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Development Economic Policy Reform Analysis Project

Final Report

Mortgage Market Reform in Egypt

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MORTGAGE MARKET REFORM IN EGYPT

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PREFACE

This report is in response to a request from the Ministry of Economy and Foreign Trade (MEFT) to the Development Economic Policy Reform Analysis (DEPRA) Project, under contract to the United States Agency for International Development, Cairo, Egypt (USAID/Egypt) (Contract No. 263-C-00-96-00001-00) with Nathan Associates Inc.

The DEPRA project is intended to encourage and support macroeconomic reform in Egypt through the provision of technical assistance and services to the MEFT with particular focus on international trade and investment liberalization, deregulation and financial sector strengthening.

This report and draft legislation was prepared by a team of international and Egyptian consultants. The international consultants were Dr. Michael L. Unger, Team Leader and Financial Economist, Mrs. Elaine Weis, Housing Finance Specialist, Dr. Douglas Diamond, Housing Finance Economist. The Egyptians were Dr. Karim Kamel, Attorney, Dr. Moh'd Nour Shihata, Professor of Civil Procedures Law, and Dr. Samir Makary, Professor of Economics. Dr. Mohamed Kamel, Attorney, provided expert legal advice to the team.

The team would like to acknowledge the excellent contribution and collaboration of Dr. Ziad Bahaa Eldin, Legal Advisor to the Minister and Judge Ashraf Shoukri, both of the Ministry of Economy and Foreign Trade.

Finally, the team would like to recognize Dr. James L. Walker, Chief of Party, DEPRA, Mr. Mohamed Wassim Saleh, Economist, and the entire DEPRA staff for their invaluable assistance in the preparation of this report.

The views, conclusions and recommendations expressed herein are solely those of the authors and are not intended as statements of policy or opinion of either USAID, the MEFT, or the authors' parent institutions.

Introduction and Executive Summary

Introduction

The Ministry of Economy and Foreign Trade and the Egyptian banking and business sectors have recognized the importance of a well-functioning housing finance system to the financial and economic development of Egypt. The Ministry is addressing mortgage market reform to implement an important element of overall financial sector reform as well as provide an opportunity for more Egyptian families to purchase a home. An additional incentive for taking action today is the oversupply of unsold housing units, particularly in the new cities, which residential real estate developers have been unable to sell, in part, due to the lack of any source of longer term mortgage finance in the Egyptian financial system. As a result of the overhang in the housing market, real estate prices have been falling and developers, and their banks, are facing the very real risk of financial impairment or even bankruptcy. Many developers who have taken out construction loans to build large blocks of flats and extensive villa projects lack the financial resources to repay their debts. Some have exhausted their ability to finance purchases of units in their projects through installment sales or lease-purchase plans. In other cases, the purchasers of housing units who had made deposits or even several payments during construction, have walked away from their units, leaving the developers without a sale and no ready market of buyers.

This situation has caused concern at the Ministry, the Central Bank of Egypt and the banks themselves. Banks which have extended credit to developers for residential construction are facing the prospect of increased provisions and potential charge-off of these loans, adversely impacting their asset quality, earnings and capital. The problem is intensified because most large real estate developers are affiliates of other Egyptian companies to whom banks have also extended large amounts of credit. If the financial positions of the residential real estate developers suffer further deterioration, there would be significant negative implications for the overall economy as well as the banking sector.

While developing a functioning housing finance system may not alleviate all of the problems of the development firms, providing access to housing credit should at least open up the home purchase market for a broader range of Egyptian families. It is widely recognized in the government, regulatory and business communities that a well-functioning housing finance system in Egypt should include a number of elements: primary mortgage lenders which originate mortgage loans as a profitable line of business, investment funds which issue shares against pools of mortgages and mortgage bonds purchased from mortgage lenders and institutional and individual investors willing to purchase securities backed by mortgages.

Egypt has the basic legal, regulatory and institutional infrastructure in place to introduce a mortgage finance system. Commercial and specialized banks are already expanding the range of consumer finance products and services they offer. Mortgage financing is a logical extension of these retail-banking activities. The capital market is established and is growing both through domestic firms and joint ventures with foreign investment companies. Longer term (i.e. 7 to 10 year) government and corporate bonds have already been issued and have received good investor

acceptance. The institutional investor market is being developed through mutual funds and reform of the insurance and pension fund sectors.

The stage is set in Egypt for the successful introduction of a mortgage finance system. The foundation of that system will be a legal and regulatory framework which permits the private sector to engage in mortgage financing operations in a safe, sound, stable and profitable manner and, at the same time, provides adequate protection for home buyers.

Shortcomings of the Current Egyptian Mortgage Finance System

A successful mortgage finance system consisting of both primary and secondary mortgage markets must be built on a sound legal and regulatory foundation. The prerequisites for any effective mortgage finance system are laws establishing security of title and a system of property and lien registration. The Egyptian Civil Code has clearly defined the rights of the parties to a mortgage, the laws and regulations on property registration have established a title and lien registration system and the Civil Code and the Code of Civil Procedures have set out a judicial process for execution on a mortgage. The problem is that the existing systems both for property and mortgage registration and execution on a mortgage are time consuming, cumbersome and costly. In addition, the judicial mortgage foreclosure process under current law is vulnerable to challenge by both material and frivolous claims which can extend the time of foreclosure for years.

As a result, Egyptian banks have not been active mortgage lenders, particularly for residential mortgages to individuals and, despite the rapid development of the Egyptian capital market, investment companies have been reluctant to create any form of mortgage-related security. Both mortgage lenders and mortgage securities investors must have confidence that their security interests in the underlying property is enforceable in a timely and cost effective manner.

An ineffective procedure for enforcing a security interest in real property is not the only impediment to the development of an efficient mortgage finance system in Egypt. Another problem is the lack of medium to long term financing for mortgages. Most lending in Egypt is funded with short term bank deposits, which is not appropriate for longer term mortgages. The bond market is just beginning to be developed, but only the largest banks and corporations are able to float bond issues in the capital market. In addition, issuing bonds to fund mortgages would require additional capital under the bank capital adequacy regulations. The capital position of some Egyptian banks is not strong enough to support any significant growth in assets due to increased mortgage lending. Banks need an alternative to portfolio mortgage lending and non-bank financial companies need to be authorized to provide a large, stable flow of funds into mortgage finance. The introduction of mortgage securitization to the Egyptian capital markets would respond to the needs of banks and would permit the development of mortgage investment funds which could channel longer term financial resources into the mortgage market.

The Mortgage Market Reform Project

The Minister of Economy and Foreign Trade recognized the shortcomings of the current Egyptian mortgage system and requested the DEPRA Project to analyze the existing housing finance market in Egypt, to make recommendations on how to improve its performance and to draft proposed mortgage legislation to implement those recommendations. This mortgage market reform project involved the Ministry's legal staff, Egyptian legal consultants and DEPRA consultants (the mortgage market reform project team). The project team jointly evaluated the existing legal and regulatory system in Egypt to identify the primary areas where reform was needed, analyzed existing real estate lending practices and prepared estimates of the impact of the passage of a new mortgage law on the volume of residential mortgage originations. The team also prepared summaries of the features of secondary mortgage markets and mortgage insurance programs. These summaries are included as annexes to this report.

The Proposed Mortgage Law

The mortgage market reform team considered numerous alternatives for resolving the legal and regulatory issues which were identified as impediments to the development of a mortgage finance system in Egypt. The team recommended that the best way to implement the needed reforms was through the enactment of a comprehensive mortgage law. The Minister authorized the team to proceed with drafting a mortgage law which would address foreclosure procedures, mortgage registration, securitization, and the institutional structure of the mortgage market and consumer protection. Several drafts of a proposed mortgage law were prepared and reviewed by the team. A final draft in English representing a consensus of views of the team members was submitted to the Minister.

The proposed mortgage law is designed to achieve several key objectives:

1. Establish a new civil procedure for execution on a mortgage under the oversight of the court of execution, but conducted by a foreclosure trustee outside the court system, which permits the sale of the mortgaged property at public auction to satisfy a mortgage debt within as little as three to four months;
2. Limit the ability of the defaulted debtor and others to delay the foreclosure;
3. Authorize the establishment of non-bank mortgage companies and establish the regulatory framework for licensing and supervision of such companies;
4. Authorize investment in mortgages by banks, other financial institutions and investment funds and the sale of mortgages by bank and non-bank mortgage originators;
5. Authorize the issuance of mortgage securities, including debt instruments collateralized by mortgage loans, certificates of ownership in pools of mortgages and shares in mortgage investment funds, and adopts specific provisions related to

the status of investors in mortgage securities relating to rights in the mortgaged property, taxation and bankruptcy;

6. Establish the authority of the Minister of Economy and Foreign Trade to issue executive regulations to establish prudential guidelines for mortgage lending and investment; and
7. Establish standards for protection of consumers in mortgage transactions.

The draft proposed mortgage law is undergoing final review and revision by the Minister's staff. Policy decisions will have to be made in several areas before the final draft law (in Arabic) is prepared. These include the nonjudicial foreclosure process; the appropriate regulatory body to supervise mortgage finance activities and the extent to which mortgage finance will be regulated; and the types of entities which can be licensed to engage in mortgage finance activities. It is expected that the Ministry will have a proposed mortgage law ready for submission to the Cabinet by mid-January, 2000.

Impact of Enactment of the Mortgage Law

The passage of the proposed Mortgage Law will mark the beginning of a modern housing finance system in Egypt. The law will encourage banks and, possibly, new specialized mortgage lenders to develop retail home lending as a major line of business because mortgage lenders will have some assurance that they will be able to realize on mortgage collateral in a timely and cost effective manner. The risk of losing the mortgaged property also should provide a powerful incentive to mortgage borrowers to keep their loan payments current.

Mortgage lenders can be expected to target mortgage lending to the segment of the population they perceive as good potential customers - middle to upper income households, particularly young professionals with strong future earnings prospects. This target market would consist of households with incomes of at least LE 2,000 per month, including income derived from informal sector employment.

Although the total demand for mortgage credit may be large, the effective demand from "bankable" credit customers can be expected to be limited. Based on 1998 data adjusted to the year 2000, the total volume of home sales to the target market segment for mortgage finance could be estimated at LE 12 to LE 15 billion. Over the next year or so, the oversupply of more expensive housing units on the market is expected to continue to depress the housing market. The average selling price of middle to upper income units is not expected to increase above the 1998 level.

In the near term, during the transition from a period in which the great majority of home purchases were effected without financing to a more highly developed housing finance system, it is likely that only a portion of home purchases will involve mortgage financing. Based on the experience in Eastern Europe in the first few years after the introduction of private sector mortgage finance, it is estimated that, initially, only about 20 to 30 percent of middle to upper income home buyers would finance their home purchases. In addition, the average loan-to-value (LTV) ratio probably would not exceed 50 percent as long as interest rates are in the 14 to 15 percent range. Based on these assumptions, for the first year or so after the enactment of the

mortgage law, the potential annual volume of mortgage lending is not likely to exceed 25,000 loans per year for a total loan volume of LE 1.5 to LE 2 billion. This limited volume of mortgage lending activity may not be sufficient to support more than a few primary mortgage lending institutions or a meaningful volume of mortgage securitization transactions.

Increasing the volume of mortgage lending in Egypt will require changes in the attitudes of the public and bank management towards debt financing of home purchases. Egypt, like many other developed and developing countries, does not have a consumer credit culture. Public information and education about the responsible use of credit will be essential to the future growth of the residential mortgage market. Banks and other mortgage lenders may have to launch extensive marketing campaigns to promote mortgage lending, similar to the current promotion of bank debit and credit cards, to generate the volume of lending needed to earn an acceptable return on equity.

One of the principal reasons for the high priority given to mortgage market reform in Egypt today is to stimulate sales of the thousands of vacant or partially completed luxury flats (i.e. flats costing LE 300,000 or more) which have been constructed in Greater Cairo and the new cities over the last several years. While mortgage loan programs targeted to prospective purchasers of luxury units can be expected to help developers market the units and to result in some increase in the number of households who can afford such flats, declining prices of these units and household income and mortgage interest rate constraints will limit the stimulative impact of the availability of mortgage finance.

Facilitating access to housing credit on market terms and interest rates should not be expected to have a significant impact on increasing the availability of housing for lower income households. Housing for the lowest income groups usually will not be brought within the scope of the formal housing finance system because low income households are unable to either accumulate the savings required for a down payment and or allocate 25 or 30 percent of their incomes to mortgage payments. Formal home ownership generally is not achievable for lower income households without some form of government intervention. The government of Egypt could continue its existing programs of low income housing construction and allocation, implement some form of direct or indirect interest rate subsidy for mortgage loans granted by formal financial institutions or provide credit guarantees for lower income households.

All programs for government intervention in the housing market carry the risk of building up large non-transparent contingent liabilities and creating distortions in the housing and credit markets. It is recommended that before the government of Egypt decides to expand its intervention in the provision of low income housing to include mortgage financing as well as its direct production and rental programs or to shift its focus to direct or indirect housing finance subsidies, the government undertake a comprehensive evaluation of the costs and benefits of the many alternative models of government intervention employed in other countries.

Critical Factors for Mortgage Market Development in Egypt

The present seems to be a good time for Egypt to develop a stronger housing finance system. The demand for housing credit and the capacity of the financial system to supply it has been

rising. In addition, the use of installment credit is becoming increasingly popular for the financing of a wide range of consumer durables, including automobiles, appliances and furniture. On the supply side, commercial banks are becoming more market oriented, investment banking are expanding (taking positions in Egyptian investment companies and funds), the bond market is becoming a more important source of funding for many companies, and financial market participants are becoming increasingly sophisticated in the management of financial risks. Housing finance will become attractive to at least some banks once the new mortgage law is enacted. The proposed mortgage law authorizes the establishment of specialized mortgage finance companies that can buy loans originated by banks as well as originating mortgage loan themselves. Further, specialized mortgage investment fund may be authorized to purchase mortgages loans, assemble them into pools and issues shares representing ownership rights in the mortgage assets. Factors that could slow the growth of the Egyptian residential mortgage market are the lack of a well-developed resale market for flats, and the absence of mortgage repayment insurance which permits the shifting of credit risk to institutional specialists more able to evaluate and manage such risks.

Next Steps

Once a mortgage law is enacted by Parliament, the provisions of the law will have to be implemented. The development of a well functioning mortgage finance market based on the new mortgage law will require the following additional actions and technical assistance: 1) developing prudential regulations for ensuring safe and sound lending practices; 2) designing the instruments, loan origination and servicing procedures and marketing programs for residential and commercial mortgages; 3) educating and training foreclosure trustees, in-house legal counsel for mortgage lending institutions, judges, and attorneys in the mortgage execution and public auction procedures; 4) training real property evaluators and other technical experts to meet reasonable professional standards. It is recommended that DEPRA assist by providing technical assistance, training seminars, workshops and materials and expert consultants in the various aspects of the mortgage finance process.

SECTION 1.0

THE PROPOSED NEW MORTGAGE LAW

1.1 Introduction

A successful mortgage finance system consisting of both primary and secondary mortgage markets, must be built on a sound legal and regulatory foundation. Unlike many other developing countries, Egypt has a sound foundation of law relating to real property rights, mortgages, title and lien registration, banking transactions and securities. The Egyptian Civil Code clearly establishes the rights of the mortgagor, mortgagee and third parties in mortgage transactions. The Civil Code also addresses the assignment of a mortgage, thereby providing the legal foundation for mortgage securitization. Registration of ownership and lien interests in real property is governed by the Law on Real Estate Declaration and Notarization, No. 114 of 1946. The procedures for foreclosing on a mortgage are set out in the Law of Civil Procedure. The Commercial Law, No. 17 of 1999 governs debt instruments used by banks and the Capital Market Law, No. 95 of 1992, and the Executive Regulations issued under that law set out the terms and requirements for capital market instruments and institutions. A discussion of the specific provisions of these laws relevant to mortgage finance is included as Annex A.

The problem in Egypt has not been the lack of adequate laws and regulations, but the ineffectiveness of some of the existing laws, the time consuming, cumbersome and costly procedures required by these laws and the need to accommodate mortgage securitization transactions which have developed since the laws were enacted.

The most critical area requiring reform is the procedure for execution on a mortgage. The existing judicial mortgage foreclosure process does not give mortgage lenders assurance that they can realize on the mortgaged property if a borrower defaults in a reasonable time and at a reasonable cost. The judicial foreclosure is vulnerable to challenge by both material and frivolous claims that can extend the time of foreclosure for years. Another area of concern is the time consuming process for registration of a mortgage. One of the prerequisites for mortgage securitization is that the procedure for registering a change of ownership of the mortgage be quick, easy and inexpensive.

As a result of these factors, Egyptian banks have not been active mortgage lenders, particularly for residential mortgages to individuals and, despite the rapid development of the Egyptian capital market, investment companies have been reluctant to create any form of mortgage-related security. Both mortgage lenders and mortgage securities investors must have confidence that their security interests in the underlying property is enforceable in a timely and cost effective manner.

An ineffective procedure for enforcing a security interest in real property and a burdensome mortgage registration procedure are not the only impediments to the development of an efficient mortgage finance system in Egypt. Another problem is the lack of medium to long term financing for mortgages. Most lending in Egypt is funded with short term bank deposits, which is not appropriate for longer-term mortgages. The bond market is just beginning to be developed, but only the largest banks and corporations are able to float bond issues in the capital market. In addition, issuing bonds to fund mortgages would require additional capital under the bank capital adequacy regulations. The capital position of some Egyptian banks is not strong enough to support any significant growth in assets due to

increased mortgage lending. Banks need an alternative to portfolio mortgage lending and non-bank financial companies need to be authorized to provide a large, stable flow of funds into mortgage finance. The introduction of mortgage securitization to the Egyptian capital markets would respond to the needs of banks and would permit the development of mortgage investment funds which could channel longer term financial resources into the mortgage market.

The Minister of Economy and Foreign Trade recognized the shortcomings of the current Egyptian laws governing the mortgage system and requested the DEPRA Project to draft proposed mortgage legislation to implement those recommendations.

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2. Limit the ability of the defaulted debtor and other parties to delay the foreclosure process;
3. Authorize the establishment of non-bank mortgage companies and establish the regulatory framework for licensing and supervision of such companies;
4. Authorize investment in mortgages by banks, other financial institutions and investment funds and the sale of mortgages by bank and non-bank mortgage originators;
5. Authorize the issuance of mortgage securities, including debt instruments collateralized by mortgage loans, certificates of ownership in pools of mortgages and shares in mortgage investment funds, and adopts specific provisions related to the status of investors in mortgage securities relating to rights in the mortgaged property, taxation and bankruptcy;
6. Establish the authority of the Minister of Economy and Foreign Trade to issue executive regulations to establish prudential guidelines for mortgage lending and investment; and
7. Establish standards for protection of consumers in mortgage transactions.

Summary of Provisions of the Proposed Mortgage Law

The proposed mortgage law addresses numerous issues. This summary discusses the most important provisions.

Chapter 1 - General Provisions. Chapter 1 addresses a variety of issues. It applies the law to all mortgages of real property; requires that there be a written purchase and sale agreement for mortgages granted to finance the purchase of real property; gives the Minister the authority to issue regulations setting out the standards for sound mortgage lending operations; exempts mortgages from the maximum interest rate ceiling in the Civil Code; establishes the conditions under which a mortgage can be called if the mortgaged property is sold or assumed by the new owner; and provides that the mortgage agreement can require the prior approval of the lender before the borrower can lease, rent or place other claims on the mortgaged property or prepay the mortgage.

Chapter 2 - Inscription and Annotation of Mortgages. Chapter 2 streamlines the mortgage registration procedure and exempts mortgages from registration fees. It facilitates mortgage securitization by permitting the assignment of a mortgage to be registered by annotation in the margin of the original mortgage and granting a mortgage assignee the same priority of claim as the original mortgagee. The proposed law requires the Real Estate Declaration and Notarization Department to act on applications to register mortgages within one week.

Chapter 3 - Transfer of Mortgages. Chapter 3 includes provisions necessary to permit mortgage securitization. These include overriding the existing law requiring the prior consent of the mortgagor before a mortgage can be transferred, confirming that the right of a mortgagee to execute on mortgaged property granted under the bankruptcy law extends to any subsequent purchaser of the mortgage, authorizes mortgage lenders to sell mortgages and banks, insurance companies, pension funds, investment funds and any other Egyptian or foreign company, partnership or other entity to purchase mortgages and mortgage securities; permits disclosure of the confidential information about the borrower required for mortgage securitization transactions.

Chapter 4 - Execution on the Mortgage. Chapter 4 establishes a nonjudicial procedure for execution on the mortgaged real property which establishes minimum notice periods which would permit execution and sale of the property at public auction within a three to four month period. A borrower will be considered to be in default on the mortgage if he is more than 15 days delinquent on a payment or if he has intentionally damaged the mortgaged property. Once a default has occurred, the lender must give a warning notice to the borrower requiring that he pay the amounts due by a date not less than 15 days from the date of the warning notice. If the borrower does not pay the amount due within the time specified in the warning notice, the lender can petition the court of execution for an order of execution, which will be served on the borrower and all other parties with a known claim on the property and will be registered in the real property registry. The order of execution will include a final demand for payment within a specified time period. If the borrower fails to pay the amount due, the lender can ask the court of execution to appoint an execution (foreclosure) trustee to sell the property at public auction. The Minister of Economy and Foreign Trade, with the approval of the Minister of Justice, will issue regulations establishing the requirements for execution trustees.

The execution trustee will prepare a notice of sale of the mortgaged property, serve the notice of sale on the borrower and all other parties with a known claim on the property and have the notice of sale inscribed in the real property registry. He will then advertise the sale in the newspaper,

on the property to be sold and at the courthouse.

The execution trustee will establish a minimum acceptable bid for the property. The property will be offered at a public auction. The lender will not be permitted to bid at the public auction.

If no acceptable bids are submitted, the execution trustee will schedule a second auction and will advertise the sale of the property again. If no acceptable bids are submitted at the second auction, the execution trustee can offer the property to the lender as satisfaction of the debt.

The execution trustee will deposit the proceeds from the sale with the court treasury and will submit a report of the sale to the court. The judge will issue a judgment enforcing the sale that will convey title in and possession of the property to the successful bidder. The judgment will be inscribed in the property registry. If the person in possession of the property refuses to surrender possession, he will be considered a trespasser and, as such, will be subject to eviction by order of a judge of the court of urgent affairs.

Chapter 5 - Regulation of Mortgage Finance Activities. Chapter 5 creates an Administrative Authority to license and supervise mortgage lenders. The location of the Authority has yet to be determined. If the Authority is an independent entity, all of the procedures for its operation will have to be specified in the mortgage law. There is some question of whether there will be a sufficient volume of mortgage lending to justify an independent Authority.

Chapter 6 - Entities Authorized to Engage in Mortgage Finance Activities. Chapter 6 requires that companies engaging in mortgage finance activities, including mortgage origination, brokerage, servicing and issuance of mortgage securities, to be licensed and regulated by the Administrative Authority. Banks are explicitly authorized to invest in mortgage finance companies. The chapter establishes the licensing and registration procedures for mortgage finance companies. It also specified the enforcement actions the Authority can take if a mortgage finance company violates the law, regulations or operates in an unsafe and unsound manner.

Chapter 7 - Consumer Protection. Chapter 7 requires that mortgage lenders make certain disclosures to mortgage customers, credit payments promptly to the borrower's account, provide the borrower with statements of his account and notify the borrower if a new company takes over the servicing of the loan. It also provides a procedure for the hearing of consumer complaints.

Chapter 8 - Sanctions. Chapter 8 is being prepared by the Ministry legal staff. It will establish the penalties for violations of the law.

1.2 PROPOSED MORTGAGE LAW

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CHAPTER 1
GENERAL PROVISIONS

1. Applicability of the Law

Article 1.

This Law is applicable to all loans secured by mortgages on real property.

2. Requirement for a purchase/sale/loan commitment contract between the buyer and seller of the property and the mortgage lender.

Article 2.

In cases where the proceeds of a mortgage loan are being used to purchase the real property to be subject to a mortgage, a purchase/sale/financing commitment agreement shall be concluded between the mortgage lender, the seller and the buyer of the property according to a form which shall be specified in a decree issued by the Minister of Economy and Foreign Trade which shall particularly include the following:

- a. The conditions whereby the seller and the buyer have agreed to sell the property, including a description of the real property being purchased, the price to be paid and the method of payment;
- b. A list of all mortgages, liens and other claims against the property inscribed with the Real Estate Declaration and Notarization Department,
- c. A list of all mortgages, liens and other claims against the property which are not inscribed with the Real Estate Declaration and Notarization Department, but of which the seller has personal knowledge, including the name and address of the creditor, person in possession of the property or other claimant, the nature of the claim and the amount of the debt, if any, secured by the real property. The seller shall attest that there are no other mortgages, liens or other claims against the property.
- d. The mortgage lender's commitment to grant the loan, including the amount of the loan, the interest rate and the conditions of repayment;
- e. That the proceeds of the mortgage loan granted will be used for the purpose of purchasing the real property described in the contract, and that the proceeds shall be paid first to repay all existing mortgages, liens or other claims on the real property which are prior in right to the mortgage created to effect the purchase of the property, other than those mortgages, liens or other claims specifically accepted by the buyer and the mortgage lender, and that the balance shall be paid directly to the seller.
- f. The obligation to register the property in the name of the buyer without prejudice to the mortgage lender's rights as well as any rights which may be held by the seller.

3. Authority for Minister of Economy and Foreign Trade to issue executive regulations prescribing prudential standards for mortgage lending.

Article 3.

The Minister of Economy and Foreign Trade, after consulting with the Central Bank of Egypt, may issue executive regulations by decree establishing prudential mortgage lending procedures which shall particularly include the following:

- a. Credit underwriting and approval standards, including the maximum ratio of the installment payments on the mortgage loan or the maximum amount of the mortgage debt to the debtor's income, the method of calculating the debtor's income, and such other standards to ensure that the debtor has the financial ability to pay the interest and repay the debt in accordance with the terms of the mortgage agreement;
 - b. The maximum ratio of the amount of the mortgage debt to the selling price or the market value of the real property subject to the mortgage;
 - c. The maximum term to maturity for different classes of mortgage loans;
 - d. Acceptable methods for determining the value of real property, property valuation professional standards and requirements for certification of real property evaluators; and
 - e. Such other requirements to ensure that mortgage lending activities are consistent with safe and sound lending practices.
4. Exempt mortgage interest rates from the maximum interest rate restriction in the Civil Code.

Article 4.

The interest rates charged on mortgage loans and the method of calculation thereof shall not be restricted by the limits prescribed in any other law.

5. Limitation on property owner's rights to sell mortgaged property subject to the mortgage; conditions for permitting assumption of mortgage by subsequent purchaser.

Article 5.

As used in this Article, the term "new owner" means the person to whom the real property is to be sold or transferred or by whom the debt is to be assumed.

(1) The mortgaged real property, or any part of or right therein, may be sold or transferred only with the prior written consent of the mortgagee, or his successor or assignee. In the event that the ownership of all or any part of or any right in the mortgaged real property is sold or transferred to another person, the mortgage shall remain in effect against the property unless terminated by the mortgagee, his successor or assignee, and a release of the mortgage is inscribed with the Real Estate Declaration and Notarization Department.

(2) Subject to the limitations and exceptions provided in this Article, if all, any part of or any right in the mortgaged real property is sold or transferred without the mortgagee's, or his successor's or assignee's, prior written consent, the mortgagee, his successor or assignee, may,

at his option, require immediate payment in full of all sums secured by the mortgage, together with all accrued and unpaid interest thereon.

(3) If the mortgagee, his successor or assignee, exercises the option to require immediate payment of the debt in full, together with all accrued and unpaid interest thereon, he must give the mortgagor, and the debtor, if different from the mortgagor, notice of such acceleration. The notice shall provide a period of not less than thirty (30) days from the date of the notice within which the mortgagor, or the debtor, if different from the mortgagor, must pay all sums secured by the mortgaged real property. If the mortgagor or the debtor fails to pay these sums prior to the expiration of this period, the mortgagee, his successor or assignee, may exercise any remedies permitted by law and the mortgage agreement without further notice or demand on the mortgagor or the debtor.

(4) The mortgagee, his successor or assignee, may, at his option, permit the new owner of the mortgaged property to assume the debt for which the mortgage was given as security.

(5) In order to effect an assumption by the new owner of the debt secured by the mortgage, the mortgagor, or the debtor, if different from the mortgagor, or the new owner shall give to the mortgagee, his successor or assignee, a written notice and request for assumption. The Minister of Economy and Foreign Trade shall issue executive regulations specifying the form, requirements and the procedures for approval or rejection of the notice and request for assumption.

(6) Even if the mortgagee, or his successor or assignee, permits assumption by the new owner of the debt secured by the mortgage, he may refuse to release the mortgagor, or the debtor, if different from the mortgagor, from liability for the payment of the debt to be assumed.

(7) A mortgagee, or his successor or assignee, may assess a fee or charge to effect the assumption by a new owner of the debt secured by the mortgage. All fees, charges and costs shall be paid by the new owner.

(8) The mortgagee, or his successor or assignee, shall submit an application to the Real Estate Declaration and Notarization Department for the declaration of an annotation in the margin of the original mortgage registered with such Department giving the details of the assumption of such mortgage.

6. Mortgage agreement may require prior consent of encumbrance of mortgaged property
Article 6.

If agreed to by the mortgage lender and the mortgagor, the mortgage agreement may provide that the mortgagor may not lease or otherwise encumber the property subject to the mortgage to a third party without the prior written consent of the mortgagee, his successor or assignee. The mortgage agreement may further provide that the mortgagor, upon his, or the debtor's, if different from the mortgagor, failure pay the amounts due on the mortgage debt when due, shall transfer and assign to the mortgagee, his successor or assignee, all of the rents, revenue, issue and profits which are or may become due, including all leases and rental agreements on the mortgaged property, until the unpaid amounts due on the debt secured by the mortgage have been paid in full.

7. Prepayment of the mortgage debt permitted only with the mortgagee's consent

Article 7.

The interest and principal repayment of the mortgage debt shall be paid in accordance with the terms of the mortgage agreement and debt agreement, if separate from the mortgage agreement.

The mortgagor, or the debtor, if different from the mortgagor, may prepay all or any part of the debt if such prepayment is provided for in the mortgage agreement, or debt agreement, if different from the mortgage agreement. The mortgagee, his successors or assignees, may assess a fee for any full or partial prepayment, if the terms of the mortgage agreement, or the debt agreement, if separate from the mortgage agreement, so provide.

CHAPTER 2

INSCRIPTION AND ANNOTATION OF MORTGAGES

8. Application of this chapter; supersedes current law.

Article 8.

Without prejudice to the provisions of the law regulating the Real Estate Declaration and Notarization Department and the executive regulations thereof, the following rules shall apply to the inscription and annotation of mortgages and rights in mortgages and the transfer, assumption, assignment and redemption of mortgages and rights in mortgages subject to the provisions of this Law.

9. Establish a mortgage registration section within the Real Estate Declaration and Notarization Department

Article 9.

A Mortgage Section shall be established within the Real Estate Declaration and Notarization Department to effect inscriptions and annotations relating to mortgage financing transactions.

10. Inscription or annotation of mortgages required

Article 10.

All mortgages, rights in mortgages and any transfer, assumption, assignment or redemption of a mortgage or a right in a mortgage shall be inscribed or annotated with the Real Estate Declaration and Notarization Department.

11. Exemption from inscription fees.

Article 11.

No fees shall be charged for the inscription or annotation of a mortgage, a right in a mortgage or any transfer, assumption, assignment or redemption of a mortgage or a right in a mortgage.

12. Application for declaring the inscription of a mortgage

Article 12.

The procedures for declaring the inscription or annotation of the mortgage shall be carried out in accordance with an application to be submitted by the mortgagee to the Real Estate Declaration and Notarization Department in whose jurisdiction the real property is situated. An official copy of the mortgagor's purchase contract, if applicable, and the mortgage agreement and an official statement from the Real Estate Taxes Department shall be attached to such application. The application shall be signed by the mortgagee and shall include the following particulars:

- a. The name and address of the creditor and the name, surname and title of the person signing the application.
- b. The name and address of the mortgagor and the debtor, if different from the mortgagor. If the mortgagor or the debtor is a natural person the application shall also give his surname, profession and place of residence.
- c. The date of the mortgage and the place of issuance.
- d. The source, full amount and maturity date of the debt secured by the mortgage.
- e. An accurate description of the mortgaged property.
- f. An attestation by the mortgagee to the effect that he has inspected the property and has ascertained that its boundaries, area and features are in conformity with the description of the property contained in the title deed of the property and that he shall hold harmless the Real Estate Declaration and Notarization Department from any error in the description of the property contained in the application for inscription.

13. Elimination of the requirement for the property to be surveyed.

Article 13.

The application for the declaration of the inscription or annotation of the mortgage shall not be examined by the surveying sections provided for in the executive regulations of the law authorizing the establishment of the Real Estate Declaration and Notarization Department, provided that a survey of the real property performed by a competent real property surveyor is attached to the application. The Minister of Economy and Foreign Trade shall issue a decree specifying the qualifications of surveyors, the method of certification as a competent surveyor and the administrative authority, which shall maintain the list of competent surveyors.

14. Time for acting upon application; notice of deficiencies; time to correct

Article 14.

(1) The Real Estate Declaration and Notarization Department shall act upon an application for declaration of inscription or annotation of a mortgage within a period of one week from the date of submission thereof, provided that the following shall have been specifically ascertained:

- a. That the boundaries of the property according to the property description contained in the application are the same as those indicated in the registered title deed.
- b. That the mortgagor, whether he is the debtor or a guarantor in kind, is the owner of the property and has the capacity to mortgage the property.

