

EMERGENCY DECREE
On Secondary Mortgage Finance Corporation
B.E. 2540

BHUMIBOL ADULYADEJ POR. ROR.

Given on the 27th day of June B.E. 2540
Being the 52nd Year of the Present Reign
(Published in Royal Gazette on 28th day of June 1997)

By Royal Command of His Majesty the King Bhumibol Adulyadej, it is hereby proclaimed that,

Whereas it is deemed proper to establish a Secondary Mortgage Finance Corporation.

Be it, therefore, graciously enacted as an Emergency Decree by His Majesty the King, in exercise of the Power under Section 175 of the Constitutional Act of Kingdom of Thailand as amended by the Amendment to the Constitution of the Kingdom of Thailand (No. 5) B.E. 2538, as follows:

- Section 1 This Emergency Decree is called the “Emergency Decree on Secondary Mortgage Finance Corporation B.E. 2540”.
- Section 2 This Emergency Decree will come into force on the day following the date of its publication in the Royal Gazette.
- Section 3 In this Emergency Decree;
“Corporation” means “The Secondary Mortgage Finance Corporation”.
- “Secondary Market for Housing Loans” means execution of any financial transaction in relation to investment in Assets and Securitisation.
- “Assets” means a claim or any other rights that give rise to a flow of income in the future whether certain or otherwise in relation to housing loans.
- “Securities” means securities under the Law on Securities and Exchange.
- “Financial Instrument” means bills and debt instruments or equity instruments as determined by the Board of Directors.
- “Securitisation” means securitisation pursuant to the law on the Special Purpose Juristic Persons for Securitisation.
- “Fund” means the initial funds pursuant to section 10, the money received from a capital increase pursuant to section 11, reserves and net profits after appropriation, after deduction of losses incurred in each accounting period and reserves from revaluation of assets.
- “The Board of Directors” means the Board of Directors of the Secondary Mortgage Finance Corporation.
- “Director” means director (s) of the Secondary Mortgage Finance Corporation.
- “Manager” means a manager of the Secondary Mortgage Finance Corporation.
- “Minister” means the Minister who is in charge of the enforcement of this Emergency Decree.

Section 4 The Minister of Finance shall be in charge of the enforcement of this Emergency Decree and is empowered to issue Ministerial regulations in the implementation of this Decree.

Ministerial Regulations shall come into force on and from the day of its publication in the Royal Gazette.

Chapter 1 Establishment and Capital

Section 5 A government agency shall be established under the name of "the Secondary Mortgage Finance Corporation" known by the abbreviation "SMC" and shall be a juristic person.

Section 6 The Corporation shall have its principal office in Bangkok Metropolis and may establish branch offices anywhere in the Kingdom; provided, however, the establishment of a branch office shall require prior approval from the Minister.

Section 7 The Corporation shall have as its objects the carrying on the business of Secondary Mortgage Finance and any other business which supports and develops Secondary Mortgage Finance.

Section 8 Within the scope of the objects of the Corporation pursuant to section 7 the Corporation has the power to engage in any of the following transactions:

- (1) own or possess or hold any real rights, construct, purchase, procure, sell, dispose of, rent, let on lease, hire-purchase, sell on hire-purchase, borrow, lend, accept pledges, accept mortgages, exchange, transfer, accept transfers or execute any transaction in relation to assets within and outside the Kingdom, including receiving money or assets donated by other persons;
- (2) accept the transfer of credits from other financial institutions or real estate operators;
- (3) undertaken the securitisation;
- (4) issue securities or financial instruments;
- (5) provide risk insurance to any person investing in Securities issued in relation to securitisation to insure repayments in a specified form or method;
- (6) charge interest, discount, fees and other related financial service fee;
- (7) make on-shore or off-shore borrowings for the business of the Corporation;
- (8) take deposits for the benefit of the business operations of the Corporation in completing the securitisation or raise funds from any financial institutions or financial markets, excluding raising funds by taking deposits from the public;
- (9) employ any uncommitted funds of the Corporation for investment to generate income, as approved by the Board of Directors; and
- (10) any other transactions relating ancillary to such management to achieve the objects of the Corporation.

