

(Unofficial Translation)*

**ACT AMENDING ROYAL ENACTMENT ON
SPECIAL PURPOSE JURISTIC PERSONS FOR SECURITIZATION**

B.E. 2540 (1997)

B.E. 2558 (2015)

Bhumibhol Adulyadej, Rex.,

Given on the day of 20th March B.E. 2558
Being the 70th Year of the Present Reign.

His Majesty King Bhumibhol Adulyadej has graciously issued a royal command to announce that:

Whereas it is expedient to amend a law on special purpose juristic persons for securitization;

Be it, therefore, enacted by the Majesty the King, by and with the advice and consent of the National Legislative Assembly, as follows:

***Section 1.** This Act is called the “Act Amending the Royal Enactment on Special Purpose Juristic Persons for Securitization B.E. 2540 B.E. 2558.”*

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

***Section 3.** The provision of Section 3 of the Royal Enactment on Special Purpose Juristic Persons for Securitization B.E. 2540 shall be repealed and replaced with the following provision:*

“Section 3. In this Royal Enactment,

“special purpose juristic person” means a vehicle established for the purpose of securitization and registered as a special purpose juristic person under this Royal Enactment.

* Reader should be aware that only the original Thai text has legal force. The English translation is strictly for reference and shall not in any event be construed or interpreted as having effect in substitution for or supplementary to the Thai version thereof. The SEC office cannot undertake any responsibility for its accuracy nor be held liable for any loss or damages arising from or related to its use.

“securitization” means acceptance of transfer of assets or acceptance of assets placed as collateral from an originator for an issuance and offer of securities for sale to investors, providing that proceeds obtained from the offer for sale of securities will be paid or given to the originator in accordance with the agreement and the repayment of debt to investors will depend on a flow of receipts generated from the assets transferred or placed as collateral.

“assets” means

- (1) rights of claim which generate a flow of receipts in the future; or
- (2) rights of claim coming into existence in the future which determine debt repayment in cash and generate a flow of receipts in accordance with the rules specified by the SEC.

“originator” means a person that transfers or will transfer an asset to or places or will place an asset with a special juristic person for the purpose of securitization.

“trust” means trust in accordance with law governing trust for transaction in the capital market.

“project” means a securitization project.

“SEC” means the Securities and Exchange Commission under the law governing securities and exchange.

“the SEC Office” means the Office of the Securities and Exchange Commission under the law governing securities and exchange.

“competent officer” means a person appointed by the Minister to act in accordance with this Royal Enactment.

“Minister” means the Minister in charge of the execution of this Royal Enactment.

Section 4. *The provision of Section 5 of the Royal Enactment on Special Purpose Juristic Persons for Securitization B.E. 2540 shall be repealed and replaced with the following provision:*

Section 5. The SEC shall have the following powers and duties under this Royal Enactment.

- (1) to formulate policies concerning securitization;
- (2) to supervise the special purpose juristic persons to ensure their compliance with this Royal Enactment;
- (3) to prescribe types of assets and securities which may be approved for securitization and types of securities to be issued in connection with securitization;
- (4) to issue notifications to implement this Royal Enactment;

(5) to determine fees for handling certain matters in accordance with this Royal Enactment;

(6) to perform any other acts to achieve the purposes of this Royal Enactment for the purpose of securitization.

The SEC may delegate the powers and duties under the first paragraph to the Capital Market Supervisory Board under law governing securities and exchange.

Notifications issued by the SEC in accordance with the first paragraph shall come into force upon publication in the Government Gazette.”

Section 5. Section 6 of the Royal Enactment on Special Purpose Juristic Persons for Securitization B.E. 2540 shall be repealed.

Section 6. The provision in Chapter 2 Special Purpose Juristic Person, Section 9 to Section 24 of the Royal Enactment on Special Purpose Juristic Persons for Securitization B.E. 2540 shall be repealed and replaced with the following provision:

“Chapter 2

Special Purpose Juristic Person

Section 9. Securitization under this Royal Enactment shall be processed by a special purpose juristic person established in the form of a limited company, a public limited company, any other type of juristic person as may be prescribed by the SEC or the establishment of trust.

A limited company, a public limited company, any other type of juristic person as may be prescribed by the SEC or a trust to be established under the first paragraph shall have the objective solely for securitization.

The provisions of law governing trust for transaction in the capital market shall apply to a special purpose juristic person established in the form of trust except where this Royal Enactment prescribes otherwise. In this regard, trustee shall have similar duties and responsibilities as a special purpose juristic person.

