the same then the Mortgagor is the owner of the Mortgaged Property and the Debtor refers to the Person who owes the debt.
8. Mortgagee: The Lender for whom the mortgage instrument has been written to secure the Debt
9. Another mortgagee: Another Person who has also obtained the right to the mortgaged property
10. Subordinate mortgage: The Person whose right to the mortgage is Subordinate to that of the preferred mortgagee.
11. Mortgaged property: Immovable property that is mortgaged to secure the debt
12. Non- possessory mortgage: Agreement between the parties that Mortgagor or Debtor has the right to release the Mortgaged Property from the Debt when the Debt has been repaid.
13. Mortgage deed: A written signed document by the Mortgagor and Mortgagee that describes the features of mortgaged property, terms of the mortgage, and obligations of the parties.
14. Property: Items capable of ownership and it include movable and immovable property.
15. Movable Property : Property that could be moved without any change in substance and form and include the tangible (goods) and the intangible such as documents of title, securities, accounts, copyrights, trademarks and patents.
16. Immovable property: Property that could not be moved without change in shape and substance and include house, building, land and fixed assets.
17. Registry: An office that registers the Document of Title, mortgage transactions and its relevant documents and keeps the records.

18. Notice of registration: Paper (form) that is drawn up in accordance with the procedures of registration of mortgage rights

19. Document of Title: A written document that is drawn up in accordance with the provisions of the law and substantiates the ownership of immovable property

20. Financing of Funds: Relates to expenses from:

- An assistance or facility provided by the Mortgagee or his partner for sharing in profit and loss, increase or decrease in prices, employment, purchase, investing capital, lease, rent- sharing, licensing, dues or fees and purchase and sale of immovable property. The assistance and facility also include the participation in financing agreements, morabaha, mosawama, istisnah or modaraba kinds of Financing

- Guarantee, letter of credit or other financial commitments that are made by the Lender on behalf of the mortgagor or Debtor.

- A credit, loan, an overdraft, a bill of exchange discounted and purchased, and other financial commitments that are made by the Mortgagee to the Mortgagor or the Debtor.

21. Default on payment: Failure to pay the Debt or the installments when due as set out in the Loan Agreement.

22. Default on performance: Failure to perform the obligations when due as set out in the Loan Agreement.

23. Transferee : Person to whom the mortgage has been transferred or assigned

24. Transferor: Person to whom money is owed, and who transfers the rights deriving from mortgage and its relevant documents to the Transferee

25. Lien: Charge against Mortgaged Property making it security for performance of obligations.

26. Power of sale: Right of Mortgagee to collect the amount of Debt from the sale of the Mortgaged Property.

27. Notice: Written information relating to specific subject that is sent to the address of central office, and or place of residence or activity of the Person in question and its receipt has been ensured.

28. Fixed assets: Movable goods that have been affixed permanently or constructively into the immovable property.

29. Person: Natural or Juridical Person

30. Sale: Transfer of ownership of immovable property in return for a specific price that is made through a contract between Mortgagor and Mortgagee.

31. Creation of Mortgage: Creation and registration of mortgage in accordance with the provisions of law

32. Location of the mortgagor:

a) Mortgagor's principal place of Business. If not available, it is the place of residence of Mortgagor.

b) A corporation's Location is where it was incorporated.

33: Profit: Benefits that are related to the property

## **Chapter Two**

### **Creation of Mortgage and its Effects**

#### **Creation of Mortgage**

##### **Article 4:**

(1) The mortgage may be created and used on immovable property to secure part or all of a debt.

(2) More than one mortgage right may be created in the same Mortgaged Property with the same Mortgagor considering the value of the property.

(3) Mortgage of immovable property shall have the following conditions:

1. It may relate to more than one property

2. One or more Mortgage may refer to the same Immovable property.

3. It can be created without delivering possession of the Mortgaged Property to the Mortgagee

(4) Mortgage can be created on a property held in common, according to the provision of this law.

(5) If debtor, after creation of the mortgage, fails to repay the Debt, the Mortgaged Property could be sold through the auction with the market price to pay off the debt, in accordance with the provisions of this law.

