

LEGAL PROBLEMS ON LAW CONCERNING THE UTILIZATION OF
IMMOVABLE PROPERTY RIGHTS: A STUDY ON THE ENTITLEMENT
OVER IMMOVABLE PROPERTY ACT B.E.2562^{*}

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Abstract

To encourage and support the investments in Thailand and boost its economy, hire of immovable property is essential for the investors for both commercial and residential purposes. However, hire of immovable property in Thailand is very restrictive under Civil and Commercial Code (“the CCC”) and the Lease of Immovable Property for Commercial and Industrial Purpose Act B.E.2542 (1999) (“The Lease of Immovable Property Act”). In other words, these two laws contain provisions that limit the utilization of immovable property. For example, the objective of utilizing the immovable property places too many restrictions on the tenant’s rights. As a result, the government of Thailand through the Ministry of Finance has introduced the Entitlement over Immovable Property Act B.E.2562 (2019) (“the Entitlement Act”), so called in Thai “Sub-Ing-Sithi”. The Entitlement Act provides a new option for the investors to utilize the immovable property by giving more rights to the holder of the Entitlement. It is expected that this law will help

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support and encourage investments by attracting more Thai and foreign investors to carry on business in Thailand.

Although the main purpose of the Entitlement Act is to provide more opportunities supportive of business sections, the provisions thereunder seem not to fully reflect its objective. There are inefficiency provisions which impede and affect the utilization of immovable property. This research points out the problems that might occur from this law through conducting comparative analysis of leasehold laws in other countries, U.K., U.S. and French which those countries have similar principle with this Act. In addition, the author also analyzes the hindrances that might happen to the application of this law.

From the comparative analysis, this article proposes the essential points to revise, modify or add some provisions as well as to find the solutions to make this Act more suitable and efficient to be executed and provide the benefits to the owners and the holder of Entitlement including relevant parties.

Keywords: Hiring an Immoveable Property, Lease Immoveable Property, Leasehold, the Entitlement

1. Introduction

At present, investors from several countries come to invest in Thailand and possess immovable property for both residential and commercial purposes. However, utilizing the rights over the immovable property is still restricted by some laws, especially those regarding hire of immovable property. In order to increase the opportunity for both foreign and local investors to utilize the rights on the immovable property as well as to promote the investments in Thailand, the government of Thailand has introduced the Entitlement Act¹. This law was drafted under the principle of hire of immovable property, but the Entitlement thereunder is regarded as the new class of asset which gives the Entitlement holder's the rights on the registered property similar to the ownership. As a consequence, the holder can rent, sell, assign, mortgage and inherit the property with the maximum period of thirty years.² This new asset will help support the investment on immovable property and mega projects in Thailand. Moreover, it was designed to eliminate the limitations in the provisions regarding hire of immovable property under the CCC as well as the Lease of Immovable Property Act, which has restriction on the utilization.³

Although the Entitlement Act provides the rights to the holder of Entitlement as if having the ownership, according to the public hearing conference held prior to this Act's enactment, several legal experts and many relevant agencies such as Department of Lands, The Thai Real Estate Association and Housing Business Association expressed their concerns over this law. To clarify, they viewed that there remained some unclear

¹ Chandler MHM Limited, 'Update: Bill on a New Entitlement over Immovable Property (Sub-Ing-Sithi) in Thailand' (ChandlerMHM, 2019) <<https://www.chandlermhm.com/bill-on-new-entitlement-over-immovable-property>> accessed 23 June 2019

² Office of the Permanent Secretary, Ministry of Finance, 'the Draft of the Entitlement over Immovable Property Act B.E...'

³ Office of the Council of State, 'the Analysis of Substantial Point in the draft of Entitlement over Immovable Property Act B.E...'

provisions and certain of them provided insufficient rights to the holder of Entitlement. Furthermore, the Act contained no provision that protected the relevant parties which might cause this law to be inefficient and discourage the users from utilizing it in some situations. In this regard, the details of these problems are as follows:

1. The nature of right on the Entitlement is unclear as to whether it is the right in rem or in personam. This gives rise to legal uncertainty over the holder's Entitlement on the immovable property.

2. There is no clarification of the objectives and opportunities including the reasons why the investors should rely on this law. The investors should be able to acquire information concerning advantages and disadvantages that they might receive or bear under the Entitlement Act as well as other similar laws.

