

Business Security Act
B.E. 2558 (2015)

Bhumibol Adulyadej, Rex.

Given this 31st day of October 2015,
Being the 70th year of the present Reign.

His Majesty King Bhumibol Adulyadej has been graciously pleased to proclaim that,

Whereas it is deemed expedient to enact a law governing business security,

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

Section 1. This Act shall be called "Business Security Act B.E. 2558".

Section 2. This Act shall be enforced after the lapse of two hundred and forty days from the date of its publication in the Government Gazette onwards, except Section 3, Section 4, Section 15, Section 54, Section 55, Section 56, Section 57, Section 58, and Section 59, which shall be enforced on and from the day following the date of publication of this Act in the Government Gazette onwards.

Section 3. In this Act,

"business" means any property which a security provider uses in business operation and any account receivable in relation to that business operation which the security provider has granted a security right over to secure a payment or other performance of obligation, whereby the title or rights of claims of such property could be transferred by the security provider to a third party in a manner that the operation of the business, whether in whole or in part, could be resumed instantaneously by the transferee.

"registered property" means a property prescribed by law that it be registered.

"Registration Officer" means the Business Security Registration Officer.

"Registrar" means the person who has the powers and duties to effect the registration under the law.

"security enforcer" means a person or several persons that the security provider and the security receiver have agreed to be the security enforcer in the case of using business as a security.

"licensee" means a person who is licensed to act as a security enforcer under this Act.

"financial institution" means:

- (1) a financial institution under the law governing financial institution business;
- (2) a company licensed to conduct life insurance under the law governing life insurance, and a company licensed to conduct non-life insurance under the law governing non-life insurance;
- (3) a bank or a financial institution established under specific law.

"account receivable" means a right to receive payment and other rights, but does not include right of claim arising from financial instruments.

"Minister" means the Minister who has charge and control of the execution of this Act.

Section 4. The Minister of Finance and the Minister of Commerce shall have charge and control of the execution of this Act, and shall be empowered to issue Ministerial Regulations fixing fees not exceeding the rates annexed hereto, exempt fee, and to prescribe other businesses, or to issue Notifications for the carrying out of this Act, however, in the part relating to their respective powers and duties.

Such Ministerial Regulations shall be enforced upon their publication in the Government Gazette.

Chapter 1 Business Security Agreement

Section 5. A business security agreement is an agreement whereby a contracting party called "security provider" has placed a property with the other contracting party called "security receiver" as a security to secure a payment or other performance of obligation, where the security provider may not be required to give up possession over the said property to the security receiver.

The security provider may place his own property as a security to secure a payment or other performance of obligation of another person.

Section 6. The security provider may be an ordinary person or a juristic person.

Section 7. The security receiver must be a financial institution or other person as prescribed in the Ministerial Regulations.

Section 8. For the purpose of this Act, property includes:

- (1) Business;
- (2) Account Receivable;
- (3) Movable property used by the security provider in business operation, such as, machinery, inventory, or raw materials used in the manufacture of goods;
- (4) Immovable property, where the security provider operates directly in real estate business;
- (5) Intellectual property;
- (6) Other property prescribed under Ministerial Regulations.

Section 9. The security provider may place a property he has possessed the right thereof at present or which is to be acquired in the future under any agreement or juristic relationship as a security to secure a payment or other performances of obligation, however, the right over the property which is an article of right under the business security agreement shall exist only when the security provider has duly acquired such property.

Section 10. The security provider who has a right in the secured property as subjected to any condition may use such property as a security under the said condition.

Section 11. The contracting parties may agree to set any causes for enforcement of the security under the business security agreement, however, such agreement must not be against the peace and order or the good moral of the public.

Section 12. Where a business is placed as security, the contracting parties shall select one or several licensees to be the security enforcer under the business security agreement.

A licensee who agrees to be the security enforcer must notify the contracting parties in writing of his consent and shall also specify the rate or the amount of consideration in return therefor.

Section 13. A business security agreement shall be done in writing and filed with the Registration Officer as provided in Chapter 2.

In the event a business is used as a security, the agreement under paragraph one must specify the name or names of one or several licensees who have consented to being the security enforcers.

Chapter 2 Registration Proceedings

Section 14. There shall be established a Business Security Registration Office in the Department of Business Development.

The Business Security Registration Office shall be responsible for registration of a notice, amendment of a registered notice, and revocation of a business security agreement registered under this Act. Furthermore, it shall make available to the public information regarding the registration of licensees and any related information concerning the licensees.

The registration of a notice, the amendment of a registered notice, and the cancellation of a business security agreement registration, including the public's access to information concerning registration and the information concerning the licensees, shall be in accordance with the regulations prescribed by the Director-General of Department of Business Development and published in the Government Gazette.

Section 15. The Director-General of Department of Business Development shall be the Registration Officer under this Act.

Section 16. The Registration Officer shall accept the registration of a notice, the amendment of a registered notice, or the cancellation of a business security agreement registration in accordance with the information received from the person who has the duty to proceed with registration under this Chapter, whereby the person with duty to proceed with registration shall be responsible for the accuracy and completion of the information provided.

In the event the information received from the person with duty to proceed with registration contains incomplete particulars under Section 18, the Registration Officer must not accept the registration of a notice, the amendment of a registered notice, or the cancellation of business security agreement registration.

Section 17. The security receiver, with written consent provided by the security provider, shall have a duty to proceed with registration with the Registration Officer.

Upon the completion of registration as provided under Section 16, paragraph one, the security receiver is deemed a secured creditor under the law governing bankruptcy.

Where business is placed as a security, the security receiver shall provide consent, in writing, of a licensee who agrees to act as security enforcer under the business security agreement in conjunction with the registration.

