

-English Translation-

Amendment Act
to
the Royal Enactment on Special Purpose Juristic Persons for Securitization B.E. 2540
B.E.

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Whereas it is expedient to revise the Royal Enactment on Special Purpose Juristic Persons for Securitization B.E. 2540;

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Section 1. This Act shall be called the "*Amendment Act to the Royal Enactment on Special Purpose Juristic Persons for Securitization B.E. 2540 B.E.*"

Section 2. This Act shall come into force from the date following the date of its publication in the Government Gazette.

Section 3. The definitions on "**securitization**", "**assets**" and "**a special purpose juristic person**" in Section 3 of the Royal Enactment on Special Purpose Juristic Persons for Securitization B.E. 2540 shall be repealed and replaced with the following:

"**securitization**" means the acceptance of transfer of assets or acceptance of assets as a security and issuance of securities for sale to investors with the requirement that returns to holders of the securities will depend on the flow of proceeds generated from the transferred assets or the assets accepted as a security.

"**assets**" means rights of claim and shall also mean future rights of claim.

"**a special purpose juristic person**" means a juristic person established at whichever tier for the purpose of securitization under this Royal Enactment and shall also

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mean trusts specifically established for the said purpose, in any of the following characteristics.

- (1) Juristic person or trust which issues securities under the project.
- (2) Juristic person or trust which accepts transfer of assets or accepts assets as a security for the purpose of transferring assets or granting of assets as a security to the juristic person or trust in (1).
- (3) Juristic person or trust at whichever tier which accepts transfer of assets or accepts assets as a security with the objective to subsequently transfer the assets or grant the assets as a security in order that the juristic person or trust in (2) is able to transfer the assets or grant the assets as a security to the juristic person or trust in (1).”

Section 4. The term "trust" shall be inserted between the term "mutual fund" and "project" in Section 3 of the Royal Enactment on Special Purpose Juristic Persons for Securitization B.E. 2540.

“trust" means a trust created under the laws relating to the establishment of trust.”

Section 5. The following content shall be inserted as Section 8/1 to the Royal Enactment on Special Purpose Juristic Persons for Securitization B.E. 2540.

“Section 8/1. The term "**transfer**" in Section 16, Section 17, Section 18, Section 19 and Section 20 shall also mean "**grant as a security**" and the term "**accept transfer**" in Section 12(1) and Section 24 shall also mean "**accept as a security**". ”

Section 6. Section 9 in the Royal Enactment on Special Purpose Juristic Persons for Securitization B.E. 2540 shall be repealed and replaced with the following:

“Section 9. A special purpose juristic person may be established in the form of a limited company, a public limited company, a mutual fund, a trust or any other form of a juristic person as may be prescribed by the SEC.”

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Section 7. The following content shall be inserted as (3) to paragraph one of Section 11 of the Royal Enactment on Special Purpose Juristic Persons for Securitization B.E. 2540:

“(3) If the special purpose juristic person is a trust or other juristic person, the Office of the SEC shall register that trust or other juristic person under the project as a special purpose juristic person.”

Section 8. Section 15 in the Royal Enactment on Special Purpose Juristic Persons for Securitization B.E. 2540 shall be repealed and replaced with the following:

“Section 15. In acceptance of transfer of assets or acceptance of assets as a security for securitization whereby the original payee acting as an agent to collect and receive payments of debts incurred, the transfer of assets or the granting of assets as a security shall be made without notice thereof being given under applicable law. The special purpose juristic person is entitled to exercise such rights of claim against the debtor of the assets transferred or accepted as a security without prejudice to other defence which the debtor may set up against the special purpose juristic person.

The agent who collects and receives payments of debts under the first paragraph shall have a duty to maintain separately an account and a list of the debtors’ name in respect of the transferred assets. A debtor shall be entitled to inspect his account and name.

If the agent who collects and receives payments of debts has been changed to be a person other than the original payee, the special purpose juristic person shall give notice of the transfer or the granting of security to the debtors on the date of the change of the agent who collects and receives payments of debts unless the change of the agent occurs by operation of law governing merger of business of such person.

If the notice of transfer or the granting of security is undertaken in accordance with the rules and procedures specified in notification of SEC, it is deemed to be rightful notice”

Section 9. The following content shall be inserted as paragraph two of Section 17 of the Royal Enactment on Special Purpose Juristic Persons for Securitization B.E. 2540.

