

PROPOSAL FOR A LAW AMENDING THE LAWS ON THE TRANSFER AND MORTGAGING OF IMMOVABLE PROPERTY FROM 1965 TO (No. 2) OF 2024

Preamble

WHEREAS, by the Immovable Property (Transfer and Mortgage) (Amendment) (No. 10) Law of 2015, Articles 44IH to 44KZ were introduced in Part VIB of the basic law, with the aim of protecting a segment of citizens identified as “trapped purchasers”;

AND WHEREAS, by the Sale of Immovable Property (Special Execution) (Amendment) Law of 2023, the then-applicable legislation was amended to ensure the process of purchase and transfer of real estate property, and to address the serious issue affecting purchasers who, although they have fully met their contractual obligations to the seller, the seller is unable, due to existing encumbrances, to transfer the property in their name;

AND WHEREAS, pursuant to Civil Appeal No. 285/2018, issued on 20 June 2024, the provisions of Articles 4410 to 44KB of the Immovable Property (Transfer and Mortgage) Law were deemed unconstitutional as contrary to Articles 23 and 26 of the Constitution, thereby rendering it impossible to protect purchasers who were classified as “trapped purchasers” before the law’s effective date;

AND WHEREAS, Article 23 of the Constitution allows for the regulation of property rights over immovable property through legislation, provided it complies with the principle of proportionality and safeguards the rights of good-faith parties;

AND WHEREAS, there continues to be a need to balance the constitutional rights of all parties involved in a sales contract — namely the good-faith purchaser, the seller, and the mortgage lender — in a manner that does not nullify the core of their constitutional rights;

AND WHEREAS, the State acknowledges the existence of this major social problem and the urgent social necessity of resolving it in the fairest way possible under the circumstances;

For all the aforementioned reasons, the House of Representatives enacts as follows:

Short Title

1. This Law shall be cited as the Immovable Property (Transfer and Mortgage) (Amendment) Law of 2025 and shall be read in conjunction with the Immovable Property (Transfer and Mortgage) Laws of 1965 to (No. 2) of 2024 (hereinafter referred to as “the basic law”), and the basic law and this Law shall together be cited as the Immovable Property (Transfer and Mortgage) Laws of 1965 to 2025.

Amendment of Article 4418 of the Basic Law

2. Article 4418 of the basic law is amended as follows:

(a) By deleting the word “**and**” at the end of paragraph (i); and

(b) By replacing the full stop at the end of paragraph (ii) with a semicolon and the word “**and**”, and by adding the following new paragraph immediately thereafter:

(iii) in cases where an application has been submitted under the provisions of Part VIB concerning a filed contract, for which no title deed has been issued, a relevant certification from the competent authority that the issuance of a title deed is not feasible under the provisions of the Streets and Buildings Regulation Law.

Provided that the term “competent authority” shall have the meaning assigned to it under the provisions of the Streets and Buildings Regulation Law.

Replacement of Article 44IH of the Basic Law

3. Article 44IH of the basic law is replaced with the following Article:

Scope of Articles 4410 to 44KZ

44IH. The provisions of Articles 4410, 44K, 44KA, 44KAA, 44KB, 44KG, 44KGA, 44KD, 44KE, 44KST and 44KZ shall apply provided that:

(a) the property or part thereof is subject to a contract which—

- (i) was concluded and filed at the competent District Land Office in accordance with the provisions of the Sale of Immovable Property (Special Execution) Law by **31 December 2014**; or
- (ii) was concluded by 31 December 2014 and was filed pursuant to a court order issued in accordance with the provisions of the Sale of Immovable Property (Special Execution) Law on an application submitted to the competent District Court by 31 December 2024;

(b) a title deed has been issued for the property which is the subject of the contract mentioned above; and

(c) in the case where the property under the said contract is burdened with registered real encumbrances and/or prohibitions that predate the filing of the contract with the District Land Office, written consent has been submitted by the persons for whose benefit those burdens operate, agreeing to their release, cancellation, or elimination:

Provided that, if those persons unreasonably and unjustifiably refuse to provide such written consent, and the sale price has been paid in full, such consent may be secured by a **court order**.

Amendment of Article 4410 of the Basic Law

4. Article 4410 of the basic law is amended by replacing subsection (2) with the following subsection:

"(2) Any pending procedure under the provisions of Parts VI and VIA of this Law, the Bankruptcy Law, the Companies Law, or any other applicable law in force shall be suspended until the application submitted under the provisions of this Part is fully examined, whether the full sale price has been paid or only part thereof up to the date of application submission, provided that the purchaser has submitted a written statement declaring that they will pay, and do pay, the remaining sale price in accordance with the terms of the contract into the **special temporary account** as specified under subsection (2) of Article 44K:

Provided that, for applications submitted before the effective date of the Immovable Property (Transfer and Mortgage) (Amendment) Law of 2025, the above suspension shall be granted **provided** the conditions set out in subsection (1A) of Article 44K are met."

Amendment of Article 44K of the Basic Law

5. Article 44K of the basic law is amended as follows:

(a) **Amendment of Subsection (1):**

- (i) By deleting the word **"and"** from paragraph (a) (first line);
- (ii) By replacing the full stop at the end of paragraph (b) with a comma and adding the phrase:

"which is the subject of the contract, and";

- (iii) By adding the following new paragraph immediately after paragraph (b):

(c) in cases where the subject of the contract is burdened with registered real encumbrances and/or prohibitions that predate the filing of the contract with the District Land Office, written consent has been submitted by the persons for whose benefit those burdens operate for their release, cancellation or nullification:

Provided that, if those persons unreasonably and unjustifiably refuse to provide the required written consent and the sale price has been fully paid, such consent may be secured by **court order**.

