

MORTGAGE INSTITUTIONS ACT

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MORTGAGE INSTITUTIONS ACT

An Act to make provisions for establishment and licensing of mortgage institutions to grant loans and advance to individuals for the purchase or construction of a dwelling

house; improvement or extension of an existing dwelling house; and to accept savings and deposits from members of the public and to pay interest thereon.

[1989 No. 53.]

[29th December, 1989]

[Commencement]

Licensing of mortgage institutions

1. Mortgage business by mortgage institutions

(1) No mortgage business shall be transacted in Nigeria except by a company which is duly incorporated in Nigeria for that purpose and in possession of a valid licence granted by the Minister authorising it to do so.

(2) Subsection (1) of this section shall not apply to-

(a) the Federal Mortgage Bank or any bank licensed under the Banks and other Financial Institutions Act and carrying on mortgage business as part of its normal operations; or

[Cap. B3.]

(b) any institution which before the coming into force of this Act was carrying on mortgage business if such institution has before the 1st day of March 1990 applied to the Minister through the Federal Mortgage Bank for licence and the application has been granted by the Minister before that date.

(3) Any person who transacts any mortgage business in contravention of the provisions of this section shall be guilty of an offence and liable on conviction to a fine of ₦ 1 00 for each day during which the offence continues.

2. Licensing

(1) If any company is desirous of carrying on mortgage business in Nigeria, it shall apply in writing through the Federal Mortgage Bank to the Minister for the grant of a licence in accordance with the following provisions of this Act.

(2) Every application shall be accompanied by the following documents, namely-

(a) in the case of a company already in existence and engaged other than in mortgage business-

(i) a copy of the company's certificate of incorporation, memorandum and articles of association certified by a director, secretary or other senior official of the company;

(ii) a copy of the latest balance sheet of the company;

(iii) a feasibility survey report in respect of the company's proposal to engage in mortgage business;

(iv) such other particulars as may be called for by the Federal Mortgage Bank; and

(b) in the case of a company not yet engaged in any business-

(i) a copy of the company's certificate of incorporation, memorandum and articles of association certified by the Registrar of Companies;

(ii) a feasibility survey report in respect of the company's proposal to engage in mortgage business; and

(iii) such other particulars as may be called for by the Federal Mortgage Bank.

(3) Upon receipt of the application and the documents or particulars referred to in subsection (1) of this section, the Federal Mortgage Bank shall consider them and make a recommendation thereon to the Minister.

(4) After the receipt of an application, documents and particulars and the recommendation of the Federal Mortgage Bank thereon, if the Minister is of the opinion-

(a) that a licence ought to be granted to the company, he shall issue it with such licence with or without condition;

(b) that it would be undesirable in the public interest to issue a certificate to such a company, he may refuse to issue such certificates, where the Minister refuses to issue a certificate, he shall state his reasons for so doing.

(5) An applicant aggrieved by the decision of the Minister may within 14 days appeal to the President, who may confirm or revoke the decision of the Minister.

(6) Where a licence is subject to any condition, the mortgage institution shall comply with the condition.

(7) Any mortgage institution which fails to comply with any of the conditions of its licence shall be guilty of an offence and liable on conviction to a fine of ₦100 for each day during which the condition is not complied with.

3. Revocation of licence

(1) The Minister may, on the recommendation of the Federal Mortgage Bank by order published in the Federal *Gazette*, revoke any licence granted under this Act-

(a) if the mortgage institution ceases to carry on in Nigeria the type of mortgage business for which it was licenced or goes into liquidation or is wound up or otherwise dissolved; or

(b) if the mortgage institution fails to fulfil any condition subject to which the licence was granted;

(c) in the circumstances and in the manner where under this Act failure to comply with any provisions thereof is a ground for revocation of the licence.

(2) Where the Minister proposes to revoke any licence in accordance with subsection (1) of this section, he shall before revoking the licence give in writing notice of his

intention to the mortgage institution concerned and shall give it an opportunity of making representations and submitting reasons why its licence should not be so revoked.

4. Requirement as to minimum paid up capital

No company shall be granted a licence as a mortgage institution and no mortgage institution shall hold a licence unless the paid-up capital of the company or mortgage institution is not less than ₦5,000,000

Operations of mortgage institutions

5. Power to grant building loans and accept savings deposits

(1) Every mortgage institution shall have power to-

(a) grant loan and advance to an individual for the purchase or construction of a dwelling house;

(b) grant loan and advance to any person for the improvement or extension of a dwelling house;

(c) subject to the provisions of the Banks and other Financial Institutions Act, accept savings and deposits from the public and to pay interest thereon.