3. A period of Entitlement on property is not long enough and may result in drawbacks to the property rather than benefits.

4. Provisions that require consent from mortgagee, security receiver or the right's holder before registration of the Entitlement are too restrictive.

5. In relation to Mortgage of Entitlement, the Entitlement Act does not provide any legal measure to protect the mortgagees in case that the Entitlement disappears.

6. There is difficulty applying mortgage provisions under the CCC to mortgage of the Entitlement.

2. Utilization of Immovable Property Right and Leasehold in Thailand

Property right in Thai laws is the right over the property in which such property is the subject of the right. Under Thai laws, the types of property rights, how to establish and terminate these rights, including their scopes are specified in the CCC, of which details are provided below:

2.1 Utilization of Immovable Property Rights

A person can utilize the right over immovable property in many categories. Some are defined as rights in which person who own them can claim to the public. To illustrate, these categories of rights are ownership, servitude, superficies, etc. On the other hand, some rights are defined as personal right which person can claim only to the parties under the agreement they enter into. To this end, most of the rights over immovable property are specified in the CCC as follows:

- 1.) Ownership is the right to use and dispose of it and acquires its interests. The owner has the right to follow and recover his right from any person not entitled to detain it, and has the right to prevent unlawful interference with it.⁴
- 2.) Possession is the right showing the fact of occupier possessing the immovable property with intention to possess for himself.
- 3.) Co-ownership is 2 persons or more owning the same property and the law presumes that the owners have equal shares in the property.⁵
- 4.) Servitude is a kind of property right in which an owner of immovable property called 'dominant property' has the right to do something for his benefit on another immovable property called 'servient'. The owner of servient is bound to suffer certain

⁴ Thai Civil and Commercial Code, s 1336

⁵ *ibid*, Thai Civil and Commercial Code, s 1357

act affecting his property or to refrain from exercising certain rights inherent in his ownership.⁶

- 5.) Habitation is the right to occupy as dwelling place in a building of others without paying rent.⁷
- 6.) Superficies is the right to own land, buildings, structures or plantations of the others, both upon and below the surface. The right is created by the owner of land.⁸
- 7.) Usufruct is the right of a person to possess, use and enjoy of immovable property, including the right to manage such property.⁹
- 8.) Charge on immovable Property is entitling the beneficiary to a periodical performance out of such property or to a specified use and enjoyment.¹⁰
- 9.) Leasehold is a contract in which a landlord agrees to rent his/her immovable property to another person, called tenant to use or benefit in such immovable property for a limited period of time and a tenant agrees to pay rent in return.
- 10.) Mortgage is a contract where by a person, called the mortgagor, assigns a property to another person, called the mortgagee, as security for the performance of an obligation, without delivering the property to the mortgagee.¹¹
- 11.) Business Security is the means for businessperson to use the value asset as security for loan in which those assets are not

⁶ Wiriya Namsiripongpun, *Kham Athibai Pramuan Kodmai Pangpanit Baap-Si Wa Duay Sapsin [Civil and Commercial Code: Property Law]* (5th edn, Duen Tula 2012) 305 (วิริยะ นามศิริพงศ์พันธุ์, คำอธิบายประมวลกฎหมายแพ่งและพาณิชย์บรรพ 4 ว่าด้วยทรัพย์สิน (พิมพ์ครั้งที่ 5, โรงพิมพ์เดือนตุลา 2555)) 305

⁷ Thai Civil and Commercial Code (n 4) s 1402

⁸ *ibid*, Thai Civil and Commercial Code, s 1410

⁹ *ibid*, Thai Civil and Commercial Code, s 1417

¹⁰ *ibid*, Thai Civil and Commercial Code, s 1429

¹¹ *ibid*, Thai Civil and Commercial Code, s 702

normally accepted by financial institution such as inventory, raw material, intellectual property, etc.¹²

2.2 Leasehold

Under Thai laws, leasehold is regarded as personal right that both parties have the right to demand another party to perform any act as they agreed. Thus, the qualification of tenants is the essence of the contract where tenant cannot sublease, assign, and mortgage the property. In addition, if tenants die, the lease contract shall also be ended.

