

[Published in the Gazette of Pakistan, Extraordinary,
Part-I, dated the 22nd July, 2019]

ORDINANCE NO.IX OF 2019

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ORDINANCE

*to provide for the efficient recovery of mortgage-backed
securities by financial institutions*

WHEREAS it is expedient to provide for the efficient recovery of mortgage-backed securities by financial institutions for the purposes of facilitating financial institutions in granting those securities, thus the same ultimately acts as a catalyst for satisfying the housing needs of the people of Pakistan;

AND WHEREAS the Senate and National Assembly are not in session and circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of Article 89 of the Constitution of the Islamic Republic of Pakistan the President is pleased to make and promulgate the following Ordinance:-

1. **Short title, extent and commencement.**—(1) This Ordinance shall be called the Recovery of Mortgage-backed Security Ordinance, 2019.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

2. **Definitions.**—(1) In this Ordinance, unless the context otherwise requires,—

(a) “bank” means—

(i) a banking company; or

(ii) a corresponding new bank; or

(iii) the State Bank of Pakistan; or

(iv) a subsidiary bank; or

(v) the House Building Finance Company Limited; or

(vi) such other bank which the Federal Government may, by notification in the official Gazette, specify for the purposes of this Ordinance.

(b) “banking company” shall have the same meaning as assigned to it in the Banking Companies Ordinance, 1962 (LVII of 1962);

(c) “banking court” means:

(i) in respect of a case in which the claim does not exceed fifty million rupees or for the trial of offences under the Financial Institutions (Recovery of Finances) Ordinances 2001 (XLVI of 2001), the court established under section 5 of that Ordinance; and

(ii) in respect of any other case, the High Court.

(d) “borrower” means any person or corporation who has been granted financial assistance by any bank or financial institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or financial institution;

- (e) "Central Depository Company" means the Central Depository Company of Pakistan formed under the Central Depositories Act, 1997 (XIX of 1997);
- (f) "default" means non-payment of any principal debt or interest thereon or any other amount payable by a borrower to any secured creditor consequent upon which the account of such borrower is classified as non-performing asset in the books of account of the secured creditor in accordance with the directions or guidelines issued by the State Bank of Pakistan;
- (g) "financial assistance" means any loan or advance granted or any other credit facility extended by any bank or financial institution;
- (h) "financial asset" means debt or receivables and includes —
 - (i) any debt or receivables secured by mortgage of, or charge on, immovable property; or
 - (ii) any right or interest in the security, whether full or part underlying such debt or receivables.
- (i) "financial institution" means —
 - (i) a financial institution as defined under the Companies Act, 2017 (XIX of 2017); or
 - (ii) any other institution or non-banking financial company as defined in the Banking Companies Ordinance, 1962 (LVII of 1962), or which the Federal Government may, by notification in the official Gazette, specify as financial institution for the purposes of this Ordinance.
- (j) "mortgage" means the transfer of an interest in property for the purpose of securing the payment of the mortgage money or the performance of an obligation which may give rise to a pecuniary liability;
- (k) "mortgage money" means any finance or other amounts relating to a finance, penalties, damages, charges or pecuniary liabilities, payment of which is secured for the time being by the security agreement, including any mortgage deed or memorandum of deposit of title deeds;

- (l) "non-performing asset" means an asset or account of a borrower, which has been classified by a bank or financial institution as sub-standard, doubtful or loss asset, in accordance with the directions or under guidelines relating to asset classifications issued by the State Bank of Pakistan;
- (m) "prescribed" means prescribed by rules made under this Ordinance;
- (n) "property" means immovable property;
- (o) "State Bank" means the State Bank of Pakistan;
- (p) "security agreement" means an agreement, instrument or any other document or arrangement under which security interest is created in favour of the secured creditor including the creation of mortgage by deposit of title deeds with the secured creditor;
- (q) "secured asset" means the property on which security interest is created;
- (r) "secured creditor" means any bank or financial institution or any consortium or group of banks or financial institutions;
- (s) "secured debt" means a debt which is secured by any security interest; and
- (t) "security interest" means right, title and interest of any kind whatsoever upon property, created in favour of any secured creditor and includes any mortgage, charge, hypothecation or assignment.

(2) Words and expressions used and not defined in this Ordinance shall have the same meaning assigned thereto in the Contract Act, 1872 (IX of 1872) or the Transfer of Property Act, 1882 (IV of 1882) or the Companies Act, 2017 (XIX of 2017).

3. **Enforcement of security interest.**—(1) Any security interest created in favour of any secured creditor may be enforced, without the intervention of any court or tribunal, by such creditor in accordance with the provisions of this Ordinance.

(2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any installment thereof and his account in respect of such debt is classified by the secured creditor as a non-performing asset, then the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured

creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4).

(3) The notice referred to in sub-section (2) shall give details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non-payment of secured debts by the borrower and shall be given in the manner and form as may be prescribed.

(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2) and in the prescribed manner, the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:—

- (a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realizing the secured asset;
- (b) take over the management of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale and realise the secured asset;
- (c) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

(5) Any payment made by any person referred to in clause (c) of sub-section (4) to the secured creditor shall give such person a valid discharge as if he has made payment to the borrower.

(6) Any transfer of secured asset after taking possession thereof or takeover of management under sub-section (4), by the secured creditor or by the manager on behalf of the secured creditor shall vest in the transferee all rights in, or in relation to, the secured asset transferred as if the transfer had been made by the owner of such secured asset.

(7) Where any action has been taken against a borrower under the provisions of sub-section (4), all costs, charges and expenses which, in the opinion of the secured creditor, have been properly incurred by him or any expenses incidental thereto, shall be recoverable from the borrower and the money which is received by the secured creditor shall, in the absence of any contract to the contrary, be held by him in trust, to be applied, firstly, in payment of such costs, charges and expenses and secondly, in discharge of the dues of the secured creditor and the residue of the money so received shall be paid to the person entitled thereto in accordance with his rights and interests.