“In cases where the transferred assets arise from a reciprocal contract and the approved project stipulated that the underlying assets must be transferred to the special purpose juristic person in order that the special purpose juristic person performs the obligation by delivering such underlying assets to the debtor being the subject of the rights of claim which have been transferred to the special purpose juristic person, the transfer of the underlying assets shall be exempt from the fees associated therewith.”

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Section 10. The following content shall be inserted as paragraph two of Section 18 of the Royal Enactment on Special Purpose Juristic Persons for Securitization B.E. 2540.

“Where there is the reasonable circumstance which makes it not feasible to calculate the interest rate by the formula previously specified, the special purpose juristic person and the debtor being the subject of the rights of claim which have been accepted by the special purpose juristic person shall jointly determine the interest rate chargeable on the assets. If no agreement has been reached by the special purpose juristic person and the debtor, the interest rate specified by the Office of the SEC shall apply.”

Section 11. Section 20 and Section 21 of the Royal Enactment on Special Purpose Juristic Persons for Securitization B.E. 2540 shall be repealed and replaced with the following:

“Section 20. Section 237 of the Civil and Commercial Code and Section 90/40 and Section 113 of the Bankruptcy Act B.E. 2483 shall not apply to the transfer of assets from the seller of the assets to the special purpose juristic person if the consideration for such transfer is less than the book value or the net book value or the fair value, as the case may be, for the purpose of enhancing the credit of the securitization.

For the purpose of this Section:

"Book Value" means book value pursuant to the laws on accounting.

"Net Book Value" means net book value pursuant to the laws on accounting or the laws governing the relevant financial institution if the transferred assets belong to a commercial bank, a finance company or a credit foncier company, as the case may be.

"Fair Value" means value that in the opinion of the independent financial advisor is a reasonable price for the purchase of that asset.

Section 21. In cases where the assets under the approved project are rights of claim for which a lawsuit for enforcing thereof has been filed at a court of law, the transfer of the assets under such approved project shall be undertaken provided that the special purpose juristic person shall interpose as a party in that case. The special purpose juristic person may submit new evidence opposing the previously submitted documentation, question the previously questioned witness(es) and object to the previously presented evidence. In the event that the court has reached judgment to enforce the rights of claim, the special purpose juristic person shall be interposed as the judgment creditor.”

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Section 12. The following content shall be inserted as Section 21/1 of the Royal Enactment on Special Purpose Juristic Persons for Securitization B.E. 2540.

“Section 21/1. In cases of securitization undertaken by granting future rights of claim as a security to the special purpose juristic person, the special purpose juristic person shall have rights to enforce the rights of claim subsequently occurring, irrespective of whether such rights of claim occur prior to, or after the security provider becomes bankrupt. If the debtor of such claim pays off the debt to the official receiver, the official receiver shall deliver the assets received as debt repayment to the special purpose juristic person where it is able to satisfy that such repayment is subject to the rights of claim which are the future rights of claim received by the special purpose juristic person as a security pursuant to the project approved by the Office of the SEC.

The rights to enforce the claim under the first paragraph shall encompass assets received through distribution, transfer, exchange or received in lieu of such rights of claim.”

Section 13. Section 22 of the Royal Enactment on Special Purpose Juristic Persons for Securitization B.E. 2540 shall be repealed and replaced with the following:

“Section 22. In cases where the Office of the SEC has found that there is any securitization undertaken in the manner of seeking gains without the genuine purpose of securitization, the Office of the SEC shall have the power to revoke the registration of the special purpose juristic person and to demand the special purpose juristic person or the person proposing the project, as the case may be, to pay compensation to the Office of the SEC in the amount equal to two times the amount of any exempted fees in relation to the securitization under this law but not less than five hundred thousand baht. The compensation shall be the property of the Office of the SEC.”

Section 14. Section 23 of the Royal Enactment on Special Purpose Juristic Persons for Securitization B.E. 2540 shall be repealed and replaced with the following:

“Section 23. The dissolution of a special purpose juristic person which is a limited company or a public limited company must be consented to by holders of more than half of the total outstanding securities.”

Countersigned by :

Prime Minister

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