(2) After the expiration of not more than one week from the date of submission of the application, the Real Estate Declaration and Notarization Department shall either approve the application or provide written notice by registered letter, with receipt acknowledgment, to the applicant specifying all the deficiencies in the application.

(3) The applicant shall correct such deficiencies and shall provide proof of such correction in a petition to be attached to the application. Within two days of submission of such proof of correction of the deficiencies, the Real Estate Declaration and Notarization Department shall approve the application.

15. Annotation of the assignment of the mortgage

Article 15.

Without prejudice to the provisions of Section 4, Chapter 1 of the Civil Law regarding the transfer or assignment of a debt, the mortgagee, or any successor or assignee, may transfer or assign the mortgage loan or his rights in the mortgage loan to another person. Such assignment shall be effected without the requirement of the debtor's consent, provided that it binds the debtor and third parties as of the date of annotation of the transfer or assignment at the Real Estate Declaration and Notarization Department.

16. Method of annotation

Article 16.

The annotation of the transfer or assignment of a mortgage shall be given the same consecutive number as that given to the inscription of the original mortgage and the transferee or assignee shall enjoy the same priority of claim as that of the original mortgagee vis-a-vis other inscribed claims against the property.

17. Procedures for annotation of a transfer or assignment of the mortgagee's rights

Article 17.

The annotation of the transfer or assignment of the rights of a mortgagee, or any successor or assignee, in the mortgaged property shall be effected pursuant to an application signed by the transferee or assignee and including the following particulars:

- a. The name and address of the transferee or assignee and the name, surname and title of the person signing the application.
- b. The date of the mortgage subject to the transfer or assignment, the date of the contract or deed of transfer or assignment and the place the contract or deed of transfer or assignment was issued.
- c. The name and address of the transferor or assignor.

- d. The source, full amount and maturity date of the mortgage debt.
- e. An accurate description of the mortgaged property.
- f. An attestation by the transferee or assignee to the effect that he has inspected the property and has ascertained that its boundaries, area and features are in conformity with the description of the property contained in the title deed of the property and that he shall hold harmless the Real Estate Declaration and Notarization Department from any error in the description of the property contained in the application for inscription.

An official copy of the inscribed mortgage agreement or the mortgage certificate shall be attached to the application.

18. Time for processing annotation of transfer or assignment

Article 18.

The Real Estate Declaration and Notarization Department shall act upon the application for annotation of a transfer or assignment of a mortgage within a period of one week from the date of submission of the application, provided that the validity of the mortgage subject to the transfer or assignment and the identity of the transferor or assignor and the transferee or assignee are verified.

CHAPTER 3

TRANSFER OF MORTGAGES

19. Transfer of mortgagee's rights to a third party does not require prior notice or consent of the mortgagor or debtor and successors to rights have the same rights as the original mortgagee (essential for securitization)

Article 19.

Subject to the provisions of Chapter 2 of this Law, relating to the annotation of a transfer or assignment of a mortgage, the mortgagee, and any successor or assignee, may sell, transfer, assign or otherwise convey the mortgage loan or any right in the mortgage loan without prior notice to or the consent of the mortgagor, or the debtor, if different from the mortgagor. The covenants and agreements of the mortgage agreement shall bind and benefit the successors and assignees of the mortgagee. If a sale, transfer, assignment or conveyance results in a change in the mortgage loan servicer, the mortgagee and the successor servicer shall both give written notice of the change to the mortgagor, or to the debtor, if different from the mortgagor. The notice will state the name and address of the new mortgage loan servicer and the address to which payments should be made.

20. Mortgages and cash collections of payments of interest and principal on mortgages not subject to bankruptcy of holder or servicer of mortgages.

Article 20.

All rights of the mortgagee to levy or continue the execution on the mortgaged property granted to mortgagees under the bankruptcy provisions of the Commercial Law, Law No.17 of 1999,

shall be transferred to the transferee or assignee in any sale, transfer, assignment or other conveyance of a mortgage loan or rights in a mortgage loan and the mortgage securing such mortgage loan.

Payments of interest and principal repayments collected by a servicing agent which declares or is declared bankrupt, but which have not been paid to the mortgagee, his successors or assignees, shall not be included in the assets of such bankrupt servicing agent. The trustee of the bankruptcy shall promptly pay all such payments of interest and principal received by the bankrupt servicing agent to the mortgagee or the transferee or assignee of the mortgage loan, as appropriate.

21. Authorization for mortgage lenders to sell mortgage loans or rights in mortgage loans to investment funds, mortgage finance companies or other companies.

Article 21.

A mortgagee and any successor or assignee of a mortgagee may sell, transfer, assign, or otherwise convey all or any part of a mortgage loan or all or any part of his rights in a mortgage loan to a third party, including a specialized investment fund established for the purpose of investing in mortgage loans and mortgage securities and any other investment fund registered with the Capital Market Authority, an insurance company registered with the Insurance Supervisory Authority, a bank registered with the Central Bank of Egypt, a pension fund registered with the Minister of Social Insurance, a mortgage finance company registered with the Administrative Authority for mortgage financing activities, or any other Egyptian or foreign company, partnership or other entity.

Investment funds registered with the Capital Market Authority, insurance companies registered with the Insurance Supervisory Authority, banks registered with the Central Bank of Egypt, pension funds registered with the Minister of Social Insurance, mortgage finance companies registered with the Administrative Authority for mortgage financing activities and any Egyptian or foreign company, partnership or other entity are hereby authorized to purchase mortgage loans, rights in mortgage loans and mortgage securities, to the extent provided in the laws, executive regulations and rules governing such entities.

The Minister of Economy and Foreign Trade, after consulting with the Capital Market Authority, shall issue a decree setting out the executive regulations for the operation of specialized mortgage investment funds established for the purpose of investing in mortgages, rights in mortgages and mortgage securities.

22. Disclosure of confidential information necessary for mortgage securitization

Article 22.

Notwithstanding any provision of law to the contrary, the mortgagee, or any successor or assignee, is not required to obtain the consent of the mortgagor, or the debtor, if different from the mortgagor, to disclose information which would otherwise be deemed confidential in a transaction involving the sale, transfer, assignment or other conveyance of a mortgage loan and the mortgage securing such loan, subject to the following conditions and limitations:

- a. Such information is required to identify and legally enforce the mortgage loan and mortgage transferred and is encrypted in the sale, transfer, assignment

or conveyance documents, the encryption key being deposited under seal with a neutral party;

b. A rating agency, the Capital Market Authority, the Central Bank of Egypt, the Administrative Authority for mortgage financing activities or an auditor of the transferee or assignee determines, based on its own standards and criteria, such information is absolutely necessary to the performance of its duties, provided that the identity of the customer is not disclosed. Such third parties are subject to the same confidentiality requirements as are imposed on a bank by the Bank Secrecy Law, Presidential Decree No. 205 of 1990; or

c. The mortgagee who originated the mortgage loan continues to service the loan in the capacity of a servicing agent.

CHAPTER 4

EXECUTION ON THE MORTGAGE

23. Events of default: The mortgagee should be empowered to execute on the mortgage for nonpayment or if the real property has been injured to such extent that the collateral value no longer provides sufficient protection to the mortgagee.

Article 23. A mortgage loan shall be considered in default upon the occurrence of one or more of the following:

- a. After a period of fifteen days from the their due date, the debtor has failed to pay the full amounts due according to the terms of the debt contract; or
- b. The mortgagor, the debtor or other person in possession of the mortgaged property, has caused injury to the mortgaged property by willful act or by his negligence.

24. Upon the occurrence of an event of default, the mortgagee must give a warning notice to the debtor requiring that he pay the amounts due or otherwise cure the default within a period of not less than 15 days.

Article 24.

1) Upon the occurrence of an event of default by the mortgagor or the debtor, if different from the mortgagor, the mortgagee, his successor or assignee, shall give a written notice of warning to the mortgagor and, if applicable, the debtor, that the amount of the debt must be paid or additional collateral security must be pledged within the time specified in the notice of warning after service of such notice. Such time period shall not be less than fifteen days.

2) If the amounts due on the debt are not paid or if additional collateral security is not submitted, as applicable, on or before the expiration of the time specified in the notice of warning, the mortgagee, his successor or assignee, may require that the entire amount of the debt secured by the mortgage, together with all interest accrued but unpaid thereon and any penalty interest or charges agreed to in the debt contract or the mortgage contract be paid in full.

3) The notice of warning shall specify the following:

a. that if the default is failure to pay the payment when due, the exact amount which must be paid, the method of computation thereof and the date, not less than fifteen days from the date the notice is given, by which such amount is due;

b. that if the default is injury to the mortgaged property, that the mortgagor, or the debtor, as applicable, shall submit to the mortgagee, his successor or assignee, sufficient additional collateral to secure the debt and the date, not less than fifteen days from the date the notice is given, by which such additional collateral must be submitted. The Minister of Economy and Foreign Trade shall issue executive regulations, which shall set out the requirements for the sufficiency of additional collateral to secure mortgage debts.

A statement that if the mortgagor or debtor fails to cure the default on or before the date specified in the notice of warning, the mortgagee, his successor or assignee, may require that the entire amount of the debt secured by the mortgage, together with all interest accrued but unpaid thereon and any penalty interest or charges agreed to in the debt contract or the mortgage contract, be paid in full.

d. A statement that if the mortgagor or debtor fails to pay all amounts of the debt due or submit the additional collateral required, the mortgagee, his successor or assignee, may execute on the mortgage, have the mortgaged property sold at public auction and have the proceeds of the sale applied to settle the unpaid amount of the debt, together with all interest, penalties, late fees and other costs and expenses then due and payable.

4) The notice of warning shall be served upon the mortgagor and the debtor, if different from the mortgagor, according to the procedures for service of process.

25. If the debtor does not pay the amounts due on the mortgage loan or does not offer sufficient additional collateral within the time specified in the notice of warning, the mortgagee can petition the court of execution for an order of execution.

Article 25.

If, after the expiration of the time specified in the notice of warning, the amounts due on the debt remain unpaid or, if applicable, sufficient collateral has not been submitted, the mortgagee, his successor or assignee, may submit an application for an order of execution either to the court(s) of execution in the governorate(s) in which each parcel of the real property subject to execution is situated or to the court of execution agreed upon in the mortgage agreement.

26. The mortgagee will serve notice of the order of execution and demand for payment

Article 26.

1) The mortgagee, his successor or assignee, shall serve notice according to the procedures for service of process upon:

a. The mortgagor, and the debtor, if different from the mortgagor, of official copies of the order of execution and the demand for payment of the amounts due on the debt by a date not less than fifteen days after the date of service at his primary residence or main office, as applicable; otherwise the notice shall be considered null and void.

b. The Real Estate Declaration and Notarization Department for inscription of the order of execution. Such inscription shall be completed within one week of the date of the notice.

c. Any and all third parties whose rights in the mortgaged property are inscribed with the Real Estate Declaration and Notarization Department and any person in possession of the mortgaged property.

2) From the date of inscription of the order of execution, the inscription shall be considered an “expropriation notification” under Article 1037 of the Civil Code and the mortgagor may not sell, transfer, convey, mortgage, lease or otherwise encumber the property without the approval of the court.

27. If the debt is not paid within the time specified in the demand for payment, the mortgagee, or his successor or assignee, shall ask the court of execution to issue an order appointing an execution trustee to sell the property at public auction.

Article 27. If, after the expiration of the time specified in the demand for payment, the amounts due on the debt remain unpaid, the mortgagee, his successor or assignee, may ask the court of execution to issue an order appointing an execution trustee from a list of competent execution trustees maintained by the Administrative Authority or mortgage financing activities. The Minister of Economy and Foreign Trade, with the approval of the Minister of Justice, shall issue a decree specifying the requirements for certification as an execution trustee, the compensation to be paid for service as an execution trustee and the procedures for appointment of a successor trustee and for recusing of trustees.

28. The execution trustee will prepare the notice of sale of the mortgaged property at public auction

Article 28.

1) The execution trustee shall prepare a notice of sale of the mortgaged real property subject to execution. If the mortgaged real property subject to execution consists of several parcels of real property situated in different governorates, separate notices of sale shall be prepared for each governorate for the parcels of real property which are situated in that governorate. All parcels of the mortgaged real property subject to execution that are situated in the same governorate shall be sold at one auction. Separate auctions shall be scheduled in each governorate in which one or more parcels of the mortgaged property are situated.

2) The notice(s) of sale shall include the following particulars:

a. The date, time and place of each public auction, which shall not be less than 30 days and not more than 45 days following the date of service of the notice(s) of sale.

b. The minimum acceptable bid for each parcel of the mortgaged property to be sold.

c. The terms of payment by the successful bidder for the mortgaged property.

d. The order in which each parcel of the mortgaged property shall be sold, which shall be determined by the executive regulations issued by decree of the Minister of Economy and Foreign Trade.

3) The execution trustee shall cause the notice(s) of sale to be served according to the procedures for service of process upon the mortgagor, the debtor, if different from the mortgagor, any and all third parties whose rights in the mortgaged property are inscribed with the Real Estate Declaration and Notarization Department and any person in possession of the property.

29. Restraining possessor from injuring property

Article 29.

The party in possession of the mortgaged property shall be responsible for any injury to the mortgaged property during the execution of the mortgage thereon, or after a sale at public auction.

30. Procedures to advertise the sale at public auction.

Article 30.

1) Before the sale of the mortgaged property at public auction, the execution trustee shall advertise the sale by:

(a) publication of a written notice of sale including the date, time and place of the sale, the minimum acceptable bid for each parcel of property to be sold, the terms of sale and particularly describing the real property, at least one week preceding the date of the sale in at least two daily newspapers having a general circulation.

(b) posting such notice, at least 20 days before the date of sale, in some conspicuous place on the real property to be sold and also at the place where the public auction will be held and at the courthouse of the governorate(s) in which the real property to be sold is located.

2) The execution trustee may post the notice or notices of sale in such other locations as he shall determine, including at the real estate bourse at the Bank of Cairo.

3) The mortgagee may, at his own expense, publish the notice of sale more frequently than required under this Article.

31. Conduct of sale at public auction.

Article 31.

1) The execution trustee will conduct the public auction under the supervision of the appropriate court or courts of execution. The public auction(s) shall be held on the date(s) and at the time(s) and place(s) designated in the notice(s) of sale. The execution trustee shall sell each parcel of the mortgaged property to the highest bidder above the minimum bid price according to the following procedures:

a. The mortgagee, his successor or assignee, may not bid at the sale.

b. If the property consists of several parcels which can be sold separately, the execution trustee shall sell each parcel in the order specified in the executive regulations;

Three. After sufficient property has been sold to satisfy the debts secured by the property, the trustee shall terminate the auction.

d. All parcels shall be sold to the highest bidder above the minimum bid price for that parcel. Each bid shall be deemed an irrevocable offer and at the completion of the sale, the purchaser shall pay the amount bid by such means of payment as the execution trustee shall deem acceptable.

e. If the purchaser refuses to pay the amount bid for the property at the public auction, the execution trustee may accept the next highest bid offered. If any loss is occasioned thereby, the person refusing to pay shall be liable for the difference between his bid and the bid that is accepted and the execution trustee, at his option, may thereafter reject any other bid of such person.

f. The execution trustee shall deposit the proceeds from the sale with the treasury of the competent court of execution.

g. upon the sale of real property at public auction, the execution trustee shall submit a report of the conduct and outcome of the public auction or auctions conducted to the competent court(s) of execution. Such report shall include the following particulars:

i. a description of the parcels of real property sold.

ii. the price paid by the purchaser for each parcel of real property if sold separately.

iii. recitals of compliance with the requirements of this chapter and the executive regulations issued thereunder relating to the sale of the property described therein, including recitals concerning the inscription of the order of execution, service of the order of execution, service, publication and posting of the notice of sale and the conduct of the public auction(s).

32. Procedures on the failure of the sale.

Article 32.

1) If there are no bidders at the public auction, no bids are submitted or the highest amount bid is less than the specified minimum bid, the execution trustee may adjourn the sale and set a new date for the sale not more than thirty days after the original date of the sale. The execution trustee shall advertise the new sale in the same manner as prescribed in this Chapter for the original sale.

2) If there are no bidders at the second public auction, no bids are submitted or the highest amount bid is less than the specified minimum bid, the execution trustee shall terminate the sale procedure and shall offer the mortgaged property to any mortgagee, his successor or assignee, to settle the amount of the debt due. If a mortgagee, his successor or assignee, accepts the property in satisfaction of the debt, he shall relinquish all further right and claim against the debtor. A mortgagee, his successor or assignee, may refuse to accept the mortgaged property in satisfaction of the debt and abandon his rights in the mortgaged property. If the mortgagee, his successor or assignee, abandons his rights in the mortgaged property, the mortgagee, his successor or assignee, shall submit an

application for declaration of inscription of a redemption of the mortgage in the manner prescribed for inscription in Chapter 2 of this Law.

33. Delivery of title

Article 33.

The judge(s) of the competent court(s) of execution shall authenticate the sale and shall issue a judgment enforcing the sale, including the notice of sale, the procedures of the sale, the official report of the conduct and outcome of the public auction and ordering the debtor, the possessor or the mortgagor to deliver possession of the property to the person in whose favor the judgment enforcing the sale has been rendered. The judgment enforcing the sale shall be deposited in the execution file.

34. Inscription of the judgment enforcing the sale

Article 34.

1) The judgment enforcing the sale shall be entitled to a declaration of inscription in accordance with the laws governing the Real Estate Declaration and Notarization Department and the executive regulations issued thereunder. The inscription of the judgment enforcing the sale will bar all other accessory rights in the real property.

[2) No proportional fee for inscription of the certificate of sale shall be charged. The fee for inscription of the judgment enforcing the sale shall be a fixed amount set by decree of the Minister of Economy and Foreign Trade, with the approval of the Minister of Justice.]

35. Possession to be delivered

Article 35.

The purchaser of real property at a public auction conducted according to this Chapter shall be entitled to possession of the real property purchased to the extent of the mortgagor's rights of possession. Any person who remains in possession of the property after the inscription of the judgment enforcing the sale with the Real Estate Declaration and Notarization Department shall be deemed a trespasser on the real property and shall be subject to eviction by order of a judge of the court of urgent affairs.

36. Bankruptcy of mortgagor does not stay execution procedure.

Article 36.

Bankruptcy of the mortgagor shall not stay the execution procedure or extend the times specified in this Chapter for reinstatement or redemption of the mortgage. The mortgagee, his successor or assignee, may proceed to execute on the mortgage independent of the bankruptcy proceeding.

37. Defenses of mortgagor or debtor or claims of third parties do not stay execution procedure.

Article 37.

Defenses or other challenges to the order of execution and sale of the mortgaged property at public auction of the mortgagor, the debtor, if different from the mortgagor, or any other person who owns or claims a right in the mortgaged property shall not stay the execution procedure or extend the times specified in this Chapter for reinstatement or redemption of the mortgage. Such defenses and challenges may be asserted in a case submitted to the civil court. The execution and sale of the mortgaged property at public auction may be set aside only, if by the preponderance of the evidence, the claimant establishes that the mortgagee, his successor or assignee, or the execution trustee, violated the provisions of this chapter or the executive regulations issued thereunder in the conduct of the execution on the mortgaged property and the sale at public auction.

38. Disposition of the proceeds of sale.

Article 38.

The competent court of execution will distribute the funds deposited in the treasury, after paying all costs of the execution and sale of the property, to the creditors according to the priority for payment established in the Civil Code. If the funds deposited are not sufficient to pay all the debts owed, the creditors can pursue the debtor on his other assets for any deficiency. Any balance remaining after payment of the amounts due shall be paid to the mortgagor.

CHAPTER 5

REGULATION OF MORTGAGE FINANCE ACTIVITIES

39. Creation of Administrative Authority; jurisdiction; authorities

Article 39.

There is hereby created an Administrative Authority to oversee mortgage financing activities. The Administrative Authority shall have the following duties, responsibilities and powers:

- 1) licensing, registration, control and supervision of mortgage finance companies. The Minister of Economy and Foreign Trade shall issue executive regulations setting out guidelines for the activities in which mortgage finance companies may engage and for the control and supervision of mortgage finance companies;
- 2) administration and enforcement of the provisions of this Law relating to the relationships between mortgage lenders and their customers regarding mortgage-financing transactions. The Administrative Authority shall issue such executive regulations, decrees and rules and take such actions as are necessary to ensure that mortgage financing transactions are not conducted in a fraudulent or dishonest manner and that mortgage lenders fully disclose to their borrowers the terms, conditions and costs of real estate financing and the obligations and rights of the parties to mortgage financing transactions.
- 3) administration and enforcement of the executive regulations issued under this Law.

40. Powers of the Administrative Authority

Article 40.

The Administrative Authority has the power, within the limitations provided by the executive regulations to:

- (a)
 - (i) receive and act on complaints;
 - (ii) take action designed to obtain voluntary compliance with this Law; or
 - (iii) commence proceedings on its own initiative to enforce compliance with this Law;
- (b) adopt, amend, and repeal rules to:
 - (i) restrict or prohibit lending or servicing practices which are misleading, unfair, or abusive;
 - (ii) promote or assure fair and full disclosure of the terms and conditions of agreements and communications between mortgage lenders or servicers and borrowers;
 - (iii) promote or assure uniform application of or to resolve ambiguities in applicable laws, regulations or rules; and
- (c) employ hearing examiners, arbitrators, clerks, and other employees and agents as necessary to perform its duties.

41. Hearing of complaints against the Authority.

Article 41.

The hearing and resolution of complaints by concerned parties against the administrative decisions issued or actions taken by the Minister of Economy and Foreign Trade or the Administrative Authority shall be conducted according to the executive regulations issued by the Minister of Economy and Foreign Trade which shall establish procedures for such hearing and resolution consistent with the procedures for hearing and resolution of complaints set out in Part 5, Articles 50 and 51 of the Capital Market Law, Law No. 95 of the year 1992.

CHAPTER 6

MORTGAGE FINANCE INSTITUTIONS

PART I

ENTITIES AUTHORIZED TO ENGAGE IN MORTGAGE FINANCE ACTIVITIES

42. Entities authorized to engage in mortgage finance activities.

Article 42.

- 1) For purposes of this Law and the executive regulations issued hereunder, mortgage securities shall include notes, debentures and bonds for which mortgage loans, real

property installment sales contracts, real property lease-purchase contracts or other forms of real property financing receivables or the cash flows from such loans, contracts or financing receivables have been pledged as collateral security; negotiable certificates of ownership or rights in mortgage loans, real property installment sales contracts, real property lease-purchase contracts or other forms of real property financing receivables or the cash flows from such loans, contracts or financing receivables; and any other form of securities relating to mortgages as may be authorized by the Capital Market Authority.

2) For purposes of this Law and the executive regulations issued hereunder, mortgage financing activities shall include the granting, holding as assets, servicing purchasing and selling of mortgage loans, real property installment sales contracts, real property lease-purchase contracts or other forms of real property financing receivables; the pledging of such loans, contracts or financing receivables as security for notes, debentures, bonds and other debt instruments issued by the entity; and the issuance of mortgage securities.

3) In addition to the powers and authorities granted under the Companies Law and the applicable laws, executive regulations and rules relating to the specific classifications of companies and other entities, the following entities are hereby authorized to engage in mortgage financing activities:

- a. All banks registered with the Central Bank of Egypt;
- b. All insurance companies registered with the Insurance Supervisory Authority;
- c. All mortgage finance companies registered with the Administrative Authority;
- d. Any other entity authorized to engage in mortgage finance activities by law, executive regulation or rule.

43. Entities authorized to engage in mortgage securities activities.

Article 43.

1) In addition to the entities authorized in Article 43, all investment funds and other such entities as may be authorized by the Capital Market Authority may invest in mortgage loans, real property installment sales contracts, real property lease-purchase contracts and other forms of real property financing receivables, rights in such loans, contracts and financing receivables and in mortgage securities;

3) All investment funds and other entities as may be authorized by the Capital Market Authority, may issue mortgage securities in accordance with the Capital Market Law and the executive regulations and rules issued thereunder.

4) The Capital Market Authority may grant a license to specialized investment funds established for the purpose of purchasing mortgage loans, real property installment sales contracts, real property lease-purchase contracts or other forms of real property financing receivables and mortgage securities. Such mortgage investment funds shall have the authority, subject to the provisions of the Capital Markets Law and the executive regulations and rules issued thereunder, to issue shares and notes, debentures, bonds, other negotiable debt securities, including mortgage securities in accordance with the executive regulations and rules issued by decree of the Minister of Economy and Foreign Trade, after consultation with the Capital Market Authority.

44. Banks may invest in mortgage finance companies

Article 44.

Banks registered with the Central Bank of Egypt may, to the extent provided by the Banks and Credit Law, No. 163 of 1957, and the executive regulations and rules of the Central Bank of Egypt issued thereunder, invest in the shares of mortgage finance companies.

PART II

MORTGAGE FINANCE COMPANIES

45. Licensing and registration of mortgage finance companies required; exemptions from licensing and registration.

Article 45.

No person, organization or establishment not granted a license as a mortgage finance company and registered according to the provisions of this Law shall engage in the business of a mortgage finance company. The Administrative Authority shall draw up the form of the license and determine the information that shall be contained in the registry. The following persons are exempted from the requirement to be licensed and registered with the Administrative Authority:

- (1) Public institutions granting first mortgage loans within the limits of the decree by virtue of which they are established;
- (2) Banks registered with the Central Bank of Egypt;
- (3) Insurance companies registered with the Egyptian Insurance Supervisory Authority;
- (4) Pension funds registered with the Minister of Social Insurance;
- (5) Investment funds registered with the Capital Market Authority;
- (6) Real estate development companies and other organizations which deal with dividing plots of land or the construction of buildings and the selling thereof on credit;] *(NOTE: May not want to exempt real estate development companies from licensing, registration and supervision)*
- (7) Bona fide nonprofit corporations granting mortgage loans or other real estate financing receivables to promote home ownership for low and moderate-income borrowers. *(NOTE: The NGO Law would have to authorize NGOs to engage in mortgage financing activities. If NGOs have this authority, may not want to exempt them from licensing, registration and supervision)*

46. Permitted form of organization.

Article 46.

A mortgage finance company shall take the form of a joint stock company.

47. Primary purpose of mortgage finance companies; prohibition from taking deposits.

Article 47.

1) The primary purpose of a mortgage finance company shall be to engage in mortgage financing activities and such other activities as may be authorized by the Minister of Economy and Foreign Trade in the executive regulations and decrees issued under this Law.

2) A mortgage finance company may not accept money deposits, as described under the provisions of Part III of the Commercial Law, No. 17 of 1999. A mortgage finance company may accept and hold for the benefit of its customers, the deposit of money in relation to its mortgage financing activities, provided that all such moneys shall be placed in a segregated account at a bank and shall not be commingled with the moneys and other funds of the mortgage finance company.

48. Application process; time for acting on applications; fees.

Article 48.

Application for a license and registration as a mortgage finance company shall be submitted to the Administrative Authority in accordance with the rules and conditions to be established by the executive regulations. The executive regulations shall determine the fees to be paid for granting a license and registration, provided that such fees shall not exceed L.E. _____. All fees fixed in the executive regulations shall be paid at the time the application is submitted. Within two weeks of the receipt of an application for registration, the Administrative Authority shall accept the application as complete or shall provide written notice to the applicant that the application is not accepted as complete. Such notice shall specify what additional documents, forms and other information must be submitted by the applicant in order for the application to be accepted as complete. The applicant shall be considered as having withdrawn his application if within three months from the date of the written notice that his application is not complete, he fails to complete the application and its annexes or to fulfill any other conditions required by the executive regulations. Fees paid by the applicant are not refundable if the applicant withdraws the application, the application is considered withdrawn due to expiration of the three-month time period to complete an application after notice that an application is not complete or the application is rejected.

49. *Time for approval, reasons for denial of application.*

Article 49.

1) Within _____ days of acceptance of an application for registration as complete, the Administrative Authority shall submit a report and recommendation to the Minister of Economy and Foreign Trade to approve or reject the application. The application shall be approved or rejected and written notice of such approval or rejection delivered to the applicant not more than _____ days from the date the report and recommendation of the Administrative Authority is received by the Minister of Economy and Foreign Trade. Decisions approving registration applications shall be published in the Official Journal.

2) The failure of the Minister of Economy and Foreign Trade to approve or reject an application for registration within the time period specified in paragraph 1) of this Article shall constitute an approval of the application.

3) The Minister of Economy and Foreign Trade, may reject the registration application for any of the following reasons:

- a) Violation of any of the provisions stipulated by this Law, its executive regulations, or by other laws and regulations, including the laws and regulations of the country or a political subdivision of that country in which the head office of a foreign mortgage finance company is located.
- b) The applicant's executive officers lack the management capability or record of sound business practices necessary to ensure that the mortgage finance company will have a reasonable probability of success.
- c) Any of the company's founders, directors or executive officers has declared or been declared bankrupt within the five years preceding submission of the application for license and registration, unless he has been rehabilitated.

50. Recording mortgage companies in the registry; minimum capital requirements; work licenses

Article 50.

- 1) Each mortgage finance company approved by the Minister of Economy and Foreign Trade shall be recorded in a special register prepared for this purpose at the Administrative Authority according to the following conditions:
- 2) The authorized capital shall not be less than [twenty million] Egyptian pounds and the paid up capital shall not be less than [ten million] Egyptian pounds.
- 3) The Minister of Economy and Foreign Trade shall set out the terms and conditions for issuing work licenses to branches and subsidiaries of foreign mortgage finance companies which desire to exercise their activities in Egypt following the effective date of the present Law.

51. Issuance of prudential guidelines for operation of mortgage finance companies.

Article 51.

The Administrative Authority shall set down guidelines for the control and supervision of mortgage finance companies in accordance with the provisions of this Law, dealing specifically with the following matters:

- a) The method to be adopted for assessment of various assets of mortgage finance companies.
- b) Establish criteria for the adequacy of shareholder's equity of each mortgage finance company by determining its ratio to assets, to the volume of mortgage originations for mortgages which are sold or to liabilities, without prejudice to the minimum capital requirement.
- c) Such other prudential guidelines for the safe and sound operation of mortgage finance companies and the protection of creditors and customers.

52. Financial reporting; auditing

Article 52.

- 1) A mortgage finance company shall at least annually, have its accounts, books and records examined by two independent auditors to be selected from a register prepared for this purpose by the Administrative Authority. The report of the auditors shall be prepared in accordance with the accounting and auditing standards specified in the executive regulations and shall be submitted to the Administrative Authority within 120 days of the end of the mortgage finance company's fiscal year and in no event less than 30 days prior to the date scheduled for convening the company's General Assembly.
- 2) Each mortgage finance company shall submit to the Administrative Authority semiannual statements on its financial position, activities and the result of its works at the dates and in the form designated by the executive regulations.

53. Examination by the Administrative Authority

Article 53.

- 1) The Administrative Authority, whenever necessary and after the approval of the Minister of Economy and Foreign Trade, may delegate one or more officials from a list approved by the Minister of Economy and Foreign Trade to examine the books and records of the mortgage finance company at its premises within the Arab Republic of Egypt.
- 2) If the books and records of the mortgage finance company are located outside the Arab Republic of Egypt, the mortgage finance company shall either make them available to the Authority at a convenient location within the Arab Republic of Egypt or pay the reasonable and necessary expenses for the Authority to examine them at the place where they are maintained. The Authority may designate representatives, including officials of the monetary authority of the country in which the records are located, to inspect them on its behalf.

54. Prior approval required for merger, cessation of operations, liquidation.

Article 54.

No mortgage finance company shall merge with or be acquired by another mortgage finance company, a bank or any other company or suspend or cease its operations or liquidate substantially all of its assets without the prior written approval of the Administrative Authority. The executive regulations shall indicate the procedures to be followed in these cases.

55. Enforcement actions

Article 55.

If the Minister of Economy and Foreign Trade determines that the mortgage finance company is engaging in unsafe and unsound activities or practices such as to threaten the stability of the mortgage finance market or the interests of the company's mortgage customers, creditors or shareholders or is in violation of any provision of this Law, the executive regulations issued

under this Law or the decisions of the Administrative Authority as issued for its implementation, the Minister shall have the power to take any of the following actions:

- a. Issue a written warning to the mortgage finance company notifying the company of the unsafe and unsound activities or practices, or violations of this Law or its regulations and instructing the company to initiate prompt corrective action to cease the unsafe and unsound activity or practice or cure the violation.
- b. Issue a written order to cease and desist the unsafe and unsound activity or practice or violation of this Law or its regulations.
- c. Issue a written order temporarily suspending the company's authority to exercise some or all of the activities for which the company has been licensed. Such temporary suspension order may not be for a time greater than ninety days, at which time the temporary order will be made permanent or will lapse.
- d. Ask the Chairman of the Board of the company to call a special meeting of the Board of Directors in order to review the violations attributed to the company and to take such steps as are necessary to correct such violations.
- e. Transfer the servicing of the mortgage loans and other real estate financing contracts to another mortgage finance company or to a bank registered with the Central Bank of Egypt engaged in the business of servicing mortgage loans, provided that such mortgage finance company or bank accepts the servicing. Any fees or costs incurred in such transfer shall be paid by the company from which the servicing is being transferred.
- f. Require the mortgage finance company to increase its paid up capital or its liquidity or both according to the terms and within the period specified by the Minister of Economy and Foreign Trade.
- g. Issue a decree merging the mortgage finance company with another mortgage finance company or with a bank, subject to the approval of the latter mortgage finance company or bank
- h. Cross out the registration of the mortgage finance company. A mortgage finance company whose registration has been crossed out must cease its operations as a mortgage finance company as of the date the registration is crossed out and must transfer the servicing of its mortgage loans and real estate financing contracts to another mortgage finance company or a bank or must sell all of the mortgage loans and real estate financing contracts held in its portfolio within the time period specified in the executive regulations. Commitments to fund or purchase mortgage loans or real estate financing contracts shall be disposed of in accordance with the executive regulations.

