

**ROYAL ENACTMENT ON
SPECIAL PURPOSE JURISTIC PERSONS FOR SECURITISATION**

B.E. 2540 (1997)

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 securitisation,

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 a Royal Enactment as follows:

Section 1. This Royal Enactment is called “Royal Enactment on Special Purpose Juristic Persons for Securitisation B.E. 2540”

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

Section 3. In this Royal Enactment,

“securitisation” means a receipt of transfer of assets and an issuance of securities for sale to investors with the requirement that returns to the holders of the securities will depend on a flow of receipts generated from the assets which are transferred.

“assets” means rights of claim or any other rights which generate a flow of receipts in the future, whether or not such receipts are certain, for example, residential loan agreements or rights under concessions for the construction of toll ways.

“a special purpose juristic person” means a juristic person established for the purpose of securitisation under this Royal Enactment.

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Freshfields Ltd. has been selected by the Office of Securities and Exchange Commission (SEC) to undertake translation of the Royal Enactment. Readers should be aware that only the original Thai text has legal force and that English translation is strictly for reference. Please also note that the translation has not been subjected to an official review by the Office of the SEC. Neither the Office of the SEC nor Freshfields Ltd. undertake any responsibility for its accuracy, nor be held liable for any loss or damages arising from or related to its use.

“mutual fund” means a mutual fund under the law governing securities and exchange.

“project” means a securitisation project.

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

“Office of the SEC” 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 Ministry of Finance shall be responsible for the execution of this Royal Enactment.

Chapter 1

General

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

- (1) to formulate policies concerning securitisation;
- (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 securitisation;
- (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 appoint sub-committees or advisors to perform any matters as assigned by the SEC;
- (7) to issue rules relating to the meetings and the performance of duties of the sub-committees;
- (8) to do any other acts to achieve the purposes of this Royal Enactment.

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

Section 6. The sub-committees and advisors under item (6) in the first Paragraph of Section 5 shall receive the remuneration as specified by the SEC which shall be paid from the funds of the Office of the SEC.

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

Section 8. In determining fees under item (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 Office of the SEC.

Chapter 2

Special Purpose Juristic Person

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

Section 10. Person eligible to submit a project to the Office of the SEC for consideration are:

- (1) commercial banks;
- (2) finance companies;
- (3) credit foncier companies;
- (4) securities companies;
- (5) other juristic persons as prescribed by the SEC.

A proposed project must be submitted together with an application for the offer for sale of newly issued securities or an application for the establishment of a mutual fund under the law governing securities and exchange, and the category of person who will act as the special purpose juristic person and relevant details must also be specified in accordance with rules, conditions and procedures prescribed by the SEC.

If the proposed project is for the establishment of a special purpose juristic person in the form of a mutual fund, a securities company which will be the mutual fund manager must also be proposed.

Section 11. After the Office of the SEC has approved a project:

- (1) if the special purpose juristic person is a limited company or a public limited company, the Office of the SEC shall register such company under the project as a special purpose juristic person and such special purpose juristic person shall be deemed to have been approved to offer for sale newly issued securities and shall be entitled to proceed with the offering of the securities for sale in accordance with the law governing securities and exchange;

- (2) if the special purpose juristic person is a mutual fund, the securities company specified in the project shall appoint a mutual fund supervisor and shall be entitled to proceed with the offering for sale of investment units to the public and to register the mutual fund in accordance with the law governing securities and exchange. At the time of the registration of the mutual fund, the Office of the SEC shall simultaneously register it as a special purpose juristic person.

In the process of securitisation, the SEC shall have the power to issue any notification prescribing different courses of action from those prescribed in the law governing securities and exchange.

Section 12. The special purpose juristic person shall carry out various activities as specified in the approved project and shall be entitled to offer for sale only newly issued securities which are issued pursuant to a proposed project.

Powers stipulated in the first paragraph include:

- (1) to receive the transfer of assets;
- (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.

Section 13. 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 characterisation of those of finance or credit foncier businesses, the special purpose juristic person shall be entitled to engage in those operations without a licence under the law governing such operations.

