

Ministerial Regulation on Interrogation for Business Collateral Enforcement

On 15th December 2017, the Ministerial Regulation on Interrogation for Business Collateral Enforcement (“**Interrogation Regulation**”) under the Business Collateral Act B.E. 2558 (A.D. 2015) (“**BCA**”) was published in the Royal Gazette and it has become effective since then.

Under the BCA, business collateral has become a new type of securities in Thailand in addition to guarantee, mortgage and pledge previously allowed under the Civil and Commercial Code (“**CCC**”). A business, a right of claim (which includes a right to receive performance of obligations), movable property used in a business such as machinery or inventory, immovable property used in a business and intellectual property can be used as security under a collateral agreement.

In the case of a business collateral agreement which creates security over a business, a collateral enforcer must be appointed for enforcement over a business. A collateral enforcer must be licensed and registered with the Business Security Registration Office of the Department of Business Development and be qualified as specified in the BCA, such as having knowledge and experience in law, accounting or business (“**Collateral Enforcer**”).

Under the Interrogation Regulation, all documents relevant to enforcement of business collateral must be submitted to a Collateral Enforcer while their copies are to be delivered to the other party on the date of interrogation or the date specified by the Collateral Enforcer. If any document is made in foreign language, it must be accompanied by its certified Thai translation unless both parties agree not to have it translated into Thai and the Collateral Enforcer is of a view that it is not the evidence directly associated with the issue to be examined for the enforcement.

In the first time of interrogation, the Collateral Enforcer will establish a list of issues in dispute for both parties to bring evidence and witness for further investigation. The Collateral Enforcer is allowed to consider both documentary evidence and oral evidence. A party may submit a statement of fact or witness statement in place of having a witness interrogated by the Collateral Enforcer.

According to the Interrogation Regulation, a Collateral Enforcer may allow either party or both parties, including witness, to testify via teleconference with the expenses of such party.

Court proceedings are not required for enforcement of business collateral under BCA and Interrogation Regulation, unless there is a dispute over the enforcement process. The enforcement procedures under the BCA and Interrogation Regulation are faster and more convenient than the enforcement of pledges and mortgages under the CCC.

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