56. Requests for information.

Article 56.

- 1) Every interested party shall have the right to have access at the offices of the Administrative Authority to the documents, registers, and reports pertaining to a mortgage finance company and obtain certified statements or copies thereof for the payment of a reasonable fee to be set in the executive regulations issued under this Law.

2) A request for access and review or for obtaining copies of data or documents shall be submitted in writing to the Administrative Authority, together with evidence of having paid the amount prescribed therefor, provided that the request shall state the applicant's capacity, the data or document he wishes to review or obtain a copy thereof and the purpose for which it is being requested.

3) The Administrative Authority may refuse the request if it determines that dissemination of the data or the copies requested is likely to disclose trade secrets, violate the confidentiality of customer information, cause harm to the mortgage finance company or infringe on the public interest.

57. Annual fees.

Article 57.

1) Mortgage finance companies shall pay an annual fee to be set in the executive regulations, provided that such fee shall not exceed a rate of (0.5% per thousand Egyptian pounds) of the value of all mortgage loans and real estate financing contracts granted and purchased during the year, with a maximum of (L.E. 10,000.)

2) This fee shall be paid to the Administrative Authority during the month of January each year for the preceding twelve months. In case of delayed payment, interest shall be paid and calculated on the basis of the discount rate as announced by the Central Bank of Egypt. The proceeds of the fees paid by mortgage finance companies under this article shall be appropriated for spending on purposes related to the control and supervision of mortgage finance companies.

CHAPTER 7 CONSUMER PROTECTION

58. Applicability of chapter.

Article 58.

This Chapter is applicable to:

1) all mortgage lenders, including banks, insurance companies, mortgage finance companies and other companies who, in the regular course of business, grant mortgage loans or otherwise provide financing to natural persons for the construction, purchase, rehabilitation, renovation, modernization, refurbishment, or improvement of real property. For purposes of this Part, all such extensions of credit to natural persons shall be referred to as "real estate loans";

2) all agents of mortgage lenders engaged in the solicitation of real estate loans on behalf of the mortgage lender and other persons engaged in the business of arranging real estate loans for individuals; and

3) all real estate loan servicers.

59. Agents of mortgage lenders and independent arrangers of real estate loans.

Article 59.

- 1) If the person arranging a real estate loan is the appointed agent of a mortgage lender or lenders, he will disclose his appointed agent status and act on their behalf, in which case the mortgage lender or lenders are responsible for his actions and advice. Alternatively, if the person arranges real estate loans from a selection of preferred lenders, based on his research of the market, or from the market as a whole, he will disclose the mortgage lenders whose real estate loans he is offering for consideration.
- 2) Persons engaged in the regular business of arranging real estate loans for individuals may charge a fee for their services, provided that such fee shall be not less than L.E. _____ and not more than L.E. _____.

60. Required notices and disclosures

Article 60.

Every mortgage lender or person arranging a real estate loan for an individual shall give or cause to be given, to each person from whom it receives or for whom it prepares a written application for a real estate loan, a notice, written in plain language easily understood by the average loan applicant and in such form as shall be established by the executive regulations of the Administrative Authority, disclosing the following information:

- a. the initial interest rate to be charged on the loan, the total interest which will be paid during the term of the loan based on that rate, the conditions under which such interest rate may be changed and the basis or method used to change the interest rate.
- b. a good faith estimate of all costs and fees which will be charged to the borrower for granting the loan and during the term of the loan.
- c. the duties and obligations of the borrower to make payments of principal and interest on the loan in accordance with the repayment schedule for the loan.
- d. the restrictions on the use and disposition of the property to which the debtor agrees upon signing the mortgage agreement.
- e. the consequences for the debtor if he fails to make his payments when due, that the mortgage lender may demand that the entire debt be repaid in full if the debtor does not make his payments and that the debtor could lose his property through execution and sale at public auction;
- f. the remedies and rights of the debtor to reinstate the loan or redeem the property if the debtor defaults on the loan.
- g. that the real estate loan applied for may be sold or assigned, or the servicing of the loan may be sold or assigned, and that the real estate loan will not necessarily be held or serviced by the mortgage lender which originates it.
- h. that the mortgage lender or servicer may disclose information about the debtor which would otherwise be confidential to a purchaser of the loan, the auditor of the purchaser of the loan, a rating agency or the Capital Market Authority.

Each debtor shall sign an acknowledgment that he has read and understood the aforescribed written notice.

61. *Disclosure of costs to originate loan; name of servicer.*

Article 61.

At the time of closing of any mortgage loan the lender shall provide the debtor with a written itemization of all costs charged to the debtor for granting of the loan and, if the initial servicer of the mortgage loan is different from the mortgage lender, a written notification of the name of the initial servicer which will be servicing the loan and the address at which loan payments should be made.

62. *Crediting debtor's payments.*

Article 62.

A mortgage lender or servicer of a real estate loan must credit to the debtor's or debtor's account any payment received within ____ banking days of the date it was received, unless:

- a. the payment is insufficient to pay the principal, interest, late charges, and any reserves then due;
- b. the loan is in default; or
- c. the payment is received at an address other than the address for payment specified in writing to the debtor.

63. *Reports to debtor*

Article 63.

1) Unless a mortgage lender or servicer of a real estate loan regularly provides the information described in paragraphs (a), (b), and (c) below, in monthly statements to debtors, the servicer shall deliver to a debtor, within 15 days after receipt of a written request, a statement of the debtor's account including the following information:

- a. the date and amount of all payments credited to the account within the previous 12-month period;
- b. the amounts of all principal and all interest paid on the account within the previous 12-month period; and
- c. the total unpaid balance of the real estate loan.

2) The first two statements requested for an account in any 12-month period shall be provided without charge. If more than two statements are requested for the same account in a 12-month period, the mortgage lender or servicer may charge a reasonable fee for the additional statements.

64. Notice requirements if servicer is changed.

Article 64.

If the servicing of a real estate loan is assigned from the mortgage lender or initial servicer to a successor servicer, the mortgage lender or initial servicer and any successor servicer shall each mail, at least ten days before the due date of the first payment due after the assignment, a written notice to the debtor, at his last known address contained in the assigning servicer's records, notifying the debtor of the assignment of servicing and of the address at which future loan payments should be made. No late payment penalty may be assessed against a debtor with respect to a payment which is misdirected because of errors in the notices required or failure to timely mail the notices.

65. Filing of complaints.

Article 65.

The Minister of Economy and Foreign Trade shall issue executive regulations setting out the procedures for the filing and hearing of complaints against mortgage lenders, agents and servicers for violation of the provisions of this chapter and the executive regulations issued hereunder. In each of its offices, every mortgage lender and servicer will have available a copy of this chapter and the executive regulations issued hereunder relating to complaints and hearing of complaints and will display a notice in a prominent position which states that any debtor who has a question or complaint about the obligations of the mortgage lender or servicer under this Law may file a complaint with the Administrative Authority and giving the address and telephone number of the Authority.

SECTION 2.0

IMPACT OF EGYPT'S PROPOSED MORTGAGE LAW ON MORTGAGE MARKET DEVELOPMENT

2.1 Background

The passage of the proposed Mortgage Law will mark the beginning of a modern housing finance system in Egypt. The law will encourage banks and, possibly, new specialized mortgage lenders to develop retail home lending as a major line of business because mortgage lenders will have some assurance that they will be able to realize on mortgage collateral in a timely and cost effective manner. The risk of losing the mortgaged property also should provide a powerful incentive to mortgage borrowers to keep their loan payments current.

The new Mortgage Law will remove the legal impediments that have prevented the development of a mortgage finance system in Egypt. However, the Mortgage Law alone will not be sufficient to generate a meaningful level of effective demand for mortgage credit or to create the institutional structure required to deliver a large, stable volume of mortgage funding. These essential elements of a well functioning mortgage finance system depend on a number of factors:

1. Continued economic growth that translates into rising household income;
2. A decrease in mortgage interest rates from their current high levels;
3. A lengthening of the maturities of mortgage loans offered;
4. The willingness of potential mortgage lending institutions to invest the financial and human resources required to organize and manage a mortgage lending function;
5. Public understanding and endorsement of the concept of incurring a large, long term debt to finance home purchase; and
6. Acceptance of mortgage-related securities by capital market participants.

2.2 Initial Size of the Residential Mortgage Market

Mortgage lenders can be expected to target mortgage lending to the segment of the population they perceive as good potential customers - middle to upper income households, particularly young professionals with strong future earnings prospects. This target market would consist of households with incomes of at least LE 2,000 per month, including income derived from informal sector employment.

It is possible that when the public becomes aware that banks and other mortgage lenders are offering mortgage loans, a significant number of lower-middle income households will seek housing finance. However, many of these potential applicants would not qualify for any meaningful amount of credit at the current interest rates of 14 to 15 percent and loan maturities of 10 to 15 years even if they have a reliable, stable and verifiable source of income. For example, a household with a monthly income of LE 1,000 could only qualify for a 14 percent, 15-year mortgage in the amount of about LE 22,500. A complicating factor is that lower middle income households are less likely to have verifiable incomes because a significant share of their income may be derived from informal employment. Without a

verifiable stable source of income, many of these households would not qualify for formal mortgage finance at all. Households with uncertain future earnings prospects also are less likely to be willing to take on a long-term financial commitment. In addition, the costs of originating and servicing small loans to this segment of the population would make them less profitable for the mortgage lender, particularly during the start-up period when the lender has a limited volume of mortgage lending activity over which to spread his administrative expense.

As a result of these factors, while the total demand for mortgage credit may be large, the effective demand from "bankable" credit customers can be expected to be limited. It appears that in 1998, the target middle to upper income market segment accounted for sales of about 60,000 new homes of a size of 100 square meters or more and a purchase price of LE 100,000 and above. In addition, it has been estimated that resales of similar housing units accounted for an additional 18,000 to 35,000 home sales, for a total sales volume estimated at between 80,000 and 100,000 dwelling units for the year. If it is further assumed that the average selling price of the dwelling units purchased was LE 150,000, the aggregate value of home sales in the year 1998 to the target market segment for mortgage finance could be estimated at LE 12 to LE 15 billion. Over the next year or so, the oversupply of more expensive housing units on the market is expected to continue to depress the housing market. The average selling price of middle to upper income units is not expected to increase above the 1998 level.

Most housing units were purchased for cash or financed with short-term loans or seller-financed installment sales or lease-purchase contracts requiring a large initial deposit of 30% to 50% of the purchase price. Therefore, it may be assumed that most of the households which have purchased homes in recent years could have qualified for a mortgage loan under generally accepted credit underwriting standards, either on their own credit or with a parent as a co-signor or guarantor. However, in the near term, during the transition from a period in which the great majority of home purchases were effected without financing to a more highly developed housing finance system, it is likely that only a portion of home purchases will involve mortgage financing. Based on the experience in Eastern Europe in the first few years after the introduction of private sector mortgage finance, it is estimated that, initially, only about 20 to 30 percent of middle to upper income home buyers would finance their home purchases. In addition, the average loan-to-value (LTV) ratio probably would not exceed 50 percent as long as interest rates are in the 14 to 15 percent range. Based on these assumptions, for the first year or so after the enactment of the mortgage law, the potential annual volume of mortgage lending is not likely to exceed 25,000 loans per year for a total loan volume of LE 1.5 to LE 2 billion. This limited volume of mortgage lending activity may not be sufficient to support more than a few primary mortgage lending institutions or a meaningful volume of mortgage securitization transactions.

Increasing the volume of mortgage lending in Egypt will require changes in the attitudes of the public and bank management towards debt financing of home purchases. Egypt, like many other developed and developing countries, does not have a consumer credit culture. Until recent years, even commercial transactions were conducted largely on a cash basis. Because of well-entrenched cultural biases, the public has reservations about incurring debt, especially for non-investment purchases. The apparent reluctance of banks to lend and people to borrow for home purchase can be expected to constrain the rate of growth in mortgage finance in Egypt. The market may not reach its full potential for a number of years. Public information and education about the responsible use of credit will be essential to the future

growth of the residential mortgage market. Banks and other mortgage lenders may have to launch extensive marketing campaigns to promote mortgage lending, similar to the current promotion of bank debit and credit cards, to generate the volume of lending needed to earn an acceptable return on equity.

A bank will not actively pursue residential mortgage lending as a major line of business and commit the financial and managerial resources required to build a viable mortgage lending function unless bank management is convinced that mortgage lending will be profitable and will not expose the bank to undue risk. As has been the case in other countries, Egyptian banks can be expected to shift more of their activities into retail banking, including mortgage lending, as increasing competition compresses the margins on prime commercial credits. Banks in other countries have seen that the net interest margins on a portfolio of smaller loans are greater and the risks less than for large corporate loans. While the administrative costs of originating and servicing consumer loans may be higher, the net interest margins generally are sufficient to cover these costs and generate as high, if not higher, returns on equity than traditional bank commercial lending. Banks also have learned that mortgage transactions create a long-term relationship with a customer that enables the bank to cross-market other profitable financial services to the customer to generate additional interest and fee income.

2.3 Impact on the Oversupply of Luxury Housing Units

One of the principal reasons for the high priority given to mortgage market reform in Egypt today is to stimulate sales of the thousands of vacant or partially completed luxury flats (i.e. flats costing LE 300,000 or more) which have been constructed in Greater Cairo and the new cities over the last several years. However, the availability of mortgage credit, even under concessionary rates and terms, probably will have little impact on the demand for these units until the market values of luxury flats reverse their recent declines and begin to appreciate again. The market perception that the prices of these units will fall further probably is a greater deterrent to sales than the lack of availability of mortgage financing.

After the enactment of the Mortgage Law, the banks which have the greatest exposure to potential losses on their loans to the developers of luxury housing projects may begin offering mortgage loans on more attractive terms (e.g. 15-year loans) to help sell the units in these projects and convert nonperforming loans to developers to performing loans to home buyers. This may result in an initial spike in mortgage lending activity at these banks. As the oversupply of luxury units is absorbed, which may take several years, the volume of mortgage lending at the impacted banks can be expected to decrease and stabilize at a more normal long-term level.

It should be acknowledged that while mortgage loan programs targeted to prospective purchasers of the luxury units a bank has financed can be expected to help the developers market the units and to result in some increase in the number of households who can afford such flats, household income and mortgage interest rate constraints will limit the stimulative impact of the availability of mortgage finance. The reality is that a household with a monthly income of as much as LE 6,000 could only qualify for an LE 135,000 mortgage at a 14 percent interest rate and a 15 year term to maturity, if a 30% payment-to-income ratio is applied. The only ways developers could significantly open up the market for their units would be to lower the selling prices to the level where the prospective buyer could afford to pay the balance of the purchase price in cash and/or buy down the interest rate so that buyers could qualify for a larger mortgage loan. For example, in order to qualify the household

earning LE 6,000 per month (a monthly mortgage payment of LE 1,800) for an LE 150,000, 15 year mortgage on a flat selling for LE 300,000 (50 percent LTV), the developer would have to buy the mortgage interest rate down to approximately 12 percent by giving the lender an up-front payment of LE 15,000.

Once the current oversupply of luxury flats has been absorbed, banks can be expected to be more conservative in underwriting loans to developers to build similar projects. The experience of other countries, including the United States, is that the prices of luxury housing tend to be more volatile than the prices of moderately priced housing and, therefore, lending in this segment of the market involves greater credit risk. In addition, a purchaser of a luxury housing unit, despite his greater wealth and income, is more likely to default on his loan if his financial circumstances deteriorate or the value of the home falls, particularly when the home purchase is for investment rather than occupancy or the home is a vacation villa.

2.4 Impact on the Lower Income Housing Market

Facilitating access to housing credit on market terms and interest rates should not be expected to have a significant impact on increasing the availability of housing for lower income households. Housing for the lowest income groups usually will not be brought within the scope of the formal housing finance system because low income households are unable to either accumulate the savings required for a down payment and or allocate 25 or 30 percent of their incomes to mortgage payments. Some low income households will remain outside the formal housing sector entirely (e.g. squatter settlements), others will rent a room or two and some may be eligible for government rental programs.

Formal home ownership generally is not achievable for lower income households without some form of government intervention. If government policy is that the social contract between the government and the population commits the government to attempting to provide the opportunity for safe, sound and sanitary housing for all people, the issue is how to leverage scarce budgetary resources to maximize the housing benefit to lower income households.

The government of Egypt could continue its existing programs of low income housing construction and allocation, implement some form of direct or indirect interest rate subsidy for mortgage loans granted by formal financial institutions or provide credit guarantees for lower income households. Many governments have been experimenting with innovative housing support programs that provide incentives for private sector involvement in the provision of low income housing which could be adapted to the situation in Egypt.

Commercial banks, and private banks in particular, cannot be expected to provide mortgage loans to lower income households unless they are required to do so by law (as in the United States under the Community Reinvestment Act and the laws governing the government sponsored secondary mortgage market agencies) or the government provides sufficient financial incentives through subsidies, guarantees or tax credits (as in virtually all developed and developing countries).

All programs for government intervention in the housing market carry the risk of building up large non-transparent contingent liabilities and creating distortions in the housing and credit markets. It is recommended that before the government of Egypt decides to expand its intervention in the provision of low income housing to include mortgage financing as well as its direct production and rental programs or to shift its focus to direct or indirect housing

finance subsidies, the government undertake a comprehensive evaluation of the costs and benefits of the many alternative models of government intervention employed in other countries. Many government programs have been massive failures in that despite government budget expenditures that represented a significant share of GDP, the beneficiary low-income households did not receive housing benefits commensurate with the investments made.

SECTION 3

CRITICAL FACTORS FOR MORTGAGE MARKET DEVELOPMENT IN EGYPT

3.1 Background

Since the early 1990's, the interest in housing finance has increased dramatically in emerging market economies. Most countries have recognized that an efficient and dynamic housing finance sector would contribute to the improvement of their financial systems and the development of their housing markets.¹ However, the specific situations have varied from country to country. Some countries have had to develop effective systems for the first time in their history, while others have had to rebuild market-based systems that were dismantled by mis-guided government policies. Many countries also have given consideration to creating some form of secondary mortgage market system to channel liquidity into the sector.

Like its counterparts around the world, the Government of Egypt wants to significantly improve Egypt's housing finance sector. The best path towards that goal depends on a variety of considerations. Some aspects of the route are time-proven prerequisites, such as the existence of effective loan recovery laws and procedures. Many other aspects are optional, such as the development of secondary mortgage markets and the authorization for specialized housing finance institutions. This report is intended to provide direction for the effort, both in meeting the prerequisites and in considering the options.

This report begins by describing current conditions in the Egyptian housing finance system. It then describes the legal and structural aspects of a well functioning system. After this, the report identifies critical elements which need to be developed in the Egyptian system, and suggests how the system can be improved. This is followed by identifying specific steps that can be taken to stimulate the development of the market.

The report is prepared under the auspices of DEPRA, a USAID-funded project in Ministry of Economy and Foreign Trade.

3.2 Financing and Building Housing in Egypt

With a rate of population growth of about 2.3 percent, it is estimated that Egypt adds about 1.4 million new citizens each year. To maintain the current average size of household of 4.8, roughly an additional 300,000 housing units are needed on net each year.² How are those thousands of new units currently being provided? For 1998, the Ministry of Housing and

¹ Developed countries, as well as emerging economies, were revamping their housing finance systems. Past tradition had been to create specialized channels for funding housing and failures of those channels or desire for increased efficiency caused a convergence towards integrated domestic financial markets.

² The gross number of new units could be more, because there are removals of older units. On the other hand, there are also subdivisions of existing units that expand the supply. Little is known about the numbers of such removals or subdivisions.

Development ("MHD") estimates that about 260,000 new units were built, of which an estimated 180,000 were formally licensed. The remainder, about 80,000 units, probably were added informally, either through urban squatter construction, encroachment on agricultural land in rural areas, or by adding units on top of existing structures (some of which may be relatively good quality units).

Of the 180,000 formal sector units, 122,000, or about 68 percent, were classified as "low-cost or economic," indicating that the average unit size was 60 square meters or less and the average unit cost was under LE 42,000. These housing units usually were occupied by households in the low to lower middle income classes, with an estimated average annual income, including income derived from informal employment, of less than LE 12,000 per year. Based on the available data, it appears that of these 122,000 units, about half were developed under the auspices of the on-going subsidized rental housing program of the government and thus financed directly out of budget appropriations to the MHD. Some of the other half were built by government-owned contracting companies or were subsidized through other programs. Others were built as additions, most commonly to be rented.

That leaves about 60,000 formal sector units to be accounted for, all of which were classified as being for households with incomes over LE 12,000 per year. More than half of these (33,000) were in the middle-income range, averaging about 100 square meters in size, about LE 100,000 in cost and appealing to households earning an average annual household income of about LE 24,000.³ Another 14,000 units were in the upper-middle income range and costing about LE 150,000-200,000.

How are these better quality units financed? The most common form of financing is an all cash purchase. In the case of new construction, buyers frequently make an initial deposit of 50 percent or more of the purchase price of the units and pay the balance in installments during construction. Some Islamic banks and developers offer installment payment terms for the housing units they have built themselves. The initial deposit ranges from 20% to 50% with the balance paid in installments over 3 to 5 years. Some developers of luxury units in excess supply are temporarily offering better terms, e.g., 15% to 30% down and payments of up to 7 years. One observer stated that the market in middle-income housing, about 100-150 square meters, is quite strong, based solely on the traditional methods of cash or short-term installment financing. Presumably the cash required for home purchase has been accumulated partly through savings and partly through intra-family transfers, both of which might be enhanced by foreign remittances.⁴

It is likely that the initial market for formal sector housing finance consists of those new units sold to middle and upper income groups, or about 60,000 units of new housing per year, plus

³ The estimates of the categories of houses by size expense and income of purchaser were prepared by Dr. Samir Makary. It is notable that the results of his analysis accord with experience in many other developing countries, in that typically households seek to buy houses that cost about 4 times their annual incomes. In this case, he estimates that the typical middle-income household has a monthly income of about LE 2000 and is the typical buyer of flats costing about LE 90-100,000, a ratio of 4 to annualized income.

⁴ Not all of these units would be owner-occupied. Although the practice of buying units and leaving them empty is probably receding, the renting of such investment units is probably increasing.

whatever turnover occurs in the resale housing market.⁵ Informed opinion seems to be that although there are real estate agents for upper income luxury housing, the general resale market is fragmented and informal. The resale market probably is significant in aggregate size. Moreover, it has taken on much greater significance since 1995 in response to the decline in inflation and rise in the real interest rate and the end of rent controls on new rental contracts. There is no way to estimate the size of the market, other than to expect that deaths and changes in economic circumstance might lead to turnover in at least 0.5-1.0 percent of the stock each year, or about 70-140,000 units, of which perhaps up to one fourth, or 18-35,000 would be formal sector, middle to upper income units. It is estimated that in 1998, approximately, resales of middle to upper income units accounted for an additional 20,000 home sales.

Based on the foregoing estimates for 1998 and an assumed 3% annual rate of increase in total home sales without mortgage finance, the total volume of sales of middle to upper income, formal sector housing units is projected at approximately 85,000 units for the year 2000 and 87,500 units for 2001. The availability of mortgage finance is expected to increase the volume of home sales by 20%, assuming an average loan-to-value ratio of 50%. Therefore, the volume of middle to upper income home sales after a mortgage finance system is created in Egypt is projected at approximately 102,000 units in 2000 and 105,000 in 2001.

Is formal sector mortgage finance already playing a role in the housing market? So far, the project team has only anecdotal evidence that market-based mortgage finance is being provided by formal financial institutions. The team has been told that nearly all commercial banks, plus the Housing and Development Bank, and the Real Estate Bank, make some amount of loans to individuals on commercial terms to purchase or build homes. In addition, banks are financing loans to developers that are then passed on and paid off in installments by final buyers. However, the fact that no banking official was able to quote a figure for these activities may indicate the small size and low priority of this activity.

What terms are being offered for formal mortgage finance? Interviews with bankers indicated that the most common maturities for individual loans were 3 to 5 years, with 7 to 10 year maturities offered primarily to the banks' own employees and the employees of major corporate clients. Mortgage loan interest rates range from 14 to 15 percent.⁶ It appears that at least one bank is offering to formally tie this rate to a "market" rate, such as 3-month T-bills, but in general the rate was viewed as being "fixed" unless economic circumstances change significantly. Bank management has indicated that the maximum loan-to-value ratio is 50% to 60%.

⁵ It possible that a large number of the lower-middle income groups will seek mortgage loans early on. This is considered to be unlikely both because lenders will not target this part of the market until they have developed their systems for more efficient mass lending on smaller loans and because these households are less likely to have verifiable incomes (many will have several jobs, mostly non-verifiable) or a desire to take on such a long-term financial commitment.

⁶ An open question is whether these "market" loans are truly commonly available currently. It appears that this format is not as common as is follow-on financing of a development loan. Such financing starts with a development loan for a construction period of about 2 years, with the purchaser putting down a deposit of up to 50 percent of the price of the flat (and therefore a large part of the cost of actually constructing the flat). The bank makes payments towards the rest of the cost of construction and, at time of completion and occupancy, finances the rest of the purchase price for qualified buyers over a period of up to 5 years.

Are these terms likely to change significantly with the introduction of a more developed and competitive mortgage market? Surprisingly, the analysis suggests that an improved system may not significantly alter many of these terms. First, the current interest rates of 14-15 percent imply a gross margin of only about 3.0 percent over a cost of funds of about 11-12 percent (fixed deposit rate of 9-10 percent plus 1.5 percent for the cost of the 15 percent cash reserve plus 0.5 percent for the cost of deposit raising). Such a spread is relatively low for a developing country and banks are unlikely to price loans at a narrower spread no matter what amount of competition is forthcoming. Second, the most that a borrower can generally qualify to borrow at current interest rates, current terms, and a payment-to-income (PTI) burden of 25-33 percent will be about 35-50 percent of the cost of the house (assuming an average annual household income of LE 24,000 and a house price of 4 times annual income), in which case the stated maximum loan-to-value (LTV) ratio becomes irrelevant.

The aspect of the market that is most likely to change is the length of repayment term. It appears that although some banks have indicated a willingness to consider offering mortgages with maturities of 10 to 12 years, most banks currently do not want to offer mortgage loans with maturities greater than 7 years. The principal concerns expressed by the bankers interviewed were the mismatch of the maturities of their short term deposit funding sources with longer term mortgages and the general exposure to the credit risk of the borrower for too long a time. As the perceived concerns about liquidity are reduced by the use of securitization and bond funding and lenders gain experience with the performance of longer term housing loans, they may be willing to extend loan maturities to 15 to 20 years or use balloon payment loan structures based on a 20 to 30 year amortization period. The most common term to maturity for mortgages in both developed and developing countries other than the United States (where the average contractual maturity of mortgage loans is almost 27 years) is 15 years.

Such a shift would have significant implications for the housing market. The table on the following page shows the maximum loan amount for which a borrower with an annual income of LE 24,000 would qualify under terms to maturity ranging from 3 to 30 years. In all cases, the price of the house being financed is LE 100,000, the PTI is 30 percent, the interest rate on the mortgage is 14 percent and the principal and interest are paid in monthly installments on a fully amortized basis. As the data in the table indicate, under the current 3 to 5 year maturities offered, the maximum loan for which the borrower could qualify would represent less than 26 percent of the cost of the house. If the term to maturity of the mortgage loan were extended to 7 years, the borrower would be able to finance almost one-third of the LE 100,000 cost of the house and would still have to pay 68 percent of the cost of the house in cash. While financing about one-third of the total purchase price of the house could increase home affordability for a small segment of the population, it would not be expected to have a material impact on the total volume of residential home sales.

Extending the maturity of the mortgage loan to 12 or 15 years has a fairly significant impact on the share of the purchase price of a house which can be financed, increasing the percent financed to 42% and 45% respectively. As the schedule indicates, extending the term to maturity of the mortgage loan beyond 15 years does not significantly increase the maximum amount of the loan. Even with a thirty year maturity, a household earning LE 24,000 per year would qualify for a

loan of only 50% of the purchase price of a typical middle income housing unit. In order to increase the affordability of housing credit, mortgage interest rates will have to decline. Since interest rates in Egypt have been falling in recent years as inflation has been brought under control, mortgage interest rates over the next year or so can be expected to moderate along with the interest rates in the bond market.

IMPACT OF EXTENDING LOAN MATURITY ON THE AMOUNT OF FINANCING

<u>Term to Maturity</u>	<u>Maximum Loan</u>	<u>Percent of House Cost</u>
3	LE 17,555	17.6%
5	LE 25,786	25.8%
7	LE 32,017	32.0%
10	LE 38,643	38.6%
12	LE 41,750	41.8%
15	LE 45,054	45.0%
20	LE 48,250	48.3%
25	LE 49,844	49.8%
30	LE 50,638	50.6%

It is apparent that no bank has actively marketed housing loans on the terms described above. This is not explicitly because of concerns about sustaining losses on default because of the existing weak mortgage foreclosure laws. It appears that lenders have enforced prompt payment on housing loans by using the post-dated check method of encouraging repayment, (the new commercial law effectively eliminates this practice as of October 1, 2000) and this, combined with careful screening of borrowers, has kept loan delinquencies low. Instead, it seems that banks have chosen not to be active housing lenders because they are not interested in retail lending in general. However, several banks, particularly the private banks, have stated their intention to more actively pursue retail lending and have begun offering credit cards, ATM cards, and auto loans.

While commercial banks have not actively marketed housing loans for individuals, it is surprising, and perhaps indicative of consumer attitude, that so few people are actively seeking the loans that are "available." The banks indicated that they do make loans to those who apply separately from a developer and who meet their requirements. However, not many meet the requirements. This situation might suggest that effective demand for housing loans will be relatively subdued even after enactment of the proposed mortgage law. The cost of borrowing will remain high relative to the return on bank savings deposits. With the current 5 percent spread between the interest rates paid on savings and charged on mortgage loans, there would be a strong incentive for would-be borrowers to draw upon cash savings rather than borrowing to purchase a home.

It will take time and commitment by banks and other potential mortgage lenders for a more viable housing finance system to evolve in Egypt. However, experience in other countries indicates that dissemination of public information about mortgage lending, active marketing of housing loans by banks and developers and a positive attitude by motivated loan officers and other bank staff combined with affordable terms for housing finance can stimulate effective demand. In addition, more employers may offer to subsidize or guarantee loans to their employees or at least facilitate direct payroll deductions for mortgage payments. Banks also may create programs to cross-market other profitable financial products to their mortgage customers. This next stage of development of the mortgage finance system in Egypt awaits the resolution of the key concerns of potential lenders. These concerns are discussed next.

3.3 Reliable Loan Recovery

The foundation of any viable long-term housing finance system is reliable loan recovery. Housing loans are small relative to traditional commercial lending and they are for a much longer term. Lenders will not enter into such long-term relationships with small borrowers unless they have confidence that for the great majority of loans, payments will be made regularly, with minimal collection effort and cost for the lender, and that those loans which do go into delinquency and default can be resolved in a timely and inexpensive manner.⁷

The first step in assuring timely repayment of any loan, including mortgage loans, is proper underwriting of the credit. Proper underwriting attempts to determine both the borrower's ability and his willingness to pay his debt when due. To determine the ability of a borrower to meet his obligation to pay, there should be a rigorous evaluation of the borrower's circumstances. This begins with information about the history and stability of the borrower's income. This is not straightforward when the borrower has one or more income-earning activities outside of formal sector employment.

The lender also must determine what is a reasonable maximum burden to be placed on the borrower's income to service the mortgage loan. This "payment-to-income" (PTI) ratio is one of the most important determinants of the access of the public to housing finance. Typically, PTI ratios are in the range of 25-30 percent.⁸ In some countries with strong and stable economies and good information on a prospective borrower's credit history, lenders may permit borrowers to take on a mortgage repayment burden that is as much as 40 percent of income. If the borrower is already heavily indebted, a lender will take the total debt burden of the applicant, including the mortgage loan, into account and will underwrite the mortgage loan at a lower PTI. Unfortunately, in Egypt as in many other countries, it is difficult for lenders to determine the amount of debt the prospective borrower may already have.

⁷ If these conditions hold, such lending can be viewed as very attractive, since the loan is quietly bringing in additional revenue with relatively little effort.

⁸ One confusing aspect of cross-country comparisons is the definition of "income" and what is expected to come out of it for other purposes. Most countries other than the U.S. define it as "net income" where taxes have been deducted. This need not be the same as "take-home income," where additional deductions for retirement or other items are routinely removed. In some countries, where educational and medical services are fully state-provided, the burden can be higher.

The ability to repay is not all that needs to be evaluated. The habit of repaying is nearly as important. From this perspective, the ideal lending situation is one where the lender has first-hand information about the borrower or has access to reliable information about the payment habits of the borrower. In many societies, this means that lenders require some kind of track record with the lender, e.g., the borrower must have been a customer and sometimes even have been making regular contributions to a deposit account. In more developed financial systems, there are other methods of gaining the information, such as credit bureaus, where the credit history of the borrower can be verified. Such a credit bureau is currently being developed by the Egyptian Bankers Association, and the Central Bank of Egypt presently circulates a list of problem commercial borrowers among the banks. The difficulty in countries like Egypt, which does not have a consumer credit culture, is that an applicant for a mortgage loan may have never obtained formal credit of any type and, therefore, has no credit history. In these cases, the lender can accept "proxies" for a credit history, such as payment of taxes, telephone bills, utility bills and other recurring contractual obligations. The issue is whether the borrower has shown that he can meet a regular contractual payment obligation.