Section 15. If the assets which have been transferred are rights of claims whereby the original payee acts as an agent to collect and receive payments of debts incurred, the transfer of the claims shall be 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 paragraph two of Section 308 of the Civil and Commercial Code shall not be prejudiced.

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 of the rights of claims 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.

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 to the transfer to the special purpose juristic person.

Section 17. The transfer of assets secured by rights of mortgage, rights of pledge or other security under an approved project shall be exempt from any fees which, no matter what law in which they are stipulated, are levied in connection with the transfer of the assets or the transfer of the security for the assets.

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. As regards the transfer of assets under an approved project where the seller of the assets is required to receive the re-transfer of assets from a special purpose juristic person, the provisions of Section 15, Section 16 and Section 17 shall apply to the re-transfer of the assets *mutatis mutandis*.

Section 20. If the special purpose juristic person truly receives the transfer of assets from the seller of the assets, Section 114 of the Bankruptcy Act B.E. 2483 (1940) shall not apply.

The true receipt of transfer from the seller of the assets in accordance with the first paragraph means a transfer of assets under which,

- (1) the consideration is paid for at a fair market price;
- (2) the special purpose juristic person will take the risks and receive returns on the assets; and
- (3) the special purpose juristic person is entitled to the benefits inherent in the transferred assets.

Apart from the characteristics of the true receipt of the transfer of assets as prescribed in the second paragraph, the SEC may prescribe other additional characteristics.

Section 21 If the securities offered for sale by the special purpose juristic person are debt instruments which are not debt instruments subordinated to ordinary creditors, a holder of the securities of the special purpose juristic person shall have the status of a preferential creditor over the assets which have been transferred to the special purpose juristic person and shall receive performance of obligations from the assets prior to other preferential creditors.

In respect of the preferential right under the first paragraph, a holder of the securities shall have the status of a secured creditor under the law governing bankruptcy.

Section 22. If the Office of the SEC has found that any special purpose juristic person has securitised the assets into securities in the manner of seeking gains without the genuine purpose of securitisation, the Office of the SEC has the power to revoke the registration of the special purpose juristic person and such person shall pay compensation to the Office of the SEC in the amount equal to the amount of fees which it has been exempted from payment, together with a surcharge at the rate of two per cent per month on the amount payable from the date of revocation of its status as a special purpose juristic person.

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 securities which have been sold.

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

- (1) it neither receives the transfer of assets nor issues securities for sale to investors under the project within six months from the date on which the project was approved;
- (2) it has paid in full the debts owed to investors who have invested in the securities of the special purpose juristic person;
- (3) holders of the securities of the special purpose juristic person who hold more than half of the total securities which have been sold have passed a resolution to dissolve the special purpose juristic person and such resolution has been approved by the Office of the SEC;
- (4) an event specified in the project occurs;
- (5) the Office of the SEC has revoked the registration pursuant to Section 22 and Section 29.

Chapter 3

Provisional Representative

Section 25. If the Office of the SEC is of the opinion that any special purpose juristic person which is a limited company or a public limited company does not have an authorised person to act on its behalf or has an authorised person but such authorised person cannot operate for whatever reason, resulting in the suspension of the activities under the approved project, the Office of the SEC 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 Office of the SEC may change the provisional representative.

Section 26. On appointing the provisional representative under Section 25, the Office of the SEC 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 Office of the SEC 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 Office of the SEC;
- (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 Office of the SEC.

Section 28. If the Office of the SEC has approved the appointment of a new authorised 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. If the Office of the SEC considers that any special purpose juristic person is unable to continue its operations, it shall revoke the registration of the special purpose juristic person and shall appoint a liquidator for the special purpose juristic person. The appointment of the liquidator shall be deemed as the appointment of a liquidator under the law governing the establishment of the special purpose juristic person.

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

Chapter 4

Competent Officer

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, mutual fund supervisor 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 authorisation 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, mutual fund supervisor, 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 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 Royal Enactment, 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 not exceeding five hundred thousand baht.

Section 34. Any special purpose juristic person which contravenes Section 13 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.

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 Royal Enactment are that securitisation 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. Securitisation 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 mobilisation 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 securitisation. 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 Royal Enactment.