

LEGAL UPDATE

Ethiopia's Foreclosure Framework: The Property Mortgaged or Pledged with Banks Proclamation and Its Application to Micro-Financing Institutions

Proclamation No. 97/1998 | Proclamation No. 98/1998 |
Proclamation No. 626/2009 | Corrigendum No. 216/2000



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1. Introduction

Ethiopia's foreclosure framework rests on two instruments issued in 1998: the Property Mortgaged or Pledged with Banks Proclamation No. 97/1998 and the Business Mortgage Proclamation No. 98/1998. Both were issued to address a common mischief. The preamble to Proclamation No. 97/1998 records that it takes rather too long to obtain judgment from courts for the sale of property mortgaged or pledged with banks and to subsequently execute that judgment. It further records that banking business, which thrives on interest payments from loans provided from public money received by way of savings deposits, has been adversely affected. The stated purpose is to create a conducive environment for economic development by enabling banks to collect their debts efficiently and thereby promoting a good business culture.

The framework has been extended beyond banks. Article 28(2) of the Micro-Financing Business Proclamation No. 626/2009 provides that the Property Mortgaged or Pledged with Banks Proclamation No. 97/1998 and the Business Mortgage Proclamation No. 98/1998 shall, *mutatis mutandis*, apply with respect to property mortgaged or pledged with micro-financing institutions. Micro-financing institutions therefore have access to the same extrajudicial enforcement machinery as banks, even though they operate under a separate licensing and supervisory regime.

This update examines the foreclosure framework, its core mechanism, the powers of the registrar, the treatment of pending suits, the 2000 amendment concerning the bank's right to acquire property where the auction fails, and the extension of the framework to micro-financing institutions. It also considers the gap between the text and practice, which is central to understanding how the framework operates today.

2. What Does the Framework Regulate?

The Property Mortgaged or Pledged with Banks Proclamation No. 97/1998 regulates the sale of property mortgaged or pledged with banks. It applies to both immovable and movable property, as reflected in the Amharic title of the instrument. Its central reform is the displacement of the ordinary judicial route to the sale of mortgaged or pledged property. Under the Civil Code framework, the enforcement of a mortgage or pledge ordinarily required a court judgment and a subsequent execution process. The Proclamation's preamble identifies the length of that process as the mischief it seeks to remedy. Its operative provisions accordingly contemplate that property mortgaged or pledged with a bank may be sold by auction through a registrar, without the need first to obtain a court judgment.

The Business Mortgage Proclamation No. 98/1998 addresses business mortgage as a distinct security interest and provides for its enforcement. The two instruments operate

together. Proclamation No. 97/1998 deals with the enforcement of mortgages and pledges held by banks, while Proclamation No. 98/1998 provides for the creation and enforcement of business mortgage as a security device. The interaction between the two instruments is not always clearly delineated, and the scope of each has been the subject of practical uncertainty.

3. The Core Mechanism: Extrajudicial Sale Through a Registrar

The central mechanism of Proclamation No. 97/1998 is the sale of mortgaged or pledged property by auction through a registrar. The Proclamation does not, in the provisions available, set out in exhaustive detail the procedural steps that the registrar must follow. It confers on the registrar the powers and duties necessary to carry out the sale by auction, and it contemplates that the sale will proceed without prior judicial authorisation. The registrar is therefore the central figure in the enforcement process, and the adequacy of the procedural safeguards depends in practice on the registrar's own practices and on the general administrative law that governs the exercise of public powers.

The mechanism is available only where a bank is the secured creditor. It does not apply to security held by other creditors, who must continue to rely on the judicial route. The limited scope of the mechanism is a feature of the instrument, not an oversight. The Proclamation was designed as a bank-specific intervention, and it has remained so. The extension to micro-financing institutions by Proclamation No. 626/2009 was effected by cross-reference rather than by a general expansion of the mechanism, and it therefore inherits the same limited structure.

4. The Registrar's Powers and the Use of Police Force

The Proclamation confers on the registrar the powers and duties necessary to carry out the sale by auction. The most notable of these is the power to use police force. The Proclamation provides that where the registrar, while taking action in accordance with his powers, finds it necessary to use police force, he may order the police. This provision authorises state coercive power in support of a private enforcement process that is not supervised by a court at the point of sale.