The evaluation of the creditworthiness of the borrower should be done by trusted entities, preferably those under the control of the lender or the investor, if the loan has been securitized. Similarly, serious and professional monitoring of repayment is needed, as is skilled intervention at the first sign of delinquency. This is also best done by the lender or the investor whose money is at risk. Although it may be cheaper to use an outside agent for one or more of these functions, doing so can significantly undermine the reliability of recovery.⁹

The second key to reliable loan recovery is the existence of a mechanism for assuring repayment if the borrower's circumstances deteriorate. In most societies, this leads to a focus on the property pledged as collateral for the loan. Access to real property as collateral furnishes a source of wealth and provides a strong incentive to borrowers to repay the loan. But some societies, including Egypt so far, have been able to secure a high rate of repayment on personal loans by other techniques, such as threatening criminal prosecution and imprisonment for failing to honor checks, or losing retirement or severance benefits, or simply dishonoring friends and relatives who are notified as guarantors in case of default.

This distinction is often lost when people look at some developed economies where the mechanism for foreclosure is well established and effective. Even in most Western societies, it is considered highly undesirable by all parties for the bank to foreclose on a person's house. The legal ability to foreclose and dispossess serves primarily as an incentive for the borrower to do everything possible to repay, including selling the house to pay off the loan, if necessary.¹⁰ Paradoxically, the ability to encourage repayment through foreclosure and dispossession makes it less likely that dispossession will be needed.

⁹ For example, the Philippine government is faced with losses of up to USD 1 billion on a government housing lending program primarily because they allowed the developers themselves to evaluate the borrowers and the properties.

¹⁰ One of the reasons why rapid and decisive execution of a mortgage is important in the U.S. is that U.S. lenders make loans that are a very high proportion of the cost of the house. As a result, most defaults are associated with situations where the value of the house is now at or below the principal of the loan. In such a case, borrowers have no incentive to repay and lender losses will mount rapidly if a forced sale is delayed.

The most important factor in determining the strength of the lender's position is certainty that the debt can be recovered, i.e., that the mortgaged property can be sold to pay off the loan. The certainty that the property can be sold to realize the amount of the debt is as important, if not more important, than the time required to bring the mortgaged property to forced sale. The important point is that, without clear and enforceable procedures to realize on the mortgaged property, the lender will have to spend more resources managing delinquent and defaulted loans and the borrower may place a low priority on making his payments when due.

In a system in which foreclosure is the principal tool to enforce loan recovery, it is important to carefully evaluate the value of the real property to make sure that it will provide adequate collateral. In other words, will the house be worth as much as the loan, plus accrued interest and foreclosure expenses? Realistically, this evaluation does not become critical unless the loan amount is more than half the fair market value of the house. The determination of the value of real property to be pledged for a mortgage should follow established professional standards and procedures and should be conducted by a competent real estate valuer (appraiser) who is either an employee of the technical department of the bank or a certified independent technical expert. The bank's reliance on the proper performance of technical experts involves what has come to be known as agency risk, the risk that property valuers or other agents of the lender will not perform as specified.

3.4 Managing Financial Risks

In addition to credit risk, mortgage lenders must manage other types of risks related to holding a portfolio of longer term mortgage loans. Often called the "financial risks" of housing finance, these include funding risk, interest rate risk, and prepayment (or option) risk. Funding risk arises when a portfolio mortgage lender funds mortgage assets with liabilities that have dissimilar durations or cash flow patterns over time. This is a basic issue for all longer-term lending, whether from the viewpoint of a portfolio lender, an intermediary between an investor and a borrower or an investor himself. In this respect, long-term housing lending can have an advantage over other types of long-term loans because a housing loan usually is fully amortizing, with principal repayments being made over the entire life of the loan. Thus, the duration is less than that of a bond of similar maturity.

The potential mismatch of duration or cash flows between a portfolio of mortgage loans and the liabilities used to fund that portfolio can be managed by issuing debt, including deposits and bonds, across a broad range of final maturities. However, in Egypt, as in most other developing market economies, the weighted average maturity of bank deposits is less than one year. Hence, it would seem that bank deposits would not be a satisfactory source of funds for mortgage lending. However, banks deposits are the major funding source in many countries, including the UK, Germany, all of the Central European countries, Malaysia, Australia, Argentina, Barbados, and South Africa. Even the savings and loan institutions in the U.S. made the bulk of their loans for many years with relatively little use of financing from the capital market.¹¹

¹¹ The U.S. savings institutions had access to a liquidity facility and a securitization conduit, but neither was used to fund the bulk of their loans before 1980. Until recently, the UK building societies had neither source for medium term funding. Both sets of institutions were protected from competition for their funding base, though.

The evidence is that bank deposits are a relatively stable pool of funds in Egypt. To a great extent, the banking sector possesses a large pool of funds that has risen steadily with long-term trends in nominal GDP and financial deepening. In fact, Egyptian enterprises have traditionally relied upon the banking sector for longer-term financing, as indicated by the 25 percent of the aggregate bank loans with maturities in excess of one year. This share has been trending downward as the bond market has become a viable funding alternative for the largest and most creditworthy corporations.¹² As the share continues to decline, banks should have more funds available to commit to longer-term mortgage lending.

This observation does not mean that banks should be permitted to place unlimited amounts of funds in mortgages for very long terms. The experience of a variety of countries is that banks can start housing lending with total reliance on a base of "stable deposits" and then utilize longer term bond funding when the share of their loan portfolio in long-term residential loans exceeds 5-10 percent. It appears to be the case currently that the most creditworthy Egyptian banks have access to unsecured, medium-term debt financing and may be able to fund their mortgage portfolios from the start with a mix of deposits and debt financing. In fact, the usual rule in countries with active and growing housing finance markets is that exposure to residential mortgages for up to 20 percent of the loan portfolio is acceptable if the banks have access to funding sources with a range of maturities and have implemented adequate risk management systems. Also, the usual concern about loan concentrations by a bank is generally lower with respect to lending for residential mortgages, as long as the credit risks and financial risks of such loans are reasonably well managed.¹³

In the longer run, lenders will need access to funds from institutions whose investment horizon and cash flow needs permit them to invest for longer periods of time. These usually are institutions like life insurance companies, pension funds, mutual funds and contract savings schemes, who themselves pool funds from a large number of savers who commit to deferring receipt of their funds. These institutional investors are thus the major sources of long term funds for use in financing housing loans.¹⁴

What are the ways of drawing upon long-term sources of funds? There are several modes by which such institutional investors may provide funds to housing lenders on a long term basis. The most common is the purchase of unsecured or collateralized bonds issued by commercial banks, specialized mortgage/real estate banks, non-bank mortgage companies and mortgage liquidity institutions that lend to banks based on mortgage collateral. An important alternative is

¹² In fact, it can be argued that, once direct access to capital markets has been achieved by most larger enterprises, the main role for banks is financing smaller enterprises and retail lending. That is exactly the practice in South Africa, for example.

¹³ There may be a misperception that defaults on residential mortgage lending were a significant source of losses suffered by thrifts in the US in the 1980s and by banks in Southeast Asia more recently. In both cases, the credit risks of lending for personal residences were unimportant and other factors created the problems. The default losses borne by lenders and insurers in the UK in the early 1990s were due to an extremely unusual swing in house prices and immoderate risk taking (with high LTVs), primarily by the mortgage insurance companies.

¹⁴ Individual savers can also be drawn on as investors if there is a capacity for them to liquidate their holdings relatively easily. Thus, in the U.S., where there are active markets in mortgage related securities, there is a substantial flow of funds from individual investors into such securities, usually through the conduit of mutual funds.

the sale of loans, either whole loans or through securitization transactions. Securitization also may be an effective means of off-loading the installment notes currently carried by large Egyptian residential real estate development companies. The approaches for funding mortgage activities are discussed in detail in Annex B. They will be described here only briefly.

The major differences between funding mortgage activities with bonds issued by the mortgage lender or longer term borrowings from mortgage liquidity institutions and the securitization of mortgage assets are the impacts on the lender's balance sheet, risk profile, capital requirements and profitability. Debt funding of a mortgage portfolio results in an increase in the bank's assets and liabilities and will require additional capital to support the balance sheet. Basically, even after minimizing the risk through reliable underwriting and collection, it is almost certain that some part of the amounts loaned out for housing (plus contractual interest and expenses) will not be recovered. If a bank keeps this risk, regulators will require that banks maintain a certain amount of capital to absorb the losses. The amount of capital varies internationally, but it is usually not less than 4 percent for residential mortgages (based on a 50 percent risk weight and a minimum capital adequacy ratio of 8 percent). In Egypt, the risk weight is 100 percent and thus the required capital is equal to 8 percent of the amount outstanding. In addition, borrowing for this purpose may have an impact on the bank's credit rating and its ability to borrow for other purposes.

Securitization transfers all or most of the credit risk on the underlying mortgages to the investor because it removes the mortgage assets from the lender's balance sheet, provided that the sale of the loans is without recourse or involves only a contingent liability. Capital is required to support securitization transactions only to the extent required for other types of contingent liabilities (e.g. for foreign exchange and interest rate swap transactions). All such regulatory capital has an opportunity cost, either in the form of the required return to be offered to new equity investment or in the form of potential profit from alternative risky lending. Thus, a bank will include this cost of capital in calculating the spread it wants to earn on this loan. However, it may be that another entity might have a lower cost of capital or a lower amount of capital required by its regulator or simply may not be regulated and may be willing to take on the risk for a lower charge. In that case, the bank may be able to make more money (or charge a lower spread) if it shifts the risk to that entity.

Some people think that the widespread use of mortgage insurance in the U.S. reflects such a situation. However, most of the success of mortgage insurance in the U.S. is due to the past rules restricting the geographic area within which a bank could lend. That created the possibility for an advantage of another kind to arise in bearing credit risk, the advantage of geographic diversification. In principle, if a bank was making loans all around the country, it would have no advantage in paying an insurance company to take the risk. It is notable that mortgage insurance is not widely used in any other country, partly because there is no advantage to be had in diversifying credit risk around the country. Instead, banks simply charge a higher rate if a loan is considered riskier.

The most likely place to shift the credit risk is either to the investors in a pool of mortgages or perhaps to a special subset of these investors, who agree to take the risk. Experience has shown that there are investors willing to take the time to study the specifics of a pool of loans and the

issuer and agree to bear the risk, all for a cost that may be less than the cost to the bank. These situations make it advantageous for lenders to sell their mortgages to investors through the means of securitization.¹⁵ However, there are several reasons why, in most countries, securitization has not been a major source of bank financing for longer-term mortgages. Banks may not want to give up the net interest income generated by their mortgage portfolios or securitized funding may be more costly than bank deposits. Due to the complexity of mortgage-backed securities and the lack of familiarity with these instruments, there may be few issues resulting in a thin market and limited liquidity. In addition, securitization passes most of the financial risks to the investor, who is faced with an uncertain cash flow over a relatively long period

As noted above and described in Annex B, there are several alternatives to securitization that offer some, but not total, relief from financial risks. All involve the issuance of traditional bonds or long term borrowing. Where they differ is in how the credit risk faced by investors is managed.

The simplest method of funding is *the issuance of unsecured bonds by the lender*. This practice has already been used by 10 banks in Egypt to extend the term structure of their liabilities and the acceptance by the market has been very encouraging. A variant would be for the bank to pledge a pool of mortgages as collateral for the bonds (“structured financing”). This would be useful primarily if such collateralization would result in the bonds receiving a higher rating or better pricing.

A significant variant on the issuance of bank bonds is the authorization of a specialized institution that is specifically designed to offer investors assurance that their risks will be limited to certain types of mortgages. This entity, usually called a *mortgage company or mortgage bank*, could have an advantage over a regular bank in issuing debt because the institution would not have the authority to engage in a wide range of riskier activities. If the company does not accept deposits, it would not be subject to the full regulatory burden of a depository institution. On the other hand, if the mortgages granted by the bank are not viewed as being of relatively low risk, there is no advantage to such a structure. In fact, the traditional mortgage bank does have some disadvantages, namely, being engaged in only one line of business and being dependent on a more limited range of funding mechanisms.

Finally, there is the alternative of setting up an intermediary institution that provides funds to banks based on mortgage collateral, but has the advantage of operating on a larger scale. Such a “*liquidity facility*” functions as a wholesale bank to retail mortgage lenders and only makes sense if the banks themselves cannot access secured bond funding at as low a rate. In countries which have established such liquidity facilities, the institutions are either governmental or government sponsored enterprises and, as such, can issue bonds at interest rates only slightly higher than sovereign debt.

Other than securitization, all of these approaches for managing funding risk may be only partially successful because they extend the term of the lender’s liabilities, but may not perfectly match the duration and cash flows of the lender’s mortgage portfolio. Their advantage over

¹⁵ Such a transaction has to also allow for the introduction of agency risk, due to the fact that the party now bearing the cost of defaults will be different from the party which is originating and servicing the loans.

securitization is that they offer investors bonds that are relatively easy to understand and which should be readily accepted by the market.

All of these approaches, and especially securitization, rely on the existence of long-term investors. Not every country has pension funds and life insurance companies sufficient to fill the needs for such long-term funding. Even when these institutions exist, they may have a limited appetite for long-term bonds and mortgage-backed securities because of legal asset allocation restrictions or management determined asset allocation strategies.

In addition to credit risk and funding risk, mortgage lenders are exposed to another major class of risk: interest rate risk. Interest rate risk is the potential impact of changes in interest rates on a lender's earnings and net asset values. Changes in interest rates affect a bank's earnings by changing its net interest income and the level of other interest-sensitive income and operating expenses. Changes in interest rates also affect the underlying value of the bank's assets and liabilities because the present value of future cash flows (and in some cases, the cash flows themselves) changes when interest rates change. Interest rate risk arises when an institution's principal and interest cash flows (including final maturities), have mismatched repricing dates. The amount at risk is a function of the magnitude and direction of interest rate changes and the size and maturity structure of the mismatch position.

The primary forms of interest rate risk to which mortgage lenders are typically exposed are repricing risk, basis risk and prepayment (optionality) risk. The most frequently discussed form of interest rate risk arises from timing differences in the maturity (for fixed rate) and repricing (for floating rate) of the mortgage portfolio and the liabilities funding that portfolio. While such repricing mismatches are fundamental to mortgage lending, they can expose a lender's income and underlying economic value to unanticipated fluctuations as interest rates vary. Repricing risk is most serious when the mortgage loans held in the lender's portfolio are long-term, fixed rate instruments and are funded with short-term deposits. If interest rates rise, the lender could face a decline in both the future income generated by his mortgage portfolio and the underlying economic value of the portfolio because the cash flows on the loan are fixed over its lifetime, while the interest paid on the funding would increase after the short-term deposit matures and is rolled over.

Another important source of interest rate risk (commonly referred to as basis risk) arises from imperfect correlation in the adjustment of the interest rates earned on variable or adjustable rate mortgages and the rates paid on the debt instruments funding the mortgage portfolio, even when the loans and funding sources have otherwise similar repricing characteristics. When interest rates change, these differences can give rise to unanticipated changes in the cash flows and earnings spread between assets and liabilities of similar maturities or repricing frequencies. For example, a strategy of funding a ten year loan that reprices quarterly based on the three month Treasury Bill rate, with a ten year bond that reprices quarterly based on the three month interbank rate, exposes the institution to the risk that the spread between the two index rates may change unexpectedly.

An important source of interest rate risk for residential mortgage lenders arises from the borrower's option to prepay all or part of the principal of the mortgage loan. Formally, an option provides the holder the right, but not the obligation, to buy, sell, or in some manner alter the cash

flow of an instrument or financial contract. The prepayment option is embedded within the standard mortgage agreement unless that option is specifically restricted according to the terms of the contract. Embedded options also exist in various types of non-maturity deposit accounts which give depositors the right to withdraw funds at any time, often without any penalties. If not adequately managed, the asymmetrical payoff characteristics of instruments with optionality features can pose significant risk to those who sell them, since the options held are generally exercised to the advantage of the holder (the borrower/ depositor) and the disadvantage of the seller (the bank). A higher rate of prepayment is triggered by declines in market rates on loans that may not be matched by declines in the rates on the funding sources. In such cases, the lender or investor will not be able to replace the loan with an asset earning as high a rate.

Changes in interest rates can have adverse effects both on a mortgage lender's earnings and its economic value. This has given rise to two separate, but complementary, perspectives for assessing interest rate risk exposure. The earnings perspective focuses on the impact of changes in interest rates on reported earnings. This is the traditional approach to interest rate risk assessment taken by many banks. Variation in earnings is an important focal point for interest rate risk analysis because reduced earnings or outright losses can threaten the financial stability of an institution by undermining its capital adequacy and by reducing market confidence. In this regard, the component of earnings that has traditionally received the most attention is net interest income (i.e. the difference between total interest income and total interest expense). However, non-interest income generated by loan servicing and asset securitization activities can be highly sensitive to changes in market interest rates. For example, if a mortgage lender provides the servicing and loan administration function for mortgage loan pools in return for a fee based on the volume of assets it administers, when interest rates fall, the servicing bank may experience a decline in its fee income as the underlying mortgages are prepaid.

Variations in market interest rates also can affect the economic value of a lender's assets and liabilities. The economic value of a mortgage loan represents an assessment of the present value of its expected net cash flows, discounted to reflect market rates. Since the economic value perspective considers the potential impact of interest rate changes on the present value of all future cash flows, it provides a more comprehensive view of the potential long-term effects of changes in interest rates than is offered by the earnings perspective. The most commonly used method for measuring the impact of interest rate changes on the economic value of a mortgage lender is duration analysis.

Duration is the time-weighted average maturity of the present value of the cash flows from assets and liabilities. It measures how price-sensitive an asset or liability item is to small changes in interest rates by using a single number to index the institution's interest rate risk. This index represents the average term to maturity of the cash flows. Option-adjusted duration models may assist in reflecting the variations in cash flows at different points in time due to the sensitivity of cash flows to changes in interest rates, and as a result of the exercise of asset and liability options across interest rate environments - that is, adjusting for events such as early withdrawal of term deposits and mortgage prepayments.

The extent of the interest rate risk Egyptian portfolio lenders will have to assume and manage will be primarily a function of the structure and terms of both the mortgages they offer and their

funding sources. If the rates on the loans can be adjusted as the market interest rate or the lender's cost of funds changes, the lender can limit his exposure to repricing risk. Housing lenders in Egypt currently use an approach that is designed to both accommodate borrowers and protect against cash-flow risk. Since they rely heavily on deposits as a funding source, banks should be making loans with interest rates that vary with market rates. However, there are no true market rates which can be relied upon to indicate changes in a bank's cost of funds. Thus, banks generally speak of the loan rate as fixed, but insert a clause into the loan contract that permits changes at the bank's discretion. However, banks have seldom changed the loan rates because interest rates in Egypt have been declining and the administrative cost of adjusting payments is not justified by any benefit of changing the loan interest rate. The intention of the banks may be to invoke the clause only if a major change in market interest rates is likely to impose significant losses. In the context of the relative stability in the cost of funds since 1995, the short term of most loans, and the ability of the net interest margins to absorb some changes, this approach appears to be reasonable under current market conditions.

3.5 Developing a Mortgage Market

It appears to be a good time for Egypt to develop a stronger housing finance market. Both the demand for housing credit and the capacity of the financial system to supply it have been rising. Demand has been boosted by rising real incomes, particularly among the urban middle class which is the natural market for unsubsidized residential mortgage loans. These increases have been aided by the continuing privatization of government owned companies, thereby creating more efficient enterprises and productive jobs. It may also have become more difficult to build up cash savings than in the past, such as when most middle-income people enjoyed low, frozen rents (as in the 1960s and 70s) or remittances from high-paying jobs in the Gulf countries (as in the 1970s and 1980s).

It is notable that the use of installment credit has become more common for a wide range of consumer durables, including automobiles, appliances and furniture. (In other countries, such an expansion in consumer credit has been a precursor to an expanding mortgage market.).¹⁶

Meanwhile, the economic reform program has significantly strengthened the potential supply side of the market. And while public sector banks are becoming more market oriented, the private banking sector has generally been more aggressive and is gaining market share relative to the public banks. Increased competition among commercial banks for large commercial loans has driven down net interest margins on commercial lending and has led to a growing interest by some banks in retail lending. Investment banking has been expanding, with several large international investment bankers (Morgan Stanley Dean Witter, ABN-Amro and ING Barings) taking positions in Egyptian investment companies and funds. The bond market is becoming

¹⁶ Some Western observers presume that middle-class people in every country will use mortgage credit if it is available on reasonable terms. However, in most traditional societies, being in debt is considered highly undesirable. Thus, long-term mortgage lending is usually slow to take off and does so only after shorter-term credit usage for consumer durables has become socially acceptable. Even so, there is a strong tendency in many developing countries to prepay mortgage loans out of any windfall income, particularly if the loans bear a high real interest rate.

more important as a source of funding for the largest Egyptian companies. Most importantly, the sophistication of financial market participants in managing financial risks has been increasing.

As noted, it can be expected that housing finance will become attractive to at least some banks once the proposed mortgage law is enacted. In addition, the mortgage law authorizes the establishment of specialized mortgage lenders, referred to as mortgage finance companies, which could buy loans originated by banks as well as originating loans themselves. While there is no certainty that any such companies will be organized, the most likely pattern would be for the large residential real estate development companies and their banks to form non-bank mortgage finance companies, which would work through the branch networks of the banks to originate and service loans. In this way, the banks would not end up diverting capital or staff attention to mortgage lending. The new mortgage law also authorizes the establishment of specialized mortgage investment funds to purchase mortgage loans, assemble them into pools and issue shares representing ownership rights in the mortgage assets. Despite these efforts to facilitate the development of a more efficient mortgage market, initially there simply may not be sufficient loan volume to support institutional expansion.

There are several other factors that could slow the growth of the Egyptian residential mortgage market. One of these is the lack of a well developed resale market for flats. It appears that relatively few existing flats are sold each year and information about the true sales price and conditions of sale is rarely available. This makes it very difficult for a lender to evaluate the "market" value of a flat and even more difficult to realize that value during an foreclosure auction. It also puts both the borrower and the bank in a difficult position when trying to resolve loan delinquencies through the voluntary sale of the flat. In general, the "market" value of such flats will be significantly higher than the amount of the mortgage, but it may be difficult for a borrower in financial distress to realize that value in a rapid manner.

Another factor that may be perceived as an obstacle is the absence of mortgage repayment insurance. Many potential lenders may be discouraged from lending by lack of empirical data on delinquency and default rates, the uncertainty of recovery on default and the prospect of having to dispossess some borrowers of their flats. Mortgage insurance could permit shifting the risk to another entity. However, shifting credit risk to a third party increases the potential for agency risk, whereby the lender may not diligently underwrite and service a loan when it does not bear the risk of loss. An overview of the issues of mortgage insurance in countries which do not have a well developed mortgage market is presented in Annex C.

It should be noted that mortgage lending for the development and ownership of rental housing may also become an important line of business in the future. This may occur in the form of loans to individuals to buy flats for investment and rent them out or for larger scale investors to build and operate large rental buildings. The social value of such investments is very high, by pushing downward the rent levels faced by the large number of low and moderate income households who do not have a prospect of owning a flat. But a higher degree of confidence that liberal rent and landlord-tenant regulations will remain in effect into the future may be needed before lenders feel that the risks can be evaluated.

3.6 Conclusions and Recommendations

3.6.1 Conclusions. Several preliminary conclusions can be reached about the future development of the housing finance system in Egypt.

First, once the mortgage law is enacted, several banks can be expected to become more active in the residential mortgage market. Competition may not reduce the cost of such loans significantly, but marketing these loans aggressively and extending loan maturities should expand usage significantly. However, in the near term mortgage loan volume is expected to be modest. Based upon incomplete data, it is estimated that initially, the lending volume probably will not exceed LE 1-2 billion per year (about 20,000 loans). Even reaching this volume of lending may depend on lenders offering maturities of up to 15 years on mortgage loans and borrowers accepting the idea of taking on a large financial commitment for such a long term.¹⁷ Such a limited volume of lending may delay the development of a secondary mortgage market because not all mortgage lenders will choose to sell the mortgage loans they originate and those lenders which do sell mortgage loans probably will not sell their entire loan portfolios.

It is likely that during the time required for the primary mortgage market to reach a sufficient volume of originations to support securitization, the bond market will have developed to the point that investors will be receptive to mortgage-backed securities. In the interim, non-deposit funding of mortgage activities probably will be accomplished by the issuance of unsecured and mortgage-collateralized bonds. Which way or combination of ways is most desirable will depend on the views of investors and the attitude of regulators. Medium-term (i.e. 3 to 10 year) bonds may be favored initially by the banks, because they are already accepted in the market. Such bond funding may be replaced with securitizations as investors become more familiar with such instruments.

Will the growth in the mortgage market help dispose of the glut of luxury flats? It is likely that the banks which are most exposed to potential losses on such development will, based on the new law, be more comfortable offering better terms (e.g., 15-year loans) on financing them. This will expand the number of households that can afford such flats and help with their marketing.

Will the growth in the mortgage market help house lower and lower-middle income households? It can be expected that the banks, other than, perhaps, the real estate bank, will not address this market segment at all. There are at least three reasons for this. First, the smaller size of loan in this market will make originating and servicing too expensive per Egyptian pound lent, until the lenders have created internal systems that are more efficient. Second, the political acceptance of forcing loan recovery among these "weaker" classes will need to be established before private lenders feel comfortable entering the market in a large-scale fashion. Finally, these households may be less able to establish a capacity to repay and also may be reluctant to take on such major long-term financial commitments.

3.6.2 Recommendations. What are desirable steps to be taken by the government? Clearly, the most important step is the enactment of the proposed mortgage law. The second step, to be

¹⁷ Of course, if the slow take-off of the market prompts the offering of subsidies of one kind or another, the size of the market could grow much more rapidly.

taken by the government is to issue the necessary executive regulations to implement the law. Third, the government needs to set up the mortgage regulatory authority to ensure that the new law is implemented in a prudential manner. Fourth, the government should undertake, or encourage the Egyptian Bankers Association to undertake, a public information program to educate the public about mortgages and the financial implications of a mortgage for the borrower and to inform the public of the financing options available and which institutions are offering mortgage finance. Fifth, the government should sponsor technical assistance and training for mortgage lenders, foreclosure trustees, mortgage finance regulators, real estate valuers, managers of mortgage investment funds and other participants in the mortgage market. There is a large body of experience to be drawn upon that is applicable across countries on how to develop effective mortgage underwriting, servicing and administrative systems and marketing strategies for housing lending. The DEPRA project may be in a position to assist with the offering of intensive seminars and useful materials to help “kick-start” mortgage lending.

Another important step to be considered by the Central Bank of Egypt in the future is to reduce the risk weighting on commercial bank’s residential mortgage assets. Such a change in the existing capital adequacy requirements would be consistent with the Basle accord, which assesses a 50% risk weighting on residential mortgage loans. However, this should only be done once it is clear to regulators that the loan recovery system under the new law is effective and that the commercial banks’ experience with default and repayment on loans to finance residential real estate clearly justifies a risk weighting of less than 100%.

Another important signal from the government would be the clear distinction in CBE directives between owner-occupied residential mortgage lending and lending for real estate development or commercial real estate in terms of the maximum value of real estate loans which can be held in a bank’s portfolio relative to its total loans or its capital. Currently, all types of real estate loans are aggregated and subject to the limitation of 5 percent of total lending. The special nature of owner-occupied residential mortgages should be recognized, as it has been by the BIS and banking regulators in most developed countries, and a separate lending limit applied, independent of the lending limit for other types of real estate lending. The lending limit for owner-occupied residential loans should be at least 5 percent of total loans. A lower lending limit will deter banks from developing a retail mortgage lending program, because the large start-up costs involved in creating systems and training personnel will not be justified by the potential profitability of mortgage lending activities.

The effort by the government to improve the functioning of the bond market is very important for the development of the mortgage market. At a minimum, banks will look to the issuance of medium-term bonds to fund loans of up to 15 year maturities. All forms of long-term fund raising will rely on the presence of a well-functioning bond market.

It is also recommended that the government sponsor workshop(s) and provide necessary technical assistance to help in the development of the securitization market. DEPRA may also be able to help arrange access to foreign experience with this process, particularly other civil code countries that have experience with securitization.

Finally, it is recommended that the benefits of a strong mortgage law be applied to all lending secured by real estate collateral. It is true that the uses of the funds (business operation, trade receivables) will usually be very different when not borrowing to buy a residence. However, if anything, the other uses are often judged by many to be more productive of economic growth and also less in need of consumer protection or social concern in case of default. It is often commented in the development literature how financial systems are imperfect whenever legal obstacles prevent individuals to utilize their major assets, their home or shops, to make wealth generating investments. In fact, in some cases, it is the desire to facilitate just such transactions, rather than housing, that motivates the passage of mortgage laws.

ANNEX A

EGYPTIAN LAWS AND REGULATIONS RELATING TO MORTGAGE FINANCE

Introduction

There are numerous Egyptian laws relating to mortgage financing transactions. The nature of the mortgage, the rights and privileges of the parties to a mortgage and the effects of mortgages on third parties are established in the Egyptian Civil Code, Civil Law No. 131/1948, Book IV, Chapter I, Articles 1030 through 1084. The Law on Real Estate Declaration and Notarization, No. 114 of 1946 governs registration of ownership and lien interests in real property. The procedures for foreclosing on a mortgage are set out in the Law of Civil Procedure. The Commercial Law, No. 17 of 1999 governs debt instruments used by banks and the Capital Market Law, No. 95 of 1992, and the Executive Regulations issued under that law set out the terms and requirements for capital market instruments and institutions. In order to establish a new system for mortgage finance in Egypt, these laws and perhaps other laws and executive regulations, will have to be reviewed and amended, where needed.

Egyptian Civil Code, Civil Law No. 131/146: Nature of the Mortgage - Rights of the Parties

The rights and privileges of the parties to a mortgage and the effects on third parties are established in the Egyptian Civil Code, Civil Law No. 131/1948, Book IV, Chapter I, Articles 1030 through 1084. The law establishes that mortgages are "accessory rights" to a debt contracted by the debtor. In other words, the debt obligation evidenced by a debt contract is a legal contract separate from the pledge of real property as collateral to secure the debt. The provisions of Civil Law No. 131/1948 are similar to those of the mortgage laws of other countries, particularly those with a Civil Code legal system. Some of the key articles are summarized as follows:

1. Article 1030: defines a mortgage as "a contract whereby a creditor acquires, over an immovable appropriated to the payment of his debt, a real right by which he obtains preference, over ordinary creditors and creditors following him in rank, for the repayment of his claim out of the price of the immovable, no matter into whose hands the immovable has passed." This provision establishes the preference for mortgagees over other creditors against the mortgaged property. The bankruptcy law is consistent with the mortgage law in that mortgage creditors are able to proceed against the mortgaged property outside the bankruptcy proceeding.
2. Article 1032: states that the mortgagor and the debtor may be different parties. The debt instrument and the mortgage are separate legal instruments. Therefore, a mortgage transaction could involve borrowing by one person and pledging of either the real property being financed or another parcel of real property by a third party. In all cases, the mortgagor must be the owner of the mortgaged property and must have the legal capacity to dispose of the real property. Article 1042 of the same law further states that the mortgage cannot be separated from the debt secured by the mortgage regarding both its validity and its extinction upon satisfaction of the debt. Therefore, if the debt is void or invalid, the mortgage is as well. When the debt is paid in full, the mortgage is extinguished. A release (quashing) of the mortgage document usually is issued by the creditor and inscribed with the Real Estate Declaration and Notarization Department.

3. Article 1033: states that if the mortgagor is not the owner of the mortgaged property, the mortgage can still be valid if the true owner of the property ratifies the mortgage contract by an official deed, which must be registered or inscribed in the Real Estate Declaration and Notarization Department. In the absence of such ratification, the mortgage is only effective from the time that the mortgagor becomes the owner of the property.

4. Article 1034: states that a mortgage on a property in which the mortgagor's title later ceases to exist remains valid if the creditor has acted in good faith and on reliance on the validity of the mortgagor's title at the time the mortgage was registered/inscribed.

5. Article 1035: states that a mortgage can only be against immovable property that is marketable and can be sold at public auction and which can be "specifically and precisely described as regards its natures and situation." The property description must be contained in the deed or in a subsequent registered document, "otherwise the mortgage is void."

6. Article 1043: states that a mortgagor can dispose of the mortgaged property subject to the mortgage. This is a provision that should be modified in a new mortgage law because it does not give the mortgage creditor the right to declare the mortgage due and payable if the property is sold. The original mortgagor would remain obligated on the debt, but another party would own the property. The mortgage creditor should have the right to require that the debt be paid from the proceeds of the sale. Alternatively, the bank could permit the new owner to assume the debt secured by the mortgage, in which case, the mortgage would remain on the property.

7. Article 1052: prohibits any agreement between the mortgagor and mortgagee whereby the mortgagee can buy the property at a fixed price or sell the property outside the formal legal procedure required under the Civil Procedures law. Any such agreement is void. However, the article appears to permit a "deed in lieu of foreclosure" satisfaction of the debt to avoid foreclosure proceedings..."It may, however, be agreed after the debt or one of the installments of the debt has fallen due, that the debtor transfers to the creditor the mortgaged property in payment of the debt." Such a transfer in satisfaction of the debt also appears to be permitted under the Banking Law.

Article 1052 prohibits a mortgage loan agreement from containing a provision whereby the bank can require that the debtor convey title to and possession of the real property securing the debt to the bank in satisfaction of the debt, although the debtor can do so voluntarily. Article 1052 also has been interpreted to prohibit the bank from participating in a public auction at which the mortgaged property is sold. The prohibition against a creditor taking the mortgaged property in satisfaction of the debt is based on the historical practice of lenders making loans to small landowners with the intent of seizing the property when the borrower defaulted on the debt. The law was designed to protect debtors from such predatory creditors. Current commercial and banking laws establish the rights of the parties in debt transactions. Consequently, the protections of Article 1052 are no longer required for bank loans.

