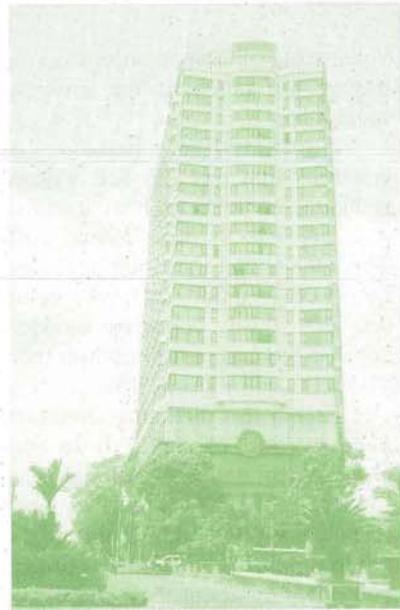


On December 29, 1999 the Government issued Decree 178/1999/NĐ-CP on mortgages of credit institutions. Article 35 of this decree requires obligations of governmental agencies in their settlement of mortgages to recover debts for credit institutions. This is one of extremely important contents to which credit institutions and businesses pay special attention. On April 29, 2001 ministries including the State Bank, Ministry of Finance, Ministry of Justice, Ministry of Public Security and General Department of Land Registration issued Circular 03/2001/TTLT/NHNN-BTP-BCA-B T C - T C Đ C guiding commercial banks' mortgage settlement for their debt recovery. Since its promulgation, the circular has really taken its effect in mortgage settlement, meeting requirements of banks when undue debts show an upward trend.

In addition to its achievements, Circular 03 has revealed some certain limitations. These defects plus inadequate understanding and incomprehensive execution have reduced the circular's efficiency. The following are some defects:

(1) There are no regulations on the deadline for the buyer's final installment if he (she) cannot afford one-time payment when buying the mortgaged asset. (Point 4, Section VIII). This may cause negative actions if the seller (authorized to sell the mortgaged asset) is in connivance with the buyer to prolong the time of payment, especially if the credit institution authorizes the Auction Center or other organizations to sell the mortgaged asset.

(2) The responsibility of competent agencies' collaboration is



Limitations of interministerial circular 03 on settlement of mortgages and suggestions to overcome

by Dr. TRẦN HUY HOÀNG

not sufficiently stipulated, because only several cities and provinces have land offices. Regarding assets like houses and building attached to the land, the Land Office also takes charge of transferring property and land-use right for the asset buyer. In those provinces having both Land Office and Service of Construction, the transferring of property and land-use right is referred to these two agencies: the Land Office for land-use right transfer and the Service of Construction for properties including houses and buildings attached to the land. Just because of this, the terms "the Land Office or the Service of Land Registration and Housing" stated in Circular 03 are not suitable for the reality.

(3) Some legal points are not distinct, especially for land-use right. Currently, most of mortgages for large loans at commercial banks

are land and houses (for example, there are 2,870 mortgaged assets worth VND933,322 in HCMC). Circular 03 provides that credit institutions must not directly sell or directly obtain the land-use right to replace their loans' guarantee. According to Point 2, Section III of this circular, if the two parties cannot reach a consensus, the credit institution shall put the asset up to an auction otherwise takes legal proceedings. In the meantime, Decree 178 allows credit institutions to have rights to settle mortgages on the whole, or land-use right mortgaged for loans if there is no agreement between the two parties.

This causes obstacles to credit institutions in mortgage settlement because according to Circular 03, credit institutions refer documents of mortgages to the Auction Center under the Service of Justice to settle the land-use right. However, this

agency fulfills its work too slowly wasting much time and even some cases are not fulfilled. This is attributed to a lot of reasons, including the Auction Center's ineffective operations. Meanwhile, if applying Decree 178, credit institutions may settle the mortgage in cooperation with the mortgager but when they transfer the land-use right or the asset attached to the land to the buyer, the authorized agency refuses its notarization, registration, etc. and explains the transfer must be referred to the Auction Center.

(4) The execution of Circular 03 is not adequate and comprehensive. The reality shows some governmental agencies are hesitating to certify documents including contracts of trading, assets transfer and valuable papers concerning property transfer, use right for the buyer, the asset receiver. In some

places where the credit institution or the mortgage is located, the People's Committee and the Police show no positive support to retrieve the asset at the credit institution's request.

(5) The troubles of procedure, time and asset auction are not fully removed. With respect to procedure, according to Point 3.1, Section III: "The credit institution submits dossiers for approving the auction of land-use right to the following agencies: The District People's Committee for mortgaged land-use right of individuals and families; and the Provincial People's Committee for organizations". This is right in terms of administration but is not adequate to protect legal rights of credit institutions. Because if these agencies give no permission without proper reasons, credit institutions cannot settle their mortgages, so the solution remains at a standstill.

Regarding time, when settling mortgages as land-use right, commercial banks have wasted their time in waiting for the Auction Center's sales. But before transferring the asset to the Auction Center, according to Point 3-Section III, Part B of Circular 03, the credit institution must request permission of the competent People's Committee for auction. This wastes time and causes cumbersome procedures of the auction process, as follows:

- 15 days for the government's approval.
- 15 days for the registration of asset auction.
- 30 days for listing the asset which will be sold by auction.
- 60 days for giving the certificate to the buyer.

While commercial banks' mortgages are in great quantity (there are 2,870 mortgages as land and houses in HCMC), according to these regulations, HCMC People's Committee shall grant 2,870 licenses to commercial banks for their auction. So how long can they recover their debts?

Furthermore, some provinces have not yet established auction

centers. Therefore, in these localities, credit institutions do not know what agency their problems are referred to and how to recover their debts in compliance with law.

We like to suggest some amendments and supplements to Circular 03 in order to facilitate the mortgage settlement of credit institutions:

- Requiring the deadline of the buyers' final installment to their purchase of mortgages if they cannot afford one-time payment.

- Ruling clearly the responsibility of related agencies; replacing the terms "Service of Land Registration and Housing" with "Service of Land Registration, Service of Construction or Service of Land Registration and Housing". This is just appropriate to the reality, at the same time rules clearly the responsibility of the Service of Construction in implementing the decision and creates favorable conditions for the buyers to transfer the ownership and land-use rights of house and buildings attached to land.

- Specifying relations between Circular 03 with other legal documents to encourage credit institutions' initiative in mortgage settlement. If credit institutions are not in adequate compliance with requirements of other legal documents, Circular 03 may be

ineffective.

- Executing Circular 03 comprehensively; creating good collaboration between credit institutions with governmental agencies; and disseminating contents of this circular to related objectives.

- Improving procedures and time and perfecting auction centers: Point 3 Article 39 of the Government's Decree 178 provides that related ministries and branches shall give guidelines; however, their guidelines are not appropriate to the reality. So they should review and give new detailed guidelines to facilitate credit institutions' mortgage settlement.

- Abolishing the provision that credit institutions shall ask permission of governmental agencies for auction and assets which cannot be settled in agreement shall not be put up to auction and adding the provision that in case of the borrower's undue payment, credit institutions have rights to settle mortgages to recover their loans in accordance with signed contracts.

- Soon establishing auction centers in provinces and districts; they shall have legal status, enough functions and powers with the aim to help credit institutions settle their mortgages ■