The Proclamation does not, in the provisions available, set out the procedural safeguards that would ordinarily accompany such a power, such as notice requirements, the right of the debtor to be heard, valuation requirements, or judicial review of the registrar's decision. Whether such safeguards exist in subordinate instruments or in the general administrative law is a matter that requires careful examination in any particular case. The absence of detailed safeguards in the text is a structural feature of the Proclamation that has implications for debtors and for the legitimacy of the auction process. The power to order police force is, in practice, one of the most significant and least discussed features of the foreclosure framework.

5. Termination of Pending Suits and Decrees

The Proclamation addresses the transitional position of litigation. It provides that any suit or decree on execution pending before a court prior to the coming into force of the Proclamation may be terminated upon application by the creditor bank with which the property has been mortgaged or pledged, and that the bank may then sell and transfer the property to the buyer in accordance with the Proclamation. This provision is striking. It allows a creditor bank, by application, to remove a pending suit or an execution decree from the judicial process and to proceed under the Proclamation's administrative mechanism instead.

The provision does not require the consent of the debtor, and it does not condition the termination of the proceedings on any judicial assessment of the merits. Its effect is to allow a creditor to migrate an existing dispute into a less supervised enforcement channel. This is among the more consequential provisions of the Proclamation, and it is also among the provisions that appear to have been used sparingly in practice. The provision applies to suits and decrees that were pending prior to the entry into force of the Proclamation in February 1998, so its direct relevance today is limited to legacy matters. Its broader significance lies in what it reveals about the policy orientation of the instrument: the Proclamation was designed to move enforcement out of the courts and into the administrative process.

6. The 2000 Amendment: The Bank's Right to Acquire Property Where the Auction Fails

The Proclamation was amended in 2000 by Corrigendum No. 216/2000, published in the Federal Negarit Gazette on 6 July 2000. The amendment concerns Article 4 of the Proclamation. It deletes a previous correction made under paragraph (2) of Corrigendum No. 1/1998 and adds the phrase "or if no buyer appears at the second auction, it may acquire the property at the floor price set for the first auction and have the ownership of the property transferred to it" after the word "buyer" at the end of the Article.

The effect of the amendment is to allow the bank, where no buyer appears at the second auction, to acquire the property itself at the floor price set for the first auction and to have ownership transferred to it. This is a significant mechanism. It prevents the auction from failing indefinitely in a depressed market, and it gives the bank a route to recover value from the security even where there is no third-party demand. The mechanism is akin to an adjudication to the creditor, a device familiar in many foreclosure regimes. It also raises questions about valuation, about the protection of the debtor's equity, and about the transparency of the process by which the bank acquires the property. The amendment does not, in the text available, address these questions in detail, and their resolution depends on the registrar's practices and on the general law.

The floor price set for the first auction therefore becomes the reference price for the bank's acquisition. The choice of the first auction's floor price, rather than the second

auction's reduced price, is significant because it sets a higher benchmark for the bank's acquisition than would otherwise be the case. The mechanism therefore reflects an attempt to balance the bank's interest in recovering its debt against the debtor's interest in not having the property transferred at an unduly low price.

7. Application to Micro-Financing Institutions

The foreclosure framework is not confined to banks. Article 28(2) of the Micro-Financing Business Proclamation No. 626/2009 provides that the Property Mortgaged or Pledged with Banks Proclamation No. 97/1998 and the Business Mortgage Proclamation No. 98/1998 shall, *mutatis mutandis*, apply with respect to property mortgaged or pledged with micro-financing institutions. The cross-reference is important for two reasons.

First, it extends the extrajudicial enforcement mechanism to a sector that is central to financial inclusion in Ethiopia. Micro-financing institutions lend to rural farmers, to micro and small-scale entrepreneurs, and to borrowers who may not have access to bank credit. Their security arrangements are often informal, and their enforcement capacity is limited. The availability of the extrajudicial mechanism is therefore of practical significance for their recovery of loans.

Second, the cross-reference is subject to the principle of *mutatis mutandis*, which means that the provisions of Proclamation No. 97/1998 and Proclamation No. 98/1998 apply with the adaptations necessary to fit the micro-financing context. The precise scope of those adaptations is not always clear. Questions arise, for example, about whether the registrar's powers and the police force provision apply in the same manner to micro-financing institutions as they do to banks, and about whether the procedural safeguards are adequate for the typically smaller-scale transactions involved. These questions have not been resolved by a developed body of practice, and they require careful analysis in any particular case.

