

EMERGENCY DECREE  
The Specific Purpose Juristic Person for Securitization  
B.E. 2540

HIS MAJESTY THE KING BHUMIBOL ADULYADEJ

Given on the 27<sup>th</sup> day of June B.E. 2540  
Being the 52<sup>nd</sup> Year of the Present Reign  
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His Majesty the King Bhumibol Adulyadej is graciously pleased to proclaim that:

Whereas it is deemed expedient to issue the law on the Specific Purpose juristic person for securitization.

By virtue of Section 175 of the Constitution of the Kingdom of Thailand as amended by the Amendment Act (No. 5) B.E. 2538, the King hereby issues the following Emergency Decree:

Section 1        This Emergency Decree shall be called the "Emergency Decree on the Specific Purpose Juristic Person for Securitization, B.E. 2540."

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

Section 3        In this Emergency Decree,

"Securitization" means the receipt of the transferred assets and the issuance of the securities sold to investors, of which the returns to a securities holder depends on the incoming flows incurred from the transferred assets.

"Assets" means the right to claim or any other right that creates in the future current receipts whether or not they are certain, examples being a housing loan agreement or rights under a concession to build a road and collect toll money.

"Specific Purpose Juristic Person" means a juristic person set up to change assets to securities under this Emergency Decree.

"Mutual Fund" means a mutual fund under the law governing securities and exchange.

"Project" means project to change assets into securities.

"Securities and Exchange Commission (SEC)" means Securities and Exchange Commission under the law governing securities and exchange.

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

"Competent Official" means a person appointed by the Minister for the carrying out of this Emergency Decree.

"Minister" means the Minister with charge and control of the execution of this Emergency Decree.

Section 4        The Minister of Finance shall have charge and control of the execution of this Emergency Decree.

## Chapter 1 General Provisions

Section 5      The SEC shall have the following powers and duties under this Emergency Decree:

- (1)      Set policy concerning securitization
- (2)      Supervise the compliance by the Specific Purpose Juristic Person with this Emergency Decree;
- (3)      Stipulate the categories of assets and securities permitted for securitization;
- (4)      Issue Notifications for the carrying out of this Emergency Decree;
- (5)      Stipulate fees for doing anything under this Emergency Decree;
- (6)      Appoint sub-committees and advisors to do anything assigned by the SEC
- (7)      Issue rules concerning the meetings of and the performance of duties by the sub-committees; and
- (8)      Carrying out anything else in pursuant of the objectives of this Emergency Decree.

The Notification of the SEC under paragraph one when published in the Government Gazette shall have force.

Section 6      The sub-committees and advisors under Section 5 paragraph one sub-paragraph 6 shall receive remuneration stipulated by the SEC which shall be paid from the money of the Office of the SEC.

Section 7      The Office of the SEC shall have the powers and duties provided in this Emergency Decree and shall receive the fees under this Emergency Decree.

Section 8      The stipulation of the fees under Section 5 paragraph one sub-paragraph 5 shall be considered in conjunction with actual expenses, fairness and burdens in the operation and shall not be with the primary intention of generating income. These fees shall be vested with the Office of the SEC.

## Chapter 2 Specific Purpose Juristic Person

Section 9      Specific Purpose Juristic Person may be organized in the form of a limited company, public limited company, mutual fund or another juristic person as the SEC stipulates

Section 10     Those who are entitled to propose projects to the Office of the SEC for consideration are:

- (1)      commercial banks;
- (2)      finance companies;
- (3)      credit foncier companies;
- (4)      securities companies;

- (5) any other juristic persons as the SEC stipulated in Notifications.

The proposed projects shall be submitted at the same time as the application for permission to make an offer for sale of newly issued securities or for permission to establish a mutual fund under the law governing securities and exchange and the categories of persons who will be the Specific Purpose Juristic Person must be specified as the particulars according to the regulations, conditions and procedures stipulated by the SEC in Notifications.

If a proposed project is to establish an Specific Purpose Juristic Person in the form of a mutual fund, such project shall also propose a securities company that will be the manager of the mutual fund.

Section 11 When the Office of the SEC has approved any project,

- (1) If the Specific Purpose Juristic Person is a limited company or public limited company, the Office of the SEC shall register it for the project and it will be deemed to have received permission to make an offer for sale of newly issued securities and it can proceed to make the offer under the law governing securities and exchange; and
- (2) If the Specific Purpose Juristic Person is a mutual fund, the securities company specified in the project shall provide a custodian of the mutual fund and it can proceed to make a public offering of investment units and register as a mutual fund under the law governing securities and exchange. For registering as a mutual fund the Office of the SEC will register it as an Specific Purpose Juristic Person at the same time.