Furthermore, leasehold is not prescribed only in the CCC, but also in the Lease of Immovable Property Act. The latter was enacted to boost the investments in real estate business as the business was slowing down and lacking liquidity, giving rise to the halts of construction and business operations. The Lease of Immovable Property Act is the lease of immovable property for the purposes of commerce and industry, of which the period can be more than thirty years but not exceeding fifty years, subject to extension for another fifty years.¹³ Under this law, the leasehold can be used as collateral by way of mortgaging. In this regard, the leasehold and duty in the lease agreement can be inherited to heirs. Moreover, tenants

¹² Business Security Registration Office, Department of Business Development (DBD), ‘Rean Roo Pai Duay Gun... Kub Kodmhai Lak Prakan Thang Durakij’ [‘Learning Together with Business Security Law’] (22 September 2015) (สำนักงานทะเบียนหลักประกันทางธุรกิจ, กรมพัฒนาธุรกิจการค้า ‘เรียนรูไปด้วยกัน...กับกฎหมายหลักประกันทางธุรกิจ’ (22 กันยายน 2558)) <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=2ahUKEwj35uKbqo3mAhWD7HMBHS6gADwOFjAAegQIAhAC&url=https%3A%2F%2Fwww.dbd.go.th%2Fchiangrai%2Fewt_dl_link.php%3Fnid%3D1787&usg=AOvVaw1P6T5wfFwxlSP6gLu3Pq30> accessed 12 January 2019

¹³ The Lease of Immovable Property for Commercial and Industrial Purposes Act B.E.2542 (1999) s 3

can sublease or assign a whole or a part of the leasehold to the third party unless otherwise specified in the contract.¹⁴

3. Leasehold in Foreign Countries

The concept of provisions under the Entitlement Act is similar to the concept of Emphyteusis, which was a particular type of leasehold during Roman era. Emphyteusis was the contract where land is leased to the tenant in perpetuity or in long period under the condition that the tenant shall improve the property by cultivating, building or otherwise. With this, the tenant shall have full right to use land and other immovable property on such land including the right to gain interests thereof. Under this condition, the tenant shall also pay rent in return and when the period of lease ends, the building or other assets on land shall be vested to the landlord.¹⁵

With regard to civil law system, for example, in France, the type of leasehold that is most similar to the Entitlement is the long leasehold, which can be subdivided into two categories. The first is Bail Emphyteotique prescribed in Code rural et de la peche maritime (The Agriculture and Fishing Code), the object of which is for agriculture. The other type is Bail a construction prescribed in Code de la construction et de l'habitation (The construction and residence Code), where the tenant undertakes to build any constructions in land including taking care of it for the whole period of lease. Both types of these long leaseholds in France are considered property right,¹⁶ and the duration of the leases ranges from 18 years to 99

¹⁴ *ibid*, The Lease of Immovable Property Act B.E.2542 (1999) s 6-7

¹⁵ Civil Law Center, Faculty of Law - Thammasat University, 'Sub-Ing-Sithi: Pun Har Thang Thidsadee Lae Thang Pratibut' ['The Entitlement: Problems in Theory and in Practice'] (Legal Seminar, Bangkok, 21 June 2019)

¹⁶ Office of the Council of State, the Analysis of Substantial Point in the draft of Leasehold Act B.E...., 4 (คณะกรรมการกฤษฎีกา, บันทึกวิเคราะห์สรุปสาระสำคัญของร่างพระราชบัญญัติทรัพย์สินสิทธิ พ.ศ....) 4

years, up to the parties' agreement.¹⁷ Moreover, the tenant can also sublease and assign the property to third party, including use the property as security for repayment.

As for the common law system, there is no specific leasehold principles, which are identical to those in the Entitlement Act, However, the countries with common law system like the United Kingdom ("UK") and the United States ("US") provide the tenant with the right similar thereto for a specified period of time. With such right, tenants can also sublease or assign the property to third person unless landlord prohibits to do so with a reasonable ground. Moreover, both the UK and the US also permit tenants to use leasehold as security. In this regard, they have adopted the laws to protect leasehold mortgagee in case leasehold disappears due to tenants' fault. Nonetheless, both countries do not have provisions prescribing a specific period of lease. Thus, duration of lease is in general agreed by an agreement between landlord and tenant. To this end, both parties may agree on a long-term lease which can be as long as 999 years, but the standard period of leasehold allowed under the UK law is about 125 years.¹⁸ In sum, leaseholds in common law system are mostly regarded as the property right.

