HAWASSA UNIVERSITY

SCHOOL OF GRADUATE STUDIES COLLEGE OF LAW AND GOVERNANCE SCHOOL OF LAW

LLM THESIS

ASSESSING THE LEGAL AND REGULATORY FRAMEWORKS FOR MORTGAGE BANKS IN ETHIOPIA

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HAWASSA, ETHIOPI

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ADVISORS' APPROVAL SHEET

This is to certify that the thesis entitled "**ASSESSING THE LEGAL AND REGULATORY FRAMEWORKS FOR MORTGAGE BANKS IN ETHIOPIA**" was submitted in partial fulfillment of the requirements for the degree of Master's with specialization in Commercial Law, the Graduate Program of the Department/School of Law, and has been carried out by **Rashida Aman Jerso**. Therefore, I/we recommend that the student fulfill the requirements and hence hereby can submit the thesis to the department.

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Name of advisor	Signature	Date

DECLARATION

I, **Rashida Aman Jerso**, hereby declare that **ASSESSING THE LEGAL AND REGULATORY FRAMEWORKS FOR MORTGAGE BANKS IN ETHIOPIA** is my original work and has not been presented for a degree in any other university, and all sources of material used for this thesis / dissertation have been duly acknowledged.

Name: ___________________________________

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This LLM thesis title has been submitted for examination with my approval as thesis advisor.

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Table of Contents

ABSTRACT

The development of mortgage banking legal and regulatory frameworks can determine the efficiency and sustainability of the housing finance system. A well-functioning mortgage market will primarily increase funding for housing at competitive cost and pricing to consumers of housing there by enabling more people to afford decent housing. The lack of mortgage banking legal and regulatory frameworks and integrating them with other conventional banks governing regimes is causing doubt and undermining the recently revived mortgage industry in Ethiopia. Hence, the basic objective of the study is to assess mortgage banking legal and regulatory frameworks in Ethiopia. The qualitative method of the study has been used to address the research questions effectively and efficiently, and the research has been supported by the notion of public interest theory. In conducting the study, general principles pertaining to effective legal and regulatory frameworks for mortgage banks and the experiences of some of the purposefully selected countries based on their successes and relevance to Ethiopia have been used. Finally, the study found that the outdated and one-sized legal and regulatory frameworks for all banks in the Ethiopian universal banking model have influenced the development of mortgage banks in Ethiopia. The study recommends that lawmakers should enact a comprehensive law and set up an organized regulatory framework for mortgage banks so as to adequately regulate and harmonize the housing finance system in the country.

Key Terms: mortgage banks, regulatory frameworks, regulatory, housing finance, legal, development

ACRONYMS

AIB	Agricultural and Industrial Bank
CAR	Capital Adequacy Ratio
CBB	Construction and Business Bank
CBE	Commercial Bank of Ethiopia
CBN	Central Bank of Nigeria
DBE	Development Bank of Ethiopia
EU	European Union
FHLBB	Federal Home Loan Bank Board
FMBN	Federal Mortgage Bank of Nigeria
FSA	Financial Services Authority
HCB	Housing and Construction Bank
HSB	Housing and Saving Bank
IHDP	Integrated Housing and Development Program
MBs	Mortgage Banks
MOFEC	Ministry of Finance and Economic Cooperation
MUDC	Ministry of Urban Development and Construction

NBE	National Bank of Ethiopia
NCUA	National Credit Union Administration
NMRC	Nigeria Mortgage Refinance Company PLC
NHP	National Housing Policy
UDAP	Unfair, Deceptive or Abusive Acts and Practices
UK	United Kingdom
USA	United State of America

CHAPTER 1: INTRODUCTION

1.1 BACKGROUND OF THE STUDY

Financial institutions play a significant role in the growth of a country's economy. Banks are often chartered to provide the community with an appropriate supply of loans at competitively determined interest rates. A loan is any financial fact originating from a bank's direct or indirect advance or commitment to advance funds to a person that is conditional on the person's obligation to repay the funds on a certain date or on demand, usually with interest.[1] Banks are the economy's most essential financial entities. They are the primary source of credit for many households, most local governments, and businesspeople.[2]

Mortgage banking is an aspect of development banking that specializes in creation of the demand for and financing of house ownership through well-structured short to long term repayment arrangements.[3] Primarily they provide funds to people who cannot afford a single payment term to own their homes and spread the repayments over several years. As such, mortgage banks are vehicles for promoting homeownership. Mortgage banks provide both finance in the form of loan for purchase, Construction, Repair and improvement of

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[1] Cornelis N Gorter Bloem Adriaan M, 'The Treatment of Nonperforming Loans in Macroeconomic Statistics' (IMF, 1 December 2001) <https://www.imf.org/en/Publications/WP/Issues/2016/12/30/The-Treatment-of-Nonperforming-Loans-in-Macroeconomic-Statistics-15525> accessed 24 April 2023.

[2] John R Brick, Commercial Banking: Text and Reading (Brick & Assoc Inc 1984).

[3] SA Oni, 'Mortgage Institutions and Financing in Nigeria: Performance, Constraints and Prospects' (2005) 43 Economic and Financial Review 8.

residential houses as per the needs of the borrowers and also build residential houses and avail them for purchase and rent.[4]

Ethiopia's housing needs are not being adequately addressed due to factors such as a lack of a well-developed housing financing system, political instability, and uncertain housing policy. The concept of housing banks in Ethiopia dates back to the Imperial and Dergue regimes, with the Housing and Saving Bank (HSB) being formed in 1970. The bank later restructured into Construction and Business Bank (CBB) in 1994 before merging under the Commercial Bank of Ethiopia in 2016.[5] Recently, the new government of Ethiopia expressed its willingness to allow foreign mortgage banks to engage in financing housing in the country.[6] An effective housing finance system will enable households to accelerate the purchase of and construction of houses and facilitates an efficient allocation of resources between housing, other goods and savings over the life cycle.[7]

Here there are different views forwarded by stakeholders at different times after the establishment of mortgage banks in the country. A Mortgage bank insider argues for laws

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[4] Ethiopian Monitor, 'First Private Mortgage Bank Starts Operation in Ethiopia' (Ethiopian Monitor, 25 October 2021) <https://ethiopianmonitor.com/2021/10/25/first-private-mortgage-bank-starts-operation-in-ethiopia/> accessed 28 December 2022.

[5] ibid.

[6] Muluken Yewondwossen, 'The First Mortgage Financial Firm to Start Operation Soon' (Capital Newspaper, 16 August 2021) <https://www.capitalethiopia.com/2021/08/16/the-first-mortgage-financial-firm-to-start-operation-soon/> accessed 28 December 2022.

[7] Boamah Nicholas Addai, 'The Regulatory Environment and Housing Finance Market in Ghana' (2011) 29 Property Management 406 <https://doi.org/10.1108/02637471111178100> accessed 25 December 2022.

regulating newly established mortgage banks, citing their specialized nature. NBE regulatory bodies question whether specific laws and regulatory bodies are needed for these banks.[8]

The lack of mortgage banking legal and regulatory frameworks and integrating them with other conventional banks governing regimes is causing doubt and undermining the recently revived mortgage industry in Ethiopia. The basic objective of this study is to assess and address the problems with the development of mortgage banking legal and regulatory frameworks and the existing legal and regulatory regimes.

Mekuria Haile's Urban Land Policy, Housing and Real Estate Markets in Urban Ethiopia Policy, Working Paper 02/2022, is among earlier study on mortgage banks in Ethiopia, highlights the importance of private sector in the housing market.[9] The report places more emphasis on the role played by the private sector in the development of housing financing. This research focuses on assessing the legal and regulatory conformity of Ethiopian banking regulations for recently revived mortgage banks. Secondly, a Synthesis Report on Unlocking Ethiopian Urban Land and Housing Markets, produced in 2017, with collaboration between the World Bank, MUDC Ethiopia, and the Ministry of Finance and Economic Cooperation. The report highlights Ethiopia's underdeveloped housing finance system, focusing on developer finance and housing loans.[10] This research has advanced from the report by

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[8] Endale Ashenafi, 'Reviving Mortgage Banking, the Bumpy Road Ahead' <https://ethiopianbusinessreview.net/reviving-mortgage-banking-the-bumpy-road-ahead/> accessed 28 August 2023.

[9] Mekuria Haile, 'Urban Land Policy, Housing, and Real Estate Markets in Urban Ethiopia'. Policy Working Paper 02/2022

[10] 'Unlocking Ethiopia's Urban Land and Housing Markets : Synthesis Report, (2017)' <https://documents.worldbank.org/en/publication/documents-

focusing on assessing the legal and regulatory challenges of newly established mortgage banks in Ethiopia.

This study aims to understand the challenges faced by mortgage banks in operating under conventional bank laws in Ethiopia. It seeks changes by the government and national banks to enable mortgage banks to operate effectively without legal and regulatory hindrances. Additionally, the study objectives are to improve the legal and regulatory frameworks of the mortgage banking sector, which is underdeveloped in Ethiopia. A well-functioning mortgage market can increase funding for housing at competitive costs, enabling more people to afford decent housing. A strong legal and regulatory framework can also contribute to economic growth and stability.

1.2 STATEMENT OF THE PROBLEM

Despite being the second most populous country in Africa, Ethiopia lacks mortgage banking and services, which might significantly boost the nation's economic development. But in order to stabilize the nation's housing demand, the current ruling party has formally opened the door for private mortgage banking, including foreign mortgage banks.[11] Mortgage banking requires prudent and careful supervision since it is a highly sensitive segment of the financial system with many competing interests, including those of the government, mortgage banks, and private citizens. The lack of legal and regulatory frameworks for

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reports/documentdetail/549221572382742218/unlocking-ethiopias-urban-land-and-housing-markets-synthesis-report> accessed 22 March 2023.

[11] Abrham Yohannes, 'Ethiopia Opens Door for Foreign Mortgage Banks – New Business Ethiopia Ethiopian Legal Brief' (Ethiopian Legal Brief, 28 February 2021) <https://chilot.me/2021/02/28/ethiopia-opens-door-for-foreign-mortgage-banks-new-business-ethiopia/> accessed 28 December 2022.

mortgage banking is a point of contention and undermining the country's recently revived mortgage market, which is being attributed to other conventional banks. To protect depositors and banks, as well as promote the stability and efficiency of the financial system, National Banks of Ethiopia requires all banks maintain a minimum capital to a risk-weighted assets ratio (Capital Adequacy Ratio) of 8Pct at all times. "Since it is difficult for banks that provide long-term loans to maintain the stated ratio, National Banks of Ethiopia must introduce special laws to regulate newly establishing specialized mortgage banks in Ethiopia. Besides Capital Adequacy Ratio, other important areas that need special regulations are a provision for doubtful loans, foreclosure, and formation of credit records for housing borrowers (credit history), borrowers' protection, and information provision.[12]

The new mortgage banks cannot operate with the existing banking laws that were crafted mainly to regulate banks that follow the universal banking model, explains Zemedeneh Negatu, one of the promoters of Selam Bank. The National Banks of Ethiopia are now working on comprehensive and timely updates to sector policy pertaining to financial services, particularly rules pertaining to mortgage banking. Selam Bank and other players in the industry thus anticipate being subject to the forthcoming new laws. The central bank has no intention of introducing a directive concerning mortgage banks soon, according to Frezer Ayalew, Director of the Banking Supervision Directorate at National Banks of Ethiopia. In Ethiopia, there are no banks offering specialized services. Any bank licensed in Ethiopia operates under existing banking laws.[13]

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[12] Ashenafi (n 8).

[13] ibid.

The need for serious consideration of these stakeholder arguments motivates the researcher to carry out research in this field. The National Bank of Ethiopia's Director of the Banking Supervision Directorate, Frezer Ayalew, makes arguments that support both embracing and opposing the regulatory frameworks for mortgage banking in Ethiopia. The director's argument further suggests that he has no grasp on the specialized nature of mortgage banking. As a matter of fact, there are numerous ways in which mortgage banking differs from commercial banking. Banks may have fewer mortgage lending options compared to mortgage companies. Their credit requirements may be a lot stricter. Mortgage companies may not be as strictly regulated as banks. It means that they can sometimes tailor loan recommendations to suit the buyer’s goals. Another one is that both banks and mortgage companies can make mortgage loans. Banks, however, can also take deposits of your money, which can be placed into a savings account or checking account, but mortgage companies cannot take deposits.

To this end, this paper mainly aims at outlining a proper regulatory and legal framework scheme for a sound long-term housing finance mechanism in Ethiopia. This objective is fulfilled by studying proven international mortgage practice systems in line with the current laws and practices of mortgage banking in Ethiopia.

1.3 OBJECTIVE OF THE STUDY

1.3.1 General Objective

The general objective of the research is to assess the legal and regulatory frameworks for mortgage banks in Ethiopia.

1.3.2 Specific Objectives

The specific objectives of this paper are to analyze the legal and regulatory frameworks of mortgage banks, to assess the practical implementation of the laws and regulatory frameworks governing mortgage banking and to assess the challenges of governing mortgage banks under the conventional banks legal and regulatory regimes.

1.4 RESEARCH QUESTIONS

Accordingly, the researcher tries to address certain research questions based on the above research problems:

A) How do the banking regulatory and legal frameworks regulate mortgage banks in Ethiopia, and what are the specific laws and regulations that govern their operations?

B) How are mortgage banks practically performing their activities under the existing banking legal and regulatory frameworks?

D) How is the mortgage industry challenged by being governed under conventional bank legal and regulatory regimes in terms of their operations, profitability, and overall performance?

1.5 SIGNIFICANCE OF THE STUDY

This study can help mortgage banks managers and the National Bank of Ethiopia to identify challenges facing the mortgage banking sector that can hinder their effective performances. Accordingly, the studies have legal, academic, and policy contributions as a whole, as well as some other specific importance. Those are;

- It gives basic and detailed information to enable the law-making body to develop a regulatory and legal framework for mortgage banking in the country.
- It helps the authorized body on mortgage banking regulation to view the experiences of chosen countries and develop the advanced and effective regulatory frameworks of mortgage banking in Ethiopia.
- Help to show the way to handle the legal and regulatory problems that would arise within the mortgage banking industry.
- It serves as a base for further or related studies by any researchers interested in this and other related concepts.