Law on Declaration and Notarization of Real Property Interests, Law No. 114 of 1946: Establishment of Ownership and Mortgage Interests through the Real Estate Notarization and Property Registration System

Notarization and registration play an important role in the transfer of property rights by assuring that purchasers obtain clear title and that their rights are protected against the claims of third parties. Banks and other formal sector mortgage lenders will lend only against the security of registered title. Most market participants believe that the notarial and property registration process provides adequate protection of real property rights.

Under Egyptian law, to be effective against third parties, all contracts involving the sale of real property and all mortgages must be formalized by a notary public and registered with the Real Estate Declaration and Notarization Department of the Ministry of Justice (the "Real Estate Registry") in the governorate in which the property is located. Article 1031 OF Civil Law No. 131/1948, Book IV, Chapter I states that "a mortgage can only be constituted by an authentic document." An "authentic document" is one that has been inscribed in the property records of a property registered with the Real Estate Registry. Therefore, in order for a mortgage to have legal effect and force, the property to be mortgaged also must be registered in the books of the Real Estate Registry. When a bank grants a loan for the purchase of a house, the bank usually requires the borrower to execute a power of attorney in favor of the bank authorizing the bank to register both the purchase of the property and the mortgage with the Real Estate Registry.

Law No. 114 of 1946 sets out the standards and procedures for the real estate declaration and notarization. Article 10 of that law stipulates that all dispositions and final judgments regarding rights and interest in real property must be registered to be proof vis-à-vis third parties. In other words, only registered title gives legal notice to third parties. The first person with a properly executed contract to file with the public registry, thereby giving legal notice of his rights in the property, has priority over prior purchasers, creditors and other claimants if they have not registered their interest and over all subsequent purchasers or lenders, whether or not registered. Many judgments have been delivered by the Egyptian Supreme Court reaffirming that only registered interests in real property are enforceable against third parties. Article 12 of the same law establishes that "accessory real rights" such as mortgages must be registered to be a proof of claim against third parties. In Article 103, a mortgage extends to all improvements, servitudes and other property which becomes a part of the real property by virtue of the use to which it is put and other permanent attachments which benefit the owner.

Registration Procedures

The procedures to register both title and mortgages involve a number of steps. Article 1054 of Civil Law 131/1948 stipulates that the provisions of the Law No. 114/ 1946 regulating the Real Estate Declaration and Notarization Department apply to effecting, renewing, deleting and canceling the inscription of a mortgage interest. The steps that must be followed for registration of interests in the real property also apply to the inscription of the mortgage contract. These steps are as follows:

a. An application for the declaration of the contract including the identity and authority of the persons executing the document, the terms of the contract and the physical description of the property is submitted to the Real Estate Registry. The parties to the transaction must appear before the notary to validate their signatures to the contract.

b. After accepting the application, the Real Estate Registry sends the application to the survey office to verify the property description. The survey office will actually survey the property and will issue a statement containing the legal description of the property, which is returned to the Real Estate Registry.

c. The application is returned to the Real Estate Registry where the notary will draw up the official declaration and all supporting documents and enter an inscription in the registry that the declaration has been accepted.

d. The fees due are then paid, the declaration is stamped and signed by the parties and the signatures verified by the notary, the declaration is entered into the Real Estate Registry and an official number is issued.

Registration Fees

Registration fees are based on the value of the property being registered. Law No. 224/1996 amended Law No. 70/1964 to reduce the fees for registering the sale of real property by half, from a sliding scale of 3% for properties with a value of up to LE 2000 to 12% for properties with a value of over LE 30,000 to a range of 1.5% to 6%. The fee schedule currently in effect is shown in the table on the following page.

Law of Civil and Commercial Procedures, Book 2, Chapter 3, Section 3, Articles 401 through 458: Execution on the Mortgage

The relevant procedures for foreclosure on a mortgaged property are set out in the Law of Civil and Commercial Procedures, Book 2, Chapter 3, Section 3, Articles 401 through 458. These procedures are as follows:

1. Notification of Expropriation

The process for executing on the mortgage begins with the service of a notification of expropriation on the defaulting debtor. The creditor gives written notice to the debtor served by a process server that all unpaid payments, including accrued interest, are due and payable. The law does not provide for acceleration of the entire amount of the debt. The notice must inform the defaulting debtor and mortgagor, if different from the debtor, that the creditor will proceed against the mortgaged property in the event of the failure to repay the debt. The Real Estate Declaration and Notarization Department must review the notification of expropriation and certify that it is appropriate for declaration before the notification may be served on the defaulted debtor/mortgagor. Service must be in person at the debtor's "natural domicile and not his elected domicile". The notification of expropriation will have the same consequences as all judicial documents.

The notice must include the following information:

**FEEs ASSESSED TO REGISTER REAL PROPERTY
AND MORTGAGES ON REAL PROPERTY**

Law No. 70/1964 as Amended by Law No. 224/1996

I. Sales Price of Property	Fee as a % of Value or Debt
Up to LE 1,000	1.00%
LE 1,000 - LE 2,000	1.50%
LE 2,000 - LE 3,000	2.00%
LE 3,000 - LE 5,000	2.50%
LE 5,000 - LE 7,000	3.00%
LE 7,000 - LE 10,000	3.50%
LE 10,000 - LE 15,000	4.00%
LE 15,000 - LE 20,000	4.50%
LE 20,000 - LE 25,000	5.00%
LE 25,000 - LE 30,000	5.50%
Over LE 30,000	6.00%
II. Establishing the Mortgage	
Up to LE 1,000	0.25%
LE 1,000 - LE 2,000	0.50%
Over LE 2,000	0.75%
III. Redemption of the Mortgage	
Up to LE 1,000	0.125%
LE 1,000 - LE 2,000	0.250%
Over LE 2,000	0.375%

- a. The date of the mortgage, the amount of the debt to be repaid and notice of service;
- b. Description of the property, indicating its location, area and boundaries
- c. The law includes other stipulations that are not mandatory.

2. Notice to Other Parties with Registered Rights in the Property

In cases where third parties have possessory rights in the mortgaged property under contracts which were registered after the registration of the mortgage, but before the registration of the notification of expropriation, such parties must be served with a "warning" that the mortgagee is initiating the action to execute on the mortgage within 15 days of registration of the notification of expropriation. The warning will include a request to pay the debt due or abandon the property. A copy of the notification of expropriation must be attached to the warning, or the warning will be null and void. The warning also must be registered with the Real Estate Declaration and Notarization Department by notation in the margin of the notice of expropriation. If the property is leased to a third party, the effect of service of the warning is to assign all rents and other revenues to the mortgagee.

3. Statement of Conditions of Sale

Within 90 days from the date of registering the notification of expropriation, the mortgagee must file a statement of the conditions of the sale of the property with the clerk of the court. Failure to file the statement of conditions will nullify the notification of expropriation. The statement of conditions of sale should contain the information required by the law and all documents required by the law should be attached. Failure to include all required information and/or attach all required documents will nullify the statement of conditions of sale.

Within 15 days from the date of filing the statement of the conditions of sale, the clerk of the court should give notice to all parties with an interest in the property and all other creditors with registered claims against the property. The notice will include the date and time for a hearing for consideration of objections against the statement of conditions of sale and the date and time of the sale of the property if no objections have been filed. The clerk of the court also will publish the statement in one of the daily newspapers. The process servers who serve notice on parties at interest will advise the Real Estate Declaration and Notarization Department that such notice has been served within 8 days of the date of service. The service of notice will be noted in the margin of the registration of the notification of expropriation. The margin notation gives legal notice to all creditors.

4. Adjudication of Objections to the Conditions of Sale

Any party with a legal interest in the real property, including the defaulted debtor has the right to submit an objection to the conditions of sale with the clerk of the court. Objections must be in writing and be submitted at least 3 days prior to the date of the hearing to consider objections.

The defaulted debtor and other parties at interest may request that the foreclosure process be vacated. If the debtor can prove that his earnings and other sources of income are sufficient to repay the amount due ("reinstate the debt") within one year, he may petition the court to stay the proceedings.

The proceedings for sale of the property will be stayed upon the timely filing of an objection to the sale and are not resumed until judgment has been rendered on all objections filed. The court's judgment may be appealed; in which case the stay will remain in place until a final judgment is rendered.

5. Public Auction

When final judgments dismissing all objections have been rendered, the public auction of the mortgaged property may proceed. Notice of the date, place and time of the public auction must be served on all parties at interest at least 8 days prior to the date of the auction. Any party at interest has the right to file a complaint against the order issued by the judge dismissing his objection, but such complaints do not stay the foreclosure sale proceedings.

The clerk of the court will publish notice of the sale in the newspaper within a period of not more than 30 days and not less than 15 days before the date of the auction. Any party at interest may file a request for annulment of the sale at least 3 days before the date of the sale. If a party does not file a request for annulment, this right lapses. The judge will rule on any such requests for annulment on the date of the sale before opening any bids. If the sale is canceled, the creditors do not lose the right to have the property sold, but they must repeat the entire process of application for sale of the property.

A party claiming title to the property under color of title, even if the title is not registered, may also obtain a stay of the public auction procedures by filing a request for a stay along with proof of his claim of ownership of the property. The case should be filed against the debtor and the creditor at least 3 days before the scheduled date of the public auction. The claimant's case will be heard and the judge can issue a stay of the public auction pending a hearing on the validity of the claim. If the court dismisses the claim, the mortgagee must obtain a judgment from the execution judge to reinstate the public auction procedures.

The public auction may be adjourned on the date of the sale if the judge determines that fraudulent acts have been committed which have prevented bidders from attending the auction. In such cases, the sale will be rescheduled within not more than 60 days and no contest to such sale will be accepted. The sale still could be stayed on the date of the auction. For example, if the sale has been ordered under a summary judgment which has not become final, the Supreme Court has issued a temporary stay of the execution, forgeries have been discovered in the enforceable documents or disputes have arisen since the date of filing objection to the sale.

When the property is finally put up for sale at the public auction, the judge opens the bids and awards the property to the highest bidder. The bidder pays the purchase price into the treasury of the court and the judge issues a judgment enforcing the sale. The judgment is the buyer's evidence of title and may be registered with the Real Estate Declaration and Notarization Department. The judgment of the court may be challenged only in three cases: 1) a defect in the procedures of the public auction; 2) a defect in the judgment; or 3) rejection of a request for a stay of the public auction when the stay is required by law.

The Law of Civil Procedures provides only for the delivery of legal title, not possession of the property. Theoretically, the judgment of the court would require that the person in physical possession of the property, whether he is the debtor or a third party, vacate

the premises so that the buyer at the public auction can occupy the property or deliver possession to a subsequent purchaser. However, the status of a mortgagor who remains in possession of the mortgaged property after it has been sold at public auction is governed by Tenant Law No. 49/1997, Art. 6, which states in relevant part that if the mortgagor is in possession of real estate which is sold at public auction, he is considered a tenant and is protected by the Tenant Law.

As a tenant "at sufferance," the defaulted debtor in possession has all the rights and privileges granted by the Tenant Law and cannot be evicted unless he defaults on the payment of his rent. Even if he does not pay the rent and the purchaser at the public auction initiates legal action to have the defaulted debtor/tenant evicted, the defaulted debtor/tenant can stop the legal proceeding and be reinstated by bringing his rent payments current.

Commercial Law No. 17 of 1999: Debt Instruments, Position of Mortgage Creditors in a Bankruptcy Proceeding

Applicability of the Commercial Law No. 17/1999 to Mortgage Transactions

The Commercial Law No. 17/1999 governs transactions between banks and individuals and commercial enterprises. Article 3 of Commercial Law No. 17/1999 states:

Article: 3

If the contract is commercial with regard to one of its parties, the provisions of the Commercial Law shall not be applicable except to the obligations of that party, exclusively. The provisions of the Civil Code shall apply to the obligations of the other party, unless otherwise prescribed in the law.

Therefore, a loan contract between a bank or other mortgage lender and an individual for the purchase of a home would be subject to the Commercial Law on the part of the lender and subject to the Civil Code on the part of the borrower.

Article 5 explicitly states that bank transactions and transactions involving income producing real estate are considered commercial activities subject to the Commercial Law. Article 5 states in relevant part:

Article 5

The following activities shall be considered commercial activities if they are exercised by way of a profession (i.e. if the entity is in the business of conducting the activities):

- F. Bank and money exchange transactions
- M. Construction, purchase or rental of realties with the aim of selling or leasing them complete or divided into apartments, rooms or administrative or commercial units, whether furnished or unfurnished.

Article 7 extends the Commercial Law to activities so similar to those enumerated in the law as commercial activities to be construed as commercial activities:

Article 7

All work that can be compared to the works in the foregoing articles (5 & 6) due to the likeness in qualities and purposes shall be considered a commercial work.

Therefore, if a new class of mortgage finance company were created which engages in lending, even though it is not one of the entities enumerated in Articles 5 & 6, the credit activities in which the company would engage are the same as the credit activities of banks and should be subject to the commercial law.

Credit Contracts

Part IV of Commercial Law No. 17/1997 relates to the instruments used in commercial transactions ("commercial papers"), including drafts, promissory notes, checks and other instruments. Article 378 of Part IV states that the provisions of the law apply to all credit instruments, regardless of the nature of the parties to the contract or the type of transaction.

Article 378

The provisions of this Part shall apply to drafts, promissory notes, checks and other commercial papers whatever the quality of the concerned parties, or the nature of works for which they were created.

The current practice of Egyptian banks is to use checks as the financing instrument for mortgage and other loans. The bank requires the borrower to give the bank post-dated checks for each installment payment of the debt. The current Penal Code makes the post-dating of checks a criminal offense if the post-dated checks are dishonored, so enforcement of payment of the post-dated checks has been effective. The Commercial Law amends the Penal Code so that failure to honor a post-dated check will no longer be a criminal offense, effective October 1, 2000. There also is a transition period. A post-dated check issued before October 1, 2000 shall be subject to the legal provisions applicable at the date the check was issued, if the check bears an attested date or if the date is attested before October 1, 2001.

The date of a check, even if it is post-dated, must be attested at one of the notary offices of the Real Estate Declaration and Notarization Department or by recording the attestation in special registers maintained by the banks or by any other method prescribed in Article 15 of the Evidence Law that is applicable to civil and commercial matters. Banks are preparing to convert to the use of promissory notes as the evidence of debt, starting October 1, 2000.

Provisions of the Promissory Note

Part IV, Chapter 2 of the Commercial Law No. 17/1999, Articles 468 - 471 sets out the requirements for promissory notes, including the contents of the promissory note itself and the method of enforcement. Article 470 states that the provisions of the Commercial Law on drafts shall apply to the promissory note, in particular:

- Legal Capacity
- Endorsement
- Alternative guarantee, considering that if the name of the guaranteed obligor is not mentioned in the formula of the guarantee, the guarantee shall then be considered made in favor of the writer of the note

- Maturity
- Payment, payment by intervention and protest to payment
- Recourse and protest
- Duplicates and multiplicity of copies
- Perversion
- Prescription

Of particular relevance to mortgage finance are the provisions of Part IV, Chapter 1 relating to endorsement, payment, protest to payment, recourse and protest.

Endorsement

Part IV, Chapter 1, Articles 391 - 400 of Commercial Law No. 17/1999 set out the procedures and law applying to endorsement of promissory notes. These procedures would be applicable to promissory notes secured by mortgages, so they facilitate transfer of mortgage secured promissory notes to mortgage investors. Transfer by endorsement will facilitate the sale of mortgage loans in securitization transactions.

Collection of Promissory Notes

Part IV, Chapter 1, Section 6 of Commercial Law no. 17/1999 establishes the right of recourse on a draft and the procedures which must be followed if the draft is not paid.

These rights and procedures are applicable to promissory notes. With a promissory note, the "draft bearer" is the lender or his successor in interest, the "draft" is the promissory note, the "drawee," "acceptor" and "drawer" of the draft are all terms referring to the borrower on a promissory note. The terms "guarantor" and "endorser" of a draft would have the same meaning for a promissory note.

Article 438

1. The draft bearer – in case it is not paid on its maturity date – shall have the right of recourse against all endorsers, the drawer and other parties bound to honor the draft.
2. The bearer shall have the right of recourse before the maturity date in the following cases:
 - a. Total or partial refrain from acceptance.
 - b. Bankruptcy of the drawee, whether acceptor or non-acceptor of the draft or his discontinuation of the payment, even if not confirmed by a court ruling or levying an unavailing distress upon his property.
 - c. Bankruptcy of the owner of the draft in which a condition is set not to present it for acceptance.
3. Each guarantor, on being subject to recourse against him before the maturity date in the cases prescribed in items (b) and (c) of the previous clause may, within three days from the date of recourse, submit to the competent judge at the court within the circuit of which lies his domicile a memorandum requesting a period for payment. If the judge deems there is a justification for granting that period, he shall determine in his warrant the date during which payment shall be made

providing it shall not exceed the date appointed for the draft maturity. This warrant shall be final.

Article 439

1. Establishing the refrain from accepting or paying the draft shall be through a protest against the non-acceptance or non-payment of the draft.
2. The protest against non-acceptance of the draft shall be made within the dates determined for submitting the draft for acceptance. If the first presentation for acceptance takes place according to the first clause of article 412 of this law on the last day of the time determined for presenting the draft, the protest may be made on the next day.
3. The protest against non-payment of the maturing draft shall be made on an appointed day or after an appointed day from the date of issuing the draft or the date of sighting it within the four working days next to the draft maturity day. If the draft is payable at sight, the protest against non-payment shall be made according to the conditions prescribed in the previous clause concerning the protest against non-acceptance.
4. The protest against non-acceptance shall do instead of presenting the draft for payment, and of lodging a protest against non-payment.
5. In case the drawee discontinues payment, whether he is acceptor of the draft or not, or in case of levying an unavailing distress on his property, the bearer of the draft may not have recourse against the guarantors except after presenting the draft to the drawee to pay it, and after lodging a protest against non-payment.
6. In case the drawee is declared bankrupt, whether he is acceptor of the draft or not, and also in case of the declared bankruptcy of the drawer of the draft in respect of which a condition is set for non-presenting it for acceptance, presenting the bankruptcy ruling shall be adequate to enable the bearer of the draft use his rights of recourse against the guarantors.

Article 440

1. The bearer of the draft shall notify the one who endorsed it for him and the drawer of non-accepting it or non-paying it, within four working days next to the day on which the protest is made or the day of presenting the draft for acceptance or payment, if it comprises the condition of recourse without expenses. Each endorser during the two working days following the day of his receipt of the notification shall in turn notify the one who had endorsed the draft for him that he has received that notification, indicating thereto the names and addresses of those who gave the previous notification and thus from one endorser until reaching the drawer. The period with regard to each endorser shall begin from the date he receives the notification from the endorser who preceded him.
2. Once one signatory of the draft has been notified according to the previous clause, his alternative guarantor shall also be notified at the same date.
3. If one of the endorsers does not show his address or shows it ambiguously, obscurely and illegibly, the notification of his preceding endorser shall be adequate.

4. Whoever should address the notification shall proceed with sending it by registered letter, cable, telex or fax message or any other method, even by returning the draft itself. He shall establish his dispatch of the notification at the date determined therefor. The date shall be considered complied with if the registered letter or cable is delivered to the post office or the telegraph office at the said date.
5. The rights of the party committed to dispatch the notification shall not abate if he fails to send it at its determined date. However, in case of necessity, he shall compensate the harm resulting from his neglect providing the compensation shall not exceed the amount of the draft.

Article 442

1. The persons who are obligors by virtue of a draft shall be jointly accountable vis-à-vis its bearer.
2. The draft bearer shall have the right of recourse against these obligors severally or jointly, without being obliged to observe the order of their obligations.
3. This right shall be established for each one having signed the draft if he pays its amount.
4. A court action brought against one of the obligors shall not prevent having recourse against the rest, even if they are subsequent to the obligor on whom the notice of action is addressed in the first place.

Article 443

The draft bearer shall claim the following from those who have the right of recourse against him:

- a- Original amount of the non-accepted or non-paid draft along with the interest agreed upon.
- b- The interest calculated according to the rate applied by the Central Bank of Egypt, effective the maturity date.
- c- Expenses of protest, notifications, stamp duty and others.
- d- In cases of recourse before the draft maturity date, the equivalent of the official discount rate at the date of recourse in the place where the bearer's domicile is located shall be deducted from its amount.

Article 444

The one who pays the draft may claim the following from his guarantors:

- a- The amount he paid.
- b- The interest on this amount, calculated from the day of payment according to the rate applied by the Central Bank of Egypt.
- c- The expenses he incurred.

Article 445

1. All obligors from whom a draft is claimed by way of recourse, or who is targeted for claiming it from him, shall have the right to claim, in case of paying the draft

amount, to be handed the draft together with the protest and a quitclaim for the amount paid.

2. Each endorser who pays the draft shall have the right to cancel his endorsement and the subsequent endorsements.

Article 446

In case of recourse after partial acceptance, the one who pays the unaccepted portion of the draft amount shall have the right to request recording this payment on the draft and a quitclaim to be handed to him, The bearer, in addition to this request, shall deliver to him a true copy of the draft signed by him, and also the protest to enable him to use his right of recourse against others.

Article 449

The bearer of the draft in respect of which a protest against non-payment is lodged may levy a preventive distress without bail on the property of each of the drawer, acceptor, endorser, alternative guarantor or other obligors regarding the draft, subject to the provisions prescribed in the civil and commercial procedures law.

Prepayment of the Debt

Article 63 of Commercial Law No. 17/1999 provides that a debtor may prepay the debt only with the permission of the creditor, unless prepayment is permitted by law, agreement or by "trade practices." If prepayment is not permitted, the debtor must pay a penalty if he prepays the debt.

Article 63

1. If the debt is a time debt and the debtor is authorized to settle it before the maturity date, he shall not – when using this right –deduct part of the debt except with the approval of the creditor, unless otherwise prescribed by a text in the law or in trade practices.
2. If the debtor is unauthorized to settle the debt before its maturity date, he may oblige the creditor to accept that settlement if he pays to him the interest due on the debt until expiry of the date, or clear him of the obligation to refund the amount if it had been paid in advance, unless there is an agreement, a trade usage or practice, or a text of the law providing otherwise.

Acceleration of the Debt

Paragraph 3 of Article 105 permits the creditor to call the entire amount of the debt due and payable only after the debtor has failed to make at least two consecutive installment payments.

Article 105 (3)

3. The agreement on maturity of the whole price in case one of the installments is not paid at its maturity date, shall not be enforced, unless the buyer fails to pay at least two consecutive installments.

Secured Transactions

The provisions of Commercial Law No. 17/1999 relating to promissory notes and drafts do not address the procedures that must be followed if the note is secured by collateral.

Of particular importance is whether the secured creditor must make demand on the promissory note before he can execute on the collateral. Some guidance can be found in Article 126 relating to the remedies on default on commercial pawn. In a commercial pawn transaction title to and possession of immovable property is transferred to the creditor or a "peer" appointed by the parties to the contract to hold the property until the debt has been paid. Article 126 permits the pawnee to sell the pawned items without having to go through the procedure for collecting on the promissory note or other debt instrument secured by the pawned items.

Article 126

1. If the debtor fails to pay the debt guaranteed by the pawn at its maturity date, the pawnee, after the lapse of five days from charging the debtor to pay his debt, shall have the right to submit a petition to the competent judge at the court within the circuit of which lies his domicile, to issue a court writ ordering the sale of whole or part of the pawned object.
2. The court writ issued by the judge for selling the pawned object may not be executed except after the lapse of five days from the date of notifying the order to the debtor and the guarantor, if any, along with indication of the location, date and hour of the sale session.
3. The sale shall take place at the time and place defined by the judge and by public auction, unless the judge orders following another method.
4. The pawnee shall receive, through priority way, settlement of his original debt, its yield and expenses, from the price accruing from the sale.

Effect of Bankruptcy on Mortgage Creditors

Some of the most significant provisions of Commercial Law No. 17/1999 relate to the position of creditors whose loans are secured by liens on real property. The bankruptcy law applies to persons, whether natural or juridical, who are defined in the commercial law as traders. In other words, if the borrower on security of a mortgage is engaged in business as an individual he can declare bankruptcy. Also, since a loan from a bank, regardless of whether the borrower is an individual or a company, is considered a "commercial debt", the bank can request a court ruling for declaration of the bankruptcy of his "debtor trader."

Chapter 3, Section 2 deals with the effects of bankruptcy on creditors. Article 605 states that if a real estate secured creditor has begun execution proceedings against the real estate, the bankruptcy judge can permit the execution to proceed outside the bankruptcy proceeding.

Article 605

1. The ordinary creditors or the general lien creditors shall not, after the court bankruptcy declaration ruling, institute individual cases against the bankruptcy, nor take any judiciary procedures against it.
2. The issue of a bankruptcy declaration ruling shall result in discontinuing the individual cases brought by the creditors mentioned in the previous clause and in staying the execution proceedings that these creditors began before the bankrupt declaration ruling was issued. However, if a day is determined for selling the

realty of the bankrupt, proceedings of execution may continue with permission from the bankruptcy judge.

3. As to the mortgagee and those vested with lien and particular lien rights on the debtor's property, they may institute the individual actions or continue therewith vis-à-vis the bankruptcy trustee. They may also levy or continue the execution on the property covered by their deposits.

Chapter 3, Section 4 deals specifically with the effect of bankruptcy on secured creditors. If the proceeds from the sale of the real property securing the loan are not sufficient to repay the debt in full, the secured creditor can share in the distribution of the other assets of the bankrupt debtor on the same basis as unsecured creditors.

Article 620

In case the price of realties is distributed before distributing the price or movables or both distributions take place together the mortgagees or lien creditors or particular lien creditors who have not received their right wholly or partially from the prices of realties burdened with insurance shall have the right to participate with the balance due to them, with the ordinary creditors, in the distribution of property to which the right of the group of creditors is pinned, providing their debts have been funded according to the provisions of this law.

Article 621

1. If one or more distributions of the movables price take place before distributing the price of the realties, the mortgagees, or lien creditors or particular lien creditors shall have the right to participating in the distributions with all their debts, providing they have been funded according to the provisions of this law. Their share in these distributions shall be set aside until carrying out the final settlement.
2. After selling the realties and carrying out the final settlement according to the classes of mortgagees, and lien creditors and particular lien creditors those whose class qualifies them to obtain all their debts from the price of said realties, may not receive the debt except after deducting the amount set aside for him, and this amount shall be returned to the group of ordinary creditors.
3. If the class of the mortgagee or lien creditors or particular lien creditors qualified him only for obtaining part of his debt, he shall have the right to participate in the rivals division with the rest of his due debt. If in effecting the final settlement it transpires that what he obtained and what was set aside for his account exceeds the amount of his due debt, the excess portion shall be deducted and restored to the group of ordinary creditors.

Article 622

The mortgagees or lien creditors or particular lien creditors who do not obtain anything from the price of realties which are burdened with their insurance shall be considered ordinary creditors and in that quality all the effects resulting from the works of the group of creditors and the judicial composition if it occurs shall apply to them.

The Capital Market Law, No. 95 of 1992

The Capital Market Law and the Executive Regulations issued under this law relevant to the mortgage market deal with the terms and conditions under which debt and equity securities may be issued, the tax treatment of such securities and the rules governing investment funds.

Articles 11 and 14 of the Capital Market Law exempt public offerings of shares, debentures and bonds from the proportional stamp duties at issuance and from the annual stamp duties. The interest and dividends on publicly issued securities is exempted from the general income tax. The interest on debt instruments also is exempted from the movable capital revenues tax. In order to qualify for these tax exemptions, securities issues must comply with Article 16 of the law, which defines public offerings as shares, debentures, bonds or other securities which constitute at least 30 percent of the total shares of the issuing company and which have at least 150 subscribers. In other words, private placements would not enjoy the tax exemptions provided in Articles 11 and 14.

Article 27 defines the types of securities activities governed by the law. Operating as a special purpose vehicle (SPV) to purchase mortgages and issue securities against the mortgages is not one of the listed activities, but Article 27 provides that "The Minister (of Economy and Foreign Trade), following approval of the (Capital Market) Authority's Board of Directors, may add other activities related to the field of securities." Therefore, the authorization of SPVs does not require any amendment to the Capital Market Law. Executive Regulations could be issued to establish the structure and operations of SPVs.

Chapter 2 of the Capital Market Law deals with investment funds. While Article 35 of the law and the Executive Regulations relating to investment funds currently limit the investments which investment funds can make to securities, the law and regulations also give the Board of Directors of the Capital Market Authority the power to "authorize the fund to deal in other movable financial values or in other fields of investments." Therefore, the Capital Market Authority can authorize investment funds to invest in mortgages and other real estate financing receivables or even in real estate.

Article 41 permits banks and insurance companies to operate investment funds, subject to the approval of the Capital Market Authority and the Central Bank of Egypt or the Egyptian Insurance Control Authority, as applicable. Under this provision of the law a bank could form an investment company to purchase mortgages originated by the bank and issue shares to the public to fund such purchases. Such an arrangement would create a potential for abuse by the sponsoring bank. A bank with a portfolio of questionable mortgages could sell the loans to its investment fund at full book value and pass all the credit risk to the investors in the investment fund. The executive regulations should set strict requirements for such affiliate transactions to ensure that any assets which the investment fund purchases from its parent bank are valued at their fair market value and that full disclosure is made to investors that the assets have been purchased from an affiliated entity.

Executive Regulations of the Capital Market Law, Decree No. 135 of 1993 (as amended)

The Executive Regulations set out the specific rules under which the Egyptian capital market must operate. Section 4 deals with the procedures that must be followed to issue debentures and finance bonds. One key requirement in Article 34 is that to be approved for issuance, all debt instruments issued should be rated. However, Article 34 further provides that the Board of Directors of the Capital Market Authority can approve an unrated bond issuance on a case-by-

case basis. The ability to have an unrated bond approved for issuance by the Authority will be important for mortgage securitizations until there is sufficient historical statistical data on mortgage delinquency, default and loss on which to base a credit evaluation of a mortgage-related security based solely on the underlying pool of mortgages. The question is whether an unrated bond will be accepted by the market at a price that makes the securitization financially feasible. It is likely that for the first five years or so, the Capital Market Authority, the rating agencies and investors will require that some form of credit enhancement be used in mortgage securitizations.

Chapter 2 of the Executive Regulations deals with investment funds. Article 140 requires investment funds to invest all of their funds in "stocks and shares" unless they have obtained a special license from the Capital Market Authority.

Article 143 limits the percentage which can be invested in the securities of any one company to 10 percent of the investment fund's monies, so long as the investment does not exceed 15 percent of the securities issued by the company. These limits may not apply to "other movable financial values" because Article 140 states that the percentage limits for investment in these types of assets will be established in the special license granted by the Authority.

The provisions of the Executive Regulations relating to management of the assets of investment funds accommodate the management of mortgages. For example, Article 168 states that if an investment fund is licensed to exercise another activity under Article 140, the Director of Investment of the fund may assign the management of this activity to a specialized agency. In other words, if the fund invests in mortgages, the Director of Investment can assign his responsibility for servicing to mortgages to the institution that originated the loans or to a mortgage servicing company.

Section 3 of Chapter 2 addresses issues relating to investment funds of banks and insurance companies. Article 175 limits the ratio of investors' money to the investment by the bank or insurance company to 20 to 1. In effect, this provision establishes a minimum capital ratio for the fund. Article 176 prohibits one investment fund sponsored by a bank or insurance company from investing in the shares of other investment funds sponsored by the same bank or insurance company, but does not prohibit the investment fund from investing in securities issued by the sponsoring bank or insurance company. Article 173 permits investment in securities of the sponsoring bank or insurance company provided that "such investment shall take place at the fair market value of these securities as shall be certified by the auditor of the bank or insurance company."

ANNEX B

ALTERNATIVE MORTGAGE FUNDING MECHANISMS

Overview

In Section 3, there is a discussion of how the method of funding long-term lending may have a significant influence on the specific terms of the loans being offered and on how various financial risks are managed. Funding through a commercial bank with a combination of bank deposits and medium-term bonds may normally be the favorite approach of market participants. However, a variety of market factors, and possible regulatory or other intervention by the government, may shift interest to other mechanisms. Three major alternative modes of funding are: securitization, mortgage banks, and liquidity facilities. This Annex describes each of these options.

It should be noted that alternative mortgage funding mechanisms require the same pre-requisites noted above for the development of the mortgage market, including a strong legal infrastructure supporting the registration, enforcement and eventual pledging and/or sale of mortgage loans. All also rely on the existence of an active bond market, since all look to the selling of fixed-income securities to the market. There is some chance that the popularity of these mechanisms can actually feed into the development of the bond market, but this potential is limited unless there is also an concerted effort to develop the government bond market as well.

Mortgage Securitization

Mortgage securities (often called mortgage-backed securities or MBS) involve the transformation of the ownership in a pool of mortgages into securities which represent some specific claim on the cash flows from those mortgages, usually in the form of debt instruments. They are not regular bonds but are debt obligations entirely and solely backed by a pool of mortgage assets that are owned by a very narrowly established legal entity, usually a trust or a special entity provided for by the law of securitization.¹ The simplest MBS is the pass-through security in which investors are entitled to pro-rata shares of the cash flows (principal [both scheduled and prepayments] and interest) from the mortgage pool. More complex derivative securities are frequently created by customizing the claims on the cash flows from the pass-throughs. As noted above, in most of these cases, securitization offers the very attractive feature that the cash flows received from mortgage borrowers is matched with the cash flows due to the investors, thus shifting all liquidity and interest rate risks to the investors

A mortgage pass-through security involves the sale of the underlying assets. The issuer may sell the mortgage assets to a special purpose vehicle or trust which then issues the securities, or to a

¹ The French-style securitization represents a co-ownership of the pool of assets. There is no actual legal entity involved.

conduit institution which purchases mortgage loans from a number of lenders, pools the loans and issuing the securities. Such an entity may be called a central securitizer.