In any issuance of securities or securitisation, the Corporation must comply with the Law on Securities and Exchange and the Law on the Special Purpose Juristic Persons for Securitisation, as the case may be.

- Section 9 Where the Corporation invests in any kinds of assets, the Corporation and the relevant parties shall mutatis mutandis enjoy the privileges and benefits pursuant to sections 14 to section 21 of the Emergency Decree on the Special Purpose Juristic Person for Securitisation B.E. 2540.
- Section 10 The initial capital of the Corporation shall be Baht One Billion to be paid from the reserves used to maintain the level of the profit required to be remitted to the Government by the Bank of Thailand.
- Section 11 An increase of capital of the Corporation must be effected by allocation from the national budget or other sources as approved by the Cabinet.
- Section 12 Working capital shall consist of:
- (1) the capital fund;
 - (2) proceeds from the issuance of securities or financial instruments by the Corporation;
 - (3) on-shore and off-shore borrowings;
 - (4) income of the Corporation;
 - (5) donations; and
 - (6) money obtained from other sources as approved by the Minister.

Chapter 2 Board of Directors and Management

- Section 13 There shall be a Board of Directors called "the Board of Directors of the Secondary Mortgage Finance Corporation" consisting of the Director-General of the Fiscal Policy Office acting as the Chairman, the Director-General of the Department of Land, the representative of the Bank of Thailand nominated by the Governor of the Bank of Thailand, the representative of the Government Housing Bank, the representative of the Office of Securities and Exchange Commission and not more than four other qualified persons as directors and the manager acting as the director and secretary.
- The qualified persons shall be appointed as directors by the Minister with the approval of the Cabinet, of which at least two directors must be qualified persons from a private sector.
- Section 14 Directors appointed by the Minister shall serve for a term of three years.
- Where a director appointed by the Minister vacates office before expiry of his term or an additional director is appointed while the appointed directors remain in office, such director or additional director shall remain in office only for so long as the remaining directors may remain in office.
- In case of the expiration of his term mentioned in first paragraph, if there is no appointment of a new director in his place, such director to retire from his office will remain in office to perform his duty until a new director is appointed in his place.
- A retiring director is eligible for re-election but he may not serve for more than two consecutive terms.

- Section 15 Apart from any vacancy occurring otherwise than by retirement pursuant to section 14, a director appointed by the Minister shall vacate office if:
- (1) he dies;
 - (2) he resigns;
 - (3) he is removed by the Minister on grounds of misfeasance or dishonesty in carrying out his duties or inability;
 - (4) he is adjudicated bankrupt;
 - (5) he becomes an incompetent or a quasi-incompetent; or
 - (6) he is imprisoned following final judgment of a court except in the case of a negligent act or petty offense.

Section 16 A Board of Directors' meeting shall require presence of not less than one-half of the total number of directors to form a quorum. If the chairman is not present at the meeting, the directors present may elect one of its members to act as a chairman.

A decision of the meeting must be approved by a majority of votes. Each director shall have one vote. In case of an equality of votes the chairman has an additional casting vote.

- Section 17 The Board of Directors has power to lay down the policy, and control and supervise the business of the Corporation within the objects described in section 7. Such power shall also include the power to:
- (1) establish regulations in relation to personal management, remuneration and expenses;
 - (2) establish regulations in relation to the procurement, finance, assets and accounting, including inspection and internal auditing;
 - (3) establish regulations in relation to the business administration and business operation;
 - (4) establish the rules and criteria on the qualifications of housing loan debtors in relation to which the Corporation will accept the transfers;
 - (5) determine the standard form of the Housing Loan Agreement which the Corporation will accept transfers;
 - (6) determine the rules in relation to valuation of assets of which will be transferred to the Corporation, including the rules, procedures and conditions and risk insurance for investors who invest in securities issued by the Corporation in connection with securitisation; and
 - (7) consider and approve budgets of the Corporation.

Section 18 The Board of Directors is authorized to appoint an executive committee which will consist of a Manager and at least three but not more than five directors as members of the executive committee and appoint one of the members of the executive committee other than the manager to be Chairman of the executive committee.