Where consent is required for the transfer of any rights concerning a business to a third party, the security receiver shall have a duty to provide, in writing, the consent of the owner of those rights for the transfer of the said right to a third party to the Registration Officer together with the application for registration.

Section 18. The registration shall at least contain the following particulars:

- (1) Date, month, year and time of registration.
- (2) Name and address of the debtor and of the security provider.
- (3) Name and address of the security receiver.
- (4) Name and address of the licensee who agrees to be the security enforcer and, where a business is placed as a security, the fee of the security enforcer.
- (5) Secured debts.
- (6) Details of the property placed as a security. If being a registered property, there shall be stated the category of registration, the registration number and the Registrar responsible for the prior registration. If being an immovable property that the security provider uses in business operation, the category, the quantity, and the value of the said property shall also be stated.
- (7) Statements showing that the security provider has placed the property specified in the registration particulars with the security receiver to secure an obligation against repayment of any debt.
- (8) The amount that the property placed as security shall be accounted in securing of a payment, as agreed in the business security agreement, shall not exceed.
- (9) The cause for enforcement of the security under the business security agreement.
- (10) Other particulars prescribed by the Registration Officer and published in the Government Gazette.

Section 19. Where the secured property is a registered property, the Registration Officer shall notify the Registrar and other creditors, who have an interest over the secured property through other relevant specialized registries, of its registration under this Act.

Upon receiving notification under paragraph one, the Registrar shall without delay, undertake all necessary amendments, filing or any other steps needed to ensure that registration of that property reflects its registration under this Act.

Section 20. The contracting parties may agree to amend the registration particulars otherwise. In this respect, the security receiver, with written consent from the security provider, shall proceed with the amendment of registration particulars within fourteen days from the date of receiving such written consent.

If the details of the secured property have changed from that registered as agreed upon by the contracting parties, the security provider shall notify the security receiver of such changes in writing within seven days from the date of said changes. If the said changes do not give rise to enforcement, the notification shall be treated as consent of the security provider and the security receiver shall be responsible for amendment of registration particulars within fourteen days from the date of receiving such consent.

Where the secured property has been commingled in a mass or product of a third party, the notification, as mentioned in the second paragraph of this section, shall include the name, the address of the aforementioned third party and the description and quantity of the secured property at the time immediately before they became part of the mass or product.

The person with duty to proceed with amendment of registration particulars under this Section who fails to proceed with amendment of registration particulars may not be raised as a defense against the third person who acts in good faith.

The provisions of Section 19 shall apply to the amendment of registration particulars under this Section *mutatis mutandis*.

Section 21. When the secured debt is extinct by any reasons other than prescription, or when the parties have agreed in writing to terminate the business security agreement, or when the secured property is redeemed, the security provider, with written consent of the security receiver, shall revoke the registration thereof within fourteen days from the day written consent is received.

Upon disposition of the secured property, or foreclosure, the security receiver shall revoke the registration of the secured property within fourteen days from the date of disposition, or from the date of foreclosure, as the case may be.

Chapter 3

Rights and Duties of Security Provider and Security Receiver

Section 22. The security provider shall have the right to possession, make use of, exchange, disposition, place the secured property under a mortgage, create another security interest over the secured property, use the property in manufacturing process, commingle, using it in the case of occupying for usage thereof, as well as obtaining the fruits of the secured property, except where the contracting parties have agreed otherwise.

The security provider may not pledge the secured property under this Act as a security against payment of future debt, otherwise the said pledge shall be invalid.

Section 23. Subject to Section 22, the security provider must exercise care and skills to preserve the value of the secured property as a reasonable person would in operating such business and occupation, and shall maintain and repair the said secured property as well.

The security provider shall be liable for damages if the secured property is lost or has depreciated in its value, unless proven that such damages did not occur out of the security provider's responsibility.

Section 24. The security provider shall prepare a list of secured property in the manner corresponding to trade practices or as agreed upon by the parties to the agreement, unless prescribed otherwise by the Ministerial Regulations.

Section 25. The security provider must allow the security receiver or his representative to inspect the secured property and the list of property from time to time during reasonable hours and period. In this respect, the security receiver must send a notice to the security provider by registered mail or by any other method which shows that the security provider has received such notice not less than three days before said proceeding of inspection.

Regarding inspection of the secured property and the list of property under paragraph one shall be carried out in the presence of the security provider or persons assigned by him, and the security provider must afford convenience to the security receiver accordingly.

Section 26. Where the security provider sent a notice to the security receiver stating the amount of outstanding debt not yet paid to the security receiver, which is of secured

debt under this Act, so that the security receiver may certify such, the security receiver must send a reply notice confirming or stating the amount of debt deemed correct to the security provider within fifteen days after receiving such notice, otherwise, if there occur any damages, the security receiver shall be liable for any damages arising thereof.

The security provider may exercise his right under paragraph one without paying any expenses, except where the exercising of said right is made within six months from the date of sending a previous notice to the security receiver, the security provider shall be liable to pay a fee to the security receiver each time he exercises such right. The fee shall be in accordance to the rate fixed in the Ministerial Regulations.

Section 27. The security provider shall have the right to redeem the secured property at any time before the disposition of the secured property or before the secured property is foreclosed by the security receiver, by making payment of debt and any maintenance cost, reasonable costs, and fees arisen from the enforcement.

Section 28. Where the security interest is extinct by any other reason than prescription, upon the contracting parties having agreed in writing that the business security agreement is to be terminated or upon there having been redeemed the secured property, the security receiver shall issue a letter of consent revoking the registration to the security provider forthwith, otherwise, if there occur any damages, the security receiver shall be liable for damages that may occur to the security provider.

Chapter 4

Rights and Obligations between Security Provider, Security Receiver and Third Party

Section 29. The security receiver shall have the right to receive repayment of debt from the secured property before any ordinary creditor, whether or not the right in the property has been transferred to a third party.