Early History. The first pass-through mortgage securities were created in 1970 in the U.S. under a program operated by Ginnie Mae. Ginnie Mae (the U.S. Government National Mortgage Association) was created in 1968 to manage the liquidation of a portfolio of mortgage loans that had been built up by a predecessor government entity called Fannie Mae, which would purchase loans made under a program involving a government guarantee of repayment. It was also intended that this funding mechanism also be made available directly to the institutions making such loans.

In both cases, the securities would be issued with an explicit payment guarantee by the U.S. government, although the pass-through security would be issued in the capital markets by private lending institutions. The key was that the collateral in all cases was already government guaranteed. The only uncertainty involved in the loans was the timing of receipt of the principal and interest. The uncertainty arose from the rate of mortgage prepayments, the possible failure of the mortgage company that was servicing the loans and the delay associated with collecting on the mortgage insurance. Ginnie Mae provided a guarantee of timely payment of interest and principal to the investor (cash flow insurance). So it took only a small additional guarantee by the government as to the timing of the cash flows to allow investment banks to sell these securities as being totally government-guaranteed as to the minimum cash flows being paid. (What was not guaranteed against was the accelerated payment of principal, which has become the major issue of prepayment risk.)

The Ginnie Mae pass-through security represents a sale of assets, involves no over-collateralization and can be issued in small denominations. The issuer retains 44 basis points for servicing the loans and pays 6 basis points to Ginnie Mae for its cash flow insurance. The issuer must advance all contractually scheduled payments to the investor. Agency risk is handled by setting the servicing fee at significantly more than the true cost of servicing. This provides a powerful incentive for the mortgage company to properly service the loans as it is its main source of income. An important lever Ginnie Mae has to control its agency risk is the threat to transfer the loan servicing (and thus fee income) to another servicer and disqualify the mortgage company from future business.

The alternative model of MBS issuance in the U.S. is that of the centralized securitizer or conduit. Conduits purchase mortgages and issue MBS based on large size pools. The best known conduits are Fannie Mae and Freddie Mac but there are also over 20 private conduits with a growing share of the market (although they do not compete in the same segments of the market with Fannie Mae and Freddie Mac).

The first true conduit (in the sense of purchasing mortgages and issuing pass-through securities) was Freddie Mac, the Federal Home Loan Mortgage Corporation. It was created in 1970 to give savings and loan associations making non-government-insured mortgages the ability to sell

them.² Freddie Mac began issuing “conventional” (non-government-insured) mortgage pass-through securities in 1972.

Fannie Mae did not begin functioning as a conduit until 1981, although it had been in existence since 1938. Formally known as the Federal National Mortgage Association, it was created to promote the use of government-insured mortgages. Throughout most of its existence, Fannie Mae functioned as a housing bank, purchasing loans for its own portfolio and issuing government debt to finance this. The main reason that Fannie Mae was “privatized” in 1968 (it was given a special charter by the government and its shares were sold to the public) was to move its mortgage purchases “off-budget” at a time of growing government deficits. But it was set up in such a way that it was generally perceived to still be government-guaranteed, although not government-owned.

Despite being privatized and despite the existence of the securitization mechanism, Fannie Mae continued to function primarily as a housing bank, buying mortgages and raising funds by selling bonds. More precisely, it operated like a U.S. savings and loan, which had been directed by law and regulation towards using savings deposits to fund long-term fixed-rate mortgages. Thus, when the savings and loan system was bankrupted in the early 1980’s by the rise in inflation and funding costs, Fannie Mae also teetered on the edge of bankruptcy. It was only at that point that it began to pursue more aggressively a program of securitizing mortgage loans rather than financing through bond issuance.

There were several reasons why Fannie Mae was slow in using securitization. The main one was the desire to avoid paying the persistent premium demanded by investors providing long-term funding. But another was the fact that the primary and resale markets in pass-throughs was not as active and efficient as the government (and implicitly Fannie Mae) bond market. This all changed in the early 1980s when government regulators allowed savings and loans who securitized their portfolio of loans to amortize their losses on those loans (the difference between the low sale price at the current high interest rates and their book value) over the life of the loan. This would allow the institution to recycle the funds into new higher-paying investments without recognizing the loss (and their true bankruptcy). This step greatly expanded the pass-through market and made it a huge business on Wall Street.

There are several other reasons for Fannie and Freddie becoming an advantageous method of funding loans. Because they purchase a large volume of loans from a large number of lenders, they can issue larger securities with more diversified loan collateral and greater liquidity. Second, their unique status as government-sponsored enterprises (GSEs) allows them to issue debt at yields lower than comparable issues of AAA-rated corporations, although still a little (10-25 basis points) higher than comparable maturity Treasury bonds. Finally, their securities enjoy several advantages that reduce investor required yields and issuance costs and the GSEs are exempted from state-level corporate income taxation.

² It should be noted that the primary concern was not for the liquidity risk of the lender, but the geographic mismatch between net saving areas of the country and growing low-savings areas. This mis-match would normally have been dealt with by lenders having branches in both areas, but this was prohibited by law until relatively recently.

Through competition among lenders, these benefits translate into lower rates and increased access to capital for borrowers. However, because their special status provides them with a funding advantage, they crowd out private conduits (which today cover parts of the market not served by Freddie and Fannie) and they constitute a duopoly in the secondary market. They have been called “spongy conduits” since only two-thirds of the value of their government support translates into lower mortgage interest rates for borrowers. Shareholders and management capture the remaining one third of the benefit.

Once created and expanded by these government-related entities, the securitization market has been utilized by private entities for a wide variety of other receivables, including credit card receivables, auto loans, and, recently, many loans for commercial real estate. The model has been picked up in many other countries, although never with as much success. In the private securitization market, investors rely on information supplied by rating agencies and enhancement from either the collateral (i.e., over-collateralization), cash flow (e.g., senior-subordinated securities) or third parties (e.g., pool insurance provided by mortgage insurers or bond insurers) to manage the credit and agency risk inherent in third party origination and servicing.

The development of the senior-subordination structure has been a key factor in the growth of the private MBS market. In this structure, the senior security has priority claim on the pool cash flows. All defaults and cash flow shortfalls will be borne by the subordinate tranches. The rating agencies have developed models that predict the default rates on pools of mortgages based on loan characteristics (underwriting ratios, loan type), servicer performance, geographic location, etc. Based on their estimate of lifetime default rates, they determine the size of the subordinate tranche necessary to get the desired rating (e.g., AAA). A lesser but still important alternative form of credit enhancement is through pool insurance provided by private mortgage insurance or bond insurance companies. A bond insurer will in effect put its AAA rating on a security (one that is already investment grade) to improve its rating for a fee.

The economics of securitization as a funding mechanism is illustrated by the experience of Canada. A mortgage-backed securities market was created in Canada in 1987 when the government-owned Canadian Mortgage and Housing Corporation (CMHC) was authorized by the government to provide timely payment guarantees on pools of federally insured (NHA) loans, like with Ginnie Mae. However, the secondary mortgage market in Canada has not achieved the same degree of success as in the U.S. This can be partly explained by three factors. Canadian lenders have always operated on a nationwide basis. Therefore, the need to rely on a secondary market to facilitate the interregional transfer of funds never developed. Second, the market never received the boost in liquidity that occurred during the early 1980s in the U.S. As a result, the economies of scale in securities issuance and servicing that characterize U.S. housing finance have not developed to the same degree in Canada.

Recent Developments. Unlike the U.S. and Canada, the European MBS market developed without any direct government involvement. There have been no government sponsored conduits created to provide credit enhancement or regulatory incentives to facilitate investor acceptance.

The pioneers in the Europe were “centralized mortgage lenders” in the UK (similar to U.S.-style mortgage banks, with little capital) that entered the market in the mid-1980s in response to wide

spreads between lending rates and money market rates. These institutions (private conduits) lend through a network of brokers and insurance agents and fund themselves entirely through wholesale sources, primarily securitization. However, after an initial boost in market share to as high as 13 percent, the share has declined sharply.

Cumulatively, up to 1998, there had been 123 issues in Europe for nearly \$26.3 billion, but mostly in the UK. MBS issues in continental Europe have been sporadic and there have been no on-going programs. The first non-UK MBS were issued in France and Spain in 1991 by government-backed mortgage banks. Issuance began to pick up in 1994 with 12 issues from France and Spain and since then issues have occurred as well in Belgium, Germany, Ireland, Italy and the Netherlands.

The primary reasons for the slow pace of mortgage securitization has been the high cost of such funding relative to bank deposits, the high costs associated with developing securitization programs, and legal and regulatory uncertainty associated with a new funding mechanism. Lack of centralized information on mortgage prepayments has also retarded MBS development. In France and Spain, an arduous process of legislative change was required to develop the necessary legal infrastructure for securitization.

However, it is expected that the European MBS market may grow substantially in the future. With European Monetary Union, the costs of cross-border financial service provision are going to fall. Competition is likely to emerge in the savings market before the lending market, which may cause the relative cost of retail funds in depositories to rise. On the other hand, there are some signs that the funding raised through the issuance of mortgage bonds may be cheaper. A critical factor is the cost of shifting credit risk to investors in the form of subordinated tranches.

A number of developing countries have utilized securitization to an extent. One of the most noted examples is Argentina, which successfully launched the first international mortgage securitization by a developing country in 1997. This was made possible by the routine issuing of mortgages in Argentina in US dollars, which means that the exchange rate risk was being borne by the borrowers.

The National Mortgage Bank (known as the BHN for its acronym in Spanish) issued its first mortgage-backed securities in October 1996. BHN is a government-owned bank which was restructured in the early 1990s as a wholesale bank providing medium and long term financing for construction and home loans. It now functions as a conduit purchasing mortgages from originators (primarily banks) and pooling them in Special Purpose Vehicles that issue bonds. The securities issued by BHN are backed by mortgages originated by banks and other financial institutions that guarantee the ultimate payment of all principal and interest (i.e., recourse purchase). Thus, the Argentinean MBS do not act to take the mortgages off the books of the banks, but do provide matched funding. In addition, there is a subordinated security portion that bears the residual risk that the banks will fail; the intent was also to make clear that BHN was not bearing any credit risk.

The Central Bank of Argentina encouraged this process by designing a standard model for the mortgage loans in respect to terms, currency, interest rate, amortization system, maximum loan

values, maximum loan-to-value ratios, installment/ income ratio, amount of expenses and fees. The Central Bank made the use of standard documents and terms mandatory for all lenders, in order to make feasible future securitization.

Legal Structure. The recent development of asset-backed securitization in general has brought about a distinction between U.S.-style (common-law) systems and French-style (civil code) systems. The U.S.-style relies on existing trust or companies law to create a ownership entity which then issues negotiable claims against itself. This entity is commonly known as a Special Purpose Vehicle (SPV). The SPV takes over ownership of the assets and simultaneously issues debt obligations which are fully secured by the assets in the SPV. The SPV uses all cashflows from the receivables, together with whatever assets (sometimes a reserve fund) or facilities it has, to service the notes according to their terms.

The French model is designed to resolve the difficulties of developing flexible financial instruments within the context of the civil code approach to law. It starts with the creation of a new type of legal entity as the holder of the assets. In France, this entity is called a "fond commun de creances" (FCC) which is an entity for co-ownership of receivables. Instead of the corporate shell of a US-style SPV issuing obligations, the FCC issues negotiable units representing a portion of co-ownership rights. The FCC has no distinct legal entity, but consist of a custodian which legally holds the assets and a manager who is set up specifically to manage these pools of assets.

In both cases, to achieve off-balance sheet treatment, it is essential that all obligations of the seller of the assets are extinguished, with no enforceable warranties or recourse. This poses a difficulty under some legal regimes, because of certain abilities of buyers or third parties to pursue remedies against sellers.

Whether a securitization is off the balance sheet or not, the SPV must be a legal entity that is tax-neutral and protected from any bankruptcy proceedings against the seller or the SPV management. These are also properties that generally require special law. However, FCC's, by virtue of not being a legal entity, does not have this problem.

Several practical issues are also important. The costs of transferring the mortgage assets, such as stamp duties, should be kept to a minimum. There should also be means of transferring servicing rights at a low cost. If a central conduit to purchase loans from a number of mortgage lending institutions (e.g. an investment fund), loan documentation and terms will need to be standardized so that loans from different lenders can be pooled.

One important question is the extent to which the law governing investment funds can serve as the core of a securitization process. Currently, investment funds are limited to owning securities themselves, not mortgage loans or other receivables. But if the scope of assets in which an investment fund may invest is expanded to include mortgages and the investment funds are tax neutral and bankruptcy remote, they may be well-suited for securitization transactions.

In addition to permitting securitization, legal and regulatory revisions usually are needed to create an investor market for the securities. There are often provisions to permit pension funds

and insurance companies to invest in mortgage securities. The legal investments authorized for pension funds and insurance companies may not include mortgage securities specifically, even if they do include bank and other corporate bonds and shares in investment funds. The laws and regulations governing these institutional investors should be clarified to explicitly authorize investments in mortgage-related securities.

Applicability to Egypt. Lenders may be interested in the possibilities of securitizing a portion of their mortgage loans in order to better manage their funding risk, capital, liquidity and asset allocation. However, there are a number of developments required to facilitate this market.

There may be some legal, accounting and regulatory complications to be resolved to ensure a "true sale" and tax-neutral mode of off-loading the loans. These issues can probably be addressed through the adoption of regulations similar to those used in other countries (e.g. U.S., Germany, France) to resolve these issues.³

A second requirement is to develop an investor base to take on the financial risks, other than credit risk. This step is crucial, since even if the credit risks stays with the lender, the investors are taking on a significant amount of uncertainty about cash flows and also may be taking on a term (up to 10-15 years) which is longer than normal. In countries where there is a significant upward-sloping yield curve and some cyclical volatility in interest rates, investors would demand a large premium in the absence of historical information on which to judge prepayment rates. In Egypt, where a yield curve is not well defined, investors may be unwilling to take on maturities longer than 5-7 years, although with pass-through mortgage-backed securities, both the weighted average maturity and the duration of longer term mortgages will be in the 5 to 7 year range. Banks could respond to this either by limiting loan maturities or by selling the loans only after holding them for several years.

A third requirement is to develop an investor or institutional base to take on the credit risk. This step can be delayed in the beginning by the banks retaining the credit risk, although such continued exposure would make the securitization a financing, not a sale of assets. Presumably, shifting the credit risk of mortgage finance to the investor will be impossible until experience and court cases clarify the extent to which the new law has strengthened loan recovery. (An exception might be special arrangements in the near term whereby developers who have funds at stake might take on the risk on loans created to dispose of the oversupply of luxury units.)

A fourth issue is that mortgage-backed securities are likely to be less liquid than standard corporate bonds because of the uncertainty about cash flows and the thinness of the market. This may result in a spread over corporate bonds which would make mortgage securitization unattractive.

³ Many of the issues involved in designing a law supporting efficient securitization are discussed in The Global Asset-Backed Security Market, ed. by C. Stone, A. Zissu, and J. Lederman, Probus Publishing, 1993.

Mortgage Banks

Long before there was mortgage securitization, there were European-style mortgage banks issuing mortgage bonds, some of which were pass-throughs of cash flows.⁴ In fact, the basic economic structure of a mortgage bank is not quite as different from a securitization as it looks. A mortgage bank is essentially a large pool of mortgages and riskless assets against which negotiable debt obligations are written. But in term of legal status and financial risks, it is quite different. It is an operating company with substantial capital, taking both operating risks and also financial risks. In fact, it is bank with a narrowly defined charter and usually with a limited or no right to accept deposits.

Because it issues debt obligations on an ongoing basis, a mortgage bank must have access to investors and it does not have “closed-end” credit risk. Moreover, because some mortgage banks have the potential of differences in cash flows between their assets and fixed-flow debt issuances, they may take significant financial risks. The main concern of the mortgage bank is risk control. In contrast with commercial banks, mortgage banks accept a variety of restrictions on their risk-taking capacity, usually in return for preferential regulatory and tax treatment. The objective of such restrictions and privileges is to enable the mortgage bank to raise funds on as favorable terms as possible.

Early History. The first mortgage banks were established in Prussia, as early as 1770. The concept underlying the Prussian mortgage bond system was the reliance on the *collateral* as the fundamental source of credit quality for fund raising. The bonds are obligations of the mortgage bank, thus the institution provides the credit enhancement.

The credit quality of the bonds is assured through the use of conservative underwriting standards and strict regulation of the loans and institutions. In the countries using this system, there are government laws creating *specialized* institutions with their main activity being the granting of real estate loans. As a rule, they only grant loans secured by first mortgages. They obtain funds only through the issuance of “mortgage bonds” for which they have the *exclusive* right to issue. Bondholders have priority claim on the pool of collateral as well as recourse to the capital of the issuing institution. There are typically restrictions on the lending limits (i.e., loan-to-value ratios), loan characteristics, institutional capital, circulation limit of bonds and the balance between borrowing and lending.

German vs. Scandinavian. Over time, there evolved two forms of mortgage banks. In Denmark and the Scandinavian countries, the issuing institutions were organized as associations of borrowers. Traditionally, the borrowers assumed joint and several liability for the bonds. In Germany, mortgage banks evolved as joint stock companies, frequently with substantial ownership by the German states (“land”).

⁴ There is a common distinction between “European-style mortgage banks” and “American-style mortgage banks.” The latter rely almost entirely on securitization for their funds, so that they have low capital and a small portfolio of loans on their books. Such “banks” (which are in no way “banks”) can exist only when there is a easy way to off-load their loans, which is the case primarily in the US (and recently also in Australia).

German mortgage bonds are issued against a large pool of collateral held by the mortgage bank (“the cover”). Although the banks can grant mortgage loans up to 80 percent LTV, only the portion of the loan at or below 60 percent LTV is eligible collateral for the highest ranked bonds, the “Pfandbriefe.” The mortgage bank can issue non-Pfandbriefe mortgage bonds to fund the remainder of the collateral. The bonds are mostly simple non-callable bullet instruments. There is a small degree of overcollateralization (average 5 percent) reflecting the presence of equity.

Mortgages issued by German-style mortgage banks are amortizing, usually over a longer-period than the bond funding.⁵ Thus, the bank takes on some liquidity risk (actually it is taking on credit risk since it has not promised the borrower financing for the full amortization term) but this is very small since the ability to roll over the debt is quite certain. The bonds are almost always with fixed rates, which could create prepayment risk if interest rates were to decline over time. To eliminate this risk, prepayment is excluded for the period of time the interest rate is fixed, at least without payment of a penalty equal to the financial loss. Thus, the mortgage bank can match-fund the loans with minimal cash flow risk. Such mortgage banks provide approximately 20 percent of mortgage credit (both commercial and residential) in Germany.

Private mortgage banks in Denmark and Sweden are the dominant lenders, partly because, prior to the 1980s, these institutions were part of a system of directed credit and they still benefit from constraints on portfolio allocation by pension funds and insurance companies that lead them to favor mortgage bonds. It is debatable whether this design of lender would be important today in the absence of these distortions.

Unlike German mortgage bonds with their simple bullet structures, and long before U.S. MBS, Danish mortgage bonds were full-term, pass-through securities. The mortgage bank funds the borrower’s loan by selling a matched bond in the capital market. The loan is funded with the proceeds of the bond issuance. The individual bonds are part of large series with a particular coupon rate that can remain open for several years. However, the mortgage is on the books of the mortgage bank, which has recourse to the house pledged by the borrower.

Given that borrowers prefer fixed rate loans, the Danish mortgage market is almost entirely funded through the issuance of callable bonds. Mortgage bond issuance in Denmark is tightly regulated. Only authorized “mortgage credit institutions” (not banks) can issue mortgage bonds. However, since 1990, banks and insurance companies have been allowed to conduct mortgage credit activities through subsidiaries. The mortgage credit institutions are subject to strict limits over the characteristics of the loans that collateralize their bond issues and matching of their assets and liabilities.

The main investor groups in the mortgage bond market remain the pension funds and insurance companies (which are partly compelled to), while notably the largest investor group in the government bond market are foreign investors. This has perpetuated the use of fixed-rate prepayable loans, since it has led to underpricing of prepayment risk. Liberalization in all of these markets will eventually lead to a diversification of funding sources and mortgage types and also higher relative mortgage rates. In fact, it seems likely that securitization or German-style

⁵ A typical transaction might be the loan that amortizes over 30-40 years, but is due in, and has a fixed rate for, 5 years. The borrower and lender expect that the loan will simply be renewed every five years at the prevailing rate.

mortgage bonds may be a better funding vehicle for long-term fixed rate loans, because they are more suitable to managing the prepayment and interest rate risks.

Role in Developing Countries. Mortgage bonds are also an important instrument for housing finance in Chile. The bonds are issued by both commercial and mortgage banks. The system is quite similar to that in Denmark in that a financial institution issues a bond on the borrower's behalf to fund the loan. The credit risk remains on the books of the banks and there are no government guarantees. The popularity of this funding vehicle partly reflects the importance of pension funds. After their privatization in the early 1980s, pension funds experienced rapid growth (pension fund assets now represent forty percent of GDP). In the early days following reform, mortgage bonds were one of the most attractive assets available to managers. They were so attractive, in fact, that the government limited the portion of assets that could be in mortgage bonds to facilitate development of other investment alternatives (e.g., the equity market).

The German mortgage bank approach is attractive for many developing countries. It relies on acceptance of demonstrably low-risk bullet bonds to match fund long-term housing loans, without the complexity of pass-through securities. But it also implies that these institutions have low diversification and no direct access to household savings accounts. In general, the great strength of these institutions derived from the restrictiveness and transparency of operations, features which are better attainable today by ordinary banks through rigorous regulation and supervision. Thus, in countries such as Germany, highly rated universal banks can issue unsecured bonds at a risk premium close to that paid by the highly restricted and inflexible mortgage banks. In addition, the universal banks can offer variable rate loans, second mortgages, and high-LTV loans.

Thus, a new form of mortgage banking is spreading around Europe. Building on commercial banking, it provides for the issuance of mortgage bonds which are backed by segregated collateral held within the bank. They also usually come with a variety of restrictions and matching requirements that limit the risks that the bond holders are exposed to, and with provisions for specialized supervision to assure the quality of the bond collateral and access to it in case of failure. However, the amortization term of the loans can be longer than the terms of the bonds.

Such a system may be an attractive and practical alternative in Egypt. It addresses the term funding issue that is a major concern voiced by banks and possibly provides a better rate on debt issuances. It is this latter matter which is the main issue. The stronger banks have been able to issue bonds at low spreads over a sovereign rate (although it appears that the government debt market has been distorted more recently). At this point, there appears to be little to gain by improving the security behind these bond issuances. If so, the advantages of bond financing can be gained without the burden of restrictions on mortgage lending or segregation of collateral.

Alternatively, a non-bank institution could attempt to pursue normal German-style mortgage banking, based on specialization and restriction. However, there are two difficulties. First, the philosophy underlying the German mortgage bank requires a strong government supervisor to assure bond buyers as to the quality of the collateral held by the bank. This is seen as requiring the enactment of specific legal provisions. It is possible that such provisions could be introduced

as part of the regulation of non-bank “mortgage finance institutions” provided for in the proposed draft Mortgage Law.

Second, until the bond market becomes more mature and active, bond issuance is not a reliable source on which to build an entire institutional structure. Without a deposit base and only bank lines of credit to fall back on, a German-style mortgage bank is vulnerable to distortions or lapses in the functioning of the bond market.

Liquidity Facilities

So far, we have discussed two forms of fundraising, (1) securitization, where cash flow risks, as well as possibly credit risk, are shifted to investors, and (2) mortgage banking, which is a method by which the lender can secure its bond holders against the eventuality of the lender failing and also possibly better manage cashflow risks. The third funding mechanism is similar to a mortgage bank in as much as it looks to mortgage collateral as ultimate security. But it is specifically designed to work with an existing structure of depository institutions making loans and retaining them on their books but having access to a low-cost term loan window that helps to manage their liquidity, and possibly interest rate, risks.

These institutions are referred to as liquidity or refinance facilities. They issue general obligation bonds in the capital markets and use the proceeds to refinance all or parts of the portfolios of primary market lenders. They provide funds to primary market lenders through collateralized loans or full recourse purchases.

Liquidity facilities exist to provide both short-term funds and capital market access to depository institutions. They operate with very low credit risk, purchasing loans on recourse or lending on an overcollateralized basis. Typically, the government sponsors their establishment (although avoids granting an explicit guarantee) in order to provide improved liquidity generally to the bank sector. In fact, the main purpose for government support is often to provide access by banks to term funding of industrial projects through use of more reliable collateral in the form of residential mortgages.

Why would a liquidity facility be superior to bond issuance directly by banks, either secured by mortgages or unsecured? If banks cannot access long-term funds at an acceptable interest rate on its own credit, a liquidity facility may be a desirable means of funding a mortgage portfolio. As a centralized, government-sponsored bond issuer, the facility can obtain better access to the capital market on more favorable terms than its owners/members. With a greater volume of assets they can access the markets more often, creating greater liquidity in their debt and negotiating better terms with underwriters. By lending to a number of institutions, they can achieve greater diversification in their asset base.

Early History. The first liquidity facility was the U.S. Federal Home Loan Bank system established in 1932 to provide liquidity to the nation's savings institutions, the then-dominant mortgage lenders. The motivation for their creation was the Depression-period collapse of the financial system caused by a lack of liquidity in the financial markets, an erosion of confidence

in financial institutions and, in the mortgage market, a lack of understanding of asset default risk on the part of investors.

At the end of 1998, the FHLBs had over USD 400 billion in assets, making them on a combined basis the third largest financial institution in the U.S. The FHLBs have never had a credit loss on a loan, reflecting their overcollateralized lending policy, and their ability to control and transfer mortgage collateral.⁶ Their bonds are rated as AAA government agency debt. Just as with Fannie Mae and Freddie Mac, their debt interest rate is lower than the corporate AAA rate because of a perceived government guarantee. FHLB securities also enjoy certain privileges including exemption from reserve requirements, exemption from SEC issuance requirements and access to examination reports of member financial institutions.

Other Liquidity Facilities. The second most prominent liquidity facility is operated in France. The Caisse de Refinancement de Hypothecaire (CRH) was created in 1985 and performs a similar function as the FHLBs. CRH issues bullet bonds to finance the purchase of mortgage backed bonds created by member lending institutions. It issues bonds that are over-collateralized by mortgage bonds created by primary market lenders rather than whole loans. CRH is a private institution, owned by most of the major mortgage lending banks in France. The current size of the CRH is USD 9.5 billion. Its growth has slowed in recent years reflecting a desire of its depository institution members to fund loans with relatively cheap retail funds.⁷

Cagamas in Malaysia is the most successful example of a secondary mortgage facility in a developing country. It purchases mortgage loans (the principal balance outstanding) from mortgage originators, but with a repurchase agreement and full recourse to the primary lenders, at a fixed or floating rate for 3 to 7 years. Just as in the U.S., this is effectively a secured financing with Cagamas looking first to the credit of the financial institutions. Cagamas issues debt securities to investors, in the form of fixed or floating rate bonds, Cagamas notes, or Cagamas Mudharabah (Islamic) Bonds. Its securities are rated AAA by the Malaysian Rating Agency and subject to only a 10% risk weight for bank investors. Twenty percent of its shares are owned by the Central Bank and commercial banks and finance companies hold the remaining shares. As of the end of 1996, Cagamas had purchased USD 6.4 billion or 27.2% of the total volume of housing loans granted in Malaysia.

Cagamas receives a number of privileges from the Malaysian government. Loans sold to Cagamas are not subject to Central Bank reserve requirements. Its securities are eligible as liquid assets (banks and finance companies must keep an additional 10% of assets in liquid form). Cagamas securities carry a risk weighting of 10%, compared with a 50% rating for housing loans. The Chairman of the Central Bank chairs the Cagamas Board.

⁶ If a borrower experiences an erosion in credit quality, the FHLBs can require a transfer of the mortgage loan collateral (i.e., notes and deeds) to a third party trustee or to the FHLB itself. During the S&L crisis of the late 1980s, the FHLBs obtained possession of the collateral. Once the S&L failed, the Resolution Trust Corporation, in its capacity to liquidate the assets, would repay the FHLB to obtain the collateral (the value of which was substantially in excess of the loan) and then sell the mortgage loans in securitized form.

⁷ In France, depository institutions benefit from a tax-advantaged contract savings scheme that allows them to raise funds on a below market (pre-tax) basis. These funds can be used for any form of housing activity and are used to cross-subsidize first mortgage loans. Also, a majority of CRH's members are large banks with direct access to the capital markets.

Closer to Egypt, a liquidity facility modeled on Cagamas and the FHLBs was created in Jordan in 1997. Called the Jordan Mortgage Refinance Company (JMRC), it also offers term loans to commercial banks in Jordan which assign qualifying mortgages to it as collateral. The rate of collateralization is 125 percent and the term of loans has been as long as 7 years (supporting the issuance of 15 year mortgages). It enjoys many of the same advantages that Cagamas does, including no reserve requirement on its loans, eligibility of its bonds for inclusion in the liquidity reserves, a 20 percent risk weighting, and the Governor of the Central Bank chairs the Board.

The JMRC has been increasingly active. As of July 1999, it had about USD 30 million in loans outstanding to banks and had issued USD 20 million in bonds (the rest of the funding was from the World Bank and equity).

Jordan chose to promote a liquidity facility because it was dismantling its previous system of support for the mortgage market. That system had been centered around the Housing Bank of Jordan, which was distorting the liberalizing financial markets and costing the government significant non-transparent subsidies. Some of the privileges that the Housing Bank enjoyed had effectively mitigated its liquidity risk from offering loans for as long as 15 years. The bank sector in general is generally deeply concerned with its liquidity, given the strategic vulnerability of the country and its economy. Thus, the banks refused to enter into wider mortgage lending without some better access to term resources.

The result has been a remarkable shift in sentiment of many banks (all of which are wholly private) towards entering into retail mortgage lending. Four banks have drawn upon JMRC loans to fund their mortgage lending and several others have started up lending programs in anticipation of using the facility.

Relevance to Egypt. From the perspective of developing housing finance in Egypt, a liquidity facility can be a method of directly addressing the concern of banks about the liquidity risk of mortgage lending. One of its premises is that the other risks of mortgage lending, credit risk and interest rate risk, can be well addressed by the banks themselves. From a bond issuance perspective, in economies with under-developed capital markets it may be also be easier to obtain investor acceptance of simple bullet bond instruments than more complex pass-through securities. On the other hand, it is not attractive if the bank can access directly bullet bond funding at good rates. Because it appears that this may be the case, i.e., banks may have as much access to the bond market as would an intermediary, even a government-sponsored intermediary, there may not be much role for a liquidity facility.⁸

Setting up a liquidity facility is relatively straightforward legally. Since the legal system supports the pledging of assets (loan secured by a loan), collateralized lending is simpler to effect than the purchase and transfer of individual mortgage loans for the purpose of securitization. It

⁸ It is a fair question as to how the U.S. system seems to support widespread use of unsecured bond issuance, securitization, and use of a liquidity facility. The answer is that different lenders use these for different purposes. The evidence is that lenders use securitization for their fixed-rate loans, since they have no easy way of dealing fully with the interest rate and prepayment risk. They do not use it for variable rate loans that do not have such risks, preferring to keep them in their portfolio. That portfolio is financed through a combination of fixed deposits and bond issuances (if big enough) or liquidity finances (if relatively small).

also matters, though, about the mechanics of registering the lien. If this is very burdensome, as it has been in Jordan, then collateralized lending in this manner becomes less attractive.

Conclusions

Which of these techniques will be attractive to Egyptian lenders? To investors? Which need additional statutory and regulatory enactments? Which are worthy of implicit or explicit government support beyond creating an enabling environment?

Egypt appears to have a much more stable and deep base of deposits than Jordan, and there is a history of blanket protection of depositors from bank failures (an implicit guarantee that stabilizes the deposits in any given bank). Thus, a stable core of deposits could be looked to for a significant part of the funding base in the early stages of building up a loan portfolio, even for maturities of up to 15 years, unless the CBE takes a very restrictive stance on this issue.

As portfolio growth reaches over 3-5 percent of loans, the stronger banks would probably find it worthwhile managing their liquidity risk via the issuance of unsecured bonds in the 3-7 year range. The government has already given this form of funding an advantage, due to the "tax" on funding through deposits arising from the 15 percent cash reserve requirement and from the tax exemption of returns paid on such bonds. The question is whether the extra costs of backing those bonds specifically with mortgages, either through securitizations or a mortgage bank structure, appear to be greater than the benefits (in the form of lower cost and risks).

It is possible that weaker banks may find it useful to secure such debt issuances by pools of mortgages. This step is worthwhile only if (1) this gets a better credit rating, i.e., the loans are viewed as being relatively safe and relatively easily evaluated and re-sold, and (2) the reduction in the cost of funds due to a better rating is worth the trouble. The stronger banks will have little to gain by issuing bonds collateralized with mortgages. However, they will be in the best position to try securitizing a portion of their loans.

As for the development of a central liquidity facility, that always requires some government intervention. The facility need not involve full or even partial government ownership, but the government would need to be actively involved in organizing the institution and in granting regulatory advantages to using it. It essentially serves as a central bond issuer (with ultimately a mortgage bank type backing of loans as collateral) and would offer all lenders access to medium-term funds on similar terms. This would result in encouraging entry by more lenders, enhancing competition. A similar result could be obtained by creation of a government-sponsored centralized securitization entity, with or without the credit risk being shifted to the entity (and thus implicitly to the government, as in the case of Fannie Mae).

It does not appear currently that a liquidity facility is needed, if in fact banks continue to have reliable access to the bond market for medium-term unsecured bonds. If spreads over government rates widen for bonds with less than AAA ratings, then it may be the case that a liquidity facility (which should be able to attain such a rating) will pay for itself (the costs will be between 50-100 basis points).