For proceeding with the securitization, the SEC shall have the power to stipulate requirements different from what is stipulated in the law governing securities and exchange.

Section 12 The Specific Purpose Juristic Person shall proceed with any action as specified in the approved projects and can make an offer for sale of newly issued securities only if it is pursuant to any of the projects proposed.

The powers stipulated in paragraph one shall also include the following powers.

- (1) Accept transfer of assets;
- (2) Issue securities to investors;
- (3) Execute contracts with persons in the interests of proceeding in accordance with the approved projects;
- (4) Create the debts and liabilities as set forth in the projects;
- (5) Invest or seek benefits from the transferred assets as the SEC permits.

Section 13 The Specific Purpose Juristic Person is prohibited from doing anything that is not specified in the approved projects unless relaxation is granted by the SEC.

Section 14 If the nature of the operations of the Specific Purpose Juristic Person is undertaking a financial or credit foncier business, it can do so without being required to receive permission under the law governing such businesses.

Section 15 If the transferred assets are rights to claim and the original payee is a collection agent and receives the debt payments, then the assignment of the right to claim is lawful without being required to notify the debtor about the assignment as provided in Section 306 of the Civil and Commercial Code, but this does not prejudice the right of the debtor to set up any defense under paragraph two of Section 308.

The collection agent under paragraph one shall have the duty of keeping the accounts and list of the debtors names for the transferred assets in separate accounts and the debtors shall be entitled to inspect their own accounts and name.

If the collection agent is changed to anybody else who is not an original payee, the Specific Purpose Juristic Person shall notify the debtors about the transfer of claim as from the date of the change unless the change of agent was a result of the law on account of amalgamation of the businesses of the two persons.

Section 16 If the assets transferred under the approved project have security or collateral that is not a mortgage right or pledge right or a right arising from a guarantee, then the rights under the asset shall be rested in the transferees and finally in the Specific Purpose Juristic Person.

Section 17 The transfer of assets that have a mortgage right, a pledge right or other security or collateral under the approved project shall be exempt from all fees even if it is stipulated in any law, that arise from transferring assets or the assets security.

Section 18 The transfer of assets under the approved project that bear lawful interest in excess of fifteen percent per annum shall not be subject to the provisions of Section 654 of the Civil and Commercial Code. The Specific Purpose Juristic Person shall have the right to charge interest on the assets at rates of not more than the previous rate and shall follow the original procedures for doing so.

Section 19 The transfer of assets under the approved project which have a term that the seller of the assets can receive the transfer of the assets back from the Specific Purpose Juristic Person shall be subject to the provision of Section 15, 16 and 17 mutatis mutandis with respect to the transfer back of assets.

Section 20 If the Specific Purpose Juristic Person genuinely accepts transfer of assets from the seller of the assets, Section 114 of the Bankruptcy Act of B.E. 2453 shall not apply.

The genuine acceptance of transfer in paragraph one means a transfer of assets,

- (1) where a fair market price is paid;
- (2) where the Specific Purpose Juristic Person must bear the risks and the return benefits of the transferred assets; and
- (3) where the Specific Purpose Juristic Person can hold the rights to the benefits of the transferred assets.

Apart from the assumption of genuine transfer given in paragraph two, the SEC may, by Notifications, stipulate other additional descriptions.

Section 21 If the securities that the Specific Purpose Juristic Person offers are an instrument other than a debt instrument with rights less than an ordinary creditor, the status of the securities holder shall be a special preferential creditor over the assets transferred to the Specific Purpose Juristic Person and the holder's right to receive payment of the debt from the asset shall be ranked before any other preferential rights.

In cases concerning the special preferential rights under paragraph one, the securities holder status shall be a secured creditor under the law governing bankruptcy.

- Section 22 If the Office of the SEC finds that any Specific Purpose Juristic Person is changing assets into securities in a way that is seeking benefits without genuinely intending to securitize the assets, the Office of the SEC shall have the power to cancel the registration of such Specific Purpose Juristic Person and require the person to make good the money in a sum equal to the amount the person was exempted from the fees for securitization plus a surcharge at the rate of two percent per month on the amount required to be paid to the Office of the SEC counting from the date of being de-registered as an Specific Purpose Juristic Person.
- Section 23 The dissolution of the Specific Purpose Juristic Person that is a limited company or public limited company requires the consents of the securities holders holding in the aggregate amount of more than one-half of all the outstanding securities.
- Section 24 An Specific Purpose Juristic Person comes to an end upon,
- (1) not accepting transfer of assets or not selling securities to investors under the project within six months from the date of approving the project;
  - (2) all debts have been paid to the investors who invest in the securities of the Specific Purpose Juristic Person;
  - (3) securities holders of the Specific Purpose Juristic Person holding more than half of all the outstanding securities resolve to dissolve and approval has been obtained from the Office of the SEC;
  - (4) when there is a circumstance specified in the project; or
  - (5) when the Office of the SEC de-registers under Section 22 or Section 29.