1.6 RESEARCH METHOD AND METHODOLOGY

1.6.1 Design of the Study

The researcher effectively selects the exploratory design of the research, for it is suitable for qualitative types of research, and its flexibility helps to address research questions of all types. Also, the design is helpful to get some insight for further investigation based on the research conducted in the new study area and when no prior study is conducted.

The study assesses Ethiopia's mortgage banks' legal and regulatory frameworks using a qualitative research methodology. This approach is suitable since it is flexible and open-minded, necessitating in-depth knowledge and discussion. It is a positive approach that helps to understand human motivation and focus on the existing reality as it happens. The interpretive method has also been used because participants have been interviewed in order to gauge their observation of the level of legal and regulatory frameworks in the industry. Interviews are conducted with participants in the study to find out how they assess the quality of the legal and regulatory environments in the sector. Because of their sophisticated mortgage banks and usefulness as benchmarks, the UK, USA, and Nigeria are included in the study's discussion of legal and regulatory experiences. Even though the concept of the mortgages and mortgage banks is basically born in the civil law legal system, the concepts are not well developed as expected in this legal system. That is why the researcher has chosen countries with a common law legal system.

1.6.2 Data Gathering Instrument

The data is gathered through both primary and secondary sources, and in collecting data, the researcher uses interview and legislative analysis for primary sources and written books, journal articles, and related publications and research for secondary sources, respectively. To conduct the interview, the researcher selects participants from the research population. The researcher chooses face-to-face interview forms because they fit semi-structured in-depth interviews and are also more helpful for the researcher to meet the interviewee personally. A semi-structured, in-depth interview is chosen among other types of interviews to enable the researcher to get a well-elaborated answer on the issues by creating a friendly relationship with the interviewee.

1.6.3 Subjects And Participants of The Study

The researcher's total study population consists of three (3) institutions: the National Bank of Ethiopia, the Commercial Bank of Ethiopia, and Goh Betoch Bank. To accomplish its task, the researcher selects six (6) participants from the population of the study, of whom three (3) are chosen from NBE, two (2) from CBE, and one (1) from Goh Betoch Bank.

1.6.4 Sampling And Data Analysis Technique

In selecting the concerned participants, the researcher has employed a purposive sampling technique based on the participants experience, position, expertise, and education to effectively address the research questions of the study. The data analysis method chosen for this research is the qualitative data analysis more specifically thematic analysis method due to its suitability for the nature of the study, which helps the researcher analyze the views, opinions, and experiences of the interviewee and drive meaning from them.

1.7 SCOPE OF THE STUDY

The scope of the study has focused on challenges with regard to regulating mortgage banks. Although mortgage banks have so many challenges that should be given considerable attention, this study only concentrated on one of them, which is legal and regulatory hindrances to mortgage banks. The study included Banking Business Proclamation No. 592/2008, NBE directives and guidelines enacted for commercial banks, the Ethiopian Civil Code, and the Ethiopian Commercial Code. Financial institutions like the Commercial Bank of Ethiopia, Goh Betoch Bank, and NBE are included in the study sample. Except mortgage banks, Commercial Bank of Ethiopia, and NBE, other banks of any form are out of my scope of study.

1.8 LIMITATIONS OF THE STUDY

In this study, the researcher has been challenged by the absence of laws governing mortgage banking in the country and related materials, a shortage of reading materials, and a lack of resources. Another one is the problem of confusing mortgage contracts with mortgage banking and mortgage business, even in the literature of countries with good and sufficient experience in the area of mortgage banking i.e. conceptual confusions.

1.9 ETHICAL CONSIDERATION

In this paper, the researcher conducts the study according to the basic norms of legal research by obeying the ethics of the study. Confidentiality of the information taken from the participants is protected by the researcher; research participants are not subject to harm in any way; the dignity of the research participant is prioritized; full consent is obtained from the participant prior to the study; the researcher ensures the protection of the participant's privacy; and the researcher is also liable for any professional fault that can cause harm to the research participant. Participants are informed in advance that their identity will not be disclosed unless they consent to it, and proper acknowledgement will be given to their contribution to the study.

1.10 ORGANIZATION OF THE THESIS

Chapter one of my study addressed the general highlights of the introduction to mortgage banks and their regulation as a whole, particularly the new Ethiopian mortgage banking industry. Another part of the worthy discussion is the main problems related to mortgage banking in the country. And also, the study addressed how much this study advanced existing knowledge. Another part of the researcher's study is the components of Chapter 2. Accordingly, chapter two of the study constituted the historical, conceptual, theoretical, and practical foundation of the research. In addition, a general overview of the general principles of regulating mortgage banking and the experiences of a few chosen countries are discussed.

Specifically, the legal, institutional, and regulatory frameworks of mortgage banking in the USA, UK, and Nigeria have been discussed.

Chapter three of this study constituted the assessment of mortgage banks in Ethiopia from different perspectives. The legal and regulatory frameworks are examined in detail. The housing finance systems of the country from the imperial period to the current regime have been discussed. The perspective of industry insiders on the development of the housing finance system in the country is also discussed. Chapter four of this study covers necessary and possible solutions or findings, recommendations, and advancements over the study in a detailed manner.

CHAPTER 2: GENERAL OVERVIEW OF MORTGAGE BANKING FROM THEORETICAL AND CONCEPTUAL PERSPECTIVE

2.1 DEFINITION OF MORTGAGE BANK

A mortgage bank is a type of bank that offers only mortgage loans. It may be involved in the creation of mortgage loans, in their servicing, or in both. Banks provide loans to borrowers using their own money, which they then sell on the secondary market or collect in installments at a predetermined interest rate. The operations of a mortgage bank might vary in size. While some mortgage banking firms have countrywide operations, others might focus more on loan volume origination than national operations.[14] The lending of money against mortgages for particular securities is the area of expertise of a mortgage bank. They engage in a variety of activities such as loan origination, mortgage sale, and loan/mortgage servicing and structure different loan products at a lower cost or with more favorable funding arrangements. Such firms continue to be highly profitable since the fees associated with these transactions are still relatively low.[15]

Money for buying or refinancing residential homes is provided by mortgage lenders. Lenders who originate mortgages by lending to homeowners and buyers perform this duty in the primary mortgage market. Lenders and investors purchase and sell loans that were first made available in the primary mortgage market in the secondary market. Pooled mortgage loans

[14] Park Meeyeon, 'Mortgage Bank - Overview, How It Functions, Income Sources' <https://corporatefinanceinstitute.com/resources/wealth-management/mortgage-bank/> accessed 12 January 2023.

[15] Ashish Kumar Srivastav, 'Mortgage Bank' (WallStreetMojo, 20 June 2020) <https://www.wallstreetmojo.com/mortgage-bank/> accessed 12 March 2023.

serve as collateral for securities that investors and lenders purchase and sell in the secondary market. Banks engage in the secondary market to generate more opportunities for fee income, boost liquidity, control credit risk, and obtain flexibility in managing their long-term interest rate exposures.[16]

2.2 HISTORICAL BACKGROUNDS OF MORTGAGE AND MORTGAGE BANKS

Mortgage contracts date back to the fifth-century B.C. reign of King Artaxerxes of Persia, who ruled over modern-day Iran. The Roman Empire established and codified the legal procedure for pledging collateral for loans, employing mensarii to arrange loans and collect interest from borrowers. These mensarii were government-appointed public bankers who demanded that the borrower provide collateral, either personal property or real estate, and that their agreement regarding the use of the collateral be handled in one of three ways: Fiducia (trust), Pignus (pawn), and Hypotheca (pledge).[17]

The mortgage is one of the oldest types of investment available to financial organizations and the oldest loan instrument still in widespread use. It was already well developed in the Roman era, with the rights of borrower and lender clearly defined. The modern mortgage is thought to have its direct ancestor in the Roman hypothecais, in which the borrower retains

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[16] 'Comptroller's Handbook: Mortgage Banking' (7 February 2014) <https://www.occ.gov/publications-and-resources/publications/comptrollers-handbook/files/mortgage-banking/index-mortgage-banking.html> accessed 29 December 2022.

[17] Michael J. Highfield, 'A Brief History of the Mortgage, from Its Roots in Ancient Rome to the English "dead Pledge" and Its Rebirth in America' (The Conversation) <https://theconversation.com/a-brief-history-of-the-mortgage-from-its-roots-in-ancient-rome-to-the-english-dead-pledge-and-its-rebirth-in-america-193005> accessed 18 March 2023.

title, possession, and use of their land and property, subject to the repayment of their mortgage obligation.[18]

Following the introduction of Roman law and customs by Emperor Claudius in 43 A.D., the British adopted another Latin term, Vadium, for a pledge of security or collateral for loans during the next four centuries of Roman rule and the following 600 years known as the Dark Ages. Real estate could be offered as "Vivum Vadium," or "living pledge," or as "Mortuum Vadium," or "dead pledge," with the lender keeping the proceeds from the land, such as income from farming, selling timber, or renting the property for residential use.[19]

Following William the Conqueror's victory at the Battle of Hastings in 1066, Norman French language had a great impact on English, causing the Latin term "Mortuum Vadium" to become "Mort Gage," which means "dead" and "pledge."[20] Mortgage and mortgage banking largely developed into the world's business aspects and became the matter of no option to ignore nowadays.

2.3 THEORIES ON MORTGAGE BANKS REGULATION

Public interest theory and private interest theory of regulation are designed to explain why regulation is attempted. This section examines these theories of regulation, and more particularly their application to mortgage banking regulation. In this section, the study

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[18] Saul B Klaman, 'Mortgage Lending Policies of Financial Intermediaries', The Postwar Residential Mortgage Market (Princeton University Press 1961) <https://www.nber.org/books-and-chapters/postwar-residential-mortgage-market/mortgage-lending-policies-financial-intermediaries> accessed 25 December 2022.

[19] Michael J. Highfield (n 17).

[20] ibid.

discussed theories that support the study and which showed the relationship between study variables.

2.3.1 Public Interest Theory

The public interest theory of regulation is a positive theory that focuses on the public interest and its construction. It suggests that regulatory authorities are guided by the public interest, and rules and processes are designed to satisfy and advance this interest.[21] This theory was initially developed by Pigou,[22] who interpreted regulation as state interference that would harm the national dividend.

Bank regulation is supplied in response to the demand for the national dividend, which is the public interest, to push resources from lower productivity to higher productivity. The justifications for banking regulation are predominantly economically oriented, as markets for goods and services are imperfect. In Western economies, market mechanisms are typically used to allocate resources efficiently, but unregulated markets can be subject to failures such as abuse of monopoly power, externalities, and information asymmetry.[23]

There are four economic grounds for government intervention in banking regulation: ensuring fair and open competition, promoting bank deposits as a primary source of national credit supply, restoring market stability and confidence in crisis situations, implementing rules and standards concerning bank exit policies, boosting economic development, making

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[21] He Ping, 'Banking Regulatory Theories' (2014).

[22] AC Pigou, The Economics of Welfare (Macmillan and co, limited 1920).

[23] Antonios Koumbarakis, 'The Economic Theory of Bank Regulation and the Redesign of Switzerland's Lender of Last Resort Regime for the Twenty-First Century' <https://folia.unifr.ch/global/documents/305574> accessed 10 April 2023.

funds available for small businesses and students to finance education-related spending, and playing a pivotal role in achieving developmental and social goals. Banks are also regulated to combat financial crime, including fraud and money laundering.[24]

In conclusion, the public interest theory of regulation provides a framework for understanding the rationale behind regulatory processes and outcomes, particularly in the context of banking regulation.

2.3.2 Private Interest Theory

The private interest theory of regulation suggests that regulation is driven by the private interests of the government, regulators, and the regulated entities. This theory can be divided into two guises: one focuses on the interests of politicians and political parties, which make demands to which private industries must respond, and another suggests that regulation is captured by private industries and designed and operated primarily for the benefit of those industries.[25]

Banking regulation is primarily shaped by the respective private interests of the government, regulators, and the regulated entities.[26] These organized interest groups are directly or indirectly involved in designing and implementing regulation in the decision-making process and trying to exploit supervisory authorities.[27]The private interest theory of banking regulation has been used to support arguments that government regulation is inefficient. However, it fails to acknowledge the similarity in interest between the public and the

[24] Ping (n 21).

[25] Koumbarakis (n 23).

[26] Ping (n 21).

[27] Koumbarakis (n 23).

regulated, as banks' interests in operating in a safe and sound banking environment overlap with the public's interest in achieving the same objective.[28]

The private interest theory has been used to support arguments that government regulation is inefficient, as systems in which the State controls a large part of economic life are more vulnerable to the demands of powerful pressure groups than in capitalist economies. In totalitarian societies, interest groups can more readily advance their own interests than in democracies, and in the context of banking regulation, banking regulators may pursue self-interest rather than social welfare.[29]

Indirect effects of social regulation, such as a competitive advantage gained, can be sufficiently large for private parties. From theories of banking regulation, the researcher builds the foundation of research based on public interest theory because it has general public interest at the center. According to this theory, public interest is far greater than the satisfaction of small groups of industries or individuals.[30]

Regulation of banks is essential to protect the interests of individual customers and the general public, which may arise from unfair competition of industries by setting fair play in the market. From the above theories of banking regulation the researcher builds the foundation of the research based on public interest theory because, theory has general public interest at the center. An economic theory of regulation is justified by public interest theory. Public interest is far greater than the satisfaction of small groups of industries or individuals

[28] Ping (n 21).

[29] ibid.

[30] ibid.

according to this theory. In public interest theory, regulatory authorities are presumed to be guided by the public interest, and regulatory rules and processes are modeled so as to satisfy and advance the public interest.

