

# JURISTIC ENTITIES AND MORTGAGE OF IMMOVABLE PROPERTY

**R**egistration of a mortgage of immovable property is a popular method for creditors to obtain security for a debt, especially in instances of borrowing money from a bank, financial institution, or juristic person (a limited company).

Until fairly recently, borrowers often faced difficulties in getting a loan from a juristic entity (both local and foreign companies), as well as a bank or financial institution other than those established and incorporated in Thailand. These difficulties were usually due to the rather complicated procedure of registering receipt of mortgage, which is required to ensure validity and enforceability under Thai law.

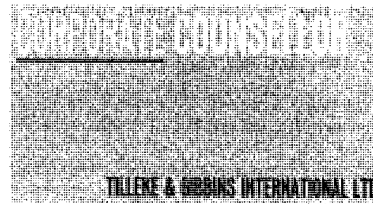
The problem mainly stemmed from the then definition of "credit foncier business", in which juristic persons are prohibited from engaging unless a proper licence is granted. The Act on Undertaking of Finance Business, Securities Business and Credit Foncier Business B.E. 2522 (1979) stipulated that lending money for the security of mortgage of immovable property in the ordinary course of business was credit foncier business.

Thus, the land officer would not register the receipt of mortgage unless such juristic entity had a licence to engage in credit foncier business or obtained a confirmation letter from the Fiscal Policy Office (FPO), Ministry of Finance, showing that it did not engage in credit foncier business.

The process of getting such confirmation from the FPO consumes time, in that various documents (corporate documents, constitution documents, audited financial statements, etc) to prove that the juristic entity does not engage in lending money and/or accept mortgages during the ordinary course of its business must be prepared for the FPO's consideration — a procedure that could take anywhere from seven to 30 days.

Effective in August 2008, the Financial Institution Business Act B.E. 2551 (2008) was drafted to address this problem by stipulating a new definition of "credit foncier business" as the conducting of monetary deposits, and receiving money from the general public required to be paid back on demand or on the expiration of a prescribed period of time and then making use of such money in either of the following means: (1) loaning money by means of taking an immovable property mortgage; or (2) buying immovable property by means of selling on consignment.

With this new definition, juristic entities — including foreign juristic entities, foreign financial institutions, and foreign banks — which do not receive deposits from the public in Thailand can now accept mortgages on immovable property and register receipt of mortgage



without having to obtain a licence or going through the long process of getting confirmation from the FPO.

The new legislation did not completely streamline the process, however. At the onset, there were still difficulties for land officers in registering receipt of the mortgage due to lack of experience and no guidelines on how to proceed or determine the juristic entity's business.

Consequently, in December 2008, the Lands Department issued explanatory letters to clarify the definition under the Financial Institution Business Act 2008, and to provide guidelines for land officers in registering acceptance of mortgage by local and foreign juristic entities, financial institutions and banks.

The guidelines state that if the land officer investigates and is of the opinion that the juristic entity does not receive deposits from the public in Thailand — but only lends its own money to other persons by means of taking mortgages or buying immovable property by means of selling on consignment (for example, in case of a limited company) — the land officer can proceed with the registration of acceptance of the mortgage accordingly; provided that the entity's constitutional documents contain an objective stating it has the ability to lend money on security of immovable property in the ordinary course of business.

In the event of any suspicious case, however, the land officer still has the authority to send documents/evidence to the FPO and/or Bank of Thailand for further investigation. If the land officer is of the opinion that such juristic entity does not engage in credit foncier business, the registration of receipt of mortgage can be completed within one day.

Thus, it has become easier for both local and foreign juristic entities to lend money, accept mortgages over immovable property as security for a loan, and register receipt of a mortgage with a land officer, without the added burden of having to prepare documents or receive written confirmation from the FPO.

This development should be seen as good news for both borrowers and creditors alike.

**By Chaiwat Keratisuthisathorn, Attorney-at-Law, Corporate & Commercial Department, Tilleke & Gibbins International Ltd. Please send comments to Andrew Stoutley at [andrew.s@tillekeandgibbins.com](mailto:andrew.s@tillekeandgibbins.com)**