Section 10. In the process of securitization, an originator or a person prescribed by the SEC shall submit a project to the SEC Office, providing that the details of project shall be in accordance with rules, procedures and conditions prescribed by the SEC.

A proposed project under the first paragraph shall be submitted together with an application for the offer for sale of newly issued securities under the law governing securities and exchange.

Section 11. After the SEC Office has approved a project submitted under Section 10, it shall register the special purpose juristic person named in such project as the special purpose juristic person under this Royal Enactment and the status of special purpose

juristic person shall be deemed to have been occurred as from the approval of the project.

Section 11/1. The special purpose juristic person shall not undertake more than one project simultaneously except for the cases under the second paragraph.

In case of the securitization established in the form of trust, a trustee may undertake more than one project simultaneously.

Section 12. The special purpose juristic person shall carry out various activities as specified in the approved project, including the following powers:

- (1) to receive assets transferred or placed as collateral;
- (2) to issue securities for sale to investors;
- (3) to enter into agreements with any persons for the purpose of implementing the approved project;
- (4) to create debts or obligations as specified in the project;
- (5) to invest or seek benefits from the transferred assets in accordance with the approval of the SEC.
- (6) to process any other activities as specified by the SEC for the purpose of securitization.

Section 13. In the process of securitization, the special purpose juristic person shall not engage in any activities other than those specified in the approved project unless a relaxation is granted by the SEC.

Section 14. If the operations of the special purpose juristic person under this Royal Enactment have the characterization of those of finance or credit foncier businesses, the special purpose juristic person shall be entitled to engage in those operations without a license under the law governing such operations.

Section 15. Transfer of assets which are rights of claims in the following cases shall be deemed lawful without notice being given to the debtor pursuant to Section 306 of the Civil and Commercial Code. However, the rights of the debtor to set up a defence under second paragraph of Section 308 of the Civil and Commercial Code shall not be prejudiced:

- (1) transfer of assets whereby the original payee acts as the agent to collect and receive payments of debts incurred;
- (2) transfer of assets whereby the agent to collect and receive payments of debts has been changed by the operation of law governing merger of business of such person.

In cases where the original payee has acted as the agent to collect and receive payments of debts incurred but there is a change of agent afterwards which is not the case under

sub-paragraph (2), the special purpose juristic person shall notify the facts concerning the receipts of transfer of assets which are rights of claims and the change of the agent to collect and receive payments of debts incurred on the date of the change of the agent occurs in accordance with rules, procedures and conditions prescribed by the SEC.

The provisions of the first and second paragraph shall apply to the case of placing assets as collateral, *mutatis mutandis*.

Section 15/1. The agent to collect and receive payments of debts 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.

Section 16. As regards the transfer of assets under an approved project, if the assets are secured by security other than rights of mortgage, rights of pledge or rights arising from a suretyship, such rights shall pass to the transferee on each transfer through until the special purpose juristic person.

Section 17. The transfer and change of registered records concerning assets under an approved project shall be exempt from any fees which, no matter what law in which they are stipulated

The provisions of the first paragraph shall apply to the transfer or change of registered records concerning assets or collateral relating to the assets under an approved project, *mutatis mutandis*.

Section 18. The transfer of assets under an approved project which legally carries interest at the rate exceeding fifteen per cent per annum shall not be subject to the provisions of Section 654 of the Civil and Commercial Code. The special purpose juristic person shall be entitled to charge interest on the assets at the rate not higher than the original rate on the basis of interest calculation originally prescribed.

Section 19. In cases where there are any legal proceedings in the court concerning assets transferred to the special purpose juristic person under an approved project, the special purpose juristic person shall subrogate the right of originator as the litigants in the case.

In the proceedings concerning the assets transferred to the special purpose juristic person under an approved project, if the court's judgment has been rendered that the originator became the judgment creditor, the special purpose juristic person shall subrogate the right of originator as the judgment creditor.

Section 20. Transfer of assets from the originator to the special purpose juristic person under an approved project in the following values shall be deemed as reasonable price and not be deemed as transfer with less than reasonable consideration or that prejudice the creditors:

(1) book value in accordance with the accounting standards;

(2) value determined by the financial advisor as reasonable price for transfer of assets that has taken into account credit enhancement for securitization, providing that such financial advisor shall not be the financial advisor of the project.

Section 21. The provisions of Section 15, Section 16, Section 17 and Section 19 shall apply to the re-transfer of assets to the originator or the discharge of assets placed as collateral during the operation of an approved project, *mutatis mutandis*.

