PROCLAMATION NO. 98/1998
A PROCLAMATION TO PROVIDE FOR BUSINESS MORTGAGE

WHEREAS, it is stated under Article 186 of the Commercial Code that the manner of keeping register of mortgage of business and canceling entries shall be specified by law;

WHEREAS, it is also stated under Article 1175(1) of the Commercial Code that the provisions of Article 179 of the Code relating to registration of Commercial Mortgage shall come into force on such day and on such conditions as shall be notified by order published in the Negarit Gazette;

WHEREAS, in order to create conducive environment to the economic development by enabling banks to efficiently collect debts from debtors whose business has been mortgaged with the banks and thereby establishing a good business culture;

NOW, THEREFORE, in accordance with Article 55(1) of the Constitution of the Federal Democratic Republic of Ethiopia, it is hereby proclaimed as follows:
In this Proclamation:

1) “Business” means a business specified under the 1960 Commercial Code of Ethiopia;
2) “Bureau” means Regional or City Bureau of Commerce and Industry or a Regional or City authority entrusted with the power to register mortgages;
3) “City” means Addis Ababa; Dire Dawa or any City which is accountable to the Federal Government;
4) “Region” means a region specified under Art.47 of the Constitution of the Federal Democratic Republic of Ethiopia;
5) “Person” means a natural or juridical Person.

PART TWO
Registration of Business Mortgage

3. Keeping of Register

1) Register of mortgage of business shall be kept in each Region or City.
2) The manner of organizing and keeping of register of mortgage shall be determined by the Executive Organ of the Region or City.

4. Requirement of Business License

In order to mortgage a business, the business shall be one which has been registered and given business license by the appropriate Federal or Regional authority.

5. Application for Registration

1) Any request for registration of mortgage of business may be submitted by the concerned person.
2) The request for registration of mortgage shall be submitted by filling in two copies the application forms for registration prepared by the Bureau.
3) The Applicant shall attach the contract or other evidence which is the basis for the request of registration.
4) When the forms are presented to the Bureau, the Bureau shall, after verifying the forms, give consecutive numbers in the order of their submission.

6. Content of Application form for Registration

1) The Bureau shall prepare application form for registration.
2) The application form for registration shall include the following:
   (a) the name and address of the applicant or agent requesting for registration;
   (b) if the business has been mortgaged previously the registry number and date of registry;
PART THREE

Selling of Business Mortgage by Auction

13. Agreement of Mortgage

Notwithstanding the provisions of Article 189 of the Commercial Code, an agreement which authorizes a secured creditor bank whose claim is not paid to sell the mortgaged business, by auction upon giving a prior notice of at least 30 days to the debtor, and to transfer the ownership of the business to the buyer or to take over the business, in consideration of its estimated value as specified in the contract of loan, and have the ownership thereof registered in its own name; in cases where bidders fail to appear upon a second public auction having been held shall be valid.
14. **Claim on Mortgaged Business**

A secured creditor bank which, prior to the effective date of this Proclamation, has a claim on business mortgage, registered in the Awraja Court in accordance with Article 1175(2) of the Commercial Code as a result of a legal imposition to register mortgage on a business, may sell the business by auction upon giving a prior notice of at least 30 days to the debtor and transfer the ownership to the buyer or take over the business, in consideration of its estimated value as specified in the contract of loan, and have the ownership thereof registered in its own name; in cases where bidders fail to appear upon a second public auction having been held.

15. **Relationship between the Bank and the Debtor**

The sale made in accordance with Articles 13 and 14 of this Proclamation shall be deemed to have been executed on behalf of the debtor.

16. **Application of the Civil Procedure Code to Auction**

The provisions of Article 394-449 of the Civil Procedure Code shall, mutatis mutandis, be applicable while the Bank is exercising its power of selling the business mortgage by auction.

17. **Liability of the Bank**

The Bank shall be liable for any damage it causes to the debtor in the process of selling in violation of the relevant provisions of the Civil Procedure Code specified under Article 16 of this Proclamation.

18. **Powers and Duties of the Bureau**

1) The Bureau which has registered the business mortgage shall have the powers and duties to take the necessary measures for carrying out the sale by auction.

2. If the Bureau, while taking action in accordance with sub-Article(1) of this Article, finds it necessary to use police force, it may order police.

19. **Cases Pending before the Court**

Any suit or decree on execution, pending before a court prior to the coming into force of this Proclamation, may be terminated upon application by the creditor bank with which the business has been mortgaged and the bank may sell the business by auction and transfer the property to the buyer in accordance with this Proclamation.

**PART FOUR**

**Miscellaneous Provisions**

20. **Applicability of the Commercial Code**

1) The relevant provisions of the 1960 Commercial Code shall be applicable in mortgage of business.

2. For the purpose of this Proclamation, the provisions in the Commercial Code concerning mortgage of business shall be read as follows:

(a) if it concerns a Region the word “Teklay-grizat” shall be read as “Region” and the “Ministry of Commerce and Industry” shall be read as “Bureau”
(b) if it concerns City the word "Teklay-gizat" shall be read as "City" and the "Ministry of Commerce and Industry" shall be read as "Bureau".

21. Fees
Fees for registration of mortgage and related services based on the Commercial Code and this Proclamation shall be determined by City or Regional law.

22. Effective Date
The provisions of Article 179 of the Commercial Code on registration of mortgage and the provisions of this Proclamation shall enter into force as of the 19th day of February, 1998.

Done at Addis Ababa, this 19th day of February, 1998.

NEGASO GIDADA (DR.)
PRESIDENT OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA

Corrigendum No. 1/1998
Property Mortaged or Pledged with Banks Proclamation No. 97/1998 is hereby corrected by:
1. omission of the ",” after the word “buyer”, in Article 3, and insertion thereafter of the phrase “or to take over the property, in consideration of its estimated value as specified in the contract of loan, and have the ownership thereof registered in its own name; in cases where bidders fail to appear upon a second public auction having been held.”; and
2. omission of the “.” at the end of Article 4, and addition thereafter of the phrase “or take over the property, in consideration of its estimated value as specified in the contract of loan, and have the ownership thereof registered in its own name; in cases where bidders fail to appear upon a second public auction having been held.”.