

ACT AMENDING THE CIVIL AND COMMERCIAL CODE (NO.20),  
B.E. 2557 (2014)

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BHUMIBOL ADULYADEJ, REX.

Given on the 10<sup>th</sup> Day of November B.E. 2557;

Being the 69<sup>th</sup> Year of the Present Reign.

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:

Whereas it is expedient to amend the Civil and Commercial Code;

Be it, therefore, enacted by the King, by and with the advice and consent of the National Legislative Assembly, as follows:

**Section 1.** This Act is called the “Act Amending the Civil and Commercial Code (No. 20), B.E. 2557 (2014)”.

**Section 2.** This Act shall come into force after the expiration of ninety days from the date of its publication in the Government Gazette.

**Section 3.** Section 681 of the Civil and Commercial Code shall be repealed and replaced by the following:

“Section 681. Suretyship can be only given for a valid obligation.

A future or conditional obligation may be secured for the event in which it would have effect; however, the objective of the creation of such secured obligation, the characteristic of the source of the obligation, the maximum secured amount of money and the period of the

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\* Translated by Mr. Sitthi Leekbhai, and reviewed by Prof. Phijaisakdi Horayangkura under contract for the Office of the Council of State of Thailand's Law for ASEAN project. -Initial Version – pending review and approval by the Office of the Council of State.

creation of the obligation to be secured shall be specified except for suretyship for a series of transactions under section 699, such period may not be specified.

A contract of suretyship shall expressly specify a secured obligation or contract and a surety shall be liable only for such specified obligation or contract.

Obligation originating from a contract which does not bind the debtor because it is entered into by mistake or the debtor is an incompetent person may be validly secured if the surety knows such mistake or incapacity at the time of entering into contract binding himself or herself.”

**Section 4.** The following provisions shall be added as section 681/1 of the Civil and Commercial Code:

“Section 681/1. Any agreement specifying that the surety shall be responsible in the same manner of joint debtor or in the status of joint debtor, such agreement is void.”

**Section 5.** The following provisions shall be added as section 685/1 of Chapter 1 General Provisions of the Title 11 Suretyship of Book III Specific Contracts of the Civil and Commercial Code:

“Section 685/1. Any agreement with regard to suretyship different from section 681, paragraph one, paragraph two and paragraph three, section 694, section 698 and section 699 is void.”

**Section 6.** The provisions of section 686 of the Civil and Commercial Code shall be repealed and replaced by the following:

“Section 686. When the debtor is in default, the creditor shall notify a surety in writing within sixty days as from the day that the debtor is in default, and, in any case, the creditor is not entitled to demand performance from the surety before the notice reaches the surety. Nevertheless, the surety shall not be precluded from performing the obligation when the obligation is due.

In the case that the creditor fails to notify in writing within the time period under paragraph one, the surety shall be discharged from liability in interest and compensation including a charge accessory to such obligation incurring after the lapse of time period under paragraph one.

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When the creditor is entitled to demand performance from the surety or the surety is entitled to perform obligation under paragraph one, the surety may perform all obligations or exercise the right to perform obligation under conditions and methods existing between the debtor and the creditor prior to the default and the surety may do so for the portion that he or she must be responsible only and the provisions of section 701, paragraph two, shall be applied *mutatis mutandis*.

During the time that the surety performs the obligation in accordance with conditions and methods of performance of the debtor under paragraph three, the creditor is not entitled to demand additional interest as a result of the default of the debtor during such period.

The performance of obligation by the surety under this section shall not affect the right of the surety under section 693.”

**Section 7.** The provisions of section 691 of the Civil and Commercial Code shall be repealed and replaced by the following:

“Section 691. In the case that the creditor takes any action resulting in the reduction of the secured amount of obligation including interest, compensation, or charge accessory to such obligation, if the debtor has performed the reduced obligation or the debtor has partially performed such reduced obligation but the surety performed the rest or the debtor does not perform the reduced obligation but the surety has performed such reduced obligation, regardless of whether the period of time for the performance of reduced obligation has lapsed, the surety shall be discharged from the suretyship.

Any agreement resulting in the increase of burden of the surety to be more than provided in paragraph one, such agreement is void.”

**Section 8.** The provisions of section 700 of the Civil and Commercial Code shall be repealed and replaced by the following:

“Section 700. If the suretyship has been given for an obligation to be performed at a definite time, and the creditor has given the debtor a period of grace, the surety is discharged from liability except the surety has also agreed to such period of grace.

Agreement concluded by the surety prior to the giving of a period of grace by the creditor resulting in the giving of consent to the granting of a period of grace by the creditor, such agreement is unenforceable.”

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**Section 9.** The following provisions shall be added as section 714/1 of Chapter 1 General Provisions of the Title 12 Mortgage of Book III Specific Contracts of the Civil and Commercial Code:

“Section 714/1. Any agreement with regard to mortgage which is different from section 728, section 729 and section 735 is void.”

**Section 10.** The provisions of section 727 of the Civil and Commercial Code shall be repealed and replaced by the following:

“Section 727. The provisions of section 691, section 697, section 700 and section 701 shall be applicable to the case that a person has mortgaged his or her property as security for the performance of an obligation by another person *mutatis mutandis*.”

**Section 11.** The following provisions shall be added as section 727/1 of Chapter 3 Rights and Duties of Mortgagee and Mortgagor of the Title 12 Mortgage of Book III Specific Contracts of the Civil and Commercial Code:

“Section 727/1. In any case, the mortgagor who mortgages property as security for the performance of an obligation by another person shall not be liable to such obligation more than the price of the mortgaged property at the time of the enforcement of mortgage or the foreclosure of the mortgage.