[Cap. B3.]

(2) The interest rate applicable to any deposit, loan and advance shall be in accordance with the interest rate determined by the Federal Mortgage Bank.

6. Duty to evaluate proposals

Every mortgage institution shall-

(a) conduct proper evaluation of the mortgage loan proposal submitted to it; and

(b) monitor the construction or extension of any dwelling house in respect of which a loan is granted.

7. Requirements as to security, and certain restrictions on operations

A mortgage institution shall not-

(a) grant a loan or advance for the building, improvement or extension of a dwelling house unless adequate security has been taken on an existing property or the property in respect of which the loan or advance is being granted;

(b) grant to any person any loan, advance or credit facility or give any financial guarantee or incur any other liability on behalf of such person so that the total of the loan, advance, credit facility or guarantee is at any time more than twenty *per centum* of the sum of the paid-up capital and statutory reserves of the mortgage institution;

(c) grant any loan, advance or credit facility on the security of its own shares; and

(d) engage in any commercial, agricultural, industrial or any other undertaking except as permitted under this Act or as the mortgage institution may in any way acquire in the course of the satisfaction of debts due to it so however that any interest in such undertaking shall be disposed of within a reasonable time.

8. Opening and closing of branches

No mortgage institution shall after the coming into force of this Act, open or close any of its branch offices in Nigeria without the prior consent in writing of the Federal Mortgage Bank.

9. Maintenance of reserve fund

(1) Every mortgage institution shall maintain a reserve fund and shall, out of its net profits each year and before any dividend is declared, transfer to the reserve fund-

(a) where the reserve fund is less than the paid-up share capital, a sum equal to not less than twenty-five *per centum* of such profits; or

(b) where the reserve fund is equal to or in excess of the paid-up capital, a sum equal to not less than twelve and a half *per centum* of the net profits.

(2) No transfer under subsection (1) of this section shall be made until any past losses have been made good.

10. Restriction on dividend

(1) No mortgage institution shall pay any dividend on its shares until-

(a) all its preliminary expenses, organisation expenses, amounts of losses incurred and other capitalised expenses not represented by tangible assets have been completely written off;

(b) after adequate provision for bad and doubtful debts has been made to the satisfaction of the Federal Mortgage Bank;

(c) adequate transfers have been made to the reserve fund in compliance with section 9 of this Act.

11. Liquidity requirements

(1) Every mortgage institution shall maintain a minimum percentage of its total deposit liabilities as deposits with the Federal Mortgage Bank as may be prescribed, from time to time, by the Federal Mortgage Bank.

(2) Except as required for the purposes of subsection (1) of this section, a mortgage institution may commit all its deposit liabilities to the granting of loans in the manner permitted under this Act.

12. Restriction as to amalgamation

(1) Every mortgage institution shall notify the Minister through the Federal Mortgage Bank of-

(a) any proposed agreement or arrangement for any sale or disposal of its business by amalgamation or otherwise; or

(b) any proposal for reconstruction,

where the Minister withholds approval under subsection (1) of this section, the mortgage institution shall not proceed with the proposed agreement or arrangement.

Books of account

13. Keeping of books of account

(1) Every mortgage institution shall keep proper books of account with respect to all its transactions.

(2) For the purposes of subsection (1) of this section, proper books of account shall not be deemed to be kept with respect to all transactions if such books as are necessary to explain such transactions and give a true and fair view of the state of affairs of the mortgage institution are not kept by the mortgage institution.

(3) The books of account as are required to be kept pursuant to subsection (1) of this section, shall be kept in the English language at the principal administrative office of the mortgage institution in Nigeria.

(4) Any person who being a director of any mortgage institution fails to take reasonable steps to secure compliance as respect any account required under this section, shall be guilty of an offence and liable in respect of each offence to imprisonment for 2 years or to a fine of ₦5,000 or to both such fine and imprisonment.

(5) In any proceeding against a person in respect of an offence under this section, it shall be a defence to prove that he had reasonable grounds to believe and did believe that another person, who is competent and reliable, was charged with the duty of seeing that the said provisions were complied with.

14. Contents of balance sheet

The balance sheet of every mortgage institution shall give a true and fair view of the state of affairs of the mortgage institution for each year.

15. Publication of balance sheet and profit and loss account

(1) Every mortgage institution shall, not later than 4 months after the end of each year-

(a) cause to be published in a daily newspaper printed and circulating in Nigeria;

(b) exhibit in a conspicuous position in each of its offices and branches in Nigeria; and

(c) forward to the Minister and to the Federal Mortgage Bank,

copies of its balance sheet and profit and loss account duly signed and containing the full and correct names of the directors of the mortgage institution.