ANNEX C

MORTGAGE INSURANCE

Introduction

Mortgage insurance programs reduce the credit risk of mortgage lending for housing finance institutions. Under these programs, all or a portion of the risk of loss on default on mortgage portfolios is shifted from the housing finance institution to the mortgage insurer, which may be a private company or a government owned or sponsored entity. Mortgage insurance programs are capitalized by an initial investment by its founders or, in the case of government mortgage insurance, a budget allocation. The ongoing operations of the mortgage insurer are funded through insurance premiums paid by the borrowers of insured loans. A few countries have established government mortgage insurance programs, but in several countries private mortgage insurance companies have evolved. The government mortgage insurance programs in some of the countries have not been successful either because government insured loans have been perceived by the public as grants that do not have to be repaid or, conversely, mortgage insurers have established such stringent underwriting criteria that they have accepted few loans and have had no losses on the loans they have insured.

Mortgage insurance is best suited to an environment where the risk of loss on foreclosure can be assessed and managed. In the United States, laws on foreclosure and the disposition of mortgage collateral are definitive and there is a substantial body of case law establishing the rights of the parties. Procedures and standards for the appraisal of residential real property are well developed and reliable data on comparable market sales are available. There also is over a fifty-year history of statistics on mortgage loan delinquency and default through economic and business cycles and national and regional recessions. Therefore, mortgage lenders, investors and government and private mortgage insurance providers can evaluate their business risk and price loans and mortgage insurance premiums accordingly. These conditions do not exist in Egypt and other developing economies.

In Egypt and other countries where mortgage finance is not well established, it is unlikely that private insurance companies will underwrite mortgage insurance. The only feasible option may be a government sponsored or supported mortgage insurance program. It should be recognized that the existence of government mortgage insurance, while it can be expected to be an effective means of encouraging banks and other mortgage lenders to make mortgages, runs the risk of undermining the development of a private mortgage market. Borrowers who know that their loans are insured by the government may have less incentive to repay their loans. Government mortgage insurance could be perceived as a housing grant, not a credit guarantee.

Government Mortgage Insurance in the U.S.

In the United States, the Federal Housing Administration (FHA) is the government agency which insures home mortgages. The FHA is a department within the Department of Housing and Urban Development, (i.e. the Ministry of Housing and Development). Another government agency, the Veteran's Administration (VA) guarantees home mortgages made to veterans.

FHA mortgage insurance was created in 1934 to address the real estate crisis caused by the Great Depression. The stated objectives of FHA mortgage insurance were to "facilitate home ownership, stimulate the construction and financing of housing, upgrade the quality of housing and improve mortgage lending practices." The FHA was effective in achieving these objectives and, in later years, in facilitating the financing of residential properties involving risks too great for the private sector to assume. The creation of FHA laid the foundation for the use of long term fully amortized loans with low down payment requirements, improved property standards and appraisal procedures and a standardized mortgage qualification process.

Until the advent of private mortgage insurance in the 1950s, FHA insured loans were the predominant type of home mortgage in the United States. The reasons for the widespread adoption of FHA programs are apparent:

1. Lower down payment requirements;
2. Longer maturities;
3. Assurance of minimum property standards and an appraisal performed under uniform procedures;
4. No penalty for prepayment;
5. Mortgage assumability;
6. Lower mortgage interest rates;
7. Greater flexibility in granting forbearance or delaying foreclosure.

Features of FHA Insured Mortgages

The FHA administers over 40 different mortgage insurance programs. The most widely used programs are the Basic Mortgage Insurance Program (Section 203(b)), the Condominium Mortgage Insurance Program (Section 203(c)) and the Rehabilitation Program (Section 203(k)).

In the past, FHA insured loans had an advantage over non-federally insured loans because they required less of an initial investment (down payment) by the homebuyer. The basic FHA home mortgage insurance program allows a home buyer to borrow up to 97% of the first \$25,000 of the lesser of the sales price or value of the house plus 95% of the balance up to the maximum mortgage amount permitted under the FHA mortgage insurance program. The maximum mortgage limits for single family homes are calculated at 95% of the median house price in the local market area, as determined by FHA. The FHA "basic" single-family mortgage loan limit which has been established for the year 2000 is \$121,296 and the "high cost area" loan limit is \$219,849.

Today, FHA has lost much of its advantage over non-government insured mortgages because privately insured mortgages can be for loan-to-value ratios as high as 95% and some mortgage insurers have begun to offer 97% insured loan programs. The principal advantage of an FHA insured mortgage is that any qualified purchaser can assume an FHA loan when the original homebuyer sells the home. Privately insured loans may be assumed only if the lender approves the assumption.

Until the late 1980s, the FHA set a maximum interest rate ceiling for FHA insured loans. When market interest rates rose above this mandated ceiling, lenders would charge an up-front fee (points)

to the borrower to increase the effective yield on the mortgage. In other words, the lender would discount the amount of the loan so that the effective interest rate on an FHA loan would be equivalent to market interest rates on non-federally insured loans. This practice increased the amount of funds a homebuyer was required to invest to purchase a home and, as a result, many prospective home purchasers could not qualify for FHA loans. In response to this problem, FHA now permits the market to determine the interest rates on FHA mortgages.

Insurance Coverage, Premiums and Claims Procedures

FHA insurance covers 100 percent of the outstanding balance on a mortgage for the full life of the loan. FHA insurance premiums are 2.25% of the original loan balance when the loan is granted, plus 0.5% of the outstanding balance each year the loan is outstanding, payable monthly as part of the mortgage payment. The FHA premium is the same for middle income homebuyers and high-risk borrowers. The premium for private mortgage insurance also is not risk-adjusted, but all borrowers must meet the higher credit standards imposed by the private mortgage insurance companies.

Studies of the rate and pattern of mortgage defaults over the 60 years since the FHA was created indicate that 100% insurance coverage may be excessive and exposes the insurance fund to undue risk. Shifting all of the risk of loss on default to the government has reduced the incentive for FHA mortgage lenders to diligently collect on insured loans. The FHA can deny a lender access to the FHA program if it does not adhere to FHA underwriting standards, policies and procedures and can prosecute institutions and their officers where mortgage fraud is discovered, but these are remedies to recover losses, not limit the risk exposure of the insurance fund.

The FHA treats a delinquent borrower more leniently than private lenders or mortgage insurers. If a borrower of an FHA insured loan is delinquent for three months, the lender must inform both the borrower and the FHA of the default. The borrower also is told of the possibility of forbearance that will allow a delay in initiating foreclosure procedures and a possible restructuring of the mortgage. If the delinquency is due to circumstances beyond the borrower's control, such as loss of employment, disability or the death of the principal wage earner, and there is a reasonable prospect that the mortgage will be repaid, FHA may accept assignment of the mortgage. If the mortgage is assigned, FHA will pay the outstanding balance on the loan to the lender or investor and will service the loan itself. The borrower will be given a grace period to make up the delinquency and the mortgage may be restructured so that the borrower can afford the payments. If FHA does not take an assignment of the insured mortgage, the lender must acquire title to the property from the borrower by a voluntary conveyance or must institute foreclosure proceedings. The lender can sell the property itself or transfer the property to FHA and request reimbursement of the principal, delinquent interest and other costs of the foreclosure. FHA pays the claim from its reserves and then must sell the house to recover its costs.

The Future of FHA

The U.S. government and Congress have questioned the need to continue the FHA as a government agency. The fundamental question is whether the government should be involved in insuring home mortgages when experience has proven that the private sector is ready, willing and able to provide mortgage insurance at an affordable cost. Opponents to government mortgage insurance argue that there is no longer a need for the FHA, that it's role has diminished steadily over the last 35 years, that the private sector can deliver mortgage insurance more efficiently and at lower cost to the borrower and that it involves a needless government expense. Like many other government social

programs created during the Depression of the 1930s, the FHA is viewed by many as a financial dinosaur.

The defenders of the FHA 100% insurance program argue that private mortgage insurers have gone out of business, that the private sector cannot always be relied upon to meet the demand for insured home mortgages and that the private sector will not insure mortgages to high risk segments of the mortgage market. They claim that private mortgage insurers will not match FHA's low cash down payment requirements, more flexible underwriting standards and willingness to continue to serve economically depressed markets. There is agreement between the opponents and proponents of the FHA, however, that there is a need to reform and reengineer the agency.

Private Mortgage Insurance

Private mortgage insurance is a line of insurance offered by either a specialized mortgage insurance company or a general insurance company. In the United States, private mortgage insurance companies were established in the 1960s to insure non-FHA/VA mortgages, called "conventional" mortgages.

Potential for Mortgage Insurance Programs in Egypt

A mortgage insurance program would be effective in supporting the development of a housing finance market in Egypt by reducing the credit risk of home lending. The creation of a system of mortgage insurance could play a key role as mortgage lenders, borrowers and the legal system gain experience with the mortgage execution procedures of the new mortgage law. The rationale for creating an FHA type of government mortgage insurance program as a stimulus to home finance in Egypt is the same as the reason why FHA was created in the United States during the depths of the 1930s Depression: banks are unwilling to assume the credit risk of a portfolio of long term mortgage loans. The existence of mortgage insurance also would facilitate mortgage securitization. An additional benefit of a mortgage insurance program would be the standardization of mortgage design, documentation, loan underwriting and loan servicing.

Egypt, as well as most developing economies, is not at a stage where credit risk can be assessed with any degree of reliability. However, as reforms are implemented, the economic transformation process proceeds and the residential real estate market develops, the ability of mortgage lenders to adequately evaluate the risk of potential loss will improve. The fundamental issue is whether mortgage insurance systems should be established today to stimulate mortgage lending in the current environment or should be delayed until the legal system and the economy have reached the stage of development where mortgage insurance can be offered as an actuarially sound line of insurance. A second consideration would be the extent of loss coverage that would be provided in a government insurance program.

It may be advisable not to develop a mortgage insurance program in an emerging market economy until the context of credit risks becomes clearer and key steps have been taken to limit mortgage credit risk. Until this has been accomplished, a mortgage insurance program will merely transfer all or a major portion of the risk from housing finance institutions to the government. Since all the benefit of risky lending will accrue to the lenders, but all of the potential losses will fall on the mortgage insurance fund, there will be little incentive for mortgage lenders to expend appropriate resources to diligently underwrite, service and enforce mortgages. In addition, borrowers of insured mortgages, particularly if the insurance covers 100 percent of the loss, may perceive their loans as government credits which they do not have to repay. Since the government is not likely to evict

them from their homes if they default on an insured mortgage, there is little incentive for borrowers to make personal sacrifices to keep mortgage payments current.

Allowing government to assume all the risk of mortgage default is a costly subsidy that would be expanded by the perverse incentives inherent in any government mortgage insurance system. An alternative approach that does not create such perverse incentives is for the government to strengthen the mortgage lender's access to mortgage collateral before the government establishes a mortgage insurance program. Once foreclosure and eviction become a practical reality, lenders will be able to rely on the government insurance against loss on foreclosure to protect against major losses due to severe economic conditions, such as massive unemployment in a region.

Of course, adoption of such a plan can be expected to delay the development of the mortgage market. Those banks which express an interest in offering mortgage financing to their customers are reluctant to enter the business until the foreclosure issue is addressed or until they are satisfied that the government will afford them some protection from loss. Consequently, housing policy officials in several emerging market economies are considering establishing mortgage insurance systems. Initially, it was thought that the government could provide an unfunded guaranty of mortgage credits. However, reforms in bank accounting, regulation and supervision have imposed stricter standards for government guarantees. Banks can no longer maintain a loan on their books at full value unless the guarantee is legitimate and funding has been provided to pay off claims made against government guarantees.

Designing a Sound Mortgage Insurance Program

The first step in designing a sound mortgage insurance plan is to develop projections of mortgage default and loss rates. The anticipated default and loss rates are critical to determining the amount of budget resources required to fund an actuarially sound insurance program and the insurance premiums that should be charged to borrowers. Projecting default and loss rates is difficult because there are no historical data upon which to base claims estimations. Mortgage default rates in the U.S. could serve as the base default rate on which to build a forecast. The mortgage default rate in the U.S. is about 4% of mortgages outstanding, but can run over 10% in areas suffering from economic problems. Unofficial data from housing finance institutions in some developing and emerging economies indicate that default rates may average 20% or more. Funding an insurance program that insures against 100% of losses on default at default rates of over 20% would require budget funding well beyond the means of most countries.

An analysis of the structure of a mortgage insurance program must include an evaluation of the extent of coverage offered. A maximum loan-to-value ratio should be established which requires the homebuyer to invest an amount of his own money sufficient to give him/her an incentive to keep the mortgage current. Initially, it may be advisable to establish a maximum loan amount of no more than 70% or 75% of the lesser of the selling price or appraised value of the home being financed. If the selling price is greater than the appraised value, the homebuyer will be required to pay the difference.

Mortgage insurance should not cover the entire mortgage. Coverage of 100% of losses not only will be too costly, but also may remove much of the incentive for sound loan underwriting and servicing. Consideration should be given to having mortgage insurance provide a lower level of coverage, perhaps 25% to 50%, to ensure that there are sufficient incentives for the lender to exercise prudent management. A mortgage insurance program that insures 50% of the outstanding balance on a mortgage distributes the risk equitably among all the parties to the transaction. If the original loan-

to-value ratio were 70%, the homeowner would bear 30% of the risk and the lender and mortgage insurer, 35% each. The homeowner would absorb the first losses if the value of the property were less than the outstanding amount of the mortgage when the mortgage goes into default.

Typically, when an insured mortgage in which the insurance covers only a portion of the amount of the loss is declared in default, the mortgage insurer has two options. It can simply pay the claim or it can pay off the mortgage balance, take title to the property and sell the property to recover as much as possible. For example, if the outstanding balance on a 50% insured mortgage at the time of default is 100,000, the mortgage insurer could pay 50,000 to the lender or pay the lender the full 100,000 and sell the home. If the home can be sold for 90,000, the cost to the mortgage insurer would be 10,000, plus the costs of foreclosure.

The government will have to invest initial capital for a mortgage insurance program in an amount sufficient to cover all operating expenses and pay anticipated losses for at least the first two years. The government's investment could be repaid out of future income. The amount of this initial capitalization will depend on the anticipated volume of insured mortgages and the projected default and loss rates.

After the start-up period, mortgage insurance premiums should be charged which will provide adequate funding for a mortgage insurance program without the need for further budgetary resources. Insurance premiums should be set at a level which will provide a sufficient flow of funds to the mortgage insurer to cover its general and administrative expenses and fund loss reserves and, at the same time, reflect actual loss experience. It is highly likely that in most emerging market economies only three or four institutions will extend mortgage credit and the volume of mortgage credit will be limited for a several years. Therefore, costs will have to be spread over a relatively small base of mortgages. In addition, it will be difficult to establish a fair mortgage insurance premium structure until there have been several years of experience to determine what the stable loss ratio may be. However, if the FHA charges a 2.25% up-front fee and 0.5% over the life of a mortgage based on U.S. loss experience, the insurance premium in markets involving a lower volume of mortgage credit and greater default risk can be expected to be considerably higher. Without ongoing budget funding, the cost of providing mortgage insurance may be more than the market can support. The mortgage insurance program could be structured to give good borrowers a rebate on a portion of the mortgage insurance premiums paid if the mortgage is paid current over a stated number of years. The promise of a rebate would provide some incentive to borrowers to make their mortgage payments, but would do little to improve mortgage affordability.

Presumably, banks will pass the cost of mortgage insurance through to the borrowers, increasing the cost of mortgage finance and reducing affordability. Lenders can be expected to lower the interest rate charged on mortgage loans to reflect the reduced risk of mortgage lending due to the existence of mortgage insurance, but the rate reduction may be less than the amount of the mortgage insurance premiums. The government should not require that mortgage lenders offer lower interest rates on insured loans because, like any administered interest rate, a rate ceiling will distort the market.

وبصفة عامة ، نجد أن العمل على تملك الشقق السكنية للأسر ذات الدخل المحدود ، لا يمكن تحقيقه بدون وجود شكل ما من أشكال التدخل الحكومي. وإذا كانت سياسة الحكومة تستند الى العقد الاجتماعي بين الحكومة والشعب ، الأمر الذي يلزم الحكومة بالعمل على توفير مسكن آمن وسليم وصحى لجميع المواطنين ، تصبح القضية هي كيفية توزيع الموارد النادرة بالموازنة الحكومية لتعظيم منافع الإسكان للأسر محدودة الدخل.

وتستطيع الحكومة المصرية الاستمرار في برامجها الحالية لإنشاء وتوزيع الإسكان لمحدودي الدخل ، وتطبيق شكل من أشكال الدعم المباشر أو غير المباشر لسعر الفائدة ، على قروض الرهن العقاري التي تقدمها مؤسسات مالية رسمية ، أو عن طريق ضمان الائتمان المقدم للأسر ذات الدخل المحدود. وقد قامت حكومات كثير من الدول بتجربة البدء في برامج مبتكرة للإسكان ، تقدم الحوافز للقطاع الخاص للدخول في مجال إنشاء المساكن لمحدودي الدخل ، والتي يمكن تعديلها لتلائم الوضع في مصر.

ومن غير المتوقع أن تقوم البنوك التجارية ، والبنوك الخاصة بوجه خاص ، بتقديم قروض الرهن العقاري للأسر محدودة الدخل ، ما لم يطلب منهم القيام بذلك طبقاً للقانون (مثلما هو الحال في الولايات المتحدة في ظل قانون إعادة الاستثمار في المجتمع ، والقوانين الحاكمة للوكالات التي تعمل في السوق الثانوي للرهن العقاري تحت رعاية الحكومة) ، أو أن تقدم الحكومة الحوافز المالية الكافية ، في شكل إعانات ، وضمانات ، وائتمان ضريبي (مثلما يحدث في جميع الدول المتقدمة والدول الآخذة في النمو).

إن جميع برامج التدخل الحكومي في سوق الإسكان ، تحمل في ثناياها مخاطر تراكم مقادير كبيرة من الالتزامات التي لا تتسم بالشفافية ، كما تولد الاختلالات في أسواق الإسكان والائتمان. وتوصي الدراسة بأنه ينبغي على الحكومة المصرية ، قبل أن تقرر توسيع نطاق تدخلها لتقديم الإسكان لمحدودي الدخل ، أن تأخذ في اعتبارها تمويل الرهن العقاري ، بالإضافة إلى ما تقوم به من برامج تشييد وتأجير للمساكن ، أو أن تحول تركيزها نحو دعم تمويل الإسكان بشكل مباشر أو غير مباشر ، أن تقوم بعملية تقييم شامل للتكاليف والمنافع الخاصة بالعديد من النماذج البديلة للتدخل الحكومي التي طبقتها دول أخرى. فالعديد من برامج الحكومة كانت مثالا صارخا للفشل ، بالرغم من تخصيص الحكومة لمبالغ كبيرة من بنود الإنفاق بالموازنة تمثل نسبة كبيرة من الناتج المحلي الإجمالي ، فإن المستفيدين من الأسر محدودة الدخل لم يحصلوا على منافع تتناسب مع حجم الاستثمارات التي تمت.

الأسعار إلى مستوى يستطيع معه المشتري المرتقب أن يدفع المبلغ المطلوب نقداً أو مدفوعات الفائدة ، بحيث يصبح المشترون مؤهلين للحصول على قرض أكبر للرهن العقاري . على سبيل المثال ، لكي تتأهل الأسرة التي تحصل على دخل مقداره ٦٠٠٠ جنيه شهريا (ومدفوعات الرهن العقاري تبلغ ١٨٠٠ جنيه شهريا) للحصول على رهن عقاري يبلغ ١٥٠ ألف جنيه لمدة ١٥ سنة للحصول على شقة ثمنها ٣٠٠ ألف جنيه (نسبة قرض : القيمة تبلغ ٥٠%) ، وعلى مشروعات التنمية العقارية التي تشتري الرهن العقاري أن تقوم بتخفيض الفائدة إلى نحو ١٢% بإعطاء المقرض مدفوعات مقدمة تبلغ ١٥٤ ألف جنيه مصري .

وحالما يتم استيعاب فائض العرض الحالي من الوحدات السكنية الفاخرة ، من المتوقع أن تصبح البنوك أكثر تحفظا في عمليات تقديم القروض إلى شركات التنمية العقارية لبناء مشروعات مماثلة . إن تجارب دول أخرى من ضمنها الولايات المتحدة ، تشير إلى أن أسعار الإسكان الفاخر تكون أكثر عرضه للتقلبات عن أسعار الإسكان المتوسط ، ولذلك يحتوي الإقراض للفئة الأولى على مخاطر إئتمانية أكبر . يضاف إلى ذلك ، أن من يقوم بشراء الوحدات السكنية الفاخرة ، بالرغم من ثرائه وارتفاع دخله ، يكون أكثر عرضة للفشل في سداد القرض إذا تدهورت أحواله المالية ، أو انخفضت أسعار المساكن ، وعلى وجه الخصوص إذا كان الشراء بقصد الاستثمار وليس بغرض السكن أو إذا كان المسكن عبارة عن فيلا خالية.

٤/٢ الأثر على سوق إسكان محدودي الدخل :

إن تيسير الحصول على ائتمان إسكاني حسب شروط السوق ومعدلات الفائدة ، لا ينبغي أن نتوقع أن يكون تأثيره كبيرا على زيادة المعروض من الوحدات السكنية الموجهة للأسر ذات الدخل المحدود. إن مثل هذا الإسكان لا يتوافر عادة من خلال نظام رسمي لتمويل الإسكان ، لأن هذه الأسر غير قادرة على القيام بالمدخرات المطلوبة للوفاء بالدفعات المقدمة المطلوبة ، أو تخصص مبلغ يتراوح بين ٢٥% ، ٣٠% من دخولها للوفاء بالمدفوعات الناشئة عن الرهن العقاري. وسوف تظل مجموعة من الأسر محدودة الدخل خارج نطاق قطاع الإسكان الرسمي بالكامل (أي تعيش في العشوائيات) ، وهناك مجموعة أخرى من الأسر سوف تقوم باستئجار غرفة واحدة أو غرفتين ، والبعض الآخر يستطيع الحصول على مسكن من خلال برامج التأجير الحكومية.

٣/٢ الأثر على فائض العرض من الوحدات السكنية الفاخرة :

إن أحد الأسباب الرئيسية لإعطاء أهمية كبيرة لإصلاح سوق الرهن العقاري في مصر ، في الوقت الحالي ، هو حث مبيعات آلاف الوحدات السكنية الشاغرة والنصف تشطيب من الشقق الفاخرة (أي الشقق التي تبلغ تكلفة الوحدة منها نحو ٣٠٠ ألف جنيه مصري أو يزيد) التي تم تشييدها في نطاق القاهرة الكبرى والمدن الجديدة خلال السنوات العديدة الماضية . ومن ناحية أخرى ، نجد أن توافر الائتمان لأغراض الرهن العقاري ، حتى لو كان بمعدلات فائدة وآجال تمييزية ، من المحتمل أن يكون تأثيره محدودا في الطلب على هذه الوحدات ، وذلك حتى تأخذ قيم الوحدات السكنية الفاخرة اتجاها معاكسا من الوضع الحالي الذي تميل فيه أسعارها نحو الانخفاض ، وتنتج نحو الارتفاع مرة أخرى . ووجود توقعات في السوق بأن أسعار هذه الوحدات سوف تحقق المزيد من الانخفاض ، من المحتمل أن يكون أحد المعوقات الكبرى أمام عمليات البيع ، أكثر من تأثير عدم توافر التمويل اللازم لعمليات الرهن العقاري . وبعد إصدار قانون الرهن العقاري ، نجد أن البنوك التي تعرضت لأكبر المخاطر الناجمة عن الخسارة المحتملة من القروض الممنوحة للقائمين بالتنمية العقارية في مشروعات الإسكان الفاخر ، سوف تبدأ في تقديم قروض لأغراض الرهن العقاري بشروط أكثر جاذبية (على سبيل المثال قروض مدتها ١٥ عاما) للمساعدة على بيع الوحدات الموجودة لدى هذه المشروعات ، وتحويل القروض غير الجيدة الممنوحة لشركات التنمية العقارية إلى قروض جيدة يحصل عليها المشترون لهذه الوحدات . وقد ينتج عن ذلك تعطيل مبدئي لنشاط الإقراض للرهن العقاري لدى هذه البنوك . وحالما يتم التخلص من فائض العرض من الوحدات السكنية الفاخرة ، وهو أمر قد يستغرق عدة سنوات ، فإن حجم الإقراض للرهن العقاري في البنوك المتأثرة بذلك ، من المتوقع أن ينخفض وأن يستقر عند مستوى عادي طويل الأجل .

وينبغي الإحاطة بأنه بالرغم من توقع أن برامج الإقراض للرهن العقاري الموجهة للمشترين المرتقبيين للوحدات السكنية الفاخرة ، والتي يقوم البنك بتمويلها ، سوف تساعد في تسويق هذه الوحدات ، وأن ينتج عن ذلك زيادة في عدد الأسر التي تستطيع شراء مثل هذه الوحدات السكنية ، فإن القيود المتعلقة بدخل الأسرة ومعدل الفائدة على الرهن العقاري سوف تقلل من الأثر التشجيعي الناشئ عن توافر التمويل للرهن العقاري . ويشير الواقع إلى أن الأسرة التي يبلغ دخلها الشهري نحو ٦٠٠٠ جنيه مصري ، تستطيع أن تحصل على رهن عقاري في حدود ١٣٥ ألف جنيه مصري فقط عند معدل فائدة ١٤% وأجل سداد ١٥ سنة ، إذا تم تخصيص نسبة ٣٠% من هذا الدخل لمقابلة مدفوعات الرهن العقاري . إن الطرق المتاحة أمام القائمين بالتنمية العقارية لفتح السوق أمام مايعرضونه من وحدات سكنية ، هي تخفيض

إن زيادة حجم الإقراض للرهن العقاري في مصر سوف يتطلب إحداث تغييرات في اتجاهات الجمهور وإدارة البنوك نحو الإقراض لتمويل شراء المساكن. إن مصر ، مثلها في ذلك مثل العديد من الدول المتقدمة والدول الآخذة في النمو ، ليس لديها ثقافة الائتمان الاستهلاكي. وحتى عهد قريب ، كانت المعاملات التجارية تتم على أساس الدفع النقدي على نطاق كبير. وبسبب هذا التحيز الثقافي ، لا زال لدى عامة الناس تحفظات تتعلق بتحمل الديون ، وبوجه خاص لتمويل المشتريات غير الاستثمارية. إن عدم تفضيل البنوك للإقراض ، وكرهية الناس للاقتراض لشراء مسكن ، من المتوقع أن يقيد معدل نمو التمويل للرهن العقاري في مصر. ومن المتوقع ألا يصل حجم السوق الى كامل إمكاناته لعدة سنوات. إن توافر المعلومات العامة ، وانتشار التعليم ، بشأن الاستخدام المسئول لعمليات الائتمان ، سوف يكون أمراً ضرورياً للنمو المستقبلي لسوق الرهن العقاري للإسكان . ويتطلب الأمر قيام البنوك والمؤسسات التي تقدم الرهن العقاري ، بحملات تسويقية موسعة لترويج عمليات الإقراض لأغراض الرهن العقاري ، تماثل الترويج للاقتراض المصرفي وبطاقات الائتمان ، لتوليد حجم الإقراض المطلوب الذي يسمح بتوليد عوائد مقبولة على هذا النشاط.

ولن يقدم أي بنك على تقديم قروض لأغراض الرهن العقاري كأحد الأنشطة الرئيسية ، أو أن يكرس الموارد المالية والإدارية المطلوبة لقيام عمليات إقراض للرهن العقاري قابلة للاستمرار ، ما لم تقتنع إدارة البنك بأن الإقراض لأغراض الرهن العقاري مربح ولن يعرض البنك للمخاطر. وكما هو الحال في دول أخرى ، من المتوقع أن تحول جزء كبيراً من أنشطتها نحو عمليات التجزئة المصرفية بما فيها قروض الرهن العقاري ، لأن المنافسة المتزايدة تؤدي إلى ضغط هوامش الربح الناتجة عن الائتمان التجاري الأساسي. فالبنوك في الدول الأخرى ، ترى أن هوامش معدلات الفائدة الصافية على محفظة القروض الصغيرة تكون أكبر ، كما أن المخاطر تكون أقل منها بالنسبة للقروض الكبيرة للشركات. وعلى الرغم من ارتفاع النفقات الإدارية المصاحبة لتقديم وخدمة القروض للمستهلكين ، فإن الهوامش الصافية لمعدلات الفائدة تكون بشكل عام كافية لتغطية هذه النفقات ، وتولد عوائد أعلى على السندات المرتبطة بها ، قياساً إلى الإقراض التجاري المصرفي التقليدي . كما تعلمت البنوك أيضاً ، أن عمليات الرهن العقاري تولد علاقة طويلة الأجل مع العملاء ، الأمر الذي يساعد البنوك على تقديم خدمات مالية أخرى تتسم بالربحية ، الأمر الذي يولد فوائد ودخلاً إضافياً لهذه البنوك .

بالإضافة الى ذلك ، تقدر عمليات إعادة البيع للوحدات السكنية المشابهة وبعدهد يتراوح بين ١٨٠٠٠ - ٣٥٠٠٠ مسكن سنوياً ، وبذلك يصل حجم المبيعات الإجمالية الى عدد يتراوح بين ٨٠٠٠٠ ، ١٠٠٠٠٠٠ مسكن سنوياً . فإذا افترضنا أن متوسط سعر بيع الوحدات السكنية كان ١٥٠ الف جنيه ، تكون القيمة الإجمالية للمساكن المباعة فى عام ١٩٩٨ الى القطاع السوقى المستهدف للتمويل بالرهن العقارى ، تتراوح بين ١٢ مليار ، ١٥ مليار جنيه مصري . ومن المتوقع خلال العام التالي ، أن يؤدي فائض العرض من الوحدات السكنية الفاخرة مرتفعة التكلفة ، أن يستمر تأثيره الانكماشى على سوق الإسكان . ومن غير المتوقع أن يتجه متوسط سعر بيع الوحدات السكنية الموجهة لأصحاب الدخل المتوسط والمرتفع ، نحو الارتفاع عن مستوى أسعار عام ١٩٩٨ .

ومعظم الوحدات السكنية المشتراة تمت بالدفع النقدي أو تم تمويلها عن طريق قروض قصيرة الأجل ، أو على أقساط ، أو من خلال عقود الشراء التأجيري التي يحتاج إلى مقدم كبير يتراوح بين ٣٠% ، ٥٠% من سعر الوحدة السكنية . لذلك ، يفترض أن معظم الأسر التي قامت بشراء مساكن فى السنوات الحالية ، تكون مؤهلة للحصول على قرض الرهن العقارى في ظل المعايير الائتمانية المقبولة ، سواء تم ذلك عن طريق الائتمان الخاص بهذه الأسر ، أو بضمان الآباء من خلال التوقيع على عقد البيع كضامنين . ومع هذا ، وفى المدى القريب ، وخلال التحول من فترة تكون فيها الغالبية العظمى من المساكن المشتراة تتم دون تمويل ، إلى نظام تمويل إسكان أكثر تطوراً ، فمن المحتمل أن تكون نسبة من المساكن المشتراة سوف تتم من خلال التمويل بالرهن العقارى . واستناداً إلى تجربة أوروبا الشرقية فى هذا الصدد ، وفى خلال السنوات القليلة التى تلي السماح للقطاع الخاص بتمويل الرهن العقارى ، فإن نسبة تقدر بنحو ٢٠% إلى ٣٠% من أصحاب الدخل المتوسط والمرتفع ، هي التي سوف تقوم بتمويل عمليات شراء المساكن الخاصة بها . يضاف الى ذلك ، أن نسبة القرض الى قيمة الوحدة السكنية لن تتعدى ٥٠% طالما كانت معدلات الفائدة تتراوح بين ١٤% ، ١٥% . وبناء على هذه الفروض ، ففي السنة الأولى التى تعقب إصدار قانون الرهن العقارى ، بأن الحجم السنوي لعمليات الإقراض لأغراض الرهن العقارى ، ليس من المحتمل أن يزيد على ٢٥٠٠٠٠ عملية إقراض سنوياً ، بالنسبة لحجم إقراض يتراوح بين ١,٥ مليار إلى ٢ مليار جنيه مصري . أن هذا الحجم المحدود من أنشطة الإقراض للرهن العقارى ، قد لا يكون كافياً لدعم سوى عدد قليل من المؤسسات التى تعمل فى هذا النوع من الإقراض ، كما لا يسمح بوجود حجم معقول من عمليات الأوراق المالية الناتجة من عمليات الرهن العقارى .

٢ / ٢ الحجم المبدئي للسوق المحلي للرهن العقاري :

من المتوقع أن يستهدف بعمليات الإقراض الخاص بالرهن العقاري قطاعا من السكان يعتبرونهم كعملاء مرتقبين ، من الأسر ذات الدخل المتوسط والمرتفع ، وعلى وجه الخصوص ، من أصحاب المهن ذات الآفاق الجيدة من حيث إيراداتهم في المستقبل. ويتكون هذا السوق المستهدف من الأسر التي يبلغ دخلها نحو ٢٠٠٠ جنيها مصريا شهريا على الأقل، متضمنا الدخل المتولدة من العمل في السوق غير الرسمية.