2.4 RATIONALE FOR MORTGAGE BANKS

- Provides funding to those who are unable to afford a single payment term so they can own a home and spread out the repayments over a number of years. This helps people to own homes. Thus, mortgage institutions serve as channels for encouraging home ownership.[31] Furthermore it is quite difficult for mid- and low-income households in today's culture to purchase a home without a mortgage plan.[32]
- Another thing of worthy importance in mortgage banking is that of granting loans by shaping loan recommendations to suit the buyer's goals depending upon the level of their income, their ability to repay the loan, and their credit history, as well as by calculating credit risk, which can be examined by the mortgage company to determine the category of loan suits for each borrower.[33]

[31] EO Nicholas and DD Patrick, 'A Review of Governmental Intervention on Sustainable Housing Provision for Urban Poor in Nigeria' (2015) 3 International Journal of Social Science Studies 40.

[32] Paul S Calem, Lauren Lambie-Hanson and Susan M Wachter, 'Is the CRA Still Relevant to Mortgage Lending?' [2019] SSRN Electronic Journal <https://www.ssrn.com/abstract=3445415> accessed 16 March 2023.

[33] Robert B Avery and others, 'Credit Risk, Credit Scoring, and the Performance of Home Mortgages' (1996) 82 Federal Reserve Bulletin 0 <https://www.federalreserve.gov/pubs/bulletin/1996/796lead.pdf> accessed 17 March 2023.

- Because of its recurring revenue and capital flowing qualities, mortgage banks are tremendously advantageous to the economies of many developed and emerging nations.[34]
- It helps to solve problems related to providing housing for the population and accelerating the development of not only the construction industry, but also related areas of activity.[35]
- For a nation's overall development, the mortgage market's progress is critical. The development of Africa's developing mortgage markets has been encouraged by policymakers and international organizations such as the World Bank, who see it as a natural boost to the continent's economy.[36]

2.5 CONCEPTUAL FRAMEWORKS OF MORTGAGE BANKS REGULATION

A mortgage is based on the concept that people need to have places to live, but they cannot afford to pay the high cost of that home up front. In order to help people fund the purchase of their homes, mortgages were created. Most people could not afford to buy a house and could not become homeowners without a mortgage. Although many people do not have mortgages on their homes, many people have their homes handed down to them; yet, most of these

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[34] Kristopher S Gerardi, Harvey S Rosen and Paul S Willen, 'The Impact of Deregulation and Financial Innovation on Consumers: The Case of the Mortgage Market' (2010) 65 The Journal of Finance 333 <https://www.jstor.org/stable/25656293> accessed 28 December 2022.

[35] Olena Bazilinska and Olena Panchenko, 'Mortgage Lending as a Component of Economic Growth' (2020) 5 Scientific Papers NaUKMA. Economics 3 <http://spne.ukma.edu.ua/article/view/213108> accessed 16 March 2023.

[36] Paul K Asabere, Carl B McGowan Jr. and Sang Mook Lee, 'A Study into the Links between Mortgage Financing and Economic Development in Africa' (2016) 9 International Journal of Housing Markets and Analysis 2 <https://doi.org/10.1108/IJHMA-05-2014-0014> accessed 16 March 2023.

people inherited their properties. The proportion of the population with the ability to purchase a property outright is quite low. Nowadays, the great majority of "homeowners" hold a mortgage on their residence.[37]

A mortgage loan was created many years ago because banks saw a way to profit significantly from people who wanted to buy homes. The bank has the resources to lend money so people can buy homes, and they charge interest to the borrowers as a cost of borrowing the money. Upon repaying their loan over the whole term of the mortgage, the borrower will have paid back much more than the initial loan amount. This idea may irritate some people, but in practice, it is the only way that the majority of people can afford to buy a home.[38]

Given their variety, mortgages can take many different forms. Both single-family and multi-family homes are eligible for mortgages. Numerous individuals also have varied loan repayment terms and interest rates. Numerous individuals can also afford to pay various fees and charges related to their loan. The fundamental idea of having a mortgage on a home remains the same, even if all of these specifics may vary significantly between loans.[39]

Mortgages are a basic financial tool that people need in order to purchase a home and achieve their objectives. To help consumers qualify for mortgages and make sure they can afford a home, mortgage lenders are popping up all over the world. A well-designed mortgage plan is the typical method of becoming a home owner in developed countries such as the United States, Britain, and Denmark. Obtaining a mortgage loan is made simpler and quicker by

[37] Anthony Aboagye and others, ‘Explaining Interest Rate Spreads in Ghana’ (2008) 20 African Development Review 378 <https://EconPapers.repec.org/RePEc:adb:adbadr:963>.

[38] ibid.

[39] ibid.

efficient administration of the mortgage system. A mortgage is a liberating idea that enables people to buy the house of their dreams and realize their ambitions.[40]

Most of the agreements are similar in that they maintain the property acquired through mortgage financing as collateral security for the mortgage debts. The mortgage owner is the property's mortgage holder until the mortgage loan is paid back. If there is any trouble with the mortgage financing, the mortgage lender has the complete right to seize the property. If there is a default in the payments, the mortgage lender can take ownership of the property and even put it up for sale to another party.[41]

2.6 EMPRICAL REVIEW OF MORTGAGE BANKS REGULATION

Mortgage banking regulation reforms in most countries have arisen quickly in the last few years. Effective and efficient housing finance and economic stability can be achieved by having effective and efficient regulatory frameworks for mortgage banking. Due to its macroeconomic characteristics, mortgage banking has the capability to determine the economic level of certain nations. Since the economic crisis in 2007, the empirical literature relating to mortgage regulation has been growing. Empirical evidence written by Jihad (2015) and C. Whitehead et al. (2017) indicates that, among many reasons, poor mortgage market legal and regulatory frameworks are the ones that led to huge market failure and the economic crisis of 2007. In Europe, the Accords and other pan-European regulations have been implemented through European Union legislation. Useful summaries of regulation and

[40] Abiodun Olukayode Olotuah and AO Aiyetan, 'Sustainable Low-Cost Housing Provision in Nigeria: A Bottom-up, Participatory Approach', Proceedings of 22nd Annual ARCOM Conference (2006).

[41] J Aderibigbe, 'The Role of the Financial Sector in Poverty Reduction' (2001) 39 CBN Economic and Financial Review <https://dc.cbn.gov.ng/efr/vol39/iss4/8>.

housing markets across Europe are given by BBVA (2013), Davis et al. (2011), Dubel and Rothemund (2011), Hartmann (2015), and Lunde and Whitehead (2016).

Mortgage lending increased rapidly, especially after the turn of the century, which was linked to rising home prices, which in turn provided the collateral for further borrowing. Many countries liberalized their mortgage markets in the 1970s and 1980s, while others, particularly in Eastern Europe, only began to grow their markets in the late 1990s and early 2000s.[42] There are several different difficulties raised by what is happening both today and before to 2008. First, it's evident that, in the years preceding the global financial crisis in numerous nations, bankers were forced to provide loans that deviated from accepted industry standards as a result of competition for market share that increasingly deregulated markets.[43]

At present, the most extensive regulatory frameworks pertaining to the banking industry are founded on the Basel II Accord. This accord offers a worldwide, optional regulatory structure concerning bank capital sufficiency, stress testing, and market liquidity risk. The financial crisis interfered before Basel II could take full effect, although it was first implemented in the

[42] Christine Whitehead and Peter Williams, 'Changes in the Regulation and Control of Mortgage Markets and Access to Owner-Occupation among Younger Households', vol 196 (2017) OECD Social, Employment and Migration Working Papers 196 <https://www.oecd-ilibrary.org/social-issues-migration-health/changes-in-the-regulation-and-control-of-mortgage-markets-and-access-to-owner-occupation-among-younger-households_e16ab00e-en> accessed 25 December 2022.

[43] Kathleen Scanlon, Jens Lunde and Christine Whitehead, 'Responding to the Housing and Financial Crises: Mortgage Lending, Mortgage Products and Government Policies' (2011) 11 International Journal of Housing Policy 23 <https://research.cbs.dk/en/publications/responding-to-the-housing-and-financial-crises-mortgage-lending-m> accessed 23 May 2023.

early 2000s. In light of the financial crisis, Basel III, its replacement, has stricter requirements.[44]

As a generality, it is noteworthy that nations appear to regulate individual transactions in phases, partly due to the EU Directive and the subsequent financial crisis. This pattern begins in those nations where deregulation was primarily implemented in the 1970s and 1980s, and progresses from lending being determined by general business practices (which frequently did not stop lending from expanding rapidly prior to the global financial crisis), to a market driven by recommendations, to legislation pertaining to key variables, and ultimately to the establishment of a variety of banking and regulatory organizations with the authority to carry out in-depth monitoring and enforcement pertaining to the housing and mortgage markets.[45]

In today's mortgage markets, the 2008 crisis had two main effects. First, throughout the immediate aftermath of the crisis as well as in the long run, banking systems were under tremendous strain. This was true in nations like Germany, where problems with internal treasury management gave rise to the crisis, as well as in nations with significant exposure to residential mortgages. It was consequently vital to prioritize strengthening macro prudential policies in order to stabilize financial systems.[46]

2.7 HOW DOES MORTGAGE BANKS FUNCTION

While a mortgage banking business is rather simple in theory, the combination of different types of operations and the various levels of risk make the review of each bank unique. A

[44] Whitehead and Peter Williams (n 42).

[45] ibid.

[46] Oriol Carreras and Rebecca Piggott, ‘Macroprudential Tools, Transmission and Modelling’ [2016] SSRN Electronic Journal <http://www.ssrn.com/abstract=2967270> accessed 23 April 2023.

bank's management may set it up to take part in one or more steps of the mortgage banking process. In order to establish the pertinent measurement criteria for the bank's income and expenses, examiners should anticipate that management has duly assessed the operating and risk profile of the institution. The mortgage banking industry is subject to cyclical fluctuations in earnings. A thriving mortgage banking business might suddenly experience significant losses if improperly managed. Maintaining a steady profit in mortgage banking necessitates close supervision of all mortgage banking operations by the board and senior management.[47]

Providing money for the acquisition or refinancing of residential properties is the primary responsibility of a mortgage lender. This role is performed in the primary mortgage market, where lenders provide loans to buyers and homeowners in order to originate mortgages. Lenders and investors trade loans made in the primary mortgage market in the secondary mortgage market. In the secondary market, securities backed by a pool of mortgage loans are also purchased and sold by lenders and investors.[48]

A bank generates a loan and the right to service the loan when it originates a mortgage loan. Banks have the option to sell loans with retained or released servicing on the secondary market. The majority of lending assets have servicing as a default feature; it only separates contractually from the underlying loans or lending assets to become a separate asset or obligation. A mortgage bank has two options for separating loan service: either by selling a

[47] 'Comptroller's Handbook: Mortgage Banking' (n 16).

[48] ibid.

loan and keeping the servicing or by buying or taking on the servicing of a loan from a third party independently.[49]

2.8 MORTGAGE BANKS FROM THE LEGAL AND REGULATORY FRAMEWORKS PERSPECTIVE: EXPERIENCES OF SELECTED JURISDICTIONS

It is important to keep in mind that while discussing the experiences of the following jurisdictions, the legal and regulatory frameworks will be the main topics of discussion. The following rationales are the key ones for the selection of the jurisdictions: researcher believes that our mortgage bank regulatory bodies will eventually benefit from the developed experiences of these jurisdictions. It is important to share the greatest mortgage bank experiences in order to boost the nation's mortgage banking industry as a whole. The mortgage markets in the United States, the United Kingdom, and Nigeria were selected purposefully because they have thriving mortgage markets within their borders and can be used as models for Ethiopia's reviving mortgage market.

2.8.1 Legal Frameworks of Mortgage Banks in USA

The federal system of administration of the country obliges the mortgage banks to follow both the federal and state mortgage banking laws of the country in which they are operating. In addition to the entire federal mortgage law, mortgage banks also have the responsibility to obey the laws of the states in which they want to operate. There are a list of federal laws for mortgage banks: the Real Estate Settlement Procedures Act (RESPA), the Truth in Lending Act (TILA), the Home Ownership and Equity Protection Act (HOEPA), the Fair Credit

[49] ibid.

Reporting Act (FCRA), the Equal Credit Opportunity Act (ECOA), the Gramm-Leach-Bliley Act (GLBA), and the Federal Trade Commission Act (FTC Act), as well as fair lending laws and fair housing laws at the federal level. Each state also has its own mortgage banking laws in the country.[50]

2.8.2 Regulatory Frameworks of USA Mortgage Banks

Historically, state and federal rules have applied patchily to the mortgage servicing sector in the United States. Even with the post-2008 financial changes, the industry's regulatory structure is still too complicated and underdeveloped. Financial institutions of many kinds offer mortgage services. Banks and more general nonbanks handle service at different periods. This is because of financial institutions are subject to different regulatory regimes, the monitoring and regulating of their mortgage servicing activities by government officials varies.[51]

Members of the Federal Reserve System that hold state charters are governed by the Federal Reserve. State banking supervisors oversee every state-chartered bank. The Comptroller of the Currency at the U.S. Department of the Treasury or the National Credit Union Administration (NCUA) is in charge of overseeing federally authorized institutions. Additionally, mortgage servicers are subject to regulations set forth by authorities that are an essential component of the securitization process rather than by a governmental body. For

[50] Schwartz Corey, ‘Who Regulates Mortgage Banking? -’ <https://www.loanatik.com/regulates-state-banking/> accessed 28 December 2022.

[51] Alan Greenspan, ‘Regulating Mortgage Servicing, (1994)’ <https://www.cambridge.org/core.accessed>.

example, the loan securitization companies they buy, Fannie Mae and Freddie Mac, have their own service policies.[52]

Federal bank regulators cover mortgage servicing activities, as preemption principles displace overlapping state rules in a particular area. State regulatory coverage is limited, with exceptions for mortgage servicers' part of federally chartered financial institutions. States do not regulate mortgage servicing, and those that do are primarily limited to licensing rules.[53]

2.8.3 Legal Frameworks of Mortgage Banks in UK

To bring reforms on the economy, UK government deregulate banking industry during mid 1980's. However, rather than changes to the economy, deregulation of the banks came with reverse effects on the country's economy during the final phases of the 20thC in the country. After deregulation of financial institutions during that time the country was challenged with financial and economic instability and later on it leads to economic crises of 2007.[54]

Following the 2007 financial crisis, the market became heavily regulated. However, the country started to regulate financial institutions since 2000. The Financial Services Authority introduced many requirements in order to prevent future financial failures. One of the requirements implemented by the financial services Authority is the Capital Adequacy Ratio.