Section 30. If the secured property is included to the property of a third party to an extent that it has become commingled or is indivisible, the security receiver shall have the right under Section 29 over the property so included according to the proportion of his secured property at the time the property is included.

Section 31. Where the security provider acquires proceeds arising out of a sale, transfer, exchange, or acquires a property in place of the secured property, or included with the secured property, including any compensation arising from said property having been lost or damaged, it shall be regarded that the said property so acquired is also the secured property.

The security receiver has the right under Section 29 over the property acquired in place of the secured property under paragraph one upon making necessary amendments to the registration particulars so that the said property is the secured property with the Registration Officer. Where the acquired property is an account receivable, the security receiver may raise the said right as a defense against the debtor of the account receivable when the debtor of the account receivable is given noticed.

The provisions of this Section shall apply to the property acquired from a sale, transfer, exchange, or the property acquired in place of the secured property, as well as the compensation owing to the said property having been lost or damaged.

Section 32. In the event the secured property, or the property which includes the secured property, or the property acquired in place of the secured property under Section 31, is a property that the security provider uses in his business operation and is of a revolving description and changing hands, a third party who has obtained such property through normal trade practices, or with the consent of the security receiver, shall receive to the said property free of security interest.

If the secured property, or the property which includes the secured property, or the property acquired in place of the secured property under Section 31, is not the property under paragraph one, the third party who has acquired such property in good faith and has paid a consideration in return or with consent of the security receiver, shall receive the said property free of security interest.

Section 33. In the case there has been placed a property as a security against payment of debt under this Act with several security receivers, the rank of security receivers shall be in respective order of the date and time of registration, whereby the security receiver who is registered first shall have priority in payment of debt before the security receiver who is registered thereafter.

If the secured property under this Act is or has been placed under a mortgage as a security against debt repayment, priority between security receivers and mortgagees shall be in respective order of the date and time of registration, whereby the security receiver or the

mortgagee who is first registered shall have priority in payment of debt before the security receiver or the mortgagee who is registered thereafter.

Section 34. When there is a competing security right against a security right under a business security agreement, priority shall be as follow:

(1) If the secured property is an immovable property, the security receiver shall have the same right as that of the pledgee under Section 282 of the Civil and Commercial Code. If there has been registered the mortgaging of the said immovable property as well, the security receiver shall have the same right as that of the mortgagee under Section 287 of the Civil and Commercial Code.

(2) If the secured property is an immovable property, the security receiver shall have the same right as that of the mortgagee under Section 287 of the Civil and Commercial Code.

Chapter 5 Enforcement of Property

Section 35. Where a property is placed under a mortgage as security under other laws and is registered as security under this Act as well, or where a property is registered under this Act as a security and is used as security against payment of debt or other performance of obligation under other laws as well, the mortgagee may enforce the mortgage by means of enforcement under this Act.

While enforcing a mortgage, should enforcement under a business security agreement also arises, upon having been so notified by the security receiver under the business security agreement, the mortgagee shall enforce that mortgage by means of enforcement under this Act.

Where enforcement under the business security agreement occurs in conjunction with the case of enforcement of a mortgage in that property is being deliberated by a court, the security receiver under the business security agreement shall submit a petition to the court asking the court to suspend its deliberation. In this respect, the court shall proceed with the inquiry without delay. If it appears to the court that there is a cause for enforcement of under the business security agreement, the court shall suspend its deliberation. However, if there is no such cause, or the cause for enforcement under the business security agreement is against the peace and order or the good moral of the public, the court shall dismiss the petition. In the

case where the court orders that such consideration shall be suspended, the mortgagee shall enforce the mortgage by means of enforcement under this Act, and after the completion of same, the mortgagee shall state to the court accordingly. However, if the cause for enforcement under the business security agreement occurs during the legal execution under the court's order, the Legal Execution Officer shall proceed with the legal execution under the court's order without delay.

Section 36. The security receiver may enforce the security whereby the secured property shall be foreclosed, or the secured property shall be sold for payment of debt.

Section 37. No security receiver shall enforce the security by foreclosing the secured property, except where the debtor owes payment of debt which is of the principal equivalent to or more than the value of the secured property, and the debtor has not paid interest for five consecutive years and there are no other registered property or other preferential right on the secured property.

Section 38. When there is a cause for enforcement under the business security agreement, and the security receiver has sent a notice stating the cause for enforcement, no security provider shall sell and transfer the secured property, or act in any way which may cause the secured property to be damaged or depreciated in value, and the security receiver shall have the right to occupy the secured property.

The exercise of right to occupy the secured property under paragraph one must not be against the peace and order and the good moral of the public.

Section 39. Where there is a cause for enforcement under the business security agreement and the security receiver has sent a notice stating the cause for enforcement, if the security provider or the person holding the secured property agrees to hand over the occupying of the secured property to the security receiver and there is a letter of consent of sale of the security, no creditor under other judgement shall seize or attach the secured property, but the said creditor shall send a notice to the security receiver for the participation in the property or money obtained from the sale of said property.

Within fifteen days from the date of occupying the secured property under paragraph one, the security receiver shall send a notice notifying the debtor and the security provider to pay debt within fifteen days from the date of receipt of the said notice, and it shall also be stated therein that if no payment of debt is made within the time fixed, the security

receiver shall enforce the security, whereby the secured property shall be foreclosed, or the secured property shall be sold for payment of debt. In this respect, a copy of said notice shall be sent for information to other security receivers and creditors who have preferential right over the secured property as appearing in the list of registration.