### Chapter 3 Temporary Representative

- Section 25 If the Office of the SEC finds that any Specific Purpose Juristic Person that is a limited company or public limited company has no person authorized to act on behalf of the Specific Purpose Juristic Person, or has one but the person cannot act for any reason with the result that implementing the approved projects is interrupted, the Office of the SEC shall have the power to appoint one or several persons, as it deems appropriate to be a temporary representative of the Specific Purpose Juristic Person.
- The temporary representative under paragraph one shall have the sole power to manage all the business of the Specific Purpose Juristic Person, and can act as necessary for the business to proceed under the approved projects.
- In appropriate cases, the Office of the SEC may change the person who is temporary representative.
- Section 26 In appointing a temporary representative under Section 25, the Office of the SEC shall give notice of the order by posting it up in a conspicuous place at the Office of the Specific Purpose Juristic Person for at least fifteen days and shall publish it in the Government Gazette and in a least one local daily newspaper.

- Section 27 When the Office of the SEC has given notice of the order appointing a temporary representative under Section 26.
- (1) the director, staff or any persons of the Specific Purpose Juristic Person shall appropriately manage to protect the assets and benefits of the securities holders of the Specific Purpose Juristic Person and promptly report on the business and deliver the property, books of accounts, documents, seals and other evidence concerning the business and other evidence of the Specific Purpose Juristic Person to the temporary representative within the period of time stipulated by the Office of the SEC; and
  - (2) any persons who have possession of property or documents of the Specific Purpose Juristic Person shall notify the temporary representative of such within the period of time stipulated by the Office of the SEC.
- Section 28 If the Office of the SEC gives approval to the appointment of a new person authorized to operate the business of the Specific Purpose Juristic Person, the Office of the SEC shall give the order or removing the temporary representative by posting it in a conspicuous place at the office of the Specific Purpose Juristic Person for at least fifteen days and shall publish it in the Government Gazette and in at least one local daily newspaper.
- Section 29 If the Office of the SEC finds that any Specific Purpose Juristic Person cannot continue its operations, the Specific Purpose Juristic Person shall be de-registered and a liquidator be appointed, and it shall be deemed that the said appointment of liquidator is an appointment under the laws concerning the establishment of an Specific Purpose Juristic Person.

The liquidation under paragraph one shall be in accordance with the provisions of Civil and Commercial Code governing the liquidation of a limited company or the law governing public limited companies concerning liquidation, as the case may be, unless any part of the liquidation is the powers and duties of the general meeting in which case it shall be the powers and duties of the Office of the SEC.

#### Chapter 4 Competent Official

- Section 30 To perform the duties, a Competent Official shall have the following powers:
- (1) to enter into the premises of the Specific Purpose Juristic Person, representatives of debentureholders, custodians of a mutual fund and collection agents of the Specific Purpose Juristic Person or any premises that compile or process data by being assigned to do so by such person or any premises that store documents or property of the Specific Purpose Juristic Person, during daylight hours or during the business hours of the premises, in order to inspect the business, property and liabilities of the Specific Purpose Juristic Person, including the documents, evidence, property or data concerning the Specific Purpose Juristic Person.
  - (2) to enter upon any premises during daylight hours or the business hours of the premises conduct a check of the property, audit the books of accounts and inspect documents or evidence that may involve an act that is an offense under this Emergency Decree;
  - (3) seize and attached documents or evidence involving the commission of an offense under this Emergency Decree for the purposes of examination or taking legal action;

- (4) order directors, staff, employees or auditors of an Specific Purpose Juristic Person, representatives of debentureholders, custodians of a mutual fund, collection agents of the Specific Purpose Juristic Person or compilers or data processors assigned by such persons, or any person who keeps documents, evidence or property of the Specific Purpose Juristic Person, to appear and make statements or furnish copies or produce books of account, documents, seals or other evidence concerning the business, operations, property and liabilities of the Specific Purpose Juristic Person; and
- (5) order any person that would be beneficial to the performance of duties by the Competent Official to appear and make statements or furnish copies or produce books of accounts, documents, evidence or any other objects involving or necessary to perform the duties.