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[52] 'Comptroller's Handbook: Mortgage Banking' (n 16).

[53] ibid.

[54] Heather Stewart and Simon Goodley, 'Big Bang's Shockwaves Left Us with Today's Big Bust' The Observer (8 October 2011) <https://www.theguardian.com/business/2011/oct/09/big-bang-1986-city-deregulation-boom-bust> accessed 28 December 2022.

The Financial Services Authority incorporates legislation from the Basel Committee due to the UK being part of the EU.[55]

There are certain laws of UK mortgage banks to regulate mortgage banks and building societies those are in addition to the EU mortgage banking laws those are: Mortgage Credit Directive Order 2015 SI 2015/910, as amended; Administration of Justice Act 1970; Administration of Justice Act 1973; Cheltenham and Gloucester Building Society v Norgan [1996] 1 All ER 449, CA.; Bristol and West Building Society v Ellis (1996) 75 P; CR 158, CA; Consumer Credit Act 1974, as amended; Financial Services and Markets Act 2000 (Regulated Activities) Order SI 2001/544, as amended by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 SI 2013/1881; Consumer Credit (Increase of Monetary Limits) (Amendment) Order 1998 SI 1998/996; Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 SI 2001/544; Consumer Credit (Exempt Agreements) Order 2007 SI 2007/1168; Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 SI 2001/544.[56]

2.8.4 Regulatory Frameworks of UK Mortgage Banks

In the UK, the Financial Services Authority oversees all financial services exchanges, markets, and companies, including the mortgage sector. They establish the regulations that businesses must adhere to and impose penalties on those who do not. Since the Financial

[55] 'The Failure of The Royal Bank of Scotland: Financial Services Authority Board Report | PDF | Financial Services Authority | Basel Iii' (2011) <https://www.scribd.com/document/78205288/The-failure-of-the-Royal-Bank-of-Scotland-Financial-Services-Authority-Board-Report> accessed 23 May 2023.

[56] 'Shelter Legal England - Legal Framework for Mortgage Arrears Repossession' (Shelter England) <https://england.shelter.org.uk/professional_resources/legal/possession_and_eviction/mortgage_possession_proceedings/legal_framework_for_mortgage_arrears_repossession> accessed 25 July 2023.

Service Authority is an autonomous organization, its only source of income is the fines collected from companies it regulates.[57] However, the industry has not always been regulated; it was not until the Financial Services and Markets Act 2000 that the single market regulator, the Financial Service Authority was created.[58] The Financial Services Authority (FSA) was the regulator for the financial services industry in the UK between 2001 and 2013. The role of the FSA included regulating banks, financial advisors, insurance companies and intermediaries, and entities engaged in the mortgage business.[59]

In 2013, the UK government chose to dismantle the FSA due to the perceived regulatory failure of the banks following the 2007–2008 financial crises. After a restructuring, the Financial Conduct Authority and the Prudential Regulation Authority were given regulatory powers over financial regulation.[60]

In the UK, the Financial Conduct Authority (FCA) oversees the financial services sector. Its responsibilities include consumer protection, industry stability, and fostering a healthy level of competition among financial service providers. The FCA is accountable to the UK Treasury and Parliament, and its functions are outlined in the Financial Services and Markets Act 2000. The FCA is a private, non-governmental organization that is fully supported by the

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[57] Hughes Nicola, 'Mortgage Market Review: Responsible Lending, (2010)'.

[58] 'Financial Services Authority Website' (1999) https://discovery.nationalarchives.gov.uk/details/r/C18080.

[59] 'Financial Conduct Authority (FCA): The UK's Financial Regulator' (Investopedia) <https://www.investopedia.com/terms/f/financial-conduct-authority-uk-fca.asp> accessed 23 May 2023.

[60] ibid.

fees regulated companies pay. The FCA acts against businesses and people who violate the law and protects consumers by using its criminal, civil, and regulatory enforcement powers.[61]

Prudential regulation and supervision are responsible for regulating around 1,500 banks, building societies, credit unions, insurers and major investment firms. By creating policy for firms to follow, rules require financial firms to maintain sufficient capital and have adequate risk controls in place.[62] It also supervises firms, to ensure that we have a comprehensive overview of their activities so that we can step in if they are not being run in a safe and sound way or, in the case of insurers, if they are not protecting policyholders adequately.[63]

2.8.5 Legal Frameworks of Mortgage Banks in Nigeria

The Nigerian system operates on a federal system of Government, and the country is made up of three regions with thirty-six (36) states. This means that the thirty-six (36) states have different laws covering the operational processes and procedures governing how mortgage banking transactions are handled. For instance, if a household wants to get a mortgage from a financial institution which is not domiciled in the state where the property is located, that means the mortgage lender have to get an agent to go to the registry in the state where the registry is located to confirm the authenticity of the title document.[64]

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[61] ibid.

[62] 'Prudential Regulation' (18 October 2022) <https://www.bankofengland.co.uk/prudential-regulation> accessed 23 April 2023.

[63] ibid.

[64] Owoeye Ayodeji Bamidele, 'The Nigerian Mortgage Finance Market: An Empirical Investigation of Associated Constraints, (2019)'.

Mortgages created in states in the North East, North West (except Kaduna state), North Central, as well as, the Eastern regions are regulated by the Conveyance Act of 1881, originally an English legislation and one of the relics of our colonial history. However, mortgages created in Delta, Edo, Ekiti, Osun, Ondo, Ogun, and Oyo states are regulated by the Property and Conveyance Law, 1959, as passed by the respective State legislatures. In Lagos, the mortgage landscape is regulated by the Mortgage and Property Law of Lagos State, 2010. Mortgage transactions in Kaduna State are regulated by the Model Mortgage and Foreclosure Law, 2017.[65]

In addition to the above, other laws and regulations which apply to mortgages in Nigeria include: The Mortgage Institutions Act, 1989 and The Banks and Other Financial Institutions Act, 1991.

2.8.6 Regulatory Frameworks of Nigeria Mortgage Banks

The Nigerian housing market is an essential component of the economy and the regulation on such vital sector is administered by the Federal Government. The ministry of Power, Works and Housing is solely responsible for the housing sector. The ministry is under the supervision of a federal ministry who is a member of the federal executive council and report to the President of the Federation. And at the state level, the various state ministries of housing take charge for housing at the state but do not report to the Minister at the Federal level. In term of policies transition, there is disconnecting if there are different policy agenda at the federal and state level.[66]

[65] Kehinde Ogundimu, 'Legal and Regulatory Framework for the Mortgage Industry in Nigeria, (2019)'.

[66] Bamidele (n 64).

From financial perspective, the central bank of Nigeria (CBN) and the Securities and Exchange Commission are entrusted with the responsibility of regulating the activities of the housing sector.[67] Additionally, Security and Exchange Commission (SEC), Federal Mortgage Ban of Nigeria (FMBN), and National Housing Trust Fund (NHTF) are also the mortgage banking regulatory organs in Nigeria.[68]

[67] ibid.

[68] ibid.

CHAPTER 3: LEGAL AND REGUATORY FRAMEWORKS FOR MORTGAGE BANKS IN ETHIOPIA: THE REALITY ON THE GROUND-THE CASE OF MORTGAGE BANKS

3.1 HISTORY OF MORTGAGE BANKS IN ETHIOPIA

3.1.1 The Overview of Bank History in Ethiopia

Ethiopian banking history began in 1905 with an agreement made between Emperor Minilik II and Mr. Ma Gillivray, a representative of the National Bank of Egypt, which was owned by the British. In accordance with the agreement, the Emperor opened the first bank, known as Bank of Abyssinia, on February 16, 1906. The Egyptian National Bank oversaw the bank in its entirety.[69]

In 1931, the Ethiopian government acquired the Abyssinia Bank, the first nationally owned bank on the African continent, and renamed it the Bank of Ethiopia. Italian banks were particularly active during Italian occupation (1936-41). After independence, Barclays Bank was established and remained in business in Ethiopia between 1941 and 1943. Other banks were established, including the National Bank of Ethiopia, Commercial Bank of Ethiopia, Banco di Napoli, Imperial Saving and Home Ownership Public Association, Addis Bank Share Co., Ethiopian Savings and Mortgage S.C., Ethiopian Investment Corporation S.C., Banco di Roma (Ethiopia) S.C., and Agricultural and Industrial Development Bank. In January 1975, all privately owned financial institutions, including three private commercial banks, were nationalized and reorganized into one commercial bank, the Commercial Bank

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[69] The National Bank of Ethiopia, 'History of Banking - National Bank' <https://nbe.gov.et/history-of-banking/> accessed 21 March 2023.

of Ethiopia, and two specialized banks, the Agricultural and Industrial Bank (AIB), Development Bank of Ethiopia (DBE), and Housing and Savings Bank (HSB), Construction and Business Bank (CBB).[70]

After the Dergue regime's fall in 1991, Ethiopia transitioned to a liberal economic system, with the Monetary and Banking proclamation of 1994 establishing the national bank as a separate entity from the government. The legal basis for investment in the banking sector was established by Proclamations No.83/1994 and Licensing and Supervision of Banking Business No.84/1994. Financial institutions were reorganized to operate on a market-oriented framework, and new privately owned institutions were allowed to operate alongside publicly owned ones.[71]

Ethiopia has 29 commercial banks, 1 development bank, and 40 microfinance institutions as of 2022. Commercial banks are divided into state-owned and private-owned categories. The National Bank of Ethiopia, Development Bank of Ethiopia, and Commercial Bank of Ethiopia are the only state-owned banks, while the remaining banks are privately owned.[72]

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[70] ibid.

[71] Dereje Asegede, 'Brief History of Banking in Ethiopia On the Occasion of the 75th Diamond Jubilee of the Commercial Bank of Ethiopia' <https://www.linkedin.com/pulse/brief-history-banking-ethiopia-occasion-75th-diamond-jubilee-dereje> accessed 21 March 2023.

[72] Joyce Imiegha, 'The History of Banking in Ethiopia' (17 February 2023) <https://blog.ussd.directory/the-history-of-banking-in-ethiopia/> accessed 21 March 2023.

3.1.2 The History of Housing Finance And Mortgage Banks in Ethiopia

The pre-1975 period in Ethiopia was marked by a feudalistic approach to controlling land, with housing provision primarily handled by the private sector. This laissez-faire system led to overcrowded areas and poor living conditions for many people, particularly in Addis Ababa. The lack of formal housing policies and limited investment in the housing sector contributed to the severe shortage of affordable residential housing for low and middle-income households.[73]

From 1975 to 1991, the central government took control of housing, with Proclamation no. 47/1975 nationalizing all urban land and extra houses without compensation. This led to the creation of various programs to provide housing, including self-help and assisted self-help housing, as well as housing cooperatives. Low-income individuals were offered house plans free of charge and technical assistance from the government while obtaining loans from the Housing and Construction Bank (HCB) with reduced interest rates.[74]

The current situation is more likely a bureaucratically free market policy towards urban development. Following the transitional government change, the transitional government introduced Land Lease Policy No. 80/1993, allowing Ethiopian citizens to possess land for residential and rental purposes. This policy allowed citizens to buy land a bid basis, with a maximum lease of 99 years for residential plots. The government began liberalizing the housing sector by selling houses administered by the public sector, eliminating the assistance

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[73] Esayas Ayele, ‘Policy Impacts on Housing Sector 2006’ <http://www.hdm.lth.se/fileadmin/hdm/alumni/papers/ad2001/ad2001-06.pdf>.

[74] ibid.

of subsidized building material delivery, and ceasing the subsidy of interest rate loans from the financial sector.[75]

Goh is now the only mortgage bank in the country after the Housing and Savings Bank (HSB), which was formed by merging the Imperial Savings and Home Ownership Association and the Savings and Mortgage Corporation of Ethiopia in 1970. The government should initiate housing policy and regulatory frameworks for mortgage banks to enable private sectors and housing developers to become key housing providers. Without government incentives and regulatory reforms, the issue of housing finance cannot be solved by government housing subsidies alone. The government should incentivize the establishment of strong, effective, and long-lasting mortgage banks by facilitating regulation of the supply chains of land and finance.[76]

Housing finance and mortgage banking complement one another, and the government, to enable the private sectors and housing developers to be key housing providers, should initiate housing policies and regulatory frameworks for mortgage banks. Without government incentives and regulatory reforms for mortgage banks, the issue of housing finance cannot be solved by government housing subsidies alone in the country. In this country, the government has to do way more than subsidizing the house by enabling the mortgage markets to work out and ready to leave the market. The Government should have to incentivize establishment of strong, effective, and long-lasting mortgage banks by facilitating regulation of the supply chains of land and finance.

[75] ibid.

[76] Monitor (n 4).