8. Relationship with Proclamation No. 98/1998

The foreclosure framework is not confined to Proclamation No. 97/1998. Article 28(2) of the Micro-Financing Business Proclamation No. 626/2009 refers to two instruments: the Property Mortgaged or Pledged with Banks Proclamation No. 97/1998 and the Business Mortgage Proclamation No. 98/1998. It provides that both shall, *mutatis mutandis*, be applicable with respect to property mortgaged or pledged with micro-financing institutions. The cross-reference establishes that Proclamation No. 98/1998 forms part of the foreclosure framework as it applies to micro-financing institutions, alongside Proclamation No. 97/1998.

9. Implementation in Practice: An Uneven Record

The foreclosure framework's practical record is uneven. Its core mechanism, the sale of mortgaged or pledged property by auction through a registrar, is used, but its application has not been uniform. In some contexts, banks and their advisers have continued to rely

on the ordinary judicial route, notwithstanding the availability of the administrative mechanism. In others, the registrar-based process has been invoked, but the procedural details have been worked out on an ad hoc basis rather than through a settled body of practice. The provision on pending suits and decrees appears to have been used infrequently, and there is limited publicly available guidance on its interpretation and application. The power to order police force has been invoked in some cases, but its exercise has not been accompanied by a developed body of published decisions or procedural rules. The 2000 amendment on the bank's right to acquire property where the auction fails has been applied, but its operation has not been the subject of extensive published analysis.

This unevenness should not be attributed solely to the Proclamation. It reflects the broader conditions of secured lending enforcement in Ethiopia, including the capacity of registries, the availability of valuation expertise, the state of the court system, and the absence of consolidated procedural rules. It also reflects the fact that the Proclamation was a narrow intervention that did not address the wider institutional and procedural questions that determine how efficiently security can be enforced. A statute that removes one procedural step does not, by itself, create an efficient enforcement system.

10. Practical Implications for Banks, Micro-Financing Institutions, Debtors and Advisers

For banks and micro-financing institutions, the framework offers a mechanism that is, on its face, faster than the judicial route. Whether it is in fact faster depends on the registrar's capacity, the availability of police support where required, the willingness of buyers to participate in the auction, and the risk of subsequent challenge to the sale. Creditors considering reliance on the framework should assess not only its text but also the practice in the relevant registry and the likely reaction of the courts if the sale is challenged. They should also consider whether the ordinary judicial route, though slower, offers greater certainty of outcome.

For debtors, the framework reduces the opportunities for judicial scrutiny of the enforcement process. The power of the registrar to order police force, the provision allowing a creditor to terminate pending proceedings by application, and the limited procedural detail in the text together mean that a debtor's ability to contest the sale is constrained. Debtors and their advisers should examine whether the framework's procedures were followed, whether the registrar had the power to act, whether the notice requirements (if any) were satisfied, whether the 2000 amendment was correctly applied where the bank acquired the property, and whether the sale was conducted in a manner consistent with the general law governing auctions.

For legal advisers, the framework requires attention to its interaction with the Civil Code, with the repealed Proclamation No. 65/1997, with Proclamation No. 98/1998, and with the micro-financing legislation. The transitional provisions are brief and may not resolve every case. The absence of a developed body of published decisions means that advice

must be given with appropriate caution, and that the position on contested points should be presented as a matter of argument rather than as settled law.

11. Conclusion

The foreclosure framework established by Proclamation No. 97/1998, Proclamation No. 98/1998, and the 2000 amendment is a significant but uneven instrument. Its central reform, the sale of mortgaged or pledged property by auction through a registrar without prior judgment, is a genuine departure from the judicial enforcement model. Its provision on pending suits and decrees is a striking example of procedural migration in favour of the creditor. Its extension to micro-financing institutions under Proclamation No. 626/2009 broadens its reach to a sector that is central to financial inclusion. Its 2000 amendment on the bank's right to acquire property where the auction fails gives the creditor a route to recover value even in a depressed market. Yet the framework has not generated the settled administrative practice that its drafters appear to have envisaged, and its application has been uneven. The appropriate response is neither to treat the framework as a settled and fully operational regime nor to dismiss it as a dead letter. It should be treated as an available but underdeveloped mechanism whose use requires careful attention to its text, to the practice of the relevant registry, and to the risk of subsequent challenge. The broader lesson is that procedural reform in secured lending requires more than a statute. It requires institutional capacity, procedural rules, published guidance, and a court system willing to give effect to the reform consistently. The Proclamation supplied the statute. The rest has been uneven.

Disclaimer

This legal update is provided for general informational purposes only and does not constitute legal advice. The application of the Proclamation may depend on the specific circumstances of a bank, micro-financing institution, debtor, security, or transaction, and on the practice of the relevant registry and the courts. Professional legal advice should be sought before relying on this update or taking any action.

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