(b) Addition of a New Subsection After Subsection (1):

“(1A) (a) Notwithstanding the provisions of subsection (1), the Director shall proceed to examine applications submitted before the effective date of the Immovable Property (Transfer and Mortgage) (Amendment) Law of 2025, provided that it is possible to issue a title deed for the property which is the subject of the contract, and the title deed is submitted within a period of **two (2) years and eight (8) months** from the effective date of the said Law:

Provided further that, if the Director finds that issuance of a title deed is not possible for any reason by the end of that period, the application may be **rejected**.

(b) Subject to paragraph (a), for the examination of applications submitted before the effective date of the aforementioned Law, the relevant documents shall be submitted to the Director within **eight (8) months** from the date of relevant notification.”

(c) Amendment of Subsection (2):

- (i) By replacing the word "**Subject to**" at the beginning of the first line with "**Notwithstanding**";
- (ii) By replacing the phrase "**thirty (30)**" (in the fourth line) with "**sixty (60)**";
- (iii) By adding, immediately after the phrase "**the remaining amount of the sale price**" (in the sixth line), the phrase:

“and in the event of non-payment within the prescribed timeframe, the Director may reject the application, notifying the applicant accordingly”;

(d) Replacement of Subsection (3):

Subsection (3) is replaced by the following two subsections:

(3) The Director may reject an application submitted under the provisions of this Part if the conditions of subsection (1) are not met within the prescribed deadlines.

(4) In the event of rejection of the application, the Director shall return any remaining portion of the sale price that was deposited into the special temporary account under the provisions of subsection (2).

Amendment of Subsection (1) of Article 44KA of the Basic Law

6. Subsection (1) of Article 44KA of the basic law is amended as follows:

(a) By replacing the phrase “**within a specified timeframe**” (second and third lines) with the phrase:

“**within a period of sixty (60) days**”;

(b) By replacing the full stop at the end of the subsection with a colon and adding the following new proviso:

Provided that, in the event that the relevant documents are not submitted within the specified timeframe, the Director may proceed to **reject the application**, notifying the applicant accordingly.

Amendment of Subsection (6) of Article 44KG of the Basic Law

7. Subsection (6) of Article 44KG of the basic law is amended by replacing the phrase:

“registration of an assignment of security agreement or notation of a loan agreement concerning the subject of the contract, notify the assignee under the assignment of security agreement or the lender under the loan agreement, by service of written notice in the form 'IH'” (third to seventh line),

with the following:

“registration of a mortgage agreement where the purchaser is the principal debtor, or registration of an assignment of security agreement or notation of a loan agreement concerning the subject of the contract, notify the purchaser and the mortgage lender of the mortgage, for the transfer of the property in the name of the purchaser and the transfer of the mortgage to the property that is the subject of the contract, by service of written notice in the form 'IHA', or the assignee under the assignment of security agreement or the lender under the loan agreement, by service of written notice in the form 'IH'”.

Amendment of the Second Schedule of the Basic Law

8. The Second Schedule of the basic law is amended as follows:

(a) Replacement of Form 'ID' with the following:

FORM 'ID'

(Article 44K)

THE IMMOVABLE PROPERTY (TRANSFER AND MORTGAGE) LAW

NOTICE OF PAYMENT OF REMAINING SALE PRICE IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 44K

Application No.:

Date:

To: [Name/Party]

Dear Sir/Madam,

Regarding the above matter, you are requested to, within a period of **sixty (60) days** from receipt of this notice, deposit the remaining amount of the sale price into the special temporary account in accordance with the contract filed under registration number PWE

In the event of failure to pay the amount within the specified timeframe, the Director may proceed to **reject your application**.

If the full amount of the sale price has already been paid, please submit all necessary documentary evidence **to substantiate this**, in accordance with the provisions of the Law.

(
For District Land Officer
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(b) Addition of New Form 'IHA' Immediately After Form 'IH':

FORM 'IHA'

(Article 44KG)

Application No.:

Date:

To:

THE IMMOVABLE PROPERTY (TRANSFER AND MORTGAGE) LAW

NOTICE OF TRANSFER

Dear Sir/Madam,

Reference is made to application No. A.E.A/....., which has been filed with my Office for the transfer of property, with registration number, plot/sheet, section, parcel in the Municipality/Community of to the name of the purchaser, based on the filed sale agreement with registration number PWE/....., which is subject to a mortgage agreement with number Y/....., and you are hereby requested to submit your **written consent** to the transfer of the property, which is subject to the said mortgage, **within thirty (30) days**.

If the required written consent is not submitted within the above period, the Director shall proceed with the **transfer of the mortgage** to the property that is the subject of the contract.

(
For District Land Officer
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EXPLANATORY REPORT

The purpose of the proposed law is to amend the Immovable Property (Transfer and Mortgage) Law in order to revise the provisions concerning the protection of so-called "**trapped purchasers**", following the issuance of a Court of Appeal ruling which held that Articles 4410 to 44KB of the Immovable Property (Transfer and Mortgage) Law were unconstitutional, as they were found to conflict with Articles 23 and 26 of the Constitution.

Specifically, the proposed amendments are deemed necessary as they aim to resolve, within a constitutional framework, the serious problem faced by property purchasers who, although they have fulfilled their contractual obligations to the seller, are unable to have the property transferred to their name due to the existence of encumbrances on the property.