3.1.3 The History of The Ethiopian Construction And Business Bank (CBB)

The Construction and Business Bank (CBB) is Ethiopia's pioneer bank in the mortgage industry, established in 1994. It has played a significant role in extending housing loans for the construction, repair, modification, and acquisition of residential and nonresidential buildings, construction sector activities, hotels, and tourism. The bank also provides business loans to meet the working capital requirements of commercial and industrial activities. It also offers foreign banking services. However, the CBB has a serious limitation in capital to reach more customers and potential house builders. To enable the bank to play an expanded role in the housing market, the government will need to invest more capital in it and increase its capacity to extend loans to potential home builders. If the government chooses not to proceed with privatization, the bank can serve as a clearing house for the government to provide low-cost housing to poor households at highly subsidized rates.[77]

In 2016 the bank becomes defunct and merged with Commercial Bank of Ethiopia. The researcher interviewed Ato Mengistu Shimelis, the Credit Monitoring Director at Commercial Bank of Ethiopia on the reasons of merger between the giant government banks in the country that is CBE and CBB. The Director said that “the main reason was the non-performing loans of Construction and Business Bank and poor performances of the bank nearly for five years before its merger in 2016. Not only this, the director also adds that the absence of specialized regulatory framework for the bank also contributes to the poor

[77] Meheret Ayenew, ‘Overview of the Housing Finance Sector in Ethiopia, Commissioned by the FinMark Trust with Support from Habitat for Humanity, 2009’.

performance of the bank which finally leads to merger."[78]From this `it is understandable that Ethiopia experiences unsuccessful government mortgage banks before the establishments of private mortgage banks.[79] This can be demonstrated by the previous facts of formal housing finance mechanisms which didn't have good record in Ethiopia.[80] In addition, the establishment of CBB as a universal bank in line with the dictates of Regulation No. 203/1994 issued by council of ministers may also weakening the potential existence of the bank in the country by assimilating the bank's regulatory frameworks with conventional banks regulatory mechanisms which was different in reality. The simple existences and flourishment of mortgage banks in the country without effective and flexible mortgage banks regulatory frameworks is like snowing the seed on the rock i.e. means that nothing you can expect from it.

3.2 ACCESS TO HOUSING FINANCE IN ETHIOPIA

Based on 2015 estimates, Ethiopia will have approximately four million new urban households by 2027 and approximately 9.7 million by 2037. Demand for urban houses is estimated at 471 000 per year from 2015 to 2025 and 486 000 houses per year from 2025 to 2035. Poor land management practices, lack of diversified housing delivery systems, the

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[78] Interview with Ato Mengistu Shimelis, Credit Monitoring Director at Commercial Bank of Ethiopia 25 July 2023.

[79] Emebet Hailemichael, 'NATIONAL REPORT ON HOUSING & SUSTAINABLE URBAN DEVELOPMENT Ministry of Urban Development, Housing and Construction National Report on Housing & Sustainable Urban Development' <https://www.academia.edu/33311975/NATIONAL_REPORT_ON_HOUSING_and_SUSTAINABLE_URBAN_DEVELOPMENT_Ministry_of_Urban_Development_Housing_and_Construction_National_Report_on_Housing_and_Sustainable_Urban_Development> accessed 5 September 2023.

[80] ibid.

absence of a robust and affordable housing construction industry and the absence of a diversified housing financing system are some of the factors that continually shape the housing stock supply in Ethiopia.[81]

Ethiopia has an underdeveloped system of housing finance. More than half of the housing market is financed informally through relatives, friends, and savings groups, and only 23% through mortgages. The low mortgage uptake is linked to high interest rates, regulatory controls, low incomes, credit risk, inadequate supply of affordable housing, and low financial literacy.[82]

And affordable financing to buy housing is inadequate due to the high interest rates on mortgages, the low number of mortgage providers and the high collateral requirements to secure financing. Private Banks keen to offer mortgages are needed. Salem Bank and Goh Botoch Bank S.C. recently started operations in 2021, and their inclusion could begin to make an impact. However, the affordability gap in the housing market means the low-income bracket end up in informal settlements, with government-subsidized (IHDP) housing benefiting only the upper and high end of the market. Limited access to decent and affordable housing has exacerbated the growth of informal and squatter settlements in the main city, particularly among the urban poor.[83]

Ethiopia needs to create an enabling environment that fosters private sector delivery of housing. In addition to supportive policies, amenities such as infrastructure have to be

[81] 'Housing Finance in Africa Yearbook' (CAHF | Centre for Affordable Housing Finance Africa, 3 November 2021) <https://housingfinanceafrica.org/resources/yearbook/> accessed 29 March 2023.

[82] ibid.

[83] ibid.

provided, proper land pricing ensured, and development land made available. Support on the demand side is provided by making sure that buyers have access to finance and general financial inclusion is improved.[84]

Access to housing finance is very important to alleviate the shortage of housing supply and help people access affordable housing. This can be improved by reforming the overall stringent financial control by the government and enabling the market to work for mortgage banks, private housing developers, and other stakeholders. Accessing finance for housing is difficult for households and private firms without government commitments to open up financial sectors for a market-based system and improve regulatory frameworks for mortgage banks in the country.

3.3 MAJOR LAWS RELATING TO MORTGAGE AND MORTGAGE BANKING IN ETHIOPIA

3.3.1 The Civil Code of Ethiopia

The Ethiopian Civil Code provides no definition for the term mortgage; therefore, what we can do is read the articles that regulate the civil code and provide a definition that capsulate the features of mortgage as they are enshrined in the civil code. Accordingly, for the purpose of this research, we may define a mortgage as a legal instrument that creates real security rights on immovable properties or special movables for the payment of a debt or the performance of an obligation without affecting the possessory and ownership rights of the mortgagor. From the definition, we can infer that a mortgage gives the creditor a stronger right than what he or she gets under the general law that creates the primary obligation.

[84] ibid.

Under the general contract law, for example, we can see that the law provides that the rights of creditors are protected by all the assets of the debtor.[85] This is in line with the legal maxim that "the property of the debtor is the common pledge of his creditors." However, if one creditor has a mortgage on one of the assets of the debtor, he will have a priority right to be paid first from the proceeds of the mortgaged property. In addition to this, other contracts entered into by his debtor after the creation of the mortgage would not be set up against the claims of the mortgagee.[86]

Another point is that a mortgage can be created by contract, by judgment, by law, or by a private agreement.[87] The essential requirements for the formation of a valid mortgage contract are that it should be in written form and that there is a registration requirement under Ethiopian law.[88] The main advantages of being a secured creditor and the privileges of the creditor who has a mortgage right over an immovable based on the general concepts and principles are the right to be paid in priority, the right to follow an immovable[89] and the right to be protected by a mortgage contract.[90] Since the mortgage banks are specialized in mortgage loans, signing a contract and concluding an agreement with the qualified borrowers are their day-to-day activities. Accordingly, the signed mortgage contract should be registered. In cases where an issue arises between mortgage banks and their customers, the

[85] Ethiopia Civil Code Proclamation No. 165/1960. Article 1888

[86] 'Ethiopia Civil Code Proclamation No. 165/1960.' (1960) <https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=52399> accessed 24 May 2023. Articles 1989; 1990.

[87] ibid. Article 3041

[88] ibid. Article 1723(1) , 3045, 3052, 3081

[89] ibid. Article 3059, 3066, 3067, 3069, 3070, 3107 3073, 3074, 3085, 3086, 3087

[90] ibid. article 3077, 3078, 3079

first thing the courts do is examine their contracts according to their contract and general contract law. The overall registration and execution of mortgage contracts by the mortgage banks should be regulated specifically by the mortgage banks regulatory framework rather than scattered in different laws of the country. Under the civil code, there are a lot of outdated articles on mortgage matters, and some of them are amended by other related laws, while others remain useless till now. Therefore, the government has to enact an exhaustive and detailed regulatory framework for mortgage banks in the country to enable the mortgage market to work.

3.3.2 The Commercial Code of Ethiopia

The concept of a mortgage under the commercial code also resembles that of the civil code, and due to its business nature, it is also well incorporated under the commercial code. A business may be mortgaged, and a mortgage for a business can be created by the law or a contract. Any mortgage, whether legal or contractual, may not be invoked against third parties unless it is registered pursuant to the relevant law. The provisions of this law shall apply to mortgages established on business without prejudice to special rules embodied in relevant laws concerning the establishment of security rights over movable property.[91]

The rights of the secured creditors under the mortgaged business are those of selling, assigning, and letting out a business. It may be provided in the contract that the debtor shall pay forthwith the debt secured by the business in the event of the business being sold, otherwise assigned, or let out for hire. Such contractual provision shall be of no effect unless

[91] Commercial Code of Ethiopia Proclamation No. 1243/2021. Article 143

it is entered in the register at the time of the registration of the contract.[92] The right to reduction of the guarantee is where the debtor reduces or is likely to reduce the value of the business, in particular by changing the site of the business, by failing to pay the rent of the premises on which the trade is carried on, or by reducing the stocks. Any secured creditor may demand that new sureties be produced and, where not produced, may move the court to order that his claim be paid forthwith.[93] Right to relocation of the business: a debtor who wishes to relocate his business shall inform the creditors secured by the business. The debt shall become due immediately where such notice is not given or relocation is effected earlier than one month from the relocation date indicated in such notice.[94] With the right to follow the business, a secured creditor may claim the business from a third party, as the mortgage follows the business into whatever hands it may fall.[95] Secured creditors shall have a preferred right on the proceeds of the sale of a business. As between secured creditors, rights shall rank in accordance with the date on which such rights have been registered. Mortgages registered on the same day shall rank concurrently. The legal mortgage of the seller shall rank before contractual mortgages.[96] Under the commercial code of 2021 the concept of mortgages are incorporated as a pledge of which the movable business are mortgaged and the rights created on this forms of mortgage are not a real right as indicated and it is different from the concept of mortgage banking. And the commercial code of the country also disregarded the concept of mortgage banks as a business entity.

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[92] ibid. Article 149(2)

[93] ibid. article 150

[94] ibid. article 151(1)

[95] ibid. article 152(1)

[96] ibid. article 154

3.3.3 Ethiopian Urban Land Lease Holding Proclamation No. 721/2011

Article 40 of the Constitution of the Federal Democratic Republic of Ethiopia proclaimed that "land is the property of the state and the peoples of Ethiopia and that its use shall be subject to specific regulation by law."[97] The sustainable rapid economic growth registered across all economic sectors and regions in the country has necessitated continuously and increasingly the demand for urban land which requires such an appropriate administration that it is efficient and responsive to land resources demand.

The private sector, including households and firms, has little direct access to formal land supply because the majority of the land is allocated for government-led priority programs such as the Integrated Housing Development Program or government uses. The limited supply to the private sector has driven households to seek accommodation in the informal markets and discouraged business owners from investing in or expanding their enterprises. Informal land and housing supply by farmers is booming in pier-urban settlements, becoming de facto sources of affordable land and housing supply.[98]

Slow implementation of the legal cadaster has limited protection and transaction of lease rights. The lease proclamation has also not provided an enabling environment for a well-functioning land market. Lack of clarity on lease law has discouraged the conversion from permits to leases. Restrictions and conditions in the leasehold rights have hindered their

[97] Ethiopian Urban Land Lease Holding Proclamation No. 721/2011. Preamble.

[98] 'Unlocking Ethiopia's Urban Land and Housing Markets : Synthesis Report, (2017)' (n 10).

transferability and reduced the viability of using the leasehold title as collateral to secure land or improve costs. Complex lease pricing further limits market entry or participation.[99]

Land markets are not linked to a working mortgage market, and the housing finance system is underdeveloped. There is a noticeable lack of developer and construction financing on the supply side; on the demand side, most formal mortgages originate through the Integrated Housing Development Plan. In fact, most of the housing is financed through informal channels. Although banks are growing their loan books, they are still unable to offer affordable products to regular clients. This is primarily due to the high risk associated with mortgage lending and a lack of long-term funds.[100]

In principle the law should provide Ethiopians with reliable land information and security of tenure and modernize the country's property registration system. However, public ownership of land has constrained the development of the housing market in the country. First, due to the absence of a dedicated land administration agency and insufficient staff, the country lacks a proper land administration mechanism. This absence of clear land title deeds and security creates difficulties for financing housing construction. Second, the private sector cannot obtain the required amount of land to construct houses. Third, land distribution has become a source of corruption. The price of urban land is high due to speculation, and lack of clarity on how to distribute and manage it.[101]

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[99] ibid.

[100] ibid.

[101] 'ETHIOPIA' (Formax) <https://www.formaxco.com/ethiopia> accessed 22 March 2023.

Generally, housing finance and land production go hand in hand with one another, and expecting one to exist without the other is unrealistic and impossible. The Minister of Urban Development and Construction was mandated to facilitate the land for private firms and households. Accordingly, the Minister has to do better on land production and managing urban land than wait for government housing subsidies, which can be inconsistent and will stop in the near future. Issues in the urban land market should be addressed through market-based delivery with a clear understanding of costs and benefits, which may speed up housing finance in the country.

3.3.4 Asset Classification And Provisioning (5th Replacement) Directive No. SBB/69/2018

This directive is enacted on the regulation of asset classification and provisioning in general and loans or advances in particular. The directive lists a lot of requirements banks should have to fulfill, including reviewing and classifying loans and advances, reporting defaulted loans and advances on time, accounting for accrued but uncollected interest on loans or advances, maintaining the provisions, accurately reflecting the risk inherent in lending activities, and accurately disclosing the capital and earnings performance of the bank according to international accounting and national regulatory standards. The National Bank of Ethiopia has to give uniform guidance to banks on the manner of asset classification and provisioning.[102] Accordingly, mortgage banks are subject to this directive because there are no specific governing laws for them yet. Following this static regulatory condition for mortgage banks can be an obstacle and can limit their performance. To ensure the

[102] Asset classification and provisioning (5th replacement) directive No. SBB/69/2018.Preamble

effectiveness of the mortgage market in the country, the government should have to reframe regulatory frameworks for mortgage banks and facilitate their market structure.

Article 3 of Directive No. SBB/69/2018 states the scope of the directive by saying that "this directive shall be applicable to all commercial banks operating in Ethiopia." Under this directive, the National Bank of Ethiopia tries to address the regulation of loans and advances by banks in accordance with national and international accounting and regulatory standards.[103] In addition to the directive applicable to all commercial banks operating in the country, it is not clear whether the newly established mortgage banks are subject to this directive or not. Mortgage banks' loan portfolios and tenures differ from those of commercial banks. It is understandable from articles 7 and 8 of the directive that the provisioning requirements of loans or advances, portfolio composition, and review of the financial statements of the borrowers, respectively, indicate the conditions that are against the nature of the mortgage banks. So without the special directive for mortgage banks, it is difficult for mortgage banks to be regulated under this directive due to mortgage banks long-term loan accounts of 80% and above. More of their activities are guaranteed loans up to a maximum of 30 years, making it difficult to maintain the provisioning requirements of loans or advances under this directive. Not only that, the National Bank of Ethiopia should also remove the conditions indicated in Article 8 of the directive, which relate to limiting the long-term loan to 20% of the bank's total capital, which is against the mortgage bank's business model.