If the secured property is perishable goods, or if it is held for a long time there is a risk of the goods being damaged or incurring expenses for the keeping of said goods which may exceed the value of the property, the security receiver may sell the secured property by a method deemed suitable, and the money so obtained will be used for payment of debt at once without proceeding with paragraph two.

Where the secured property is an account receivable, when the security receiver has sent a notice stating the cause for enforcement to the debtor of the right, no debtor of the right shall make payment of debt to the security provider from the date of receipt of said notice. When an account receivable is due for payment, the debtor of the right shall make payment to the security receiver accordingly.

The sending of notice under this Section shall be made by registered reply mail or by any other method which provides evidence that the recipient has received the said notice.

Section 40. Subject to Section 43, in the case the security provider fails to make payment of debt within the period of time fixed in the notice under Section 39, paragraph two, and the security receiver will enforce the security by selling the secured property for payment of debt, the security receiver shall proceed with the disposition of the security by an open bidding. In this respect, the security receiver must send a notice stating the day, time, place, and method of disposition of the security to the security provider, other security receivers and creditors who have preferential right over the secured property as appearing in the list of registration at least not less than seven days before the disposition of the security by registered reply mail, or by any other method which provides evidence that the recipient has received the said notice.

Section 41. In selling the secured property under Section 39, paragraph three, and Section 40, the security receiver must exercise care in such proceeding as if a reasonable person would do under such circumstances.

The provisions governing the objection to the sale through an auction under the Civil Procedure Code shall apply to the proceeding under paragraph one mutatis mutandis.

Section 42. The buyer of the secured property from the sale under Section 39, paragraph three, and Section 40 shall be entitled to the transfer of the secured property without security and mortgage burdens.

Section 43. In the case the secured property is the right in the deposits at a financial institution, and the security receiver is the financial institution who has accepted the deposits itself or has accepted the deposits for the benefits of all security receivers, the security receiver may use the said deposits to make deduction for debt payment forthwith when there is a cause for enforcement under the agreement, however, there must be issued a notice notifying the security provider of such within seven days from the date of said proceeding by registered reply mail or any other method which provides evidence that the recipient has received said notice.

If the security provider and the security receiver have agreed that the financial institution accepting the deposits may deduct the debt from the deposits under the business security agreement on behalf of the security receiver, the financial institution accepting the deposits may deduct the debt from the deposits forthwith upon receipt of the notice from the security receiver that there is a cause for enforcement under the agreement.

The provisions of Section 52 shall apply to the deduction of debt from the deposits under this Section *mutatis mutandis*.

Section 44. If the security receiver enforces by way of foreclosure, and the security provider fails to make payment within the period of time stated in the notice under Section 39, paragraph two, whereby fails to provide a letter of objection within the said period of time, the secured property and any fruits arised from the day the security receiver is entitled to occupy the secured property shall be foreclosed and vested in the security receiver. However, if the security receiver receives a letter of objection within the said period, the security receiver shall dispose the secured property through public bidding, and, in this respect, the provisions of Section 40 and Section 41 shall apply to the disposition of the security under this Section *mutatis mutandis*.

The sending of the notice of objection under paragraph one shall be performed by registered reply mail, or by other methods which provides evidence that the recipient has received the notice.

Section 45. Prior to the disposition of the secured property under Section 39, paragraph three, Section 40 and Section 44, or prior to the secured property is foreclosed and

vested in the security receiver under Section 44, the security receiver has a duty to maintain the secured property under his care and to preserve the secured property as a reasonable person would to his own property.

If the secured property under the care of the secured receiver is damaged or lost by a cause that the security provider cannot be blamed, the said amount of damages shall be deducted from the amount of debt the security provider is liable under the business security agreement.

Section 46. Upon enforcement under a business security agreement, if the security provider or the person in possession of the secured property refuses to give over possession of the secured property, the security receiver may file a petition to the court for enforcement, indicating in the petition if enforcement is to be carried out by foreclosing the secured property or by selling the secured property for payment of debt.

Section 47. Upon having received a petition under Section 46, the court shall set a date of deliberation without delay, and shall issue a summons to the security provider or the person in possession of the secured property, in which shall state the cause of filing the case to the court for a judgement of enforcement and the method of enforcement under the petition, and that the security provider must appear before the court to give statements and testimony on the same date, and the court shall order the security receiver to appear before the court on the appointed date of consideration of the case as well.

The court shall consider the case consecutively every day until the deliberation is finished and a judgement or an order has been issued, except in the case of special unavoidable circumstances.

The parties shall appear before the court on every day of deliberation, and, for the benefit of this Section, the provisions of Section 200, Section 201, Section 202, Section 203, Section 204, Section 205, and Section 206 of the Civil Procedure Code shall apply to the consideration of the court under this Section *mutatis mutandis*.

Section 48. In the case the court is of an opinion that there is a cause for enforcement under the business security agreement, and the agreements concerning the cause for enforcement cited by the security receiver under the business security agreement are not contradictory to the peace and order or the good moral of the public, the court shall pass a judgement for enforcement according to the procedure filed by the security receiver, except where the security receiver requests that the security be foreclosed, but it does not fall under

the conditions specified in Section 37, when the court shall pass a judgement that the secured property be sold by auction for payment of debt.

If the court considers that there is no cause for enforcement under the business security agreement, or the agreements concerning the enforcement cited by the security receiver under the business security agreement are against the peace and order or the good moral of the public, the court shall dismiss the petition accordingly.

The judgement or the order of the court under this Section may be appealed to the Appeals Court within fifteen days from the date of judgement or the date of order of the court, and, in this respect, the provisions governing respite of enforcement under a judgement or an order of the court of first instance under the Civil Procedure Code shall apply to the appeal under this Section *mutatis mutandis*.

The judgement or the order of the Appeals Court shall be final.

