

(Translation)

EMERGENCY DECREE ON

SPECIAL PURPOSE JURISTIC PERSONS FOR SECURITIZATION

B.E. 2540 (1997)

*(As amended)**

Bhumibhol Adulyadej, Rex.,

Given on this 27th day of June B.E. 2540
Being the 52nd Year of the Present Reign.

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

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

H.M. the King, by virtue of Section 175 of the Constitution of the Kingdom of Thailand amended by the Constitution of the Kingdom of Thailand Amendment (No.5) B.E. 2538 (1995), is therefore graciously pleased to proclaim an Emergency Decree as follows:

Section 1. This Emergency Decree is called “Emergency Decree on Special Purpose Juristic Persons for Securitization B.E. 2540

Section 2. This Emergency Decree shall come into force on the date following the date of its publication in the Government Gazette.

Section 3.² In this Emergency Decree,

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

**Published in the Government Gazette, Volume 114, Part 29 Gor, dated 28 June B.E. 2540*

The English translation of the Emergency Decree on Special Purpose Juristic Person for Securitization B.E. 2540 (1997) was originally prepared by Freshfields Ltd. Owing to the Decree of the Act Amending the Emergency Decree on Special Purpose Juristic Person for Securitization B.E. 2540 B.E., the English translation has been revised by the staff of the SEC Office. It is important to note that this is an unofficial English translation which has not been subjected to an official review by the SEC Office. Readers should be aware that only the original Thai text has legal force and that English translation is strictly for reference. Accordingly, the SEC Office can neither undertake any responsibility for its accuracy, nor be held liable for any loss or damages arising from or related to its use.

²Amended by the Act Amending the Special Purpose Juristic Persons for Securitization Act B.E.2540 B.E. 2558

“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 Emergency Decree.

“Minister” means the Minister in charge of the execution of this Emergency Decree.

Section 4. The Minister of Finance shall be responsible for the execution of this Emergency decree.

Chapter 1

General

Section 5.² The SEC shall have the following powers and duties under this Emergency decree.

(1) to formulate policies concerning securitization;

(2) to supervise the special purpose juristic persons to ensure their compliance with this Emergency Decree;

²Amended by the Act Amending the Special Purpose Juristic Persons for Securitization Act B.E. 2540 B.E. 2558

(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 Emergency Decree;

(5) to determine fees for handling certain matters in accordance with this Emergency decree;

(6) to perform any other acts to achieve the purposes of this Emergency Decree 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 6.²

Section 7. The SEC Office shall have powers and duties as specified herein and shall be entitled to receive various fees in accordance with this Emergency Decree.

Section 8. In determining fees under sub-paragraph (5) in the first paragraph of Section 5, expenses and charges incurred in the actual handling of the matters shall be taken into consideration without the principal intention being to generate revenue. The fees shall become the property of the SEC Office.

Chapter 2

Special Purpose Juristic Person²

Section 9. Securitization under this Emergency Decree 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 Emergency Decree prescribes otherwise. In this regard, trustee shall have similar duties and responsibilities as a special purpose juristic person.

² Repealed by the Act Amending the Special Purpose Juristic Persons for Securitization Act B.E. 2540 B.E. 2558

² Amended by the Act Amending the Special Purpose Juristic Persons for Securitization Act B.E. 2540 B.E. 2558

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 Emergency Decree 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 Emergency decree 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.

Chapter 3

Provisional Representative

Section 25. If the SEC Office is of the opinion that any special purpose juristic person which is a limited company or a public limited company does not have an authorized person to act on its behalf or has an authorized person but such authorized person cannot operate for whatever reason, resulting in the suspension of the activities under the approved project, the SEC Office shall have the power to appoint one or several persons as it deems appropriate to be a provisional representative of the special purpose juristic person.

The provisional representative under the first paragraph shall have the sole authority to manage the business of the special purpose juristic person in all respects and do all necessary acts so that the business shall proceed in accordance with the approved project.

If it is appropriate, the SEC Office may change the provisional representative.

Section 26. On appointing the provisional representative under Section 25, the SEC Office shall notify its order by posting it in the open at the office of the special purpose juristic person for a period of not less than fifteen days. The order shall also be published in the Government Gazette and in at least one local daily newspaper with a wide circulation.

Section 27. When the SEC Office has notified an order for the appointment of a provisional representative of any special purpose juristic person under Section 26,

(1) directors, employees or any persons of the special purpose juristic person shall take such actions as may be reasonable to protect and preserve the things and interests of the holders of securities of the special purpose juristic person and shall promptly report on the business and deliver property together with books of account, documents, seals and any other evidence in relation to the business of the special purpose juristic person to the provisional representative within the period prescribed by the SEC Office;

(2) any person who is in possession of property or documents belonging to the special purpose juristic person shall inform the provisional representative of its possession within the period prescribed by the SEC Office.

Section 28. If the SEC Office has approved the appointment of a new authorized person for the special purpose juristic person, it shall issue an order withdrawing the provisional representative and post it in the open at the office of the special purpose juristic person for a period of not less than fifteen days. The order shall also be published in the Government Gazette and in at least one local daily newspaper with a wide circulation.

Section 29.² 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.

² Amended by the Act Amending the Special Purpose Juristic Persons for Securitization Act B.E. 2540 B.E. 2558

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.

Chapter 4

Competent Officer

Section 30.² 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 Emergency Decree;
- (3) seize or attach documents or evidence related to the commission of offences under the provisions of this Emergency Decree 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.

²Amended by the Act Amending the Special Purpose Juristic Persons for Securitization Act B.E. 2540 B.E. 2558

Section 31. In the performance of his duties, the competent officer shall present his identification card to the persons involved.

The identification card of the competent officer shall be in the form prescribed by the Minister as specified in the Government Gazette.

Section 32. In the performance of his duties in accordance with this Emergency Decree, the competent officer shall be an official under the Criminal Code.

Chapter 5

Penal Provisions

Section 33. Any person in proposing a project under Section 10 presents false information or conceals facts which should have been stated shall be subject to a fine ³not exceeding five hundred thousand baht.

Section 34.² 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 35. In a case where the commission of offences under Section 33 or Section 34 resulted from the instruction, the act, the failure to give instruction or the omission of an act which is a duty required to be performed by a director, manager or any person responsible for the operation of such juristic person, such person shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding three hundred thousand baht, or both.

Section 36. Any person who fails to comply with Section 27 shall be liable to imprisonment for a term not exceeding six months or a fine not exceeding sixty thousand baht, or both.

Section 37. In a case where the person who commits the offence under Section 36 is a juristic person and the commission of an offence by such juristic person resulted from the instruction, the act, the failure to give instruction or the omission of an act which is a duty required to be performed by a director, manager or any person responsible for the operation of such juristic person, such person shall also be liable to the penalties provided for such offences.

Section 38. Any person who obstructs the competent officer in the course of performing his duties under Section 30 shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding one hundred thousand baht, or both.

²Amended by the Act Amending the Special Purpose Juristic Persons for Securitization Act B.E. 2540 B.E. 2558

Section 39. Any person who fails to comply with the orders of or fails to give assistance to the competent officer in the course of performing his duties under Section 30 shall be liable to imprisonment for a term not exceeding six months or a fine not exceeding sixty thousand baht, or both.

Section 40. Any person who makes a false statement to the competent officer, which may cause damage to another person or to the public, shall be liable to imprisonment for a term not exceeding six months or a fine not exceeding sixty thousand baht, or both.

Section 41. Any person who removes, damages, destroys or renders useless any seal or mark which the competent officer has stamped or affixed on any object in performing his duties under Section 30 as evidence for the seizure, attachment or preservation of such object shall be liable to imprisonment for a term not exceeding three years and a fine not exceeding three hundred thousand baht.

Section 42. Any person, who damages, destroys, conceals, takes away, or loses or renders useless any property or document which the competent officer has seized, attached, preserved or ordered to be delivered as evidence in accordance with Section 30, regardless of whether the competent officer keeps such property or document by himself or orders such person or another person to deliver or keep it, shall be liable to imprisonment for a term of six months to three years and a fine of sixty thousand baht to three hundred thousand baht.

Section 43. A fine fixing committee appointed by the Minister shall have the power to fix a fine for offences under Section 33, Section 34, Section 35, Section 36, Section 37, Section 38, Section 39 and Section 40.

The fine fixing committee appointed by the Minister under the first paragraph shall consist of three persons.

Where a fine fixing committee has fixed a fine for an offence and the alleged offender has paid the fine as determined by the fine fixing committee within the period of time specified by the fine fixing committee, such case shall be regarded as settled under the provisions of the Criminal Procedure Code.

If the alleged offender refuses to pay the fine or agrees to pay the fine but fails to pay the fine within the specified period, the legal action shall be continued.

Section 44. If a legal action in respect of the offence the fine of which can be fixed under Section 43 is not filed with a court within five years from the date of commission of the offence, the statutory limitation period shall expire.

Countersigned by:

General Chavalit Youngchaiyudh

Prime Minister

Remarks: The reasons for issuing this Emergency Decree are that securitization business is an important financial process which can be used to solve the problem of shortage of both

short-term and long-term fund in numerous business sectors. Securitization business will also create a new type of financial instrument with high stability which will be conducive to the development of the capital market and mobilization of domestic savings. In addition, Thailand is currently facing the problem of economic slow-down which has resulted from sluggish conditions of various business sectors, coupled with a shortage of current capital, in particular, in the property sector. These factors lead to a general and wide impact on the operations and the management of liquidity of financial institutions in general, which would further have an effect on the recovery of the economy of the country. It is therefore expedient to enact the law on special purpose juristic persons for securitization. Furthermore,

the current sluggish economic conditions might have far-reaching effects on the economy which could in the long run undermine the economic stability of the country. And since the preservation of the economic stability of the country is an urgent and necessary matter, there is therefore a need to issue this Emergency Decree.

Transitional provision

The Act Amending the Emergency Decree on Special Purpose Juristic Persons for Securitization B.E. 2540 B.E. 2558

Section 10. All notifications, rules, orders or regulations issued by the Securities and Exchange Commission under the Emergency Decree 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 Emergency Decree on the Special Purpose Juristic Persons for Securitization B.E. 2540 as amended by this Act come into force.