[103] Asset classification and provisioning (5th replacement) directive No. SBB/69/2018. Article 3

3.3.5 Banking Business Proclamation No. 592/2008

Mortgage Banks are highly important in socio economic development of one country in general and for the development of housing finance in particular. It has a number of attributes which, if not managed properly, has the potential to generate financial system and macroeconomic instability. Having comprehensive law for the licensing and supervision of the banking business is essential to ensure safety, soundness and stability of the mortgage system. This Banking business proclamation is also one of the most important legal frameworks for universal banks in the country. However, the proclamation don't clearly shows the recognition of specialized banks especially mortgage banks in the country and this can be understandable from the definition of the 'banking businesses activities' of the proclamation under its article 2(2).[104] This proclamation is intended for conventional banks in the country of which engages on the similar business models of taking deposit and lend it out for their customers.

Article 11 of the proclamation sets limitations on the acquisition of shares, and due to their nature, mortgage banks have to do more to mobilize huge amounts of funds and to do so, the restrictions stated under this article can hinder the banks performance by limiting the flow of capital. The mortgage banks may get huge funds from different sources, and limiting the acquisition of shares is not the solution for regulating the bank.

Article 18 of the proclamation states the financial obligations and limitations of the banks by setting capital requirements. The way of determining mortgage bank capital requirements should be different from conventional banks because they are different by their business risk,

[104] Banking business proclamation No. 592/2008. Article 2(2)

business models, and business asset and liability assessment. Again, Article 19(1) of the proclamation imposes the legal reserve requirement on banks to deposit 25% of their net profit into their legal reserve account each year. Let alone keeping a huge amount of reserve, mortgage banks are struggling to mobilize funds for their survival in the market.

Article 20 of the proclamation also stipulates the maintenance of adequate liquidity and reserve balance conditions for banks. In the first place, this condition is intended for conventional banks, and mortgage banks cannot bear this condition because of their nature. Art. 20(3) state that "Any bank shall maintain a cash reserve balance with the National Bank in accordance with the directive to be issued by the National Bank." Article 21 of the proclamation also indicates provisioning, depreciation, loss coverage, and amortization. Maintaining these conditions by the bank is critical, but mortgage banks have difficulty doing so due to the nature of their business. Another point worth mentioning is the limitations on certain transactions of Article 22(1), the conditions and limitations on investments of banks, and a loan, advance, or other credit facility, financial guarantee, or any other commitment or contract given by a bank, directly or indirectly, to a person shall be determined by a directive to be issued by the National Bank. Again, the limitations indicated in other laws by the basis of this proclamation hinder the mortgage banks by limiting their investments and activities. So, the government should consider any conditions of the proclamation in detail and regulate mortgage banks differently.

3.3.6 Investment on Development Bank of Ethiopia Directive No. SBB/81/2021

Whereas, there is a need to secure stable and long-term funding so as to sustainably finance development oriented projects. Whereas, it is found important to secure funding from the domestic market other than government intervened financing modality. Whereas, it is decide to raise funds from commercial banks through the sale of federal government guaranteed Development Bank of Ethiopia Bonds.[105] Art. 3 and 4 of the directives stipulate scope of the applicability of the directives to all commercial banks in the country and the condition to buy the bond from DBE to support the government initiatives. Private bank's lending activity is further curbed by the requirement that 27% of their new loan disbursements be invested in low-yielding government bonds as indicated under the NBE directives on the DBE Bonds.[106] This is a compulsory requirement of National Bank of the country on the commercial banks and requirement is difficult for mortgage banks to be abided by, the directives requirements is not easy for mortgage banks to finance long-term housing loan. Even the mortgage banks demanding the National Bank of Ethiopia to allow them on issuing of the bond like mortgage banks of other jurisdiction for itself than buying bonds from the government bank. Not only this, mortgage banks to stay in the market successfully, they have to do more on searching the sources of funds including from the government stock and affiliates of housing and credit associations. Mortgage banks in nature needs huge capital mobilization to be effective and stay in the housing finance industry consistently for itself than supporting government initiatives. Hence, mortgage banks to be effective and consistent in the country, the government should eliminate regulatory challenges of this bank and facilitate the smooth flow of the fund for the market to operate.

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[105] Investment on development bank of Ethiopia bonds directive No. SBB/81/2021. Preamble

[106] 'Unlocking Ethiopia's Urban Land and Housing Markets : Synthesis Report, (2017)' (n 10). P-47

3.3.7 Limitations on The Investment of Banks (2nd Replacement) Directive No. SBB/65/2017

Whereas, investment related activities of banks require sound and prudent practices to effectively manage risks; Whereas, diversification of business activities and setting limits for investments are essential tools for risk management; Whereas, there is a need to ensure that banks focus on their core business which is debt financing managed at arm's length.[107]

Art. 3 of the directive indicate the scope of its application to all banks in the country. This shows the mortgage banks are also subject to this directive's applicability. Art. 4 of the same directive also stipulate the limit on the investment and financing of banks. The article lists bank investment limitations as follows:

Art. 4: Limits on Investment and Financing of Banks

"4.1 No bank shall directly engage in insurance business. However, a bank may hold equity shares not exceeding 5% of an insurer's subscribed capital in a single insurance company.

4.2 A bank that currently holds equity shares in excess of the limits stated under sub-article 4.1 hereinabove shall reduce such holdings to the stated limits or below in line with article 3 of the National Bank Directive No. SIB/35/2013.

4.3 No bank shall engage directly in non-banking business or in businesses other than those indicated under sub-article 2.2 hereinabove.

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[107] Limitations on the investment of banks (2nd replacement) directive No. SBB/65/2017. Preamble

4.4 Notwithstanding sub-article 4.3 hereinabove, a bank may: i. engage in interest-free banking services in line with the National Bank Directive No.SBB/51/2011; ii. hold equity interest in financial infrastructure; or iii. hold up to 10% equity shares in a single non-banking business other than insurance.

4.5 Where a bank engages in interest-free banking business, the National Bank Directive on Credit Exposure to a Single and Related Counterparty No. SBB/53/2012 shall also apply to the bank mutatis mutandis by treating all asset exposures of such bank to interest-free banking activities as loans and advances as defined in the above Directive.

4.6 A bank's aggregate equity investment in all non-bank businesses, including insurance companies, shall not exceed 10% of its net worth.

4.7 Notwithstanding sub-article 4.6 hereinabove, the National Bank may waive the investment limit where it deems necessary.

4.8 No bank shall invest more than 10% of its net worth in real estate acquisition and development, other than for its own business premises, without prior approval of the National Bank.

No bank shall deal in securities. However, a bank may provide securities brokerage services to its customers, acting as their agent;

4.10 A bank's equity participation in any financial institution other than an insurance company in line with sub-article 4.1 hereinabove shall be subject to prior authorization of the National Bank."[108]

This article of the directive shows the restriction of bank involvement in investments other than those allowed by the National Bank of Ethiopia for banks. Mobilization of resources is difficult for mortgage banks without diversification of the sources of funds, including deals in securities and other forms of negotiable instruments like the issuing of bonds. Due to the need for huge resource mobilization by mortgage banks, restrictions on this directive can substantially hinder the performance of mortgage banks in the country. For the mortgage to be effective, the government shall introduce the capital market in the country, not even restricting the mortgage banks from dealing in security.

3.3.8 Interest Rate Directive No. NBE/INT/12/2017

Regulating and supervising of deposit and lending interest rates of banks in Ethiopia are the main important regulatory frameworks of the banks. The directive stipulates the deposit and lending interest rates of banks under its article 1 and 2 of the same directive respectively. However, the stipulated way of charging interest rates on deposit and lending shall be reviewed to make an inclusion of mortgage banks by the regulatory organ. As indicated under the art. 2.2 of the directive state that 'lending rate on loans and rediscount facilitates granted by NBE to Commercial Banks and other financial institutions are determined by the NBE from time to time.[109] Under this article the NBE should have to consider the mortgage

[108] Limitations on the investment of banks (2nd replacement) directive No. SBB/65/2017. Article 4

[109] Interest rate directive No. NBE/INT/12/2017. Article 2(2)

banks in different ways than conventional banks due to the need of incentives by mortgage market of the country and the peculiar business model of the mortgage banks.

3.3.9 Reserve Requirement (8th Replacements) Directives No. SBB/84/2022

The reserve requirement of the banks imposes conditions on the banks to deposit the birr to the NBE for the case of emergence, which can help them keep their balance in bad times. This condition can be difficult for the banks, which follow a different business model from other conventional banks.

Art. 2 obliges the banks to open two separate birr accounts, which are the reserve account and payments and settlement account with the National Bank of Ethiopia.[110] In this case, mortgage banks in Ethiopia are the banks that finance the house for a long-term maximum of up to 30 years, and the condition of the reserve imposed on all banks can be a potential challenge for mortgage markets to successfully operate in the country.

Article 3 of the directive stipulated the reserve requirement as follows:

"3.1) A bank operating in Ethiopia shall maintain in its Reserve Account, as stated under Article 2.1 a of this directive, seven percent, on average, in every calendar month, of all birr and foreign currency deposit liabilities held in the form of demand/current deposits, saving deposits, and time deposits.

[110] Reserve requirement (8th replacements) directives No. SBB/84/2022. Article 2

3.2) Notwithstanding sub-article 3.1 hereinabove, a bank shall, at all times, maintain a minimum of 5% of all birr and foreign currency deposit liabilities held in the form of demand/current deposits, saving deposits, and time deposits."[111]

Art. 3 of the bank even stipulates further the condition of the reserve by setting the minimum percent of the reserve account deposit, and accordingly, Art. 4 of the same directive restrict other assets from being computed as a reserve balance. This condition of the reserve balance is targeted for banks of a commercial nature that follow similar forms of business models, and it is difficult for specialized banks to be regulated by this directive due to the lack of enough funds to finance the house for the long term while at the same time expecting them to deposit for the reserve fund. The mortgage banks expect the NBE to allow them the means of borrowing from the central banks to survive in the market, let alone restraining their capital by reserve requirements. .

3.3.10 Liquidity Requirement (5th Replacement) Directives No. SBB/57/2014

The NBE imposed liquidity requirements as one of the regulatory steps for the banks to follow. This requirement can help the banks meet their payment obligations in a timely and cost-effective manner.

Art. 3 of the directives indicate the applicability of this directive to all banks except DBE.[112] This directive's applicability also extended to mortgage banks in the country, and it is not easy to be treated like other conventional banks on liquidity conditions, and the NBE should

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[111] Reserve Requirement (8th Replacements) Directives No. SBB/84/2022 . Article 3

[112] Liquidity requirement (5th replacement) directives No. SBB/57/2014. Article 3

have to enact a specific regulatory framework for mortgage banks on its overall aspects. The business model of mortgage banks is different from that of conventional banks, and the liquidity conditions of the directive are not easily attained. This can be a challenge to the smooth flow of mortgage market businesses because it is not easy for mortgage banks to maintain the liquidity assets of 15% of their net current liabilities as stated under Art. 4(3) of the same directives. Mortgage banks are banks that do not rely on deposits to provide funds like conventional banks, and even it is difficult for them to mobilize resources for themselves let alone put down liquidity assets equal to conventional banks.

3.4 REGULATORY REGIME RELATING TO HOUSING FINANCE AND MORTGAGE BANKS IN ETHIOPIA

3.4.1 Roles of Ethiopian National Bank on Mortgage Banks Regulatory Frameworks

The National Bank of Ethiopia is the most prominent organization in connection with the regulation of banks in Ethiopia. Under its establishment proclamation no. 591/2008 of Article 5, the National Bank of Ethiopia was entrusted with essential powers, including the regulation and supervision of banks in the country. The proclamation extensively lists the powers and duties of the Ethiopian National Bank under Article 5 as follows:

Article 5: Powers and Duties of the National Bank

"For the fulfillment of its purposes, the National Bank shall have the powers and duties to:

1 coin, print, or cause to be coined, printed, and circulated the legal tender currency;

2: dispose of or cause to be disposed of coins and notes issued legally;

3) issue its own debt and payment instruments;

4: regulate and determine the supply and availability of money and credit, as well as the applicable interest rates and other charges;

5: formulate and implement an exchange rate policy;

6: manage and administer the international reserves of Ethiopia;

7: license and supervise banks, insurers, and other financial institutions;

8: create favorable conditions for the expansion of banking, insurance, and other financial services;

9: Set limits on gold and silver bullion and foreign exchange assets that banks and authorized dealers can hold;

10: Set limits on the net foreign exchange position and on the terms and amount of external indebtedness of banks and other financial institutions;

11: Make short-term and long-term refinancing facilities available to banks and other financial institutions as might be necessary;

12: accept deposits of any kind from foreign sources;

13: collect data from any person and prepare periodic economic studies on the balance of payments, money supply, price forecasts, and other relevant statistical indicators for analysis and for the formulation and determination of monetary, saving, and exchange policies as are useful to the Ethiopian economy;

14/ act as a banker, fiscal agent, and financial advisor to the government;

15/ take such steps to establish, modernize, conduct, monitor, regulate, and supervise payment, clearing, and settlement systems;

16/ act in compliance with international monetary and banking agreements of Ethiopia and represent Ethiopia in the International Monetary Fund and other international financial organizations formed by central banks;

17 special commemorative coins;

18: Establish and manage a deposit insurance fund; exercise such other powers and functions to execute its purposes as central banks customarily perform."[113]

National Bank of Ethiopia has the power to enact directives on the establishment of specialized banks like the mortgage banks and others, to protect the interest of the stakeholders, banks, customers and the public at large in the country. Today mortgage banks actively performing in the country even if there is no prudent regulatory framework suitable for them. As the researcher have interviewed one of the National Bank of Ethiopia's banking and supervision department expert whose name is not mentioned due to confidentiality said 'the reason why National Bank of Ethiopia reluctant to issue directives on the mortgage banking until now is due to the lack of mortgage banking experts and also the newness of mortgage banking activities to the country as a full fledge private mortgage bank. Not only this, even the National Bank of Ethiopia's banking and supervision department requesting the mortgage banks in the country to prepare suitable proposal of regulatory framework for their

[113] National Bank of Ethiopia establishment proclamation No. 591/2008. Article 5

banks and submitted to the department".[114] From this, it is understandable that National Bank of Ethiopia is inviting the concerned stakeholders to take part in the development of regulatory frameworks helps to establish reliable mortgage market in the country. But lack of enough skilled manpower on the area shouldn't be underestimated and National Bank of Ethiopia have to prepare itself from every aspects to support the consistency of healthy and effective mortgage market in the country.