Section 49. The security receiver may file to the court together with the petition under Section 46 to issue an order of seizure or attachment of the secured property temporarily until there will have been issued a judgement or an order under Section 48, whereby there must be placed an amount of deposit or a security for prevention of damages arising from the seizure or attachment of the secured property according to the amount fixed by the court, which must not be less than twenty five percent of the maximum amount of the property agreed to be used as the security.

Section 50. In the case the court issues an order to temporarily seize the secured property, but the security provider has a duty to sell or transfer the secured property under an agreement to a third party, upon a request of the security provider and upon a deposit amount or a security having been placed according to the amount deemed suitable by the court, the court may permit the security provider to sell and transfer the secured property.

Section 51. In the case the secured property is a registered property, when the security receiver sends a notice notifying the disposition of the security under Section 39, paragraph three, Section 40, or Section 44, or when the security receiver sends a notice of facts and documents or evidences concerning the enforcement by foreclosure under Section 44, or when the security receiver presents the judgement of the court for enforcement under Section 48, the Registrar shall change the property registration particulars of the secured property by regarding that the notice of facts concerning the enforcement or the judgement of enforcement shall be an intention of the security provider.

Section 52. The proceeds from the disposition of the secured property under Section 39, paragraph three, Section 40 and Section 44, and the fruits arisen from the day the security receiver is entitled to occupy the secured property, shall be allocated for payment in the following order:

(1) Expenses for maintenance and preservation of the secured property under Section 45.

(2) Reasonable expenses and fees arisen from the security enforcement.

(3) Payment of debt to the security receiver and other creditor having preferential right over the secured property as appearing in the list of registration respectively.

(4) Payment of debt to the creditor under other court judgement for the participation in the property or the money obtained from the disposition of the property under Section 39.

(5) The remaining amount, if any, shall be returned to the security receiver.

The provisions of Section 287, Section 289, and Section 319 of the Civil Procedure Code shall apply to the payment of debt to other creditor having the preferential right under (3) mutatis mutandis.

If the secured property has been sold and the net proceeds therefrom is less than the amount of outstanding debt, the amount in short shall be regarded as a debt that the security receiver may claim from the debtor. However, if the security provider is not a debtor, no claim shall be made against the security provider.

Any issue which is different from the provisions of this Section shall be invalid.

Section 53. If the security receiver enforces the security whereby the secured property is foreclosed, it shall be regarded that the principal debt and the debt under the business security agreement shall be extinct.

Any issue which is different from the provisions of this Section shall be invalid.

Chapter 6 Security Enforcement of Business

Part 1 Security Enforcer

Section 54. A security enforcer shall be issued with a license from the Registration Officer.

Section 55. The applicant for security enforcer license must have knowledge, expertise, and experience in law, accountancy, economics, business administration, or property appraisal, however, it shall be in accordance with the bases prescribed by the Minister, and he must not possess the following prohibited descriptions:

- (1) Being or having been a dishonest bankrupt person, being a bankrupt person, or the period of having been a bankrupt person has lapsed for less than five years.
- (2) Had been sentenced by a final court judgement to imprisonment on offences relating to property or offences under Section 89 or Section 90.
- (3) Had been a director, the manager, or a person who had the management power of a financial institution the license of which has been revoked, except where exempted according to the bases prescribed by the Minister.
- (4) Being a director, the manager, or a person with management power of the security provider or the security receiver.
- (5) Had been removed from the position of the chief executive officer, a director, or the manager under Section 144 or Section 145 of the Securities and Exchange Act B.E. 2535 (1992), or under the provisions of other laws.
- (6) Being a political servant, a person holding a political position, or a person holding a position in a political party.
- (7) Being a civil servant with a permanent position or salary.
- (8) Having other prohibited descriptions as prescribed by the Minister.

Section 56. In applying for secured enforcer license, an application shall be submitted to the Registration Officer per the form prescribed by the Minister. If the Registration Officer has examined same and deemed that the applicant for license under paragraph one has possessed the qualifications and has not possessed the prohibited descriptions under Section 55, the Registration Officer shall issue a security enforcer license accordingly.

The Registration Officer shall notify the applicant for license of the approval or the disapproval of the application under paragraph two within sixty days from the date of receipt of the application under paragraph one.

In the case the Registration Officer does not issue a security enforcer license, the applicant shall have a right to lodge an appeal to the Minister within thirty days from the date of being notified of the disapproval, by submitting the appeal to the Registration Officer.

The Minister shall decide the appeal within sixty days from the date of receipt of the appeal, and the decision of the Minister shall be final.

Section 57. The security enforcer license shall be valid for three years from the date of issue.

An application for renewal and the renewal of a license shall be in accordance with any procedures or conditions prescribed by the Minister.

In the case the Registration Officer denies a renewal of the license, the applicant shall have a right to lodge an appeal to the Minister within thirty days from the date of being notified of denial of license renewal, whereby the applicant shall submit his appeal to the Registration Officer.

The Minister shall decide the appeal within sixty days from the date of receipt of such appeal, and the decision of the Minister shall be final.

Section 58. In the case the security enforcer license is lost or damaged in the material part, the licensee shall submit an application for a substitute license thereof to the Registration Officer.

The application for substitute license and the issuance of substitute license shall be per the bases, procedures, and conditions prescribed by the Minister.

Section 59. If it appears that the licensee lacks the qualifications or has possessed prohibited description under Section 55, or the court has passed a judgement that the security enforcer shall be removed from his position under Section 77, the Registration Officer shall accordingly revoke the security enforcer's license.

The licensee whose license has been revoked under paragraph one shall have a right to appeal to the Minister within thirty days from the date of being notified of revocation, whereby the licensee shall submit his appeal to the Registration Officer.

The Minister shall make a decision within sixty days after having received the appeal. The decision of the Minister shall be final.

During the period the appeal is not yet considered, the Minister shall be empowered to order that the appellant may continue his duty for the time being if the appellant so requests.

Section 60. The remunerations of the security enforcer shall be according to the rate or the amount shown in the registration particulars under Section 18 (4) or as ordered by the court, as the case may be.

Part 2 Security Enforcement of Business

Section 61. In the event a business is placed as a security, the security enforcement shall be in accordance with the provisions of this Chapter.

Section 62. The provisions of Section 35, Section 42, and Section 51, including the penalties concerned, shall apply to the security enforcement which is a business according to this Chapter *mutatis mutandis*.

Section 63. If there is a cause for security enforcement under the business security agreement, the security receiver shall send a notice to the security enforcer of such by registered reply mail, or by any other methods which could provide evidence that the security enforcer has received such notice.

The security enforcer shall set the day, time, and place of fact-finding inquiry without delay, which must not exceed seven days from the day he receives the notice under paragraph one, and shall send notices to the security provider and the security receiver of such without delay by registered reply mail, or by any other method which provides evidence that the recipients have received said notices. In this respect, the cause cited by the security receiver for security enforcement and the issues of consideration shall be stated in the said notice, and a copy of the notice of the security receiver under paragraph one shall also be sent together therewith.

In the case the security enforcer dies or is unable to perform his duties owing to having lacked the qualifications or having possessed prohibited descriptions under Section 55 before commencing the proceedings under paragraph one, the contracting parties shall agree among them to select other security enforcer to be the security enforcer, and, in this instance, the provisions of Section 12, paragraph two, shall apply to the selection of security enforcer under this Section *mutatis mutandis*.

In the case the contracting parties are unable to reach an agreement in regard to the selection of other licensee to be the replacement security enforcer within fifteen days from the date of occurrence of the cause under paragraph three, any contracting party may file to

the court requesting the court to issue an order appointing one or several licencees as the court may deem fit to be the replacement security enforcer.

Section 64. The security provider shall send a notice providing details concerning the business which is the security as it is on the day the security provider receives the notice under Section 63, paragraph two, to the security enforcer within seven days from the date of receipt of said notice, and when there are special reasons, the security enforcer may extend the said period of time as he may deem fit.

If the security provider fails to make clarification of details concerning the business which is the security within the period of time fixed under paragraph one, it shall be regarded that on the day the security receiver receives the notice under Section 63, paragraph two, the business which is the security shall be as shown in the registration particulars on the day the security receiver receives the said notice.

Section 65. Upon receiving the notice under Section 63, paragraph two, the security provider shall not sell and transfer the business which is the security, except:

(1) the said business has a property which are perishable goods, or if they are held for a long period of time, it will risk being damaged, or the expenses for maintaining them would exceed the value of the said property, or has a property that the security provider must hand over such to a third person under a contract or juristic relationships concluded before having received the notice under section 63, paragraph two, the security provider may sell or transfer the said property by a method deemed suitable. However, there must be sent a notice to the security enforcer in advance of the reasons and necessity for the said sale or transfer of such property, the category, and the quantity of the property, the day, time, place, method of sale, and the selling price in the market of the said property on the date of notice, and the price to be sold which is in line with the situation of the selling price in the market of said property on the date of notice, or

(2) the security provider has placed a deposit amount or a security for the prevention of damages arisen from the sale or transfer of the business which is the security according to the amount set by the security enforcer, which must not be less than twenty five percent of the maximum amount agreed to be used in the business which is the security.

Section 66. In conducting the fact-finding inquiry, the security provider or the security receiver may do so by themselves, or may authorize any person or several persons to act on their behalf.

Rules and procedures regarding the fact-finding process shall be as prescribed under a Ministerial Regulations.

Section 67. Upon completion of the fact-finding inquiry, the security enforcer shall decide if there is a cause for security enforcement. In the case it is decided that there is a cause for enforcement, the amount of debt payable shall be specified as well.

If the contracting parties have agreed that there shall be several security enforcers, a decision shall be by a majority of votes.

In the case there is a cause for security enforcement and the security receiver wishes to proceed with security enforcement immediately, the security enforcer shall pass a decision for security enforcement. If however the security receiver agrees to extend a relaxation to the security provider in writing by regarding that there has never been a cause for security enforcement, it shall be decided that there is no cause for security enforcement, and such relaxation extended by the security receiver shall be recorded in the decision.

In the case there is no cause for security enforcement, the security enforcer shall pass a decision that there is no cause for security enforcement.

The decision shall be made in writing and shall comprise the conclusion of facts, the legal points concerned, the reasons of passing decision, the signature of the security enforcer, and the date of the decision.

Section 68. The security enforcer shall decide the application for security enforcement within fifteen days from the first date of fact-finding inquiry.

Section 69. The security enforcer shall send a notice of decision under Section 67 to the debtor who is the security provider, the security receiver, and other creditors having preferential rights over the secured property as per the list shown in the registration evidence by registered reply mail, or by any other method which provides evidence that the recipients have received the notices. In the case of a decision for security enforcement, the security enforcer shall send a notice of its decision to the Registration Officer, the Registrar, or the juristic registrar concerned, for information.

Upon acknowledging the decision under paragraph one, the Registration Officer, the Registrar, or the juristic person registrar concerned, shall record the said decision in the Registers without delay.

Section 70. It is prohibited to object to the decision under Section 67, except where the fact-finding inquiry for the decision was not in line with the bases and procedures under Section 66, or the said decision contains a flaw about the facts or the legal points which are of a material part.

The person lodging objection to the decision under paragraph one shall submit his petition to the court within fifteen days from the date of receipt of the notice of decision.

A filing of a petition objecting to a decision under this Section shall not respite the security enforcement under the decision for security enforcement.

Upon having received the petition under paragraph two, the court may require the petitioner to place a deposit or to provide a security according to the amount the court may deem fit. If the petitioner fails to place a deposit or to provide the security as set by the court, the court shall dismiss the petition.

The court shall set the date of consideration of the petition under paragraph two without delay, and shall consider the case consecutively every day until the consideration is finished and there is passed a judgement or an order, except where there occur special unavoidable circumstances.

In the case the court considers that there is a cause for objection under paragraph one, the court shall pass a judgement revoking the decision under Section 67, whereby the court may revoke such either wholly or partly. In this instance, the court may require the security enforcer to re-decide the application for security enforcement duly revoked, in which case the provisions of Section 68 and Section 69 shall apply to the decision of the application for security enforcement of the part revoked mutatis mutandis, or if the evidences appearing in the file are sufficient for a decision, the court may pass a judgement amending such and pass an order as the court may deem fit.

In the case the court considers that there is no cause for objection under paragraph one, the court shall dismiss the petition.

A judgement or an order of the court under this Section shall be final.

Section 71. Where the security enforcer has passed his decision for security enforcement, the powers and duties in the management of the business which is the security of the security provider shall be terminated, and the said powers and duties and all the rights under the law of the shareholders or of the partners of the security provider in the business which is the security, except the rights to receive dividends, shall be vested in the security enforcer forthwith, and no creditors under other judgements shall seize or attach the business

which is the security, but the said creditors may send a notice to the security enforcer for the participation in the property or the proceeds received from the sale of said business.

Section 72. Within seven days from the date of receipt of the decision of the security enforcer, the security provider must hand over the business which is the security, the stamp, the books of account, and the documents concerning the property, liabilities and rights which are related to the operation of business which is the security, to the security enforcer, except where it can be proved that he is unable to do so because of force majeure. In such a case, the security provider shall state the said cause to the security enforcer within seven days from the date of learning of said cause, and must proceed as such within a period of time fixed by the security enforcer.

If the security provider fails to proceed with paragraph one, the security enforcer may file to the court for seizure or attachment of the business which is the security and handing over same to the security enforcer. Upon the court having passed such an order, the Legal Execution Officer shall proceed with the seizure or attachment of the business which is the security for handing over to the security enforcer under the court's order. For the purpose of this proceeding, the Legal Execution Officer shall have the powers and duties in the same manner as those of the security enforcer in relation to the management of the business which is the security of the security provider temporarily during the period the business is not yet handed over to the security enforcer.

Section 73. The security enforcer shall have the powers and duties to maintain, manage, and operate the business which is the security until the business which is the security is sold, to examine and assess the price of the business which is the security, to prescribe suitable method for the disposition of the business which is the security, to proceed with the disposition of the business which is the security, and to allocate the proceeds from the disposition of business which is the security under Section 74. For the purpose of this proceeding, the security enforcer may sell, transfer, lease, lease out, pay debts, create debts, or act anything which generates burdens in the business which is the security to an extent necessary for the continued operation of the business.

It shall be regarded that the proceedings of the security enforcer under paragraph one are the proceedings by a resolution of the general meeting of shareholders or agreements of all partners of the security provider.

In carrying out the duties under this Section, the security enforcer shall exercise favourable care as if a profession practitioner would do in such circumstances.

Section 74. The proceeds from the disposition of business which is the security shall be allocated in respective order as follows:

(1) Fee for the seizure or attachment under Section 72, maintenance expenses, management and business operation of the security enforcer under Section 73.

(2) Remunerations of the security enforcer, reasonable expenses arisen from the enforcement of security, fee for security enforcement, and fee for the disposition of business which is the security.

(3) Payment of debts to the security receiver and other creditors who have preferential rights over the security as shown in the list of registration in respective rank thereof.

(4) Payment to the creditors under other judgements which seek the participation in the property or the proceeds from the disposition of said business under Section 71.

(5) The remaining proceeds, if any, shall be returned to the security provider.

The provisions of Section 52, paragraph two, paragraph three, and paragraph four, shall apply to the allocation of payment under this Section mutatis mutandis.

Part 3 Objection against the Security Enforcer

Section 75. In exercising his duties, a security enforcer must be neutral and independent, and must disclose facts which may be a reasonable cause to suspect about his neutrality or independence, and from the date of being selected or appointed as the security enforcer under any business security agreement. The security enforcer must disclose such facts to the contracting parties without delay, except where he has notified the contracting parties of such in advance.

Section 76. Where the security enforcer performs his duties dishonestly or negligently and as such has created, or may create, inflict damages to the security provider or the security receiver, or there appears a fact which is a reasonable cause to suspect the neutrality or independence of the security enforcer, or the security enforcer has lacked the qualifications or has possessed the prohibited descriptions under Section 55, the security provider or the security receiver may file a petition to the court for issuing an order that the security enforcer be removed.

Upon having received the petition under paragraph one, the court may require the petitioner to place a deposit or to provide a security according to an amount deemed

suitable by the court. If the petitioner fails to place the deposit or fails to provide the security as set by the court, the court shall dismiss the petition. Such an order of the court shall be final.

The court shall set the date of consideration of the petition under paragraph one without delay, and shall consider the case consecutively every day until the consideration is finished and a judgement or an order passed, unless there occur special unavoidable circumstances.

During the consideration, the court may order the security enforcer to stop performing his duties until the court will have passed a judgement or an order. If the court passes such an order, the court shall appoint a licensee as it may deem fit to perform the duties of security enforcer temporarily, except in the case where there are no licensees, when the court shall appoint a person with knowledge, expertise, and experience under Section 55. In such a case, the temporary security enforcer shall have the same powers and duties as a security enforcer.

