

Mortgage Enforcement

Prior to the effectiveness of the latest amendment to the Civil and Commercial Code of Thailand (“CCC”) regarding mortgage enforcement on 12 February 2015, there were two options to enforce a mortgage. Those options were:

- (i) bringing an action to the court for the foreclosure of mortgaged property and selling such property by public auction pursuant to Section 728; and
- (ii) bringing an action to the court for claiming the foreclosure of the mortgaged property pursuant to Section 729.

The enforcement of a mortgage pursuant to Section 728 and Section 729 above require that an action must be brought to the Thai competent court and it can only be initiated by the mortgagee, while the mortgagor was not entitled to initiate such mortgage enforcement.

It is interesting to note that the amendment to the CCC specified above later stipulated an additional option to enforce a mortgage in Section 729/1. It is the only option where the mortgage enforcement can be initiated by the mortgagor and such mortgaged property can be sold by public auction without bringing an action to the court.

Pursuant to Section 729/1 of the CCC, at any time after the obligation is due, if there are no other mortgages or preferential rights registered on the mortgaged property, then, the mortgagor is entitled to notify the mortgagee in writing to demand the mortgagee to sell the mortgaged property by public auction without bringing an action to the court. If such notice is sent, the mortgagee must sell the mortgaged property within one year from the date the mortgagee received such notice. If the mortgagee does not sell that mortgaged property within such one year period, the mortgagor will be discharged from unpaid interest and compensation by the debtor, including accessory charges to debtor’s obligation incurring after the expiry of such one year period.

In case the mortgagee and the mortgagor agrees otherwise than as stipulated in Section 729/1 of the CCC (i.e. the mortgagor waives its right pursuant to Section 729/1), there are two possible outcomes as a result of such agreed term which are as follows:

- (i) it can be deemed invalid as it is an agreement that the parties to the mortgage agreement agree on the mortgage enforcement other than as specified in the provisions concerning enforcement of mortgage pursuant to Section 711 of the CCC; or
- (ii) it can be deemed void as it is contrary to public order or good morals pursuant to Section 150 of the CCC.

Nonetheless, there are currently no judgements of the Supreme Court of Thailand on this issue.

The sale of mortgaged property by public auction without bringing an action to the court pursuant to Section 729/1 of the CCC is currently the only mortgage enforcement under the CCC that can be initiated by the mortgagor. However, the question whether the mortgage enforcement pursuant to Section 729/1 could be agreed otherwise by the parties still remains uncertain until clarifications is received from further Supreme Court judgements regarding this issue. In our view, the Thai courts will most likely deny the waiver of the right of the mortgagor under Section 729/1 of the CCC.

For more information, please contact:



THERE IS ALWAYS A SOLUTION

Important Note and Disclaimer

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The content of this Newsletter is prepared as of 10 October 2018.

This Newsletter is informational in nature and is not to be considered as legal advice. It does not exhaustively cover the subjects which it treats, and is only intended to address some of the key issues. When specific questions arise in practice, it is necessary to obtain appropriate legal advice.

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