¹⁷ Henry Dyson, *French Property and Inheritance Law - Principles and Practice* (1st edn, OUP 2003) 173

¹⁸ William Calvert, 'BUILDING BRICKS What is a leasehold, what does it mean when buying a house and how is it different to a freehold?' (*The Sun*, 20 April 2018) <<https://www.thesun.co.uk/money/6101788/leasehold-freehold-difference-explained/>> accessed 12 January 2019

4. The Entitlement over Immovable Property Act B.E. 2562

The Entitlement Act was drafted in accordance with the principle of the hire of property law but in a more flexible way. Its objective is to provide another option for a person to utilize the immovable property, and regard it as a new asset which is intended not to represent any property right or contractual right like those in hiring property. Moreover, this law aims to boost domestic investments, especially in the real estate sector which has great influences over the growth of Thai economy.

The Act has defined the word “Entitlement over Immovable Property” so called “Sub-Ing-Sithi”¹⁹ in Thai, as the property relying on the utilization of rights on immovable property²⁰ where such rights are valuable and transferrable. There are two parties related to the Entitlement. The first is an owner who owns a title deed of land or land with building, including condominium with title deed. Another party is the holder of the Entitlement.

The owner who needs to utilize and increase the value of the property can under this law register the property as the Entitlement with the Department of Land for a period of not over thirty years. However, before registration, if the property is mortgaged or bound under the Business Security Act, or a third party holds certain rights registered on the property, the owner has to first obtain consent from the relevant parties in order to protect those rights. After registering, the official shall issue a certification of the Entitlement to the owner. The registration of the Entitlement can be unilaterally completed. Any persons interested in the registered property may ask the owner to sell or transfer the property and become the holder of the Entitlement, giving them the rights, duties, obligations and responsibilities as if being the owner.

¹⁹ Pra Rajcha Banyad Sub-Ing-Sithi Por Sor 2562 [The Entitlement over Immovable Property Act B.E. 2562 (2019)] (พระราชบัญญัติ ทรัพย์อิงสิทธิ พ.ศ. 2562)

²⁰ *ibid*, The Entitlement over Immovable Property Act B.E. 2562 (2019) s 3

Entitlement shall be automatically terminated when the Entitlement period ends. The owner cannot terminate the Entitlement before the expiration of such period, except in the case where the owner of property is the holder of the Entitlement. After termination, the holder of the Entitlement shall return the registered property to the owner in the condition as it is at the time of returning unless agreed otherwise by the owner and the holder.

5. Problems Regarding the Entitlement over Immovable Property Act B.E. 2562 (2019) and Recommendations

The author has studied the Entitlement Act in comparison with foreign laws and found that the Entitlement Act still has some inefficient provisions, which are not supportive of the user of the Entitlement and not pursuant to the Act's intention. The analyses on these problems and the recommendations thereof are as follows:

5.1 The Nature of Right on the Entitlement

According to the Entitlement Act, it defines the Entitlement as the property relying on the utilization of rights on immovable property. Moreover, the holder of Entitlement has the rights, duties, obligations, and responsibilities over the Entitlement property the same as the owner does, except only the right to obstruct any illegal interference, follow and recover the possession from the others. Compared with other property rights specified in the CCC, the Entitlement is similar to those detailed as follows;

1.) Ownership: the right of the holder of the Entitlement is almost the same as the ownership except only that the Entitlement's holder does not have the right to follow and recover the property from any person as well as the right to prevent unlawful interference, which still belong to the owner.

2.) Superficies: the Entitlement is rather similar to this right because the person who holds the superficies has the right to use and acquire

benefits from buildings or structures of others both upon and below the surface and it can be inherited to the heir. However, the scope of the Entitlement covers more of immovable property than superficies in that the Entitlement covers the whole of the land while superficies covers only building or the structure thereon²¹.

3.) Usufruct: the Entitlement is also similar to usufruct, but the person who holds usufruct shall manage the property in accordance with objective of possession as agreed with the owner. Nonetheless, usufruct cannot be inherited while the Entitlement can.

In this regard, according to the meaning of the Entitlement, it can be assumed that the Entitlement is a type of property right created by a specific law as mentioned in Section 1298 of the CCC.²² However, the Entitlement seems to be the mixture of several categories of property rights under the CCC. To clarify, the Entitlement Act provides that the holder can assign or mortgage the property to third party, which supports the concept that the holder of Entitlement can enforce and claim the Entitlement to the public, not only the parties of the contract creating Entitlement.