Section 22. If the SEC Office has found that any special purpose juristic person fails to process the securitization under the approved project without any proper reason, the SEC Office has the power to revoke the registration of the special purpose juristic person and require such special purpose juristic person and the originator to jointly liable for a compensation in the amount equal to twice the amount of fees exempted, together with a surcharge at the rate of one million baht.

The SEC Office shall remit the compensation and surcharge under the first paragraph to the Ministry of Finance.

Section 23. The dissolution of a limited company, a public limited company, any other juristic person prescribed by the SEC as a special purpose juristic person or trust shall be made only when the status of special purpose juristic person has been terminated.

Section 24. The status of special purpose juristic person shall terminate when:

- (1) it has paid in full the debts owed to investors who have invested in the securities of the special purpose juristic person and has re-transferred assets or remaining assets to the originator or has released the assets previously placed as collateral;
- (2) an event specified in the approved project occurs;
- (3) the SEC Office has revoked the registration pursuant to Section 22 and Section 29.”

Section 7. *The provision of Section 29 of the Royal Enactment on Special Purpose Juristic Persons for Securitization B.E. 2540 shall be repealed and replaced with the following provision:*

“Section 29. In cases where a provisional representative has been appointed, if the SEC Office considers that any special purpose juristic person is unable to continue its operations, it shall revoke the registration of the special purpose juristic person. The company shall be dissolved and a liquidator shall be appointed. The appointment of the liquidator shall be deemed as the appointment of a liquidator under the law governing the establishment of the limited company or the public limited company, as the case may be.

The dissolution and liquidation of a limited company or a public limited company under the first paragraph shall be carried out in accordance with the provisions of the Civil and Commercial Code or under the law governing public limited companies, as the case may be, except that any acts in the process of dissolution and liquidation which are within the power and duty of the general meeting shall be within the power

and duty of the SEC Office.”

Section 8. *The provision of Section 30 of the Royal Enactment on Special Purpose Juristic Persons for Securitization B.E. 2540 shall be repealed and replaced with the following provision:*

“Section 30. In the execution of his duties, a competent officer shall have the power to:

- (1) enter the premises of a special purpose juristic person, debenture holder representative, trustee or agent who collects and receives payments of debts of the special purpose juristic person or any place where data is collected or processed pursuant to an authorization of such person or any place where documents, evidence or property of the special purpose juristic person are stored, during the hours between sunrise and sunset or during the working hours of such places, in order to examine the operations, property and liabilities of the special purpose juristic person, including documents, evidence, property or information concerning the special purpose juristic person;
- (2) enter any place during the hours between sunrise and sunset or during the working hours of such place, to examine property, accounts, documents or evidence which may be related to the commission of offences under the provisions of this Royal Enactment;
- (3) seize or attach documents or evidence related to the commission of offences under the provisions of this Royal Enactment for the purpose of inspection or taking legal action;
- (4) order a director, officer, employee or auditor of the special purpose juristic person, debenture holder representative, trustee, agent who collects and receives payments of debts of the special purpose juristic person, any person who collects or processes data under assignment from any such person or any person who collects documents, evidence or property of the special purpose juristic person, to testify or to deliver copies of or present accounts, documents, seals or other evidence related to the businesses, operations, property and liabilities of the special purpose juristic person;
- (5) order any person who will be useful in the performance of the duties of the competent officer to testify or deliver copies of or present accounts, documents or other objects which are related to or necessary for the performance of duties of the competent officer.”

Section 9. *The provision of Section 34 of the Royal Enactment on Special Purpose Juristic Persons for Securitization B.E. 2540 shall be repealed and replaced with the following provision:*

“Section 34. Any special purpose juristic person which contravenes Section 13 or the second paragraph of Section 15 or an agent to collect and receive payments of debts which contravenes Section 15/1 shall be subject to a fine not exceeding three hundred thousand baht.”

Section 10. *All notifications, rules, orders or regulations issued by the Securities and Exchange Commission under the Royal Enactment on the Special Purpose Juristic Persons for Securitization B.E. 2540, prior to the date on which this Act comes into force shall remain in force until notifications, rules, orders or regulations otherwise issued under the Royal Enactment on the Special Purpose Juristic Persons for Securitization B.E. 2540 as amended by this Act come into force.*

Section 11. *The Minister of Finance shall be responsible for the execution of this Act.*

Countersigned by:

General Prayuth Chan-o-cha

Prime Minister

(Ref.: Government Gazette, Volume 132, Part 21 Kor, dated 26 March B.E. 2558)