Frezer Ayalew, Director of the Banking Supervision Directorate at National Banks of Ethiopia, says 'the central bank has no intention of introducing a directive concerning mortgage banks soon. "There are no banks providing specialized services in Ethiopia. Any bank licensed in Ethiopia operates under existing banking laws."[115] However, the speech of the director takes both sides of enacting and vice versa of the directives governing mortgage banks in the country. However, after certain period of time the officials at the National Bank of Ethiopia (NBE) are drafting a new directive to set new requirements needed to establish a mortgage bank in Ethiopia. It is a move taken following a plea by industry insiders, who have been calling for the introduction of separate rules for the establishment of specialized banks. Since last year, the central bank has licensed five commercials banks, of which, two provide fully-fledged interest free banking service. Goh Bank is the only self-proclaimed specialized financial institution that has joined the industry as "a mortgage bank" last year, though it is licensed as a conventional bank by the regulatory body. Frezer Ayalew, Bank Supervision director, confirmed to The Reporter that a committee has been formed to draft the new

[114] Interview with a high ranking expert in National Bank of Ethiopia who was not consented to the disclosure of his name and identity, on July 23, 2023

[115] Ashenafi (n 8).

directive to govern mortgage banks. "It is going to address how we are going to incentivize those interested to join the financial sector as a specialized bank," said Frezer. The directive is expected to explicitly address requirements needed to form a mortgage bank. Officials believe it should be treated differently from the conventional ones, as its business model is distinct from others. "A study is underway to decided how mortgage banks should operate," said Solomon Desta, vice governor of the NBE.[116] National bank of Ethiopia is gradually considering the development of mortgage banking regulatory framework according to the above discussion.

Researchers have interviewed Ato Gobena Worana, the vice director of the banking supervision directorate at the National Bank of Ethiopia, on the current regulatory framework status of mortgage banking in Ethiopia. He said that "National Bank of Ethiopia regulates and supervises mortgage banks in the same way as other banks because the National Bank of Ethiopia licenses mortgage banks as conventional banks, and there are no other banking laws that specifically govern specialized banks in the country than the general banking business proclamation of 592/2008. In fact, mortgage banks have a different business model from other banks, and it is important to have specific regulatory frameworks for mortgage banks. Currently, the trend of mortgage banks is under study by the National Bank of Ethiopia to develop directives that suit the peculiar nature of their services and products. The reason why the National Bank of Ethiopia is reluctant to enact the mortgage banking directives is a

[116] Selamawit Mengesha, ‘Central Bank Begins Drafting New Directive For Specialized Banks | The Reporter | Latest Ethiopian News Today’ (2 April 2022) <https://www.thereporterethiopia.com/22526/> accessed 24 May 2023.

matter of time, and the bank will develop the directives on the regulation and supervision of mortgage banking recently".[117]

3.4.2 Regulation And Supervision of Mortgage Banks in Ethiopia

Bank regulation typically refers to the rules that govern the behavior of banks, whereas supervision is the oversight that takes place to ensure that banks comply with those rules. More specifically, bank regulations exist to safeguard the industry against systemic risk, protect consumers, and achieve stability. Regulation is also important for the efficiency of the banking industry.[118]

The assessments of some regulatory variables are so important to look at the effective presence and performance of mortgage banks in the country. Yet mortgage banks in the country have had no effective and impactful presences compared to other jurisdictions since their establishment in the country.[119] This can be understood from the defunct and amalgamated construction and business bank, which is the former Housing and Savings Bank, with that of Ethiopian Commercial Bank due to the non-performing loans of the bank and the lack of an effective and specific regulatory framework for the bank, which can help the bank operate properly.[120]

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[117] Interview with Ato Gobena Worana, vice director of banking supervision director at National Bank of Ethiopia on 24 July 2023

[118] Lelissa Tb and Kuhil Am, 'Are Regulatory Measures Influencing on Bank Performances? The Ethiopian Case' (2018) 8.

[119] Yewondwossen (n 6).

[120] Interview with Ato Mengistu Shimelis, Credit Monitoring Director at Commercial Bank of Ethiopia and Ato Endashew Habte Credit Portfolio and Industry Analysis Expert at Credit Monitoring Director Department of Commercial Bank of Ethiopia on 24 July 2023.

Recently private mortgage banks started to flourish in the country by studying the demand of housing market in the country.[121] These developments of housing finance in the country have to be supported by the government to minimize high demand of housing in the major cities, specifically in Addis Ababa. Even though the government supporting low and mid-income households with different housing initiatives and condominium houses, the accumulated demand of housing over the years in the country can't be stabilized easily without the involvements of mortgage banks in the country.[122] Therefore, government and private stakeholders have to goes hand in hand by supporting one another because the matter of citizens housing is also one of the government's key assignments. On this matter the researcher have interviewed one of the National Bank of Ethiopia's Legal Directorates Department Legal Expert Ato Mesfin Getu, He Said that "currently Mortgage Banks in the country have no specific regulatory frameworks and they have been regulated and supervised as any other conventional banks and governed by the banking business proclamation No. 592/2008. He added that "banking business proclamation is on the amendment process and one of the main reasons for the amendments is to recognize the specialized banks. He also further mentioned that, after the amendment of business banking proclamation No.592/2008 the mortgage banks will have specific regulatory frameworks which will includes their licensing requirements, capital conditions, reserve issues, liquidity issues, provisioning issues, exposure issues and also how they can engage in the market with other banks and

[121] Ashenafi (n 8).

[122] Yewondwossen (n 6).

with their customers, about their supervision and also about their liquidation at the end.[123] Ato Mesfin Getu also mentioned the importance of having specific legal and regulatory frameworks which can helps to clearly define peculiar nature, risk and commitments of mortgage banks by saying "The National bank of Ethiopia will enact the directives in the future that can enumerates the conditions of licensing, supervision and deposit mobilization of mortgage banking in the country because mortgage banks are different from conventional banks in every aspects like their business model, their nature, their products and services."[124]

3.4.3 Regulating Mortgage Banks in Ethiopia From Industry Insiders Perspective

Currently, Goh Betoch Bank has started to operate successfully in the country, even though there are certain legal and regulatory impediments to it. The bank announced that it expects policy support from the regulatory body, NBE, to amplify the required success, while Yinager Dessie, Governor of NBE, promised to back the operation of the first private mortgage bank.[125] Mulugeta Asmare, the founding president of Goh, said that the bank is expected to see some policy changes from the regulatory body and the government in general to attain its target, which is also one of the government's top economic development pillars that is mentioned on its ten-year economic plan. "We want to see preferential treatments on NBE policies, like the composition of the long-term loan portfolio, which is now 20 percent

[123] Interview with Ato Mesfin Getu, Legal Expert at National Bank of Ethiopia’s Legal Directorate Department on 24 July 2023

[124] Interview with Ato Mesfin Getu, Legal Expert at National Bank of Ethiopia’s Legal Directorate Department on 24 July 2023

[125] Yewondwossen (n 6).

of the total portion of loans and advances for commercial banks, and enable them to partner with foreign fund sources."[126]

Mulugeta said that the bank also expects a conducive policy environment and other segments of support from the Ministry of Urban Development and Construction and similar public offices in regions and cities to realize the housing solution in the country. Yinager said that NBE will consider supporting such kinds of specialized financial firms because "the country needs different specialized banks besides the existing commercial banking scheme." He said that currently, most of the existing banks are financing commerce, while the residential housing problem, mainly in urban areas, is very high and should be backed by a financing scheme. The governor appreciated the initiative of Goh, which was formed to support the housing and construction sector, which is also one of the tools for economic growth in the country.

"On our ten-year economic plan, the government and political leaders have underlined that special support shall be provided for banks that are forming on the focus of housing financing," Yinager says, adding that "the sector and demand are very high and need more similar banks, and the government will also provide special support."[127]

The lack of functioning mortgage markets in Ethiopia impedes the emergence of both savings institutions and long-term financing facilities. Risk-bearing financing is provided in

[126] ibid.

[127] ibid.

other countries by venture capital institutions.[128] The legal and regulatory framework is just one of the critical success factors for the creation of a sound housing finance market.[129] The industry insiders are calling out to authorities for the enactment of legal and regulatory frameworks as well as for any incentives believed to be helpful for the bank to engage in the market effectively. A sound regulatory environment ensures the adequacy of the loan collateral. This enormously benefits both the mortgagee and the mortgagor. For the mortgagees, it reduces their risk in the event of borrower default and enables them to offer housing credit to prospective mortgagees. To the mortgagor, it reduces their cost of borrowing, makes long-term housing credit easily available, and enables them to consume adequate housing. The availability of a sound regulatory environment thus leads to the creation of an efficient housing finance system in a country.[130]

The researcher has interviewed The Goh Betoch Bank Credit Management Directorate Director Ato Safework Mulugeta on the bank's meaningful existence and performance in the country.[131] Director said that "Goh Betoch Bank is fully a mortgage bank and it is different from other conventional banks in every aspect." Even though that is the case yet there is no any legal and regulatory frameworks that can recognizes the establishment of mortgage banks in the country including its licensing conditions. Treating mortgage banks like ordinary banks and ignoring its specialty nature and assimilating it with other banks

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[128] Abraham Tesfaye, 'Problems and Prospects of Housing Development in Ethiopia' (2007) 25 Property Management 27 <https://doi.org/10.1108/02637470710723245> accessed 21 March 2023.

[129] Addai (n 7).

[130] ibid.

[131] Interview with Goh Betoch Bank Credit Management Directorate Director Ato Safework Mulugeta on 27 July 2023

regulatory frameworks can hinder the housing finance hope of mortgage banks in the country and their customers. Mortgage business is a risky business in nature and if it is protected and supported it can be reliable and very helpful for the citizens and the country as well as for the banks also, if not it can cause economic crises to the country due to their high resource mobilization nature. The director also adds that "Goh Betoch bank giving a loan for long-term tenure and it is difficult for bank to rely on short term deposit for funding the houses. National Bank of Ethiopia needs to enact flexible and exhaustive directives to support the mortgage banks in the country because housing financing is the area where many commercial banks in the country retreat from investing on it due to its risky nature and less profitability." Finally the director suggests that without the government support, incentives and cooperation, mortgage banks has nowhere to go and mobilization of fund for housing finance can be unattainable in the country and housing problem can be remained a generational problem in the country.

CHAPTER 4: MAJOR FINDINGS AND RECOMMENDATIONS

4.1 CONCLUSION

Mortgage banking is an aspect of development banking that specializes in creating demand for and financing house ownership through well-structured long-term repayment arrangements. Mortgage banks provide funds to people who cannot afford a single payment term to own their homes and spread the repayments over several years. As such, mortgage banks are vehicles for promoting homeownership.

Crisis is a reality in today's mortgage banking industry around the world, rapid organizational changes, shifting economic conditions, fluctuating personnel issues, unanticipated technological changes, and political influences can create an environment of instability in today's mortgage banking industry. Mortgage banking is affected by changing economic conditions and new legislation, accounting principles, regulatory guidance, examination efforts, and legal actions.

Coming to the mortgage banking in Ethiopia; mortgage banks are not a new phenomenon in the country and it was dated back to 1970's, when Housing and Saving Bank (HSB) was formed by the merger of Imperial Savings and Home Ownership Association and the Savings and Mortgage Corporation of Ethiopia mid 1970 during the Derg period. Later on, Housing and Saving Bank restructured into Construction and Business Bank (CBB) in 1994 before it became defunct and merged under the state giant Commercial Bank of Ethiopia in 2016. Goh and Selam bank is the first private mortgage banks begin to enter the industry after the merger of CBB with CBE in the country. This mortgage banks are hoped to minimize the unmet demand of housing in the cities, especially in Addis Ababa, the capital city of the country.

Financial markets in general and mortgage markets in particular are underdeveloped in Ethiopia. The lack of a housing finance system, both in terms of offering developer finance and offering housing loans to consumers, creates a huge demand-supply gap for housing in the country. This problem has been getting worse since 2016, when the CBB was absorbed by the CBE. Indeed, the absence of such a market has impeded the emergence of long-term financing facilities in the country. There is also a need to nurture capital market formation and other options for greater financing in the long run.

Currently there are many reasons for the need of developing mortgage markets regulatory frameworks separately in the country; first the issues of urban development, Ethiopia is urbanizing rapidly, the country's urban population is increasing by 4.7% a year, with 21.6% of the population classified as urban in 2020. The demands of this growth have not been matched by access to jobs, services and housing. Fastest growing of urbanization is also influencing socio, economic and political dynamics of the towns and cities in the country. Urban development would not be functional without solving housing issues, and sustainable housing cannot be achieved without development of housing finance and efficient mortgage markets and the market cannot function well without effective legal and regulatory regimes. As evidenced by the global spread of poorly serviced, high-density informal settlements and slums, most cities in developing countries have failed to meet their people's housing needs. Housing demand is influenced by city economies, while housing supply flexibility is influenced by economic activity. The growth of the city's slums is closely linked to economic activity. And the growth of economy goes hand in hand with the growth of private sectors involvement and appreciation. As the sole supplier of land in urban areas, the state has struggled to meet the diverse and growing demand. Significant policy and regulatory changes are necessary including facilitating greater access to land and housing for the private sector. Therefore, In order to save the finance and land, as well as to solve the housing problems, the best option is to enable the private firms to take part in the mortgage market, incentivize them and facilitating the market by removing regulatory and legal barriers to the mortgage markets.

Secondly, the existing universal banking legal and regulatory frameworks are not suitable for the mortgage banks in Ethiopia. Most banking legal and regulatory frameworks were initially designed for conventional banks, and it is difficult for mortgage banks to follow. Banking business proclamation No. 592/2008 sets comprehensive and stiff conditions which can be an obstacle to mortgage banks operations under its articles 18 to 22 and other provisions. In fact, mortgage banks cannot last in the industry under these conditions unless a reform is made to the proclamation. Other specific regulatory regimes, like the liquidity requirement directive, reserve requirement directive, interest rate directive, and investment on the DBE bonds directive, limitations on bank investment directive, asset classification and provisioning directive, and others, are also limiting the mortgage banks day-to-day activities, which may have led to a mortgage bank crisis recently in the country. These laws are threatening the industry even before the banks are going too far at their initial stages. Therefore, the government should support the housing finance market by expanding its oversight and activities; this will allow lenders to assess and take risks and for borrowers to make educated decisions. There are four key policy areas for NBE to further develop: (i) banking supervision; (ii) the conduct of business requirements; (iii) consumer protection; and (iv) consumer education by reforming the outdated legal and regulatory frameworks of mortgage banks in Ethiopia.

Thirdly, having an effective legal and regulatory framework is one of the critical success factors for the creation of a sound housing finance market. Putting in place the legal and regulatory frameworks for the mortgage banks is targeted to promote the development of the housing finance system in the country. Less developed regulatory and legal frameworks for mortgage loan recovery expand the credit risk of mortgage lenders. The regulatory authority will no doubt be operating within a framework that has three major objectives: ensuring compliance with the regulation, ensuring prudent management of mortgage banks, and providing information to the government on an ongoing basis. Therefore, adopting effective and efficient legal and regulatory frameworks for mortgage banks is important to safeguard the competitiveness and sustainability of mortgage banks for this nation.

Fourthly, for economic development, housing markets play an important role in most economies, as a large share of overall economic activity is related to housing. Consequently, from a financial perspective, mortgage markets play an important role, as mortgage debt often makes up a large share of total outstanding aggregate debt in the economy. Thus, a profound and timely analysis of mortgage market legal and regulatory frameworks is of great importance for the whole economy and financial markets in general.

Fifthly, poor housing finance system in the country, the Ethiopian housing market is mainly dominated by the state-driven IHDP. This is closely linked to limited land sale to the private sectors, a program of state driven rental through Keble's, and civil servant housing that is struggling to meet supply. Therefore, Ethiopia needs to create an enabling environment that promotes private sector delivery of housing by making sure that private sector have access to supply chains of land, finance and general financial inclusion is improved. The government also needs to facilitate market based land and housing delivery by further considering changes to the state-driven housing program and land supply system.

The main objective of the study was to assess the legal and regulatory frameworks for mortgage banks in Ethiopia. So, based on its objectives, the study came up with the following findings:

There are no definitions given for the terms mortgage and mortgage banks under any laws of our country. Additionally, the definition given under Banking Business Proclamation No. 592/2008 for banking business activities is narrow, and the peculiar natures of mortgage banks are not considered. So, this limits the development of mortgage banks. The USA, UK, and Nigerian experiences show that mortgage banks have not only clear recognition but also separate legal and regulatory bodies.

The second gap in the legislation is the non-inclusion of mortgage banking under Banking Business Proclamation No. 592/2008. The provisions of Banking Business Proclamation No. 592/2008 are unsuitable and stiff. Also, there are different provisions here and there scattered in different laws of the country, like commercial and civil codes.

It has been pointed out that, compared to other legal systems; Ethiopian mortgage banking is an infant and incomparable to that of the USA, UK, and Nigeria in regulating mortgage banking.

Without legal and regulatory reforms for mortgage banks, there will be no effective existence or performance of mortgage banks in Ethiopia. The reasons for the bad records of mortgage banks in Ethiopia for a long period of time can be due to the lack of separate, comprehensive, and efficient legal and regulatory frameworks for mortgage banks in the country.

Notwithstanding its substantial economic contribution, the nation lacks an effective housing finance system. The government-led IHDP program's dominance in the housing finance sector, marked by unsustainable practices and poor performance, exacerbates the already fragile state of the nation's housing finance system. Government economic policies have an impact on the effectiveness of market-based financial and housing delivery.

Government activity and regulations in the housing finance sector have often been stifling to private sector activity. Restrictions to the entry of foreign retail financial service providers has limited the number of players and constrained supply. Interest rate controls have also discouraged greater lending. Heavy government borrowing from the private sector has also discouraged private sector lenders from lending to the general public. To encourage a more diverse and better supply of housing finance products, there is a need to create a conducive environment for their establishment and growth of private players. Government’s role should thus only be retained for carefully thought out prioritized and strategic interventions. Land price controls which have likewise had a negative effect on mortgage funding need also be revisited.

The NBE, as a regulatory body of the financial institutions in the country, has not yet been ready to include the banks, which have different business models, and that is why mortgage banks are disregarded and subjected to the laws governing conventional banks in Ethiopia. The NBE reluctance to enact laws which can suits mortgage bank are pulling down the hope of a good housing finance system in the nation.

Most of the directives enacted by NBE challenge the day-to-day activities of mortgage banks by limiting their performances. Unnecessary limitations on the investment of banks, on their loans and assets, and others are among the regulatory challenges of directives on mortgage banks. Due to outdated and one-sized legal and regulatory frameworks for all, the development of mortgage markets has stagnated and been badly affected.

Ethiopia has no specific and comprehensive legal and regulatory frameworks for mortgage banking like that of the USA, UK and Nigeria. Not only that these jurisdiction have separate institutional frameworks for their mortgage market. Having strong and effective legal, regulatory and institutional frameworks for mortgage banks in Ethiopia can boost the mortgage market and highly contributes to the nation's economy. So, the country's mortgage banks regulatory organs shouldn't approach mortgage industry simply as an ordinary bank rather as an industry in which the public interest is protected and promoted. Housing is one of the Ethiopian government ten-year plan strategy parts and this can only be achieved by facilitating the mortgage market to work in the country.

Mortgage banks are on challenges daily to cope with the regulatory challenges of Ethiopian banking laws and the legal obstacles. The financial markets in Ethiopia are undeveloped. This, among others, limits the development of a large mortgage industry in the country.

Without the stock market expecting sustainable mortgage market in the country is a nightmare. Even the today's mortgage industry are challenging with the lack of capital market to mobilize funds at its initial stages. There is a need to nurture capital market formation for greater financing options in the long run.

Finally, the lack of specific and exhaustive legal and regulatory frameworks is influencing the development of mortgage banks in the country.

4.2 RECOMMENDATIONS

Based on the findings of this paper, the writer would like to recommend the following:

1. The government should focuses on reforming the policy, legal and regulatory frameworks by removing challenges toward private sector's housing finance delivery. This can be achieved by taking the experiences of the countries with developed mortgage banking system by examining it with the practices of the mortgage industries in the country.
2. NBE should expand its banking regulation and supervision activities by reforming directives for mortgage banks access to long term capital, as well as support to go down-market.
3. The government should focuses on the inclusive mechanisms of the diversified model of banks rather than focusing only on universal banking model. Specialized banks should be regulated accordingly.
4. NBE should also try to be inclusive of diversified system of banking regulation than one sized approaches on the banking regulation. One sized approach to all types of

banks cannot be beneficial to the nations because one can't fit different banks with different business model.

5. NBE should incentivize mortgage banks by easing regulatory policies toward the mortgage banks like allowing sources of funds like pension funds and reserve funds to access.
6. The government should liberalize the housing finance system by allowing foreign mortgage banks entry to the market and open up capital market in the country.
7. The government should have to have a gradual plan to exit IHDP by facilitating and enabling market based housing delivery and housing finance system in the country than funding IHDP at the cost of private sectors.
8. The government should have a new mortgage banks governance institution; one that facilitates the market and organizes its limited public resources to address market failures.
9. Finally; the law maker shall enact a comprehensive separate law and set an organized regulatory framework for mortgage banks so as to adequately regulate and harmonize the housing finance system in the country.

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APPENDIXES

Appendix-I

Interview guides prepared for the National Bank of Ethiopia Bank Supervisors

Personal detail of respondent

Name of the respondent (if he or she consented) ______________________________

Position of the respondent ____

Organization of the respondent ____

Type of the study: Writing a research

Title: Assessing the legal and regulatory frameworks for Mortgage Banks in Ethiopia

Objective of this interview: To assess the practical experiences and challenges faced in regulating mortgage banking. Therefore, you are kindly requested to respond to the interviews, as your information will be helpful for effective accomplishment of the study and as it will be kept confidential and analyzed anonymously unless consented for the disclosure of your identity and personal views.

Thank you, in advance, for your co-operation

Guiding questions for National Bank of Ethiopia

1. What does regulating mortgage banks looks like after they start operation in the country?
2. How you are supervising and governing mortgage banking?

3. What are the challenges faced in regulating mortgage banking?
4. How you are controlling “banks” involved in mortgage banking activities?
5. Do the currently banking regulatory frameworks suits (fits) for mortgage bank due to the special nature of mortgage banks?
6. What do you think about mortgage banks claim of separate regulatory frameworks from other conventional banks in the country?
7. Is it not difficult for banks that provide long term loans to maintain capital adequacy ratio of 8% a minimum capital to a risk-weighted assets ratio required by NBE?
8. Do you think the reason why CBB failed is due to the lack of the strong legal and regulatory frameworks?
9. Why NBE hesitant to have a clear directives/guidelines on mortgage banking though such mandate is given to it by Banking Business Proclamation No. 592/2008. Why NBE unwilling to enact directives governing mortgage banking till now.
10. Is there any directives enacted by NBE regarding the regulation and supervision of mortgage banking? What is the status of drafting new directives currently?
11. Which countries model system do you use to draft the directives for mortgage banking?
12. Do you have any plan to support mortgage banks in the country?

Appendix-II

Interview guides prepared for Goh Betoch Bank supervisors

Personal detail of respondent

Name of the respondent (if he or she consented) ______________________________

Position of the respondent ____

Organization of the respondent ____

Type of the study: Writing a research

Title: Assessing the legal and regulatory frameworks for Mortgage Banks in Ethiopia

Objective of this interview: To assess the practical experiences and challenges faced in regulating mortgage banking. Therefore, you are kindly requested to respond to the interviews, as your information will be helpful for effective accomplishment of the study and as it will be kept confidential and analyzed anonymously unless consented for the disclosure of your identity and personal views.

Thank you, in advance, for your co-operation

Guiding questions for Goh Betoch Bank supervisors

1. How does NBE supervising and governing your bank/Goh Betoch Bank?
2. What are the legal and regulatory challenges faced during the day to day activity of your bank?

3. How you are cooperating with other banks involved in mortgage banking activities and other conventional banks?
4. Why the currently banking regulatory frameworks unsuitable (unfits) for mortgage banks? Why do you needs for separate regulatory frameworks?
5. Does mortgage bank gives loan without asking for collateral? Or gives loan without high percentage of down payment?
6. What will be the sources of your mortgage funding? Is it deposits or other forms of funding?
7. What do you think about the opening of mortgage banking as a full-fledged bank? Do you think its opening is important and useful? If so its claim of specialty and separate governing law is necessary? If the National Bank of Ethiopia or any other authoritative body enacts the law which separately governs mortgage banking will your bank claim its applicability to your mortgage banking service?
8. How you are to mobilizing resources for financing housing?
9. Does prospective mortgage bank regulation is needed for better performance of housing finance in Ethiopia?
10. Is there any directives enacted by NBE regarding the regulation and supervision of mortgage banking?
11. How do you see the possibility of innovating housing microfinance for low income household and individuals in Ethiopia?
12. Do you know many commercial banks in the country conducting mortgage banking activities? If that is the case are you advocating for the legal frameworks which exclusively giving the role of housing finance to the newly established mortgage

banks like that of the Germany legal system? Or do you push and move forward to compete with these giant banks in the country? Are there any laws which restrict conventional banks from entering mortgage industry in Ethiopia?

13. Today you are calling and advertising for deposit like other conventional banks. Do you think you can mobilize the resource you planned for with in the planned time frame in this way? If it is the case what is your performance looks like since you start the operation?
14. Is it not difficult to convince and get honors and trust from the consumer with a lot of options in the market with in this time frame to mobilize huge amount of capital? But I'm not saying planning big is too bad. But I'm saying this plan may be unachievable and unrealistic?
15. Do you have any alternative plan if what you have planned for failed to achieve?
16. What kind of support do you expect from NBE? Or Government?
17. What percentage of the bank's operations will be dedicated to mortgage banking as your plan?

Appendix-III

Interview guides prepared for Commercial Bank of Ethiopia Loan Directors

Personal detail of respondent

Name of the respondent (if he or she consented) ______________________________

Position of the respondent ____

Organization of the respondent ____

Type of the study: Writing a research

Title: Assessing the legal and regulatory frameworks for Mortgage Banks in Ethiopia

Objective of this interview: To assess the practical experiences and challenges faced in regulating mortgage banking. Therefore, you are kindly requested to respond to the interviews, as your information will be helpful for effective accomplishment of the study and as it will be kept confidential and analyzed anonymously unless consented for the disclosure of your identity and personal views.

Thank you, in advance, for your co-operation

Guiding questions for Commercial Bank of Ethiopia

1. How you are cooperating with other banks involved in mortgage banking activities and other conventional banks on mortgage activities?
2. Do you think the current banking regulatory framework suitable for mortgage banks in Ethiopia?

3. What do you think the opening of mortgage banks as a full-fledge bank? Do you think its opening is important and useful? If so its claim of specialty and separate governing law is necessary?
4. Is there any directives enacted by NBE regarding the regulation and supervision of mortgage banking?
5. Why the former CBB defunct and merged with CBE? Is it due to the absence of strong legal regime which specifically governs the bank?