The petitioner under paragraph one shall pay for the remunerations of the temporary security enforcer according to the rate or the amount fixed by the court. However, in the event the court has passed a judgement that the security enforcer is to be removed, any remunerations made to the temporary security enforcer shall be within reasonable expenses arisen from security enforcement under Section 74 (2), and it shall be allocated to the petitioner under paragraph one.

Section 77. If the court deems that there is a cause for an objection to the security enforcer under Section 76, paragraph one, the court shall pass a judgement that the security enforcer be removed. However, if the court considers that there is no such cause, the court shall dismiss the petition.

A judgement or an order of the court under this Section may be appealed to the Court of Appeal within fifteen days from the date of passing such judgement or order of the court. The judgement or the order of the Court of Appeal shall be final.

In the case no appeal is lodged against the judgement or the order of the court within the period of time under paragraph two, or when the Court of Appeal has passed its judgement or order, as the case may be, the court shall order that the security be returned to the person who has placed the deposit or provided the security under Section 76, paragraph two.

Section 78. In the case the court has passed a judgement that the security enforcer be removed under Section 77, and there are still businesses to be conducted continually, the court shall appoint a licensee as it may deem suitable to be the succeeding security enforcer,' except where there are no licensees, when the court shall appoint a person with knowledge, expertise, and experience under Section 55.

The provisions of this Chapter in the part relating to the security enforcer shall apply to the succeeding security enforcer under paragraph one mutatis mutandis.

Section 79. The judgement of the court that the security enforcer be removed under Section 77 shall not affect any business that the security enforcer has carried out prior to the passing of said court judgement.

Chapter 7 Termination of Business Security Agreement

Section 80. The business security agreement shall be terminated upon:

- (1) the secured debt is extinct by other reasons than prescription;
- (2) the security receiver and the security provider have agreed in writing to terminate the business security agreement;
- (3) the secured property has been redeemed;
- (4) the disposition of the secured property during enforcement, or when the secured property has been foreclosed by security receiver.

Section 81. The security receiver may enforce the security even when the secured debt is barred by prescription, but he may not enforce the outstanding interest under the business security contact more than five years.

Chapter 8 Penalties

Section 82. Any security provider or security receiver shows false statements, or conceals the facts, for the registration proceedings under Section 16, or the application for registration under Section 17, or the application for amendment of registration particulars under Section 20, or the application for revocation of registration under Section 21, or the proceedings under Section 51, or the reporting of causes under Section 72, paragraph one, shall be liable to

imprisonment not exceeding three years or fine not exceeding Baht three hundred thousand, or both.

Section 83. Any security receiver fails to comply with Section 20, paragraph one or paragraph two, Section 21, paragraph two, Section 40, Section 43, paragraph one, or Section 44, paragraph one, shall be liable to fine not exceeding Baht one hundred thousand.

Any security receiver commits the offences under paragraph one dishonestly shall be liable to imprisonment not exceeding two years or fine not exceeding Baht two hundred thousand, or both.

Section 84. Any security provider fails to comply with Section 20, paragraph two, Section 24, Section 25, paragraph one, or Section 72, paragraph one, or violates Section 38, paragraph one, or Section 65, shall be liable to fine not exceeding Baht one hundred thousand.

Any security provider commits the offences under paragraph one dishonestly shall be liable to imprisonment not exceeding two years or fine not exceeding Baht two hundred thousand, or both.

Section 85. Any security provider fails to comply with Section 21, paragraph one, shall be liable to fine not exceeding Baht one hundred thousand.

Section 86. Any security provider takes away, damages, destroys, depreciates, renders useless, removes, hides, or transfer to other person, the secured property dishonestly to an extent that it causes the security receiver not being able to enforce the security either in whole or in part, shall be liable to imprisonment not exceeding two years and fine not exceeding Baht two hundred thousand.

Section 87. Any security receiver shows false statements or conceals the facts in asking the court to pass a judgement for security enforcement under Section 46, or in notifying the security enforcer for a decision on security enforcement under Section 63, shall be liable to imprisonment not exceeding three years or fine not exceeding Baht three hundred thousand, or both.

Section 88. Any security provider delivers or presents stamp, books of account, and documents, which are false, concerning the property, the liabilities, including the rights relating to the secured property, to the security receiver or the security enforcer, shall be liable

to imprisonment not exceeding two years or fine not exceeding Baht two hundred thousand, or both.

Section 89. Any security receiver or security enforcer knows of or obtains private information from a business operation or any other information of the security provider, which is a confidential information that would not generally be disclosed, and who discloses or uses such information for his own benefits or for other's benefits, shall be liable to imprisonment not exceeding one year or fine not exceeding Baht one hundred thousand, or both, except where it the disclosure was in compliance with a law, for the purpose of investigation, court case consideration, or the security provider has provided his consent.

Whoever knows of, or obtains, the information or secrets from the persons under paragraph one owing to the carrying out of official duties or investigation or court case consideration, and discloses the said information or secrets in such a way that it is likely to cause damages to any person, shall be liable to the same punishment.

Section 90. Any security enforcer carries out his , or fails to carry out his duties, in good faith, or violates or fails to comply with the provisions of this Act, with an intention to cause damages to the security provider or the security receiver, shall be liable to imprisonment not exceeding two years and fine not exceeding Baht two hundred thousand.

Section 91. For all of the offences under this Act, the Case Settlement Committee appointed by the Minister shall be empowered to settle such cases by imposition of fine. The Case Settlement Committee appointed by the Minister shall comprise of three committee members, one of whom must be an investigating official under the Criminal Procedure Code.

After the accused has made payment of the fine according to the amount so imposed within a period of time fixed, but it must not exceed thirty days, it shall be regarded that the case is settled under the Criminal Procedure Code.

Countersigned:

General Prayuth Chan-o-cha Prime Minister