

THEMATIC TITLE	LEGAL PROBLEMS IN USING RIGHT OF CLAIM AS SECURITY IN BUSINESS SECURITY ACT, B.E. 2558
KEYWORDS	RIGHT OF CLAIM/BUSINESS SECURITY
STUDENT	PISIT TANTIRODJANAKITJAKARN
THEMATIC ADVISOR	ASSISTANT PROFESSOR DR.NISIT INTAMANO
LEVEL OF STUDY	MASTER OF LAWS BUSINESS LAW
FACULTY	SCHOOL OF LAW SRIPATUM UNIVERSITY
YEAR	2021

ABSTRACT

Thailand's Business Security Act, B.E. 2558 (the "Act") was developed from Floating Charge regime of the United Kingdom and Uniform Commercial Code (UCC) Article 9 Secured Transactions from the United States of America, as security interest over property law. The Act shall alleviate limitation of mortgage property, possession criteria of pledge, as well as legal issue of business security by transfer of right of claim. Security interest over the property and priority are created and perfected by way of security agreement and public registration, without delivery of the property. Over 4 years since the inception date, right of claim is the property of the highest value, counting to 76.84 percent of registered securities totaling value of 9.39 trillion Baht. However, provision related to right of claim as security are available only 4 sections in the Act. Material provisions for extensively defined right of claim in question are not inclusive.

This paper examines legal issues and practices of using right of claim as business security under the Act. Study of historical background of the Act, as well as the conceptual framework and discussion of the Parliament ad-hoc legislative considering committee of the business security bill are carried out, with comparative research of principles and provisions of foreign law guideline, i.e., the UCC Article 9 Secured Transactions and UNCITRAL Model Law on Secured Transactions. The paper findings are as follows. The ad-hoc legislative committee deleted certain sections related to right of claim in the bill, including provision of notification of a security right in a right of claim, and special provision, before default, for performance of the obligor of the right of claim under security interest. The Act has no clear provision of rights and obligations among obligor of right of claim, security grantor, and secured

creditor. There is also no protection of the obligor of right of claim as per transfer of rights provisions in the Civil and Commercial Code (the “CCC”). The security enforcement provision is limited and inapplicable to non-monetary obligation. There is no provision for distribution, to secured creditor by priority ranking, of the payment or proceeds of the encumbered right of claim, as prescribed for encumbered tangible asset or right to payment of funds credited to a bank account in the Act. Moreover, the good faith and for value principles applied in the Act to protect any third party to obtain, free from security interest, property which is not property used in business operation and in a revolving manner, are in contradiction to its underlying legal concept and not in line with foreign law guideline. There are also manifest errors in substituted security provision.

This study leads to proposal to resolve the issues by applying principles and provisions from the compared foreign law guideline and former draft of Thailand’s business security bill, as follows. To amend provisions for notification of a security right, and special provisions for performance of the obligor of the right of claim before default, by analogous provision of pledge of right represented by a written instrument per the CCC and by recommendations of foreign law guideline, to protect all parties’ interest. To amend the security enforcement provisions for right of claim in monetary and non-monetary obligations, to be in accordance with the others for tangible property. To amend provision for protection of third party to obtain non-revolving property free from security interest other than consent of the secured creditor criteria, by removal of good faith and for value criteria, to be fair and in line with foreign law guideline. Finally, to amend manifest errors in substituted security provision.