## **Conditions of mortgage creation**

### **Article 5:**

(1). Mortgage can be created under the following conditions:

1. Signing of mortgage deed by both parties that includes details of the mortgaged property.
2. Presenting valid Document of Title of the Mortgaged Property by the Mortgagor to the mortgagee
3. Commitment of both parties to comply with the provisions set out in the Loan Agreement
4. Registration of the mortgage in the relevant office

(2) Identity of the mortgagee, Mortgagor and the Debtor are specified in the mortgage deed.

Identity of the natural Person to include the name, name of father and grandfather, address, date of birth, and number of identity card, and the identity of legal Person to be determined by his license and tax identification number,

(3) Mortgage deed shall be valid when signed by the parties or their representatives and witnesses along with their names and the date,

(4) Parties may add other conditions to the ones set forth in this article provided that they do not contravene the provisions of this law

(5) If the Mortgagor cannot read and understand the contents of mortgage deed, the Mortgagee is obliged to assign a lawyer to explain his commitments and obligations before signing the Mortgage deed.

## **Conditions of loan agreement**

### **Article 6:**

(1) Loan Agreement shall be in writing, signed by both parties and contain the following:

1. Name of the Debtor (if the Debtor is not the mortgagor)
2. Commitment of the Mortgagor to fully repay the mortgage Debt
3. Determination of the time and place and manner of repayment of the Debt or the relevant installments

#### 4. Manner of calculation and deduction of the paid installments

If the Mortgagor is obliged to repay the Debt in installments at specified deadlines in the future, then the Mortgagee is obliged to attach the timetable for the payment of the installments to the loan agreement.

(2) Regarding the establishment of identity, signature and insertion of date in the loan agreement, the conditions set forth in clause (2) of article 5 of this law shall apply.

### **Combining the Loan Agreement and mortgage deed**

#### **Article 7:**

The mortgage deed and the Loan Agreement could be combined into one, provided that they meet the requirements set forth in this law.

### **Effects of mortgage on parties**

#### **Article 8:**

(1) The Mortgagor or another Person may assume a mortgage debt.

(2) If the signed mortgage deed or Loan Agreement relates to a house, then any Person dwells in such a house cannot waive or limit any rights or remedies provided in this law or annul the Mortgage deed or Loan Agreement.

### **Obligations and responsibilities of mortgagor**

#### **Article 9:**

(1) Mortgagor is obliged to commit to the following in addition to the conditions set forth in article 5 of this law:

1. Agreement on maximum sum of money related to the mortgage debt
2. Mortgaged Property should be free from ownership rights by others
3. Full awareness regarding the rights and obligations of parties and compensation arising from Default on payment or Default on performance.
4. Full awareness of the loss of ownership right and other relevant rights proportionate to all secured Debt in case of Default on payment or performance
5. Insurance of the Mortgaged Property (except for land) in accordance with the local standards

6. Carrying out of appropriate repairs of the mortgage property
7. If the mortgage property is a home, a clear statement is required that the Mortgagor has read and understood all the terms and condition of Mortgage deed.
8. Repayment of Debt on time and in accordance with the agreed terms and conditions

(2) The Mortgagor is obliged to comply with the following unless it is agreed in writing otherwise, or the total Debt amount has been repaid:

1. Not to sell the Mortgaged Property without the consent of mortgagee
2. Not to put restrictions on the mortgaged property
3. Granting permission to the Mortgagee to inspect the Mortgaged Property during usual business hours
4. Payment of taxes and duties and performing other obligations related to the mortgaged property, in accordance with the provisions of the law

### **Responsibilities and obligations of the mortgagee**

#### **Article 10:**

(1) The Mortgagee is obliged to commit to the following in addition to the conditions set forth in article 5 of this law:

1. Provision of the financed sums to the Mortgagor or Debtor or other financial obligations upon making written request by the mortgagor,
2. Provision of the agreed loan in cash or equivalent to the Mortgagor according to financing request by the mortgagor unless the written request by Mortgagor indicates otherwise.
3. Legal Persons will maintain normal business hours and natural Persons will make themselves available regularly to receive repayment of the Debt
4. Performance regarding repayment of the Debt shall be in accordance with the conditions set forth in the loan agreement.

(2) If the Mortgagor fails to observe the conditions set forth in clause (1) of article 9 of this law or refuses to repay the debt, the Mortgagee shall not be obliged to provide the financed sum.

(3) The Mortgagee shall not disturb the mortgagor, Debtor or any Persons who lawfully possesses the Mortgaged Property, provided that the Mortgagor has complied with the provisions set forth in the mortgage deed and loan agreement.

(4) The Mortgagee is obliged to provide quarterly report of payment deductions from the total debt, unless agreed otherwise in the loan agreement.

(5) The Mortgagee is obliged to submit copy of the signed mortgage deed and the Loan Agreement to the mortgagor.

### **Chapter Three**

#### **Effects of Mortgage on Third Parties**

##### **Transfer of mortgage effects**

###### **Article 11:**

(1) If another Person fully pays the debt subject to Mortgage, then the Mortgagee shall transfer the rights arising from the mortgage along with its benefits effective from the registration date of the mortgage to this Person.

(2) If the Mortgagor sells the Mortgaged Property without the written permission of the mortgagee, it shall have no effect on the rights and compensations of the mortgagee.

##### **Precedence of mortgage right**

###### **Article 12:**

(1) If more than one mortgage existed on the same mortgaged property, the precedence of mortgage rights shall be determined in accordance with the provisions of this law.

(2) The precedence of two or more mortgages shall be determined based on their registration date, unless it agreed otherwise in the loan agreement

(3) If the term of registration of mortgage is lapsed, or it is terminated in error or without authorization of the mortgagee, the Mortgagee is obliged to register a Notice of reinstatement within (30) days after its expiration or termination at the Registry office. These proceedings shall not alter the precedence and other rights of the mortgage.

(4) If after the expiration or termination of the mortgage or prior to its reinstatement, the provision of loan or financed sums is legally made by another mortgage of lower priority, then the provision set forth in clause (3) of this article shall not apply.

### **Precedence of mortgage, other dues and future loans**

#### **Article 13:**

(1) Mortgage precedence shall include the provision of all financed funds in the present or future, provided that the mortgage precedence with regard to future debts is set forth in the mortgage document

(2) If Mortgagee is aware of the existence of an execution creditor, his mortgage shall not take precedence over the advances made by aforementioned creditor. The following are exceptions:

1. If the loan money is paid to someone other than the mortgagor
2. If the money is paid in accordance with the provision of law or order of the court.
3. If the Mortgagee has incurred the service expenses on the mortgaged property

(3) If the Mortgagee is aware that the Mortgaged Property is subject to the credit of the execution creditor, the Mortgagee shall not be obliged to advance the financed loan.

### **Dues for provision of goods and services**

#### **Article 14:**

(1) If a Person in the course of his business provides materials and services for the mortgaged property, his dues shall have precedence over other mortgage rights on the mortgaged property, in proportion to the value of materials and services provided.

(2) For the purpose of continuing the right to precedence set forth in clause (1) of this article, the Person whose due is more than 25,000 Afghanis shall be obliged to register his dues within 180 days after the provision of materials and services with the relevant Registry office.

### **Subordination agreement**

#### **Article 15:**

The Mortgagee with precedent right can modify or waive its right in favor of another mortgagee. This is called Subordinate agreement.

The Subordinate agreement shall be in writing and registered in the relevant office, in accordance with the provisions of this law.

### **Ownership of Mortgaged Property by third party**

#### **Article 16:**

Person who has or acquires the ownership right to mortgaged property, his ownership shall be subject to the present mortgage of mentioned immovable property, unless stated otherwise in this law.

## **Chapter Four**

### **Transfer of obligations and liabilities**

#### **Transfer of the liabilities of the Mortgagor and the debtor**

##### **Article 17:**

Liabilities of the Mortgagor and Debtor with regard to Mortgaged Property and Debt can be transferred to another Person after written consent of the mortgagee, unless stated otherwise in this law.

#### **Liabilities of the mortgagee**

##### **Article 18:**

Actions or omissions for which the Mortgagor is responsible, shall not affect ,by itself, the authority of the Mortgagee to exercise the Power of Sale and not impose any liability upon the mortgagee.

## **Transfer of rights of Mortgagee to others**

### **Article 19:**

The Mortgagee can act as Transferor and without the consent of the Mortgagor transfer the mortgage rights to others, unless stated otherwise in this law.

## **Non-transfer of mortgage right**

### **Article 20:**

Mortgage right shall not be transferred in the following conditions:

1. The written agreement of Mortgagee to refrain from transfer according to the terms set forth in the Loan Agreement and the mortgage deed
2. Prohibition on transfer in accordance with the provisions of the law
3. Within (90) days after the death of the mortgagor
4. If the Debt cannot be distinguished from other debts that are in the possession of the Transferee.

## **Rights of Transferee**

### **Article 21:**

(1) The rights of Transferee over the Mortgagor shall be subject to the following, unless agreed otherwise in writing:

1. All conditions of the mortgage agreement or relevant agreement between the Transferor and the mortgagor
2. Other claims and defenses by the Mortgagor against the Transferor made prior to the receipt of written Notice of transfer.

The Mortgagor can sue the Transferee only to reduce the amount of debt.

(2) Modification or change of contract between the Transferor and Mortgagor is effective against a Transferee if it is made before the transfer in accordance with commercially reasonable standards.

## **Reduction of the debt**

### **Article 22:**

(1) Mortgagor can reduce the Debt with payments to the Transferor if it has not received the Notice concerning the transference of amount due and the execution of payments to the Transferee. After the receipt of such a notice, the Mortgagor can only reduce the Debt through payments to the Transferee and the responsibility for any payments made thereafter to the Transferor shall lie with the mortgagor.

(2) The Notice set forth in clause (1) of this article is only valid when it is sent to the address of the Mortgagor and in which the transferred mortgage is explained and the address where future payments of the Debt are made is clarified.

(3) Mortgagee is obliged to provide, on the request of mortgagor, documents proving the transfer within the appropriate time, in which case the Transferee is obliged to perform the mentioned request, otherwise the Mortgagor is not responsible for repayment of Debt to the Transferee , even if he has received the transfer notice.

(4) If all the expenses set forth in this law are paid and the Transferor does not have any obligation to provide further financed sums, the Mortgagor that has received the transfer Notice shall be entitled to receipt of a written document to absolve him of the fulfillment of responsibilities to the transferor.

## **Compensation for the mortgagor**

### **Article 23:**

In case of non-compliance with the provision of this law by the mortgagee, Transferee or transferor, the indemnity of Mortgagor shall take place in accordance with the provisions of this law.

**Chapter Five**  
**Effects of Non-payment and Non-performance**

**Determination of rights and compensation due to non-payment and non-performance of liabilities**

**Article 24:**

1. In case of non-payment of debts and non-performance of the liabilities, the mortgagor and Mortgagee shall exercise all the rights and compensations prescribed in the mortgage deed and other relevant and enforceable documents, in accordance with provision of this law, provided that such an exercise is performed in a commercially reasonable manner.
2. No individual shall enforce the rights and compensation from the other laws on a mortgage created according to the provisions of this law.

**Notice of non-payment and non-performance and enforcement actions**

**Article 25:**

- (1). In case of non-payment of the Debt or non-performance of liabilities, the Mortgagee shall send a written Notice to the Mortgagor for non-payment of the debts or non-performance of liabilities, and request to remove such a Default within 35 days, unless more is anticipated in the mortgage deed or loan Agreement.
- (2). For a Mortgage on a home where the Mortgagor is a natural or judicial 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). In case the mortgagor does not pay the debts or perform the liabilities within the timeline mentioned in paragraphs 1 or 2 of this article, the Mortgagee can take the following actions:
  1. Exercise the power of sale in accordance with the provisions of this law.

2. Collect all amounts of the rent, profit and other payments related to the property. In this case, the Debtor or Mortgagor shall be responsible to handover the above mentioned payments to the mortgagee.

3. Provide Notice to the tenant or the Person who occupies the Mortgaged Property for the purpose of paying the rent, profit or other payments.

(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 26:**

1. Before the Mortgagee exercises power of sale on Mortgaged Property or take possession of it, the mortgagor or other mortgagees can redeem the Mortgaged Property by paying the Mortgagee all the payable debts. In this case, the Person that redeems the Mortgaged Property is obliged to pay the reasonable expenses for services including seizing, holding, repairing and preparing the Mortgaged Property for sale.

2. Should another Mortgagee wish to redeem the Mortgaged Property it shall submit a written Notice to the Mortgagor or other mortgagees (if available).

3. The Mortgagor may provide a written waiver of his right to redeem Mortgaged Property only after f Default on payment or default on performance.

### **Power of Sale**

#### **Article 27:**

(1) The Mortgagee shall apply to the court for a Power of Sale over Mortgaged Property. The court shall grant the power of sale after reviewing the following documents and confirming of its consistency with this law:

1. The original or certified copy of the mortgage deed and Loan Agreement including any attachments indicating payment of the Debt installment.
2. Copy of the Notice of non-payment that has been sent to the mortgagor by the mortgagee and signed by parties.

3. Explanation and signature of this issue by the Mortgagee or his authorized agent that the default has not been removed within the time period mentioned in the article 25 of this law.

4. Other documents, which has been submitted by Mortgagee.

(2) In case the court after it conforms the documents with requirement of this law, does not issue order on the grant of power of sale within 20 days, the Mortgagee shall be allowed to exercise and complete the power of sale without court approval.

### **Notice on exercise of power of sale**

#### **Article 28:**

(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. Publishing of general Notice in local and official languages in a newspaper with high circulation in the province, district, city or village where the property is located. In case it is not possible, its publication shall also be authorized through other possible means.

(2). Notice mentioned in the paragraph 1 of this article shall include the following issues:

1. Explanation of the mortgaged property.
2. Outstanding amount of the debt.
3. Amount of relevant expenses
4. Statement that responder to the exclusive or general Notice can purchase or release the property from mortgage, upon payment of the amounts mentioned in parts 2 and 3 of the paragraph (2).
5. Day, time and place of the open auction

(3). Statement in exclusive Notice that when the eligible Person for receiving the Notice does not release the property, the property shall be subject to power of sale, and the Mortgagor or Debtor shall bear responsibility for the outstanding amount of Debt after the sale.

## **Protecting the legitimate right of parties**

### **Article 29:**

(1). Mortgagor or the Person who holds rights in the property may refer to authorized court for taking the following actions:

1. To stop the exercise of power of sale for the following reasons: Default of payment has not occurred.

- Notice of non-payment has not been given.

- Sufficient time as provided in this law has not been given to the Mortgagor to remove the default of payment.

2. Temporary or permanent suspension of power of sale due to non-observance of the provisions in this law.

3. Order to annulment of the right and compensation of the Mortgagee for the following reasons:

a) Debt has been paid

b) Mortgage does not exist.

4. Require the Mortgagee or other rightful Person s to comply with provision of this law.

(2) The Court will inform the Mortgagee of the application stated in clause (1) of this Article; Mortgagee must respond to the matter and act within 10 (Ten) days from the date of notice.

(3) If the Mortgagee doesn't respond to the Notice or act on the application, the court must rule on an issue stated in clause (1) of this Article within (7) days.

(4) Once a Court has ruled against an application described in clause (1) of this Article, the same Person cannot file another application until it has deposited with the Court an amount equal to the greater of Afghani 250,000 or half of the unpaid Debt subject to the Mortgage.

### **Sale through auction**

### **Article 30:**

Subject to Article twenty six to Article 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.

## **Pricing of mortgaged property under sale authority**

### **Article 31:**

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. In case the Mortgagee cannot sell the property in a price mentioned in paragraph 1 of this article, the property can be sold in lower price under the following conditions:
  1. Mortgagee, in accordance with the provisions of this law, shall hold at least two open auctions.
  2. Mortgagee shall prove based on documents that the price under paragraph 1 of this law has not been obtained in any of the auctions.

## **Distribution of funds resulting from sale authority**

### **Article 32:**

Fund obtained from exercise of power of sale or lease of mortgaged property shall be distributed as follow:

- 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 to the mortgagee.
3. Payment of Debt owed to Mortgagees with lower priority and of obligations owed to persons who hold lien right against the mortgaged property. Priority is determined by the date of registration;
4. Payment of the remained funds to the Mortgagor.

## **Effects of exercise of power of sale on Mortgaged property**

### **Article 33:**

(1) A Power of Sale over Mortgaged Property in accordance with provisions of 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 leases 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, in accordance with the provisions of this law, present to the mortgagor a written report including the following information within (7) days after exercising the power of sale, or upon request to other mortgagees and Person(s) who have right of Lien registered in the relevant Registry:

1. Received amounts
2. Paid amount for the incurred expenses
3. Paid expenses for the payment of debt
4. Paid amounts to the mortgagees or the Person s, who have right of Lien against the property.
5. Paid amount to the Mortgagor.

### **Mortgagee Retaining Mortgaged Property**

#### **Article 34:**

(1). Should the Mortgagor fail to pay the debt or Perform the obligations 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. In this case, The Mortgagee must give written Notice of this proposal to:

1. The Mortgagor
2. The Mortgagee who prior to receiving of the Notice by the mortgagor is registered in Registry.

(2). Person(s) mentioned in paragraph 1 of this article may object to this proposal within 15 days from the date of receiving the Notice and get the receipt of such objection from the Mortgagee.

(3). in the case no objection is received within the period mentioned in paragraphs 2 of this Article, the Mortgagee can take possession of property for the purpose of paying the debt. In this case, the Mortgagee has the right to bring the property under its possession or sell it regardless of the rights of the Mortgagor or mortgagees with lower priority to which the Notice of sale has been given.

## **Mortgagee as competent representative**

### **Article 35:**

1. Should a Mortgagee retain Mortgaged Property or exercise the power of sale in accordance with the provisions of this chapter, the execution or registration of Document of Title over Mortgaged Property can be made by one of the following Person s:

1. Mortgagor
2. Mortgagee who is the competent representative of Mortgagor.
2. The registration office shall accept and register the sale and ownership documents, which are completed by any of the Person s mentioned in paragraph 1 of this article.

## **Protection of property customers after sale**

### **Article 36:**

In case of sale of property, the buyer in accordance with the provisions in this chapter can take the following actions:

1. Acquires the Mortgaged Property free from the rights or claims of the Mortgagor, a Mortgagee or Lien holder with lower priority
2. May apply to the court to void a lease which is created by the order of the court 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 Six**

### **Miscellaneous provisions**

## **Limitations on implementation of law**

### **Article 37:**

Provisions of this law shall not be applicable to the following cases:

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.

3. The transaction for issuance, completion, priority or enforcement of the mortgage right is subject to other enforced law or conventions or international treaties to which Afghanistan has acceded.

### **Registration Office**

#### **Article 38:**

1. Mortgage right shall be recognized as applicable when it is issued according to the provisions of this law and registered in the relevant office.
2. The Mortgagee shall register any amendment, cancellation or assignment of a mortgage in the respective office.

### **Resolution of disputes**

#### **Article 39:**

Claims for determining the priority of a mortgage and payment of compensation shall be resolved through the authorized court.

### **Retrospective effects of law**

#### **Article 40:**

1. Provisions of this law shall not be applicable to the transactions concluded prior to the enforcement of this law.
2. Parties to the existing non- possessing mortgaged can sign and register their new documents in relevant office, which are not contrary to the provisions of this law.

### **Creation of rules and procedures**

#### **Article 41:**

De Afghanistan Bank may establish regulations and procedures for better implementation of the provisions of this law.

### **Preference of the provisions**

#### **Article 42:**

The provisions of this law shall take precedence if they are contrary to other laws.

### **Enforcement**

#### **Article 43:**

This law shall be enforced from the date of endorsement and shall be published in the official gazette.