Any agreement rendering the mortgagor has more liability than provided in paragraph one or the mortgagor is liable in the same manner of the surety, such agreement is void regardless of whether such agreement exists in a contract of mortgage or is concluded as a separate agreement.”

**Section 12.** The provisions of section 728 of the Civil and Commercial Code shall be repealed and replaced by the following:

“Section 728. For the enforcement of mortgage, the mortgagee shall notify the debtor in writing in advance to perform the obligation within a reasonable period of time not less than sixty days as from the day that the debtor receives such notice. If the debtor neglects to comply with such notice, the mortgagee may bring an action to the court for a judgment ordering the mortgaged property to be seized and sold by public auction.

In the case under paragraph one, if it is a case that the mortgagor mortgaging property as security for the performance of an obligation by another person, the mortgagee

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shall deliver such notice to the mortgagor within fifteen days as from the date that the notice is delivered to the debtor. If the mortgagee does not proceed within such fifteen-day period, the mortgagor shall be discharged from liability in interest and compensation unpaid by the debtor including charge accessory to such obligation incurring as from the date that such fifteen-day period expires.”

**Section 13.** The provisions of section 729 of the Civil and Commercial Code shall be repealed and replaced by the following:

“Section 729. For the enforcement of mortgage under section 728, if there is no other mortgages or preferential rights registered on the same property, the mortgagee may bring an action to the court for the foreclosure of the mortgaged property in lieu of public auction under the application of the following conditions:

- (1) the debtor has failed to pay interest for five years; and
- (2) the mortgagee has substantiated and satisfied the court that the price of the property is lesser than the amount in arrears.”

**Section 14.** The following provisions shall be added as section 729/1 of the Civil and Commercial Code:

“Section 729/1. At any time after the obligation is due, if there are no other mortgages or preferential rights registered on the same property, the mortgagor is entitled to notify the mortgagee in writing for the mortgagee to sell the mortgaged property by public auction without resorting to the court on the condition that the mortgagee shall sell the mortgaged property by public auction within one year as from the receipt of such notice. It shall be deemed that the notice of the mortgagor is a consent notice for the public auction.

In the case that the mortgagee does not sell the mortgaged property by public auction within the period of time specified in paragraph one, the mortgagor shall be discharged from liability in interest and compensation unpaid by the debtor, including charge accessory to such obligation incurring after the day that such period expires.

Upon the completion of the public auction of the mortgaged property and the mortgagee has acquired the net income, the mortgagee shall allocate such amount of money for the completion of the performance of the obligation and the secondary obligation. If there is any remaining amount, such remaining amount shall be returned to the mortgagor or to a person deserving to receive such amount of money. On the other hand, if the acquired amount

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of money is less than the amount in arrears, it shall be as provided in section 733 and in the case that a mortgagor mortgaging property as security for the performance of an obligation by another person, the mortgagor shall be only liable as specified by section 727/1.”

**Section 15.** The provisions of section 735 of the Civil and Commercial Code shall be repealed and replaced by the following:

“Section 735. Any mortgagee wishes to enforce the mortgage against the transferee of the mortgaged property, the mortgagee shall notify the transferee in writing in advance for a period of not less than sixty days in order to be entitled to the enforcement of such mortgage.”

**Section 16.** The provisions of section 737 of the Civil and Commercial Code shall be repealed and replaced by the following:

“Section 737. The transferee may redeem the mortgage at any time, but if the mortgagee has notified that the enforcement of mortgage is forthcoming, the transferee shall redeem such mortgage within sixty days as from the day of the receipt of such notification.”

**Section 17.** The provisions of section 744 of the Civil and Commercial Code shall be repealed and replaced by the following:

“Section 744. A mortgage is extinguished:

- (1) when the secured obligation is extinguished due to other causes other than periods of prescription;
- (2) when the release of mortgage is granted in writing to the mortgagor;
- (3) when the mortgagor is discharged;
- (4) when the mortgage is redeemed;
- (5) when the mortgaged property is sold by public auction under the court order which is a result of the enforcement of mortgage or the redemption of mortgage or when there is a public auction under section 729/1;
- (6) when the mortgaged property is foreclosed.”

**Section 18.** The provisions of this Act shall not affect the contract concluded prior to the entering into force of this Act unless otherwise provided in this Act.

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**Section 19.** In the case that the debtor is in default as from the date that this Act comes into force, rights and duties of the creditor and the surety shall be in accordance with section 686 of the Civil and Commercial Code amended by this Act.

**Section 20.** In the case that the creditor takes any action as from the date that this Act comes into force resulting in the reduction of the amount of obligation including interest, compensation or charge accessory to such obligation, the surety shall be discharged from suretyship in accordance with conditions as specified in section 691, paragraph one, of the Civil and Commercial Code amended by this Act.

**Section 21.** The provisions of section 727 of the Civil and Commercial Code amended by this Act shall be applicable to the mortgage agreement still effective on the day that this Act comes into force.

**Section 22.** The provisions of section 728 and section 735 of the Civil and Commercial Code amended by this Act shall be applied to the enforcement of mortgage performed as from the date that this Act comes into force.

**Section 23.** The provisions of section 737 of the Civil and Commercial Code amended by this Act shall be applied to the case that the transferee wishes to redeem the mortgage when there is a notice of enforcement of mortgage as mentioned in section 735 of the Civil and Commercial Code amended by this Act.

**Section 24.** The Minister of Commerce shall have charge and control of the execution of this Act.

Countersigned by  
General Prayut Chan-o-cha  
Prime Minister

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