(2) The balance sheet and profit and loss account of a mortgage institution shall bear on their face the report of an approved auditor and may be published or exhibited in such abridged form as may be agreed with the Federal Mortgage Bank.

(3) For the purposes of subsection (2) of this section, "**approved auditor**" means an auditor approved for the purposes of section 16 of this Act.

(4) Any mortgage institution which fails to comply with any of the requirements of this section shall in respect of each such failure be guilty of an offence and liable on conviction to a fine of ₦200.

16. Appointment and powers of auditor

(1) Every mortgage institution shall appoint annually, a person approved by the Minister, in this section referred to as "the approved auditor" whose duties shall be to make to the shareholders a report upon the annual balance sheet and profit and loss account of that institution.

(2) No person-

(a) having an interest in a mortgage institution otherwise than as a depositor; or

(b) who is a director, officer or agent of a mortgage institution; or

(c) which is a firm in which a director of a mortgage institution is interested as partner or director,

shall be eligible for appointment as the approved auditor for any mortgage institution.

(3) Any person appointed as the approved auditor who-

(a) subsequently acquires any such interest as is specified in subsection (2) of this section; or

(b) subsequently becomes a partner in a firm in which a director of a mortgage institution is interested as partner or director,

shall cease to be such auditor.

(4) If any mortgage institution-

(a) fails to appoint the approved auditor under subsection (1) of this section; or

(b) at any time fails to fill a vacancy for such person,

the Minister shall, after consultation with the Federal Mortgage Bank, appoint the approved auditor and shall fix the remuneration to be paid by the mortgage institution to such auditor.

(5) Every auditor of a mortgage institution shall have a right of access at all times to the books, accounts and vouchers of the mortgage institution, and shall be entitled to require from the director, and officer of the mortgage institution such information and explanation as he thinks necessary for the performance of his duties.

(6) The report of the approved auditor shall be read together with the report of the board of management of the mortgage institution and two copies of each report together with the report of the board of management at the annual general meeting of the shareholders and two copies of each report together with the auditor's analysis of doubtful advances, shall be sent to the Federal Mortgage Bank which shall transmit a copy of each report to the Minister.

(7) For the purposes of this section, an approved auditor shall be an auditor who is a member of one of the professional bodies for the time being declared by the Ministry by notice in the Federal *Gazette* to be approved for such purposes.

(8) No auditor shall be approved for the purposes of this section unless-

(a) he is resident in Nigeria; and

(b) he is carrying on in Nigeria full-time professional practice as a public accountant and auditor.

General and supplemental

17. Submission of returns to the Federal Mortgage Bank

(1) Every mortgage institution shall submit to the Federal Mortgage Bank-

(a) not later than 28 days after the last day of each month, a statement of its assets and liabilities in such form as may be prescribed by the Federal Mortgage Bank;

(b) such other periodical returns as may be prescribed by the Federal Mortgage Bank; and

(c) on request, such information as it may be prescribed by the Federal Mortgage Bank.

(2) The Federal Mortgage Bank may require a mortgage institution to submit such further information as it may deem necessary for the proper understanding of any statement or information furnished under subsection (1) of this section and such information shall be submitted within such a reasonable period as the Federal Mortgage Bank may require.

(3) Any mortgage institution which fails to comply with any of the requirements of subsections (1) and (2) of this section shall be guilty of an offence and liable on conviction to a fine of ₦ 100 for each day during which the offence continues.

(4) It shall be the responsibility of the Federal Mortgage Bank to prepare and publish consolidated statements aggregating the figures in the statements furnished under subsection (1) of this section.

(5) The statements and information submitted by each mortgage institution under subsection (1) or (2) of this section shall be regarded as secret other than as between that mortgage institution and the Federal Mortgage Bank:

Provided that the Federal Mortgage Bank-

(a) shall furnish any such information required by the Minister, and shall inform the Minister if at any time in its opinion there is need for an inspection of any mortgage institution; and

(b) may in support of its opinion convey to the Minister such information as it possesses concerning the state of affairs of any mortgage institution.

18. Appointment and powers of examiners

(1) There shall be an examiner who shall-

(a) be an officer of the Federal Mortgage Bank appointed by it with power to examine periodically the books and affairs of each and every mortgage institution;

(b) have the right of access at all times to the books, accounts and vouchers of the mortgage institution;

(c) be entitled to require from the officer and director of the mortgage institution such information and explanation as he thinks necessary for the performance of his duties;

(d) have access to any accounts, returns or information regarding mortgage institutions that are in the possession of the Federal Ministry of Finance.

(2) An examiner shall make a report of his findings to the Federal Mortgage Bank which shall forward a copy of such report to the Minister.

19. Disclosure of interests by directors

(1) Every director of a mortgage institution who is in any manner whatsoever, whether directly or indirectly, interested in any advance, loan or credit facility from that mortgage institution shall, as soon as practicable, declare the nature of his interest to the board of directors of that mortgage institution and the secretary of the mortgage institution shall cause the declaration to be circulated forthwith to all the other directors.

(2) Every director of a mortgage institution who holds any office or possesses any property which creates duties or interests that conflict with his duties or interests as director shall declare at a meeting of the directors of that mortgage institution the fact and the nature, character and the extent of the conflict.

(3) The declaration referred to in subsection (2) of this section shall be made at the first meeting of directors held-

(a) after he became a director of the mortgage institution; or

(b) if already a director, after he commenced to hold office or to possess the property.

20. Restriction of interests by officials of mortgage institutions

(1) No manager, official or employee of a mortgage institution shall-

(a) in any manner whatsoever, whether directly or indirectly be interested in any loan, advance or credit facility to be granted to any person by that mortgage institution; or

(b) grant any loan, advance or credit facility to any person unless he is authorised in accordance with the rules and regulations of the mortgage institution and where adequate security is required by such rules and regulations, such security shall be obtained for the loan, advance or credit facility and shall be deposited with the mortgage institution.

(2) Every manager or other official who contravenes or fails to comply with the provisions of this section shall be guilty of an offence and liable on conviction to a fine of HI 0,000 or to imprisonment for a term of three years and in addition any money or property accruing to any person by reason of the contravention shall be forfeited to the Federal Government.

21. Prohibition of receipt of commission, etc., by staff

Any director, officer or employee of a mortgage institution or other persons being persons receiving remuneration from such mortgage institution, who asks for or receives, consents or agrees to receive any gift, commission, emolument, service, gratuity, money,

property or thing of value for his own personal benefit or advantage or for that of any of his relations, from any person other than from the mortgage institution-

- (a) for procuring or endeavouring to procure for any person any loan, advance or credit facility; or
- (b) for permitting any person to overdraw any account with the mortgage institution,

shall be guilty of an offence and liable on conviction to a fine of ₦ 10,000 or to imprisonment for a term of three years and in addition any money, property or thing of value accruing to any person by reason of the offence shall be forfeited to the Federal Government.

22. Priority of deposit liabilities

Where a mortgage institution becomes unable to meet its obligation or suspends payments, the assets of such mortgage institution shall be available to meet all deposit liabilities of the mortgage institution and such deposit liabilities shall have priority over all other liabilities of the mortgage institution.

23. Jurisdiction

The Federal High Court shall have jurisdiction to try all offences created under this Act.

24. Application of Companies and Allied Matters Act

The provisions of this Act are without prejudice to the provisions of the Companies and Allied Matters Act in so far as they relate to mortgage institutions and to winding up by the court:

Provided that where any of the provisions of that Act are inconsistent with any provisions of this Act, the provisions of this Act shall prevail.

[Cap. C20.]

25. Regulation

The Minister may in consultation with the Federal Mortgage Bank make such regulations as may be required from time to time for carrying into effect the object of this Act.

26. Interpretation

In this Act, unless the context otherwise requires-

"approved auditor" means the person appointed and approved as such pursuant to section 16 of this Act;

"deposits" means moneys lodged by the general public with any person for safe a keeping or for the purpose of earning interest or dividend whether or not such moneys are repayable upon demand, upon a given period of notice or upon a fixed date;

"director" includes any person by whatever name he may be referred to, carrying out or empowered to carry out substantially the same functions of a director in relation to the direction of a company registered under the Companies and Allied Matters Act;

[Cap. C20.]

"license" means a license granted under this Act;

"Minister" means the Minister charged with responsibility for matters relating to works and housing;

"Mortgage Bank" or **"Federal Mortgage Bank"** means the Federal Mortgage Bank of Nigeria established by the Federal Mortgage Bank of Nigeria Act;

[Cap. F16.]

"mortgage business" means the business of accepting deposits from members of the public for the purpose of granting mortgage loans and advances for the purchase, construction, improvement and extension of houses;

"mortgage institution" means any company licensed to carry on mortgage business under this Act.

27. Short title

This Act may be cited as the Mortgage Institutions Act.

MORTGAGE INSTITUTIONS ACT

SUBSIDIARY LEGISLATION

No Subsidiary Legislation