In connection with foreign laws, the principle of the Entitlement under the Entitlement Act is most similar to Emphyteusis, which is a type of long-term lease defined as a property right. Thus, it can be inferred that the Entitlement should be considered the property right as well.

With the reason in the previous paragraph, the author opines that in order to protect the right of the Entitlement's holder, and avoid the inconsistent interpretation of the law, especially when any of disputes

²¹ Kittisak Prokati, 'Sub-Ing-Sithi: Pun Har Thang Thidsadee Lae Thang Pratibut' ['The Entitlement: Problems in Theory and in Practice'] (Legal Seminar, Civil Law Center - Faculty of Law, Thammasat University, Bangkok, 21 June 2019) 7 (กิตติศักดิ์ ปรกติ, 'ทรัพย์สิน อิงสิทธิ: ปัญหาทางทฤษฎีและทางปฏิบัติ' (เสวนาวิชาการ, ศูนย์กฎหมายแพ่ง คณะนิติศาสตร์ มหาวิทยาลัยธรรมศาสตร์, กรุงเทพฯ, 21 มิถุนายน 2562)) 7

²² Thai Civil and Commercial Code (n 11) s 1298

Property Rights may be created only by the virtue of this Code or other laws.

occur, the Entitlement Act should identify the Entitlement as the property right by amending Section 3 of the Entitlement Act as follows:

“Entitlement” means the property relying on the utilization of rights on immovable property as specified in this Act and shall be regarded as the property right”

5.2 Application of the Entitlement Act

Leaseholds under the Lease of Immovable Property Act and the CCC are very restrictive and not supportive of the investments. The Lease of Immovable Property Act limits the purpose of lease only to commerce and industry, the categories of which are subject to determination by the government sector. Similarly, leasehold under the CCC focuses on qualification of tenants where sublease, assignment and mortgage of leasehold by the tenants are prohibited, and the leasehold shall be ended if the tenants pass away. For these reasons, the Entitlement Act seems more attractive to the investors, who wish to utilize the immovable property for a long period.

The Entitlement Act might be a good option for investors or person who expects to have the rights on land as ownership. However, it might also be disadvantageous if the investors have too many choices of laws to select in order to utilize the immovable property for their best benefits. Compared with other countries, the rights of a tenant over immovable property are included in the hire of immovable property provisions. Thereby, the parties of the lease agreement can agree on the objectives of lease, the tenants' right and even the use of leasehold as security in terms and conditions of the agreement.

After the introduction of the Entitlement Act, the author has analyzed which group of investors may gain good opportunities and benefits

by relying on the Act to conduct their commercial activities, and the results are as follows:

1. Foreign investors who will invest and stay in Thailand for a long period will benefit from the Entitlement Act. As the Thai Land Act prohibits the foreigner to own the immovable property, except condominium in Thailand, the foreigners who have their demand to own the land in Thailand may instead rely on the Entitlement Act.
2. Both Thai and foreign investors who need to own the immovable property as if being the owner may also rely on the Entitlement Act to utilize the property without any interruptions by the owner and other parties. The Entitlement Act provides the holder with the rights more flexible for utilization. Also, the Entitlement is very similar to a property right where it is certified to be claimed to the public.

However, the Entitlement Act is not suitable for the investors wishing to invest in a large project on immovable property for a term of thirty years and without any plans to assign the right to hold such property. The same applies to any person wishing to use the leasehold as security against the repayment. This is because there remain other laws on which the investors can rely with less expense than required under the Entitlement Act.

5.3 Problem on the Duration of the Entitlement

The period of thirty years provided in the Entitlement Act is not proper for the objective of this law because this asset provides the rights similar to ownership, and it is also related to many parties. To clarify, the reasons behind this are as follows:

- 1.) If the period of using the Entitlement is the same as prescribed in the CCC, which provides the maximum period of thirty years, some owners of the property might not want to register for the Entitlement because the registration thereunder might not be worth the increased obligations.

2.) Since the holder of Entitlement can sell, rent, and assign the Entitlement to a third party who also wishes to use the property for a long period, the period specified in this law may not be sufficient to utilize the property in case of many parties involved.

3.) If the Entitlement is used as collateral to guarantee the repayