

Legal Alert for February 2010 – Housing Laws in Nigeria Part 1

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LEGAL ALERT—HOUSING LAWS IN NIGERIA – PART 1 – FEDERAL MORTGAGE BANK OF NIGERIA ACT

INTRODUCTION

The rapid growth in global population has not been matched by a reasonable availability of safe and affordable houses. The situation in Nigeria is made more excruciating by a cumbersome land tenure system, with an unbalanced short-term and expensive credit/mortgage structure meant to fund long-term housing requirements of the Nigerian populace.

The housing insufficiency in Nigeria is not only due to defects in the existing housing structures – i.e. land tenure and financing as mentioned above - but also exacerbated by the non-dissemination of information on the existing structures, with the applicability of such existing structure to the citizenry by all the stakeholders in the housing industry.

This Legal Alert and a few others following it will provide you with some information on the existing housing laws in Nigeria, how they affect you and what benefits you could derive from taking some action concerning them.

FEDERAL MORTGAGE BANK OF NIGERIA ACT

The Federal Mortgage Bank of Nigeria Act, 1993 established the Federal Mortgage Bank of Nigeria (“FMBN”) to among other things provide long-term credit facilities to Mortgage Institutions in Nigeria. The FMBN is also established to encourage and promote the development of Mortgage Institutions in rural, local, State and Federal government levels in Nigeria.

Subject to the provisions of the Land Use Act, the FMBN is also authorised to acquire, hold or dispose of property, whether such property is movable or immovable. For the purpose of achieving its other objectives, the FMBN is also authorised to undertake the following activities:-

OBJECTIVES OF THE FMBN

1. Provide long-term credit facilities to other Mortgage Institutions in Nigeria at such rates and on such terms as may be determined by the Board of the FMBN in accordance with the policy directives of the Federal Government of Nigeria. The rates and terms for the long-term credit facilities are by statute required to be designed to enable Secondary Mortgage Institutions grant comparable mortgage facilities to Nigerians desiring to acquire houses of their own - See Section 5(a) FMBN Act.
2. Licence and encourage the emergency of viable Mortgage Institutions to service the housing delivery needs of Nigerians.
3. Encourage and promote the development of Mortgage Institutions in rural, Local, State, Federal levels in Nigeria.
4. Regulate the activities of all Mortgage Institutions in Nigeria.
5. Collect, manage and administer all contributions made under the National Housing Fund ("NHF") in compliance with the National Housing Fund Act.

FUNDS AND REGULATORY AUTHORITY OF THE FMBN

The FMBN is empowered to accept deposits and savings from Mortgage Institutions and other Financial Institutions. The FMBN is also empowered to issue its own securities under the Federal Government guarantees, with promissory notes and other bills of exchange for the purpose of raising Funds from other Financial Institutions.

To ensure that securities issued by FMBN are redeemed, the FMBN is required to establish a sinking Fund for the redemption of its securities. FMBN provides the contributions to this sinking Fund.

The FMBN is further statutorily required to organise and operate, in collaboration with reputable Insurance companies, a Mortgage protection system designed to guarantee liquidity to Mortgage Institutions in Nigeria, in addition to affording these mortgage institutions the opportunity of having long-term credit on liberal premium terms.

The above liabilities of the FMBN are re-discountable with the Central Bank of Nigeria. See section 6 of FMBN Act on the above powers.

CAPITAL REQUIREMENTS FOR THE FMBN AND TAXATION

The principal sources of capital to the FMBN are its authorised paid-up Share Capital, a general reserve Fund into which its net profits for each

Financial year are paid, with loans from the Federal Government of Nigeria and other approved bodies or sources.

The FMBN is exempted from the payment of any form of tax on its income. The provisions of the Banks & Other Financial Institutions Act (“BOIF”) are not applicable to the FMBN.

CONCLUSION

Whether the Federal Mortgage Bank of Nigeria is providing the minimum retail, supervisory and regulatory support to the housing needs of Nigerians is a matter of minimal debate. Allegations of bureaucratic practices and the inability to ensure the regular collection of monthly contributions from National Housing Fund contributors continue to plague the Federal Mortgage Bank of Nigeria.

The Federal Mortgage Bank of Nigeria has not been able to adopt a proactive strategy of providing affordable long-term loans to a double digit interest rate short-term lending economy. Statutory authority provided under the National Housing Fund Act to compel banks and insurance companies to make mandatory contributions appear to be unimplemented by the Federal Mortgage Bank of Nigeria.

The unsuccessfulness of the National Housing Fund as operated by the Federal Mortgage Bank of Nigeria also has the effect of jeopardising the various rent control legislations in Nigeria as most of these rent control legislation cannot be implemented in an environment where the housing demands outstrips the supply of available houses for rent.

The Federal Government of Nigeria must therefore restructure and modernise the Federal Mortgage Bank of Nigeria to meet the challenges of the twenty-first century. Should this be impossible, the Federal Mortgage Bank of Nigeria should be privatised to operate like other mortgage institutions while greater tax and investment incentives should be provided to mortgage institutions that provide minimum long-term loans with a tenure of not less than ten (10) years.

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