Section 31 In performing the duties, the Competent Official shall show an ID card to those concerned.

The Competent Official ID card shall be in accordance with the design (form) that the Minister specified in the Government Gazette.

Section 32 To perform the duties under this Emergency Decree, the Competent Official shall be an official under the Penal Code.

#### Chapter 5 Penalties

Section 33 Any person proposing a project under Section 10 with false statements or concealing the truth that should be stated shall be liable to a fine of not exceeding Baht 500,000.

Section 34 Any Specific Purpose Juristic Person who violates Section 13 shall be liable to fine of not exceeding Baht 300,000.

Section 35 In the case of the commission of an offense under Section 33 or Section 34 arising from an order, carrying out an act, failure to give an order or a failure to act which is a duty required to be done by a director, manager or any person responsible to the operation of the juristic person, such person shall be liable to a term of imprisonment not exceeding one year or to a fine not exceeding Baht 300,000 or to both.

Section 36 Any person who fails to comply with Section 27 shall be liable to a term of imprisonment not exceeding six months or to a fine not exceeding Baht 60,000 or to both.

Section 37 If the person who commits an offense under Section 36 is a juristic person and if the commission of the offense arose from an order, carrying out an act, failure to give an order or a failure to act which is a duty required to be done by a director, manager or any person responsible in operating the juristic person, such person shall also be punished under the provisions for that offense.

Section 38 Any person who obstructs the Competent Official while performing the duties under Section 30 shall be liable to a term of imprisonment not exceeding one year or to a fine not exceeding 100,000 Baht or to both.

Section 39 Any person who fails to obey an order by or fails to facilitate the Competent Official in order to perform his duties under Section 30 shall be liable to a term of imprisonment not exceeding six months or to a fine not exceeding Baht 60,000 or to both.

- Section 40 Any person who makes a false statement before the Competent Official which may injure another person or the public shall be liable to a term of imprisonment not exceeding six months or to a fine not exceeding Baht 60,000 or to both.
- Section 41 Any person who removes, causes damage to, destroys or renders useless a seal or mark which the Competent Official has stamped, affixed or marked on anything in the performance of the duties under Section 30 in order to be evidence in seizure or attachment or to preserve (keep) such thing, shall be liable to a term of imprisonment not exceeding three years or to a fine not exceeding Baht 300,000.
- Section 42 Any person who causes damage to, destroys, hides, makes away with, or causes loss of or renders useless any property or documents that the Competent Official has seized or attached or kept or ordered be sent to serve as documentary evidence under Section 30, whether or not the Competent Official has kept such himself or has ordered that person or another person to keep the property or documents, shall be liable to a term of imprisonment of from six months to three years and to a fine of from Baht 60,000 to Baht 300,000.
- Section 43 An offense under Section 33, Section 34, Section 35, Section 36, Section 37, Section 38, Section 39 and Section 40 shall be settled by a committee appointed by the Minister with the power to settle offense.
- The Committee appointed by the Minister under paragraph one shall have three members.
- When the Committee has settled any case and the accused has paid the penalty proposed within the period stipulated by the Committee, it shall be deemed that the case is closed under the provisions of the Criminal Procedure Code.
- If the accused does not consent to the settlement or consents but fails to pay the fine within the stipulated period of time, further legal action shall be taken.
- Section 44 If an offense that has been settled under Section 43 is not entered in Court within five years from the date of the commission of the offense, it shall expire by prescription.

Countersigned by  
Gen. Chavalit Yongchaiyuth  
Prime Minister

Note: A rationale behind the announcement of this Emergency Decree is that the Securitization business is an important financial process which can be implemented to rectify the shortage of both short and long-term capital of the businesses. It also helps create a new, highly-stable financial instrument, which should facilitate the development of the country's capital market and the mobilization of its savings. Besides, at present, Thailand is facing an economic slowdown, which is a result of the lackluster of the businesses and the shortage of the capital flows especially in the real estate sector. This, in general, has widely affected the operation and the liquidity management of the financial institutions and induced a chain reaction to an attempt to restore the country's economy. It is, therefore, deemed expedient to issue a law on the Specific Purpose Juristic Person on Securitization. And due to the fact that the present economic stability may widely spread to the point that it can be difficult to maintain the economic stability and in the event of emergency which as an express necessity to preserve the country's economic stability, it is, therefore, necessary to issue this Emergency Decree.