

SECTION C - SECURED FINANCING

C1. Property rights regime

- a) *Is the system of ownership rights in respect of both land and other property reasonably stable and certain in this economy?*

It is reasonably stable.

- b) *In particular:*

- (i) *is the system of land ownership and rights sufficiently developed to encourage lending on the security of land; and*

Lending on security of land is widespread. The land title system does allow for some ambiguity over title, but generally it does not act as a fetter upon lending. The main difficulty is that foreclosure is slow. Also, the Bank of Thailand has placed restrictions upon the ownership of real property for banks, so this acts as a restriction.

- (ii) *is the system of ownership and rights in relation to property other than land sufficiently developed to encourage lending on the security of such property?*

In general terms, yes. For immovable property, registration must be made at the land office. This also applies to “extraordinary movables”, such as vessels, floating houses and even beasts of burden. Machines may also be mortgaged through registration. Property may also be pledged, which requires possession by the lender.

C2. Secured financing

- a) *What mechanisms for taking of security over assets of a corporate borrower are available to financiers in this economy (for example mortgages over land; fixed and/or floating charges over personal property; legal and/or equitable mortgages; debentures; pledges; liens, etc.)?*

Mortgages (legal), pledges, liens and charges are available.

b) In practice, which of these types of security are most commonly employed by financiers?

Mortgages over immovable property are a common form of security. However, foreclosure is a slow and restrictive process. Movable properties can be pledged as security for performance of an obligation by delivering of such properties to the pledgee. In addition, if the pledged property is a right represented by a written instrument, the pledge is void unless such instrument is delivered to the pledgee and the pledge is notified in writing to the debtor of the right. If a named certificate for share or debenture is pledged, such pledge shall be registered either under the company's book or the Stock Exchange of Thailand as the case may be. The right to a possessory lien arises in specific circumstances in respect of unpaid amounts owing in respect of goods in the possession of creditors. It is not used as security for finance. Shares pledges are relatively common.

c) Is there a system of registration in this economy for any of these types of security taken by financiers?

There is a system of registration for mortgages. Share pledges must be registered in the companies books.

d) To what extent are priorities between competing securities regulated?

Secured and unsecured security is distinguished between.

C3. Enforcement of securities

a) When a corporate borrower is in financial difficulties and a secured debt has become due, would it be usual or customary for a secured lender and/or the corporate borrower to attempt to negotiate a suitable arrangement for repayment and/or refinancing before the secured

lender invokes legal enforcement methods?

When a secured debt become due and the debtor is not in a position to repay, while the secured lender may enforce the security by filing of case with the court, the lender is likely to first attempt to negotiate. This is both due to cultural factors, but also because the court process may be time consuming due to the current backlog.

b) What mechanisms are available to security holders to enforce their securities under the legal system of this economy (For example, power to take possession of the property, power to appoint a receiver, power to foreclose on a mortgage, power to sell the secured property, power to wind up the corporate borrower)?

A mortgagee may enforce its security by filing for foreclosure of mortgage of immovable properties. In this matter, the law requires that the debtor is notified in writing for a reasonable time to comply. Upon the court judgment, the mortgaged property will be sold by public auction. This is the most commonly employed method by security holders. In certain cases where there is only one registered mortgage and the property is not greater in value than the amount due, the mortgagee is entitled to claim foreclosure of the mortgage should the debtor fail to pay interest for five years. In a public auction of mortgaged property, the law does not prevent a related party to bid in such auction. An auction is conducted by the applicable Execution Office, Ministry of Justice.

On enforcement of the pledge, the security holder must first notify the debtor in writing specifying a reasonable time to comply. Should the debtor fail to comply with such notice, the pledgee is entitled to sell the pledged property, but only by public auction. In this regard, the pledgor shall be notified of the time and place of the auction.

c) Do these methods include that a secured creditor may 'self-enforce' the security (i.e. without the need for an order of a court or the consent of a regulatory authority)?

d) In practice, which method(s) of enforcement are most commonly

employed by security holders?

e) Briefly describe the process involved in these method(s).

see above.

C4. Effectiveness of judicial system

a) How effective is the judicial or court system for the purpose of enforcing secured property rights?

The foreclosure laws have come under much criticism recently. They do not allow for expeditious enforcement. The debtor or interested parties may easily raise certain objections and delay the process. In this regard, certain provision under the Civil Procedure Code are being revised and pending the enactment by the Parliament. There will be limitations on some appeal rights, while a related court judgment on enforcement of security shall have jurisdiction over the Kingdom without having to request for another enforcement order from another applicable court.

That pledges require sale by public auction is also a restriction. This takes time and money to organise, and may be inappropriate for some pledged items.

C5. Effect of insolvency proceedings

a) What effect, if any, does the commencement of insolvency proceedings in respect of the corporate borrower (i.e. where an application has been filed for some type of insolvency procedure but has not yet been adjudicated) have on the process of security enforcement?

In the normal process of Bankruptcy case commencement the enforcement of security is not affected, unless an interim receivership order is obtained. However similar to the US' s Chapter 11' s automatic stay scheme, Thailand has amended the business reorganization provisions. Upon a petition for business rehabilitation by an applicable party, no judgment creditor including secured creditor shall carry out the execution of a judgment over the asset of the debtor. In addition,

no secured creditor may enforce payment of debt against security unless otherwise approved by the Court with whom the petition for business rehabilitation is filed. Additionally, the owner of assets which is material for the debtor's business operation may not repossess the assets.

b) What effect, if any, does the formal pronouncement of an insolvency administration in respect of the corporate debtor have on the process of security enforcement?

Any creditor must file a claim in the bankruptcy case within two months, (extendible for additional 2 months for creditors residing outside the Kingdom) following the date of publication of the absolute receivership order. Secured creditor naturally has rights over the asset which is security afforded to him by his debtor prior to the order of receivership of such asset, and need not file a claim for repayment under the bankruptcy case. Should the lender already enforced the security, he can claim for the balance of debt, if legally entitled to. In case that the security is not yet enforced, lender may ask the receiver in the bankruptcy case to sell by public auction or appraise the security in order to claim for an outstanding balance. (In the later case, receiver is authorized to redeem the asset at such valuation)