The executive committee will have the powers designated by the Board of Directors.

- Section 19 For the benefit in operating the Corporation, the Board of Directors has power to appoint a sub-committee to carry out any businesses of the Corporation.
- Section 20 The Board of Directors has the power to appoint and remove the manager with the approval of the Minister.
- The appointment and removal of the manager mentioned in the first paragraph must be approved by no less than three-fourths of votes of the total directors.
- The manager is not considered as an employee under the law on the standard qualifications of directors and employees of State Enterprises.
- Section 21 The manager has a power to carry on the business of the Corporation in compliance with its objects and the powers and duties of the Corporation and in accordance with the policies and any regulations determined by the Board of Directors.
- In carrying on any businesses of the Corporation with a third party, the manager shall act as the representative of the Corporation. For this purpose, the manager may appoint an agent or any person to do any specific act; provided that such appointment must comply with the regulations determined by the Board of Directors.
- Section 22 The Chairman of the Board, directors, the chairman of the executive committee, executive directors and the Sub-Committee are entitle to receive such remuneration as determined by the Minister.

Chapter 3 Supervision, Operation and Control

- Section 23 The Minister has a power and duty to supervise the business of the Corporation in general. For this purpose, he may order the Corporation to explain the facts, make any recommendation, prepare a report or suspend any action of the Corporation which is in conflict with the Government's policy or decisions of the Cabinet including the power to order the Corporation to comply with the Government's policy or decision of the Cabinet and order and examination of any facts relating to its business operation.
- Section 24 The Corporation must maintain its capital funds in proportion to its assets, liabilities and obligations according to the rules, procedures and conditions prescribed in the Ministerial Regulations.
- Section 25 Where the Corporation requests the Government to guarantee loans which the Corporation will borrow from any source either inside or outside the country, the Government has the power to guarantee such loans but the amount of loans which will be guaranteed when combined with the remaining outstanding loans already guaranteed by the Government after calculation into Thai currency must not exceed four times the capital fund of the Corporation regardless of the law by virtue of which such guarantee were issued.
- In calculation of the Thai currency equivalent to determine the foreign currency of the total amount of loans under the first paragraph, the daily average of the currency exchange rate fixed by the exchange equalisation fund as at the execution date of the agreement shall be used.

Section 26 The Office of the Auditor-General of Thailand shall be the auditor of the Corporation and must provide a report of its examination of the accounts to the Minister.

The Corporation must submit the annual report on business operation, balance sheet, profit and loss statement which are certified by the auditor mentioned in the first paragraph to the Minister, for his submission to the Cabinet and the Parliament for their acknowledgment within 180 days from the end of each fiscal year.

Chapter 4 Profit Allocation

Section 27 In allocating annual net profit, the Corporation must allocate not less than one-half of its net profit as reserves for the business operation of the Corporation and the balance may be allocated as the capital fund or remits as revenue of the State, as determined by the Cabinet.

Transitional Provisions

Section 28 All businesses, assets, rights, liabilities, capital and obligations of the Secondary Mortgage Finance Office within the Government Housing Bank shall be transferred to the Corporation within a period of no longer than 180 days from the effective date of this Royal Decree.

Countersigned by
General Chavalit Yongjaiyuth
Prime Minister

Remarks: The rationales for the proclamation of this Emergency Decree include the necessity and the emergency for the rectification of the problems of real estate businesses in the country which is now in sluggish stage by expanding credits on housing. This is considered as one of the measures for the rehabilitation of the national economy as a whole. Currently, the granting of credits on housing in the real estate business require funding from intermediary financial institutions in both public and private sectors. However, such public and private financial institutions are subject to several restrictions which disallow the allocation of funding for credits on housing to sufficiently accommodate the demand side. It is therefore expedient to establish government agency for the development of the secondary market for housing loans by application of the securitisation technique to raise funds for sufficiently and consistently accommodating the expansion of credits for housing. As it is of emergency which requires urgent actions to preserve the stability of the national economy, this Emergency Decree is, therefore, enacted.