ومن المحتمل أنه عندما يصبح الرأي العام مهتما بقيام البنوك وغيرهم من الجهات التي تعمل في مجال الإقراض للرهن العقاري ، بتقديم القروض اللازمة لهذا النشاط ، أن يبحث عدد كبير من الأسر ذات الدخل المنخفض عن مصادر لتمويل الإسكان. ومع ذلك ، نجد العديد من هؤلاء العملاء المرتقبين غير مؤهلين للحصول على مقدار كبير من الائتمان عند معدلات الفائدة الحالية التي تتراوح بين ١٤% و ١٥% ، وبأجال تتراوح بين ١٠ ، ١٥ سنة ، حتى لو تمتعوا بمصادر دخل يمكن الاعتماد عليها ، وتتسم بالاستقرار وإمكانية التحقق منها. على سبيل المثال ، تستطيع الأسرة ذات الدخل الشهري الذي يبلغ ١٠٠٠ جنيها أن تحصل على حجم ائتمان مقداره ٢٢٥٠٠ جنيها مصري للرهن العقاري ، وذلك لمدة ١٥ سنة ، وبمعدل فائدة ١٤%. ومن العوامل التي تعقد الأمور ، أن الأسر ذات الدخل المنخفض من فئة الأسر متوسطة الدخل ، قد يصعب عليها إثبات مصادر دخولها لأن جزءا كبيرا منها يتولد من التوظيف في القطاع غير الرسمي. وبدون القدرة على إثبات مصدر الدخل ، يصبح العديد من هذه الأسر غير مؤهل للحصول على تمويل رسمي للرهن العقاري على الإطلاق. وكذلك نجد أن الأسر ذات آفاق الدخل المستقبلية غير المؤكدة ، تكون أقل رغبة في تحمل التزامات مالية طويلة الأجل. يضاف إلى ذلك ، أن تكاليف إصدار وخدمة القروض الصغيرة لهذا القطاع من السكان يجعل الربحية أقل من وجهة نظر المقرضين لأغراض الرهن العقاري ، وبوجه خاص خلال مرحلة بدء النشاط عندما يكون حجم نشاط الإقراض الذي توزع عليه التكاليف الإدارية محدودا.

وكنتيجة لهذه العوامل ، وعلى الرغم من كون الطلب الكلي على الائتمان الخاص بالرهن العقاري كبيرا ، فإن الطلب الفعلي من العملاء القادرين على الحصول على ائتمان مصرفي من المتوقع أن يكون محدودا. واستنادا إلى بيانات عام ١٩٩٨ ، نجد أن المبيعات للقطاع المستهدف الذي يضم الفئات متوسطة ومرتفعة الدخل تصل الى نحو ٦٠٠٠ مسكن جديد ، بمساحة تبدأ من ١٠٠ متر مربع أو يزيد ، وبسعر شراء يقدر بمبلغ ١٠٠ ألف جنيها أو يزيد.

القسم الثاني

أثر القانون المقترح للرهن العقاري في مصر على تطوير سوق الرهن العقاري

١/٢ الخلفية :

إن إصدار القانون المقترح للرهن العقاري سوف يكون نقطة البداية لنظام حديث لتمويل الإسكان في مصر. وسوف يشجع هذا القانون ، البنوك ، كما يشجع أيضا جهات أخرى حديثة تعمل في مجال الإقراض للرهن العقاري ، على تقديم نشاط إقراض للإسكان يعمل على أساس التجزئة ، كمنشآت اقتصادية رئيسية ، الأمر الذي يجعل هؤلاء المقرضون متأكدين من قدرتهم على تحويل العقارات المرهونة إلى سيولة نقدية في وقت مناسب وبتكلفة معقولة. إن مخاطر فقدان الممتلكات المرهونة تؤدي إلى وجود حافز قوي لدى المقرضين للوفاء بالمدفوعات المتعلقة بالقروض التي حصلوا عليها.

إن القانون الجديد للرهن العقاري سوف يزيل العوائق القانونية التي تحول دون تطوير نظام تمويل الرهن العقاري في مصر. إلا أن قانون الرهن العقاري بمفرده ليس كافيا لتوليد مستوى معقول من الطلب الفعال على الائتمان بقصد الرهن العقاري ، أو خلق الهيكل المؤسسي المطلوب لتقديم حجم كبير ومستقر من الأموال المطلوبة للرهن العقاري. وهذه العناصر الأساسية اللازمة لوجود نظام جيد لتمويل الرهن العقاري تعتمد على مجموعة من العوامل هي :

- ١- نمو اقتصادي مستمر يترجم في شكل ارتفاع دخول الأسر.
- ٢- انخفاض في معدلات الفائدة المطبقة في الرهن العقاري عن معدلاتها الحالية المرتفعة.
- ٣- توسيع آجال القروض الممنوحة لأغراض الرهن العقاري.
- ٤- وجود رغبة من جانب المؤسسات العاملة في مجال الإقراض للرهن العقاري في استثمار الموارد المالية والبشرية المطلوبة لتنظيم وإدارة وظيفة الإقراض بقصد الرهن العقاري.
- ٥- تفهم وقبول الرأي العام لمفهوم تحمل دين كبير وطويل المدى لتمويل شراء المساكن.
- ٦- قبول المشاركين في سوق المال للأوراق المالية المرتبطة بعمليات الرهن العقاري.

الخطوات التالية:

حالما يوافق البرلمان على قانون الرهن العقاري ، يتم تطبيق النصوص الواردة به. إن تطور سوق لتمويل الرهن العقاري يعمل بطريقة جيدة ، يتطلب وجود الأفعال الإضافية التالية ، والمساعدات الفنية ، في المجالات الآتية:

- ١- إيجاد لوائح حصرية لضمان تطبيق عمليات الإقراض بشكل آمن وسليم.
- ٢- تصميم أدوات خلق القروض وخدماتها ، والبرامج التسويقية الخاصة بالرهن العقاري والتجاري.
- ٣- إعداد برامج تدريب للأوصياء القائمين على استرجاع الرهن العقاري ، وإنشاء مجلس استشاري داخلي في المؤسسات التي تقدم قروض الرهن العقاري وقضاه متخصصون في أعمال الرهن العقاري ، ووكلاء شرعيين لتنفيذ الرهن العقاري والمزادات العامة المتعلقة به.
- ٤- عمل دورات تدريبية للخبراء المثمنين وغيرهم من الخبراء الفنيين ، للوصول بهم إلى المستويات المهنية المرغوب فيها.

وتوصي الدراسة بإمكانية قيام مشرع "دبرا" بتقديم المساعدات الفنية المطلوبة ، والدورات التدريبية ، وورش العمل والمواد التدريبية والخبراء ، في المجالات المختلفة المرتبطة بعملية تمويل الرهن العقاري.

شكل من أشكال الدعم المباشر أو غير المباشر لسعر الفائدة ، على قروض للرهن العقاري تقدمها مؤسسات مالية رسمية ، أو عن طريق ضمان الائتمان المقدم للأسر محدودة الدخل.

إن جميع برامج التدخل الحكومي في سوق الإسكان ، تحمل في طياتها مخاطر تراكم مقادير كبيرة من الالتزامات التي لا تتسم بالشفافية ، كما تولد الاختلالات في أسواق الإسكان والائتمان. وتوصي الدراسة بأنه ينبغي على الحكومة المصرية ، قبل أن تقرر توسيع نطاق تدخلها لتقديم الإسكان لمحدودي الدخل ، أن تأخذ في اعتبارها تمويل الرهن العقاري ، بالإضافة إلى ما تقوم به من برامج إنشاء وتأجير للمساكن ، أو أن تحول تركيزها نحو دعم تمويل الإسكان بشكل مباشر أو غير مباشر ، أن تقوم بعمل تقييم شامل للتكاليف والعوائد الخاصة بالعديد من النماذج البديلة للتدخل الحكومي التي طبقتها دول أخرى.

عوامل حاسمة لتطوير سوق الرهن العقاري في مصر:

يعتبر الوقت الراهن مناسباً للاقتصاد المصري لتطوير نظام قوي لتمويل الإسكان. فالطلب على الائتمان الإسكاني ، وقدرة النظام المالي على عرض التمويل المطلوب ، أخذ في التصاعد. يضاف إلى ذلك ، أن استخدام الائتمان في عمليات البيع بالتقسيط أصبح أكثر شيوعاً في تمويل مدى واسع من السلع الاستهلاكية المعمرة مثل سيارات الركوب ، والأجهزة المنزلية ، والأثاث. وعلى جانب العرض ، أصبحت البنوك التجارية أكثر توجهاً لاحتياجات السوق ، وبنوك الاستثمار أخذت في التوسع (وتأخذ أوضاعها في شركات وصناديق الاستثمار المصري) ، وأصبح سوق السندات مصدراً متزايد الأهمية للتمويل بالنسبة لعدد كبير من الشركات ، وأصبح المشاركون في سوق المال أكثر قدرة على إدارة المخاطر المالية التي تتسم بالتعقيد. وسوف يصبح تمويل الإسكان نشاطاً جذاباً ، على الأقل بالنسبة لبعض البنوك ، حالما يصدر القانون الجديد للرهن العقاري. فالقانون الجديد للرهن العقاري يصرح بإنشاء شركات متخصصة لتمويل الرهن العقاري ، تستطيع شراء القروض التي تصدرها البنوك ، بالإضافة إلى إصدار مثل هذه القروض بنفسها. يضاف ذلك ، إمكانية التصريح لصناديق الاستثمار المتخصصة في الرهن العقاري بشراء مثل هذه القروض ، ووضعها في صناديق مجمعة وإصدار أسهم تمثل حقوق الملكية في الأصول الخاصة بالرهن العقاري. أما العوامل التي يمكن أن تبطئ نمو سوق الرهن العقاري في مصر ، فقد تتمثل في الافتقار إلى سوق متطور لإعادة بيع المساكن ، وعدم وجود نظام تأمين على مدفوعات الرهن العقاري يسمح بتحويل مخاطر الائتمان إلى مؤسسات متخصصة تكون أكثر قدرة على تقييم وإدارة مثل هذه المخاطر.

المؤسسات التي تعمل في هذا النوع من الإقراض ، أو لا يسمح بوجود حجم معقول من عمليات الأوراق المالية الناتجة من عمليات الرهن العقاري. إن زيادة حجم الإقراض للرهن العقاري في مصر سوف يتطلب إحداث تغييرات في اتجاهات الجمهور وإدارة البنوك نحو الإقراض لتمويل شراء المساكن. إن مصر، مثلها في ذلك مثل العديد من الدول المتقدمة والدول الأخذة في النمو ، ليس لديها ثقافة الائتمان الاستهلاكي. إن توافر المعلومات العامة ، والتعليم ، بشأن الاستخدام المسئول لعمليات الائتمان ، سوف يكون أمراً ضرورياً للنمو المستقبلي لسوق الرهن العقاري للإسكان. ويتطلب الأمر قيام البنوك ومقرضي الرهن العقاري ، بحملات تسويقية موسعة ، لترويج عمليات الإقراض لأغراض الرهن العقاري ، تماثل الترويج الحالي للاقتراض المصرفي ، وبطاقات الائتمان ، لتوليد حجم الإقراض المطلوب الذي يسمح بتوليد عوائد مقبولة على هذا النشاط.

إن أحد الأسباب الرئيسية لإعطاء أهمية كبيرة لإصلاح سوق الرهن العقاري في مصر في الوقت الحالي ، هو حث مبيعات آلاف الوحدات الشاغرة والنصف تشطيب من الشقق الفاخرة (الشقق التي تبلغ تكلفتها نحو ٣٠٠,٠٠٠ جنيه مصري أو يزيد) التي تم تشييدها في نطاق القاهرة الكبرى والمدن الجديدة خلال السنوات العديدة الماضية. وعلى الرغم من أن برامج الإقراض للرهن العقاري تستهدف المشترين المرتقنين للوحدات السكنية الفاخرة ، فإنه من المتوقع أن تساعد القائمين بالتنمية العقارية عن طريق زيادة عدد الأسر التي تستطيع الإقدام على شراء مثل هذه الوحدات الفاخرة ، إلا أن اتجاه أسعار هذه الوحدات نحو الانخفاض ، ودخل الأسر ، ومعدل الفائدة على الرهن العقاري ، تعتبر من القيود التي تحد من الأثر المحفز لوجود نظام لتمويل الرهن العقاري.

إن تيسير الحصول على ائتمان إسكاني حسب شروط السوق ومعدلات الفائدة ، لا ينبغي أن نتوقع أن يكون تأثيره كبيراً على زيادة المعروض من الوحدات السكنية الموجهة للأسر محدودة الدخل. إن مثل هذا الإسكان عادة لا يتوافر من خلال نظام رسمي لتمويل الإسكان ، لأن هذه الأسر غير قادرة على القيام بالمدخرات المطلوبة للدفعات المقدمة المطلوبة ، أو تخصيص مبلغ يتراوح بين ٢٥% إلى ٣٠% من الدخل للوفاء بالمدفوعات الناشئة عن الرهن العقاري. إن العمل على تمليك الشقق السكنية للأسر ذات الدخل المحدود ، لا يمكن تحقيقه بصفة عامة ، بدون وجود شكل ما من أشكال التدخل الحكومي. وتستطيع الحكومة المصرية الاستمرار في البرامج الحالية لتشييد المساكن لمحدودي الدخل وتخصيصها ، وتنفيذ

الممتلكات المرهونة الى حفز المقترضين بشدة ، على الوفاء بالمدفوعات الخاصة بالقروض التي حصلوا عليها.

ومن المتوقع ان يستهدف القائمون بعمليات الإقراض الخاص بالرهن العقاري قطاعا من السكان ، كعملاء مرتقبين ، من الأسر ذات الدخل المتوسط والمرتفع ، وعلى وجه الخصوص المهنيين أصحاب الآفاق الجيدة من حيث إيراداتهم في المستقبل. ويتكون هذا السوق المستهدف من الأسر التي يصل دخلها إلى نحو ٢٠٠٠ جنيه مصري شهريا على الأقل ، متضمنا الدخل المتولدة من العمل في القطاع غير الرسمي.

وعلى الرغم من كون الطلب الكلي على الائتمان الخاص بالرهن العقاري كبيراً ، فإن الطلب الفعلي من العملاء القادرين على الحصول على ائتمان مصرفي من المتوقع أن يكون محدوداً. واستنادا إلى بيانات عام ١٩٩٨ مع تعديلها بالمتوقع في عام ٢٠٠٠ ، نجد أن الحجم الإجمالي لمبيعات المساكن للقطاع السوقي المستهدف من عمليات تمويل الرهن العقاري ، يقدر بمبلغ يتراوح بين ١٢ مليار ، ١٥ مليار جنيه مصري. ومن المتوقع خلال العام التالي ، أن يؤدي فائض العرض من الوحدات السكنية الفاخرة مرتفعة التكلفة ، أن يستمر في تأثيره الانكماشى في سوق الإسكان. ومن غير المتوقع أن يتجه متوسط سعر بيع الوحدات السكنية الموجهة لأصحاب الدخل المتوسط والمرتفع ، نحو الارتفاع عن مستوى أسعار عام ١٩٩٨.

وفي المدى القريب ، وخلال مرحلة التحول التي كان فيها الشطر الغالب من المساكن المشترية يتم بدون تمويل ، إلى مرحلة نظام متطور لتمويل الإسكان ، من المتوقع أن نسبة ضئيلة فقط من عمليات شراء المساكن سوف تتضمن تمويلا من خلال الرهن العقاري. واستنادا إلى تجربة أوروبا الشرقية في هذا الصدد ، وفي خلال السنوات القليلة التي تلي السماح للقطاع الخاص بتمويل الرهن العقاري ، فإن نسبة تقدر بنحو ٢٠% إلى ٣٠% من أصحاب الدخل المتوسط والمرتفع ، هي التي سوف تقوم بتمويل عمليات شراء المساكن الخاصة بها. يضاف إلى ذلك ، أن نسبة القرض إلى قيمة الوحدة السكنية لن تتعدى ٥٠% طالما كانت معدلات الفائدة في مدى يتراوح بين ١٤% ، ١٥%. وبناء على هذه الفروض ، وبالنسبة للسنة الأولى التي تعقب إصدار قانون الرهن العقاري ، فإن الحجم السنوي لعمليات الإقراض بقصد الرهن العقاري ، ليس من المحتمل أن يزيد على ٢٥٠٠٠ عملية إقراض سنويا ، بالنسبة لحجم إقراض يتراوح بين ١,٥ مليار إلى ٢ مليار جنيه مصري. إن هذا الحجم المحدود من أنشطة الإقراض للرهن العقاري ، قد لا يكون كافيا لدعم عدد قليل من

٢- تقييد حالات فشل المدنيين فى السداد وغيرهم ، من اجل إبطاء عمليات استرجاع الرهن العقاري .

٣- التصريح بإنشاء شركات غير مصرفية للرهن العقاري ، وإقامة إطار تنظيمي للترخيص لهذه الشركات والإشراف عليها .

٤- التصريح للبنوك بالاستثمار فى أنشطة الرهن العقاري ، وكذلك المؤسسات المالية وصناديق الاستثمار ، وبتداول عمليات الرهن العقاري بواسطة البنوك والجهات غير المصرفية .

٥- التصريح بإصدار أوراق مالية لعمليات الرهن العقاري ، متضمنة أدوات الدين المضمونة بقروض الرهن العقاري ، وشهادات الملكية فى مجمعات الرهن ، وأسهم فى صناديق الاستثمار فى الرهن العقاري ، وانتهاج قواعد معينة ترتبط بوضع المستثمرين فى الأوراق المالية الخاصة بالرهن العقاري ، وربطها بالحقوق فى الممتلكات محل الرهن ، وقواعد فرض الضرائب على هذه الأنشطة ، والافلاس .

٦- منح وزير الاقتصاد والتجارة الخارجية سلطة إصدار اللوائح التنفيذية ، لوضع خطوط إرشادية وإعوية لعمليات الإقراض المتعلقة بالرهن العقاري والاستثمار فيه .

٧- وضع المعايير الخاصة بحماية جمهور المستهلكين فى عمليات الرهن العقاري .

وتخضع مسودة القانون المقترح للرهن العقاري لعملية مراجعة نهائية من جانب مساعدي الوزير ، ويحتاج الأمر الى إصدار العديد من القرارات الخاصة بسياسات معينة فى مجالات عديدة قبل إعداد المسودة النهائية للقانون باللغة العربية . ويتضمن ذلك العملية الخاصة بعمليات الاسترجاع غير القضائي ، والجهاز التنظيمي الملائم للإشراف على أنشطة تمويل الرهن العقاري ، والمدى الذي يتم من خلاله تنظيم عمليات التمويل ، وأنواع الجهات التى يرخص لها بالتعامل فى أنشطة تمويل الرهن العقاري . ومن المتوقع أن تكون مسودة القانون المقترح جاهزة للعرض على مجلس الوزراء بحلول منتصف يناير عام ٢٠٠٠ .

أثر سن قانون الرهن العقاري :

إن إصدار القانون المقترح للرهن العقاري سوف يكون بمثابة إشارة البدء لنظام حديث لتمويل الاسكان فى مصر . وسوف يشجع هذا القانون ، البنوك ، ومن المحتمل أيضا ، جهات مقرضة أخرى تعمل فى مجال الرهن العقاري على القيام بعمليات إقراض لشراء المساكن كنشاط اقتصادي رئيسي ، وذلك لتأكد هؤلاء المقرضون من قدرتهم على تحويل العقارات المرهونة الى سيولة نقدية ، فى وقت ، وبتكلفة معقولة . كما تؤدي مخاطر فقدان

مصر، وذلك للوصول الى مجموعة من التوصيات تتعلق بكيفية تحسين أداء هذا السوق ، وعمل مسودة مقترحة لقانون للرهن العقاري لتنفيذ هذه التوصيات. ويضم مشروع إصلاح سوق الرهن العقاري خبراء قانونيين من الوزارة ، ومن خارجها ، بالإضافة إلى الخبراء العاملين من خلال مشروع دبرا. وقام هؤلاء الخبراء بعمل تقييم مشترك للنظام القانوني الراهن في مصر بغرض التعرف على المجالات الأولية التي تحتاج الى إصلاح ، ثم قاموا بتحليل الممارسات المتعلقة بالإقراض العقاري ، بالإضافة إلى عمل تقديرات تتعلق بأثر صدور قانون جديد للرهن العقاري على حجم ما يمكن أن ينشأ في إطار الرهن العقاري. ثم قام فريق الدراسة أيضا ، بإعداد ملخص يضم السمات الخاصة بالأسواق القانونية للرهن العقاري ، وبرامج التأمين المرتبطة به ، وقد تم وضع هذه الملخصات في ملاحق تقرير الدراسة.

القانون المقترح للرهن العقاري :

قام فريق الدراسة التي تناولت إصلاح سوق الرهن العقاري بدراسة عدد كبير من البدائل المطروحة لحل القضايا القانونية والأمور التنظيمية التي تعتبر عقبات تحول دون تطوير نظام تمويل الرهن العقاري في مصر. وقد أوصى فريق الدراسة بأن أفضل سبيل لتنفيذ الإصلاحات المطلوبة يكون من خلال إصدار قانون شامل للرهن العقاري. وقد أعطى وزير الاقتصاد توجيهاته لفريق الدراسة لإعداد مسودة قانون للرهن العقاري ، والذي سوف يركز على خطوات استرجاع الرهن العقاري ، وإجراءات التسجيل ، وطرح أوراق مالية متعلقة بالرهن العقاري ، بالإضافة إلى الهيكل المؤسسي لسوق الرهن العقاري وحماية المستهلك. وقد تم إعداد ومراجعة عدة مسودات لقانون مقترح للرهن العقاري. وقد تم التوصل إلى مسودة نهائية باللغة الإنجليزية تمثل اتفاق لوجهات نظر الخبراء المشاركين في الدراسة ، للعرض على وزير الاقتصاد والتجارة الخارجية.

ولقد تم تصميم القانون المقترح للرهن العقاري بالشكل الذي يحقق مجموعة من للأهداف الرئيسية مثل :

١- وضع إجراءات مدنية جديدة لتنفيذ عمليات الرهن العقاري تحت إشراف محكمة التنفيذ ، على أن يقوم بذلك وصي من خارج المحكمة ، ويسمح له بيع الممتلكات موضوع الرهن العقاري في مزاد عام للوفاء بالدين الخاص بالرهن ، وذلك في غضون ثلاثة أو أربعة شهور.

تستغرق وقتا طويلا ، وتعتبر معوقة ومكلفة. يضاف الى ذلك ، أن العملية القضائية اللازمة لاسترجاع الرهن العقاري في ظل القانون الحالي تواجه تحديات مرجعها الادعاءات المادية والعبثية ، والتي يمكن أن تمتد زمن الاسترداد للرهن العقاري لسنوات عديدة.

وكتيجة لذلك ، لم تكن البنوك المصرية مقرضا نشطا في مجال الإقراض للرهن العقاري ، خاصة بالنسبة للرهن العقاري لأغراض السكنى ، وللأفراد ، وبالرغم من التطور السريع في سوق المال المصري ، فان شركات الاستثمار لا تحبذ خلق أى نوع من الأوراق المالية المرتبطة بالرهن العقاري. وينبغي إعطاء الثقة لكل من المقرضين لأغراض الرهن العقاري ، والمستثمرين في الأوراق المالية الخاصة بهذا الرهن ، بأن مصالحهم الخاصة بالملكية قابلة للتنفيذ في الوقت المناسب وبتكلفة معقولة.

إن وجود إجراءات تفتقر للكفاءة في عملية التنفيذ الجبري للمصالح الخاصة بالملكية الحقيقية ليست هي العائق الوحيد أمام تطوير نظام كفاء لتمويل الرهن العقاري في مصر. وهناك مشكلة أخرى تتمثل في نقص التمويل متوسط وطويل الأجل المتاح لعمليات الرهن العقاري. إن معظم عمليات الإقراض في مصر يتم تمويلها باستخدام الودائع المصرفية قصيرة الأجل ، وهي أداة غير ملائمة لتمويل عمليات الرهن العقاري طويلة الأجل. إن سوق السندات يعتبر في بداية التطوير ، كما أن البنوك والشركات الكبرى فقط هي القادرة على تعويم السندات المصدرة في سوق المال. يضاف الى ذلك ، أن إصدار سندات لتمويل الرهن العقاري يحتاج إلى وجود رأسمال إضافي في ظل اللوائح المنظمة لكفاية رأس مال البنك. إن وضع رأسمال بعض البنوك المصرية ليس بالقوة بالكافية لدعم أى نمو كبير في حجم الأصول نتيجة الزيادة في عمليات الإقراض للرهن العقاري ، وتحتاج البنوك إلى وجود بديل لمحفظه الإقراض للرهن العقاري ، وتحتاج شركات التمويل غير المصرفية الى الحصول على سلطة تقديم مقدار كبير ، يتسم بالاستقرار ، من الأموال التي تذهب لتمويل الرهن العقاري. إن طرح أوراق مالية لتمويل الرهن العقاري في سوق المال المصري ، يمكن أن يستجيب لاحتياجات البنوك ، ويمكن أن يسمح بتنمية صناديق الاستثمار في الرهن العقاري ، الأمر الذي يساعد على توجيه موارد رأسمالية ذات آجال أطول الى سوق الرهن العقاري.

مشروع لإصلاح سوق الرهن العقاري في مصر :

لمس وزير الاقتصاد والتجارة الخارجية أوجه القصور في النظام المصري الحالي للرهن العقاري ، وطلب من مشروع "دبرا" إعداد دراسة عن سوق التمويل العقاري الحالي في

وعلى حين قد لا يؤدي إنشاء نظام للتمويل العقاري إلى التخلص من جميع مشاكل شركات التنمية العقارية ، فان ضخ المزيد من الائتمان العقاري سوف يؤدي ، على الأقل ، إلى فتح سوق الشراء المحلي أمام قطاع عريض من الأسر المصرية. وهناك اعتراف واسع النطاق من جانب الحكومة وقطاع الأعمال أن وجود نظام جيد للتمويل العقاري في مصر ، ينبغي أن يشمل على عدد من العناصر تتمثل فيما يلي: وجود مقرضين يعملون في السوق الأولي للرهن العقاري كنشاط اقتصادي يحقق ربحا ، وجود صناديق استثمار تقوم بإصدار أسهم لتغطية عمليات الرهن وسندات الرهن العقاري المشتراة من المجموعة الأولى للمقرضين ، ومن مؤسسات وأفراد مستثمرين يرغبون في شراء أوراق مالية مدعمة بالرهن العقاري.

وتملك مصر البنية الأساسية القانونية ، والتنظيمية ، والمؤسسية المطلوبة لوجود نظام لتمويل الرهن العقاري. وتقوم البنوك التجارية والبنوك المتخصصة بالفعل بتقديم مدى واسع من عمليات تمويل سلع وخدمات المستهلك. ويعتبر تمويل الرهن العقاري امتدادا منطقيا لخدمات التجزئة التي تقدمها البنوك . إن سوق المال موجودة بالفعل ، وأخذت في النمو عن طريق الشركات المحلية والمشروعات المشتركة مع شركات الاستثمار الأجنبي . كما يتم بالفعل إصدار سندات حكومية وسندات شركات ذات أجل طويل (من ٧ - ١٠ سنوات) ، وهي ذات قبول حسن من جانب المستثمرين. كما يتم تطوير سوق المؤسسات الاستثمارية من خلال الصناديق التبادلية وإصلاح قطاعات التأمين وأموال المعاشات. لقد أصبح المسرح الآن ، على أتم استعداد لتقديم نظام لتمويل الرهن العقاري. ويتمثل أساس النظام في وجود إطار قانوني وتنظيمي يسمح للقطاع الخاص بالدخول في عمليات تمويل الرهن العقاري على أساس آمن ، وسليم ، ويتسم بالاستقرار والربحية ، ويقدم في نفس الوقت الحماية المناسبة للمشتريين.

أوجه القصور في النظام الحالي لتمويل الرهن العقاري في مصر:

يتكون النظام الناجح لتمويل الرهن العقاري ، من سوق أولية ، وأخرى ثانوية للرهن العقاري ، ويعتمد على أساس قانوني سليم. إن المتطلبات المسبقة لأي نظام فعال لتمويل الرهن العقاري هي القوانين التي تحمي سند الملكية ، ونظام لتسجيل الملكية والرهن. إن القانون المدني المصري يعرف بوضوح حقوق أطراف الرهن العقاري ، كما أن القوانين واللوائح المتعلقة بتسجيل الملكية ، قد أقامت نظاما لتسجيل الملكية والرهن العقاري ، كما وضع القانون المدني وقانون الإجراءات ، والعملية القضائية الخاصة بتنفيذ الأحكام في الرهن العقاري. وتكمن مشكلة النظم الحالية لتسجيل الملكية والرهن العقاري وتنفيذها ، في أنها

المقدمة والملخص التنفيذي

المقدمة:

هناك اتفاق في الرأي بين وزارة الاقتصاد والتجارة الخارجية والقطاع المصرفي وقطاع الأعمال في مصر على أهمية وجود نظام جيد للتمويل العقاري ، يسهم في عملية التنمية الاقتصادية في مصر . وتركز وزارة الاقتصاد والتجارة الخارجية على إصلاح سوق الرهن العقاري لاستكمال أحد العناصر الهامة للإصلاح الشامل للقطاع المالي ، بالإضافة إلى إتاحة الفرصة للمزيد من الأسر المصرية لشراء المساكن التي تحتاج إليها . وهناك حافز إضافي يستدعي الإسراع باتخاذ خطوات سريعة ، يتمثل في وجود فائض عرض من الوحدات السكنية المعروضة للملك ، وعلى وجه الخصوص في المدن الجديدة ، حيث لا يستطيع القائمون بأعمال التنمية العقارية بيع هذه الوحدات ، ويرجع ذلك جزئيا إلى عدم وجود تمويل عقارى طويل الأجل في النظام المالى المصرى . ونتيجة للوضع الذى يسود السوق العقاري ، اتجهت أسعار العقارات نحو الهبوط ، الأمر الذى جعل القائمين على التنمية العقارية والبنوك التى يتعاملون معها يواجهون مخاطر مالية حقيقية معوقة ، بل قد يصل الأمر الى مرحلة الإفلاس . ويعانى الكثير من شركات التنمية العقارية التى حصلت على قروض إنشائية لبناء عمارات سكنية كبيرة ومشروعات موسعة لبناء الفيلات ، من عجز في الموارد المالية اللازمة لسداد الديون المستحقة عليها . وقد استنفدت بعض هذه الشركات الفرص المتاحة أمامها لتمويل مشتريات هذه الوحدات من خلال خطط البيع بالتقسيط والشراء التأجيلي . وفي حالات أخرى ، قام مشترو الوحدات السكنية ، الذين سددوا دفعة الحجز ، أو حتى سددوا عدة أقساط ، خلال فترة التسديد ، بترك الوحدات التى تعاقدوا عليها ، الأمر الذى جعل القائمين بالتنمية العقارية عاجزين عن إتمام البيع ، بالإضافة إلى عدم وجود مشتريين .

وقد أثار هذا الوضع قلق وزارة الاقتصاد والتجارة الخارجية ، والبنك المركزي المصري ، بالإضافة إلى البنوك ذاتها . وتواجه البنوك التى قدمت الائتمان إلى القائمين بالتنمية العقارية زيادة الاحتياطات والمسئولية المحتملة عن منح هذه القروض ، والتي تؤثر سلبا على نوعية أصول البنك ومحصلاته ورأسماله . وتزداد المشكلة صعوبة لأن معظم الشركات العقارية الكبرى عبارة عن شركات فرعية لشركات مصرية أخرى حصلت على مقادير كبيرة من الائتمان المصرفي . وإذا حدث فريد من التدهور في الأوضاع المالية للشركات العقارية ، سوف يترتب على ذلك آثار سلبية كبيرة على الاقتصاد ككل ، وكذلك على القطاع المصرفي .

استهلال

تم إعداد هذا التقرير بناء على طلب من وزارة الاقتصاد والتجارة الخارجية الى مشروع تحليل وإصلاح السياسات الاقتصادية والتنمية (مشروع دبرا) ، من خلال عقد مع الوكالة الأمريكية للتنمية الدولية بالقاهرة - مصر (عقد رقم ٠٠-٠٠٠٠١-٩٦-٠٠-٢٦٣) تقوم بتنفيذه شركة ناثن أسوشيتس إنكوربوريشن .

ويهدف مشروع دبرا الى تشجيع ومساندة برنامج الإصلاح الاقتصادي في مصر ، وذلك من خلال تقديم المعونة الفنية الى وزارة الاقتصاد والتجارة الخارجية ، مع التركيز على الجوانب المرتبطة بتحرير التجارة والاستثمار الدوليين ، وتحرير وتدعيم القطاع المالي .

وقام بإعداد التقرير ومسودة القانون مجموعة من الخبراء العالميين والمصريين برئاسة، الدكتور/ مايكل أونجر ، المستشار الاقتصادي والمالي ، والسيدة/ إيلين وايز ، الخبيرة في التمويل العقاري ، والدكتور/ دوجلاس دياموند ، الخبير الاقتصادي للتمويل العقاري. ومن الخبراء المصريين ، الدكتور/ كريم كامل المحامى ، والدكتور/ محمد نور شحاتة ، أستاذ قانون الإجراءات المدنية ، والدكتور/ سمير مكاري ، أستاذ الاقتصاد ، والدكتور/ محمد كامل المحامى .

ويود فريق الدراسة أن يعبر عن عميق الشكر للتعاون والمساهمة الممتازة التي قدمها كل من الدكتور/ زياد بهاء الدين ، المستشار القانوني لوزير الاقتصاد والتجارة الخارجية ، والسيد القاضي/ اشرف شكري ، مستشار وزير الاقتصاد والتجارة الخارجية .

وأخيرا ، يود فريق الدراسة أن يشكر الدكتور/ جيمس وواكر ، رئيس فريق مشروع دبرا ، والسيد/ محمد وسيم صالح ، الخبير الاقتصادي بالمشروع ، وكافة العاملين بالمشروع دبرا على ماقدمته من مساعدات قيمة خلال إعداد التقرير .

ويعتبر فريق الدراسة هو المسئول عن كافة الآراء ، والنتائج والتوصيات الواردة بالتقرير ، والتي لا تعكس آراء وسياسات وزارة الاقتصاد والتجارة الخارجية المصرية ، أو الوكالة الأمريكية للتنمية الدولية ، أو الجهات التي ينتمي إليها القائمون بإعداد التقرير .

