

Thailand

Chandler & Thong-ek Law Offices

Secured transactions

On July 4 2016, the Secured Transactions Act came into force. Following this, the department of business development (DBD) launched the online system for registering business collateral agreements. The qualified security recipient must be a financial institution regulated by the Bank of Thailand. A draft



Foifa Tharaphan

of the ministerial regulation to allow additional types of qualified persons to be security recipients is now going through the legislation process.

The security interest available under the new legislation is equivalent to a floating charge.

Unlike a pledge of movable property, physical delivery of the assets is not required for the perfection of the security under the new Act. The parties enter into a business collateral agreement and then register the agreement online.



Albert T Chandler

Almost every type of collateral available under the new legislation would be commercially acceptable to Thai financial institutions. This includes: accounts; raw materials; machinery; equipment; vehicles; receivables; and claims. A business can also qualify as collateral. Rights over accounts are frequently registered as collateral. This is due to the specific enforcement procedure through which a security recipient is able to set off the amount in the account after the occurrence of an event of enforcement.

The Act introduces a new enforcement procedure by the so-called security enforcer. To register the businesses as collateral under the Act, the parties must appoint the security enforcer who will conduct enforcement actions, including

operating and selling the business after an event of enforcement.

The security enforcer is neither an official enforcer officer in the civil court case nor the official receiver. To conduct an enforcement, their duties and powers must be elaborated under the implementing regulations. Eligible persons who are qualified to be registered security enforcers include lawyers and appraisers. The DBD must also issue a notification regarding the business evaluation standard guidelines for the reference of appraisers to review the collateral upon an event of enforcement.

The concept of the security, registration of the agreement, and the enforcement process are relatively new. No court case precedent has yet become available.

The implementation of the legislation and the practice thereof is being monitored by all of the concerned parties. This includes: security providers; financial institutions; legal advisors; and the law enforcer.

Foifa Tharaphan and Albert T Chandler

Contacts

7th-9th Floors, Buhajit Building, 20
North Sathorn Road,
Silom, Bangrak, Bangkok 10500
Thailand

T: +66 2 266-6485

F: +66 2 266-6483

E: foifa@ctlo.com

atchandler@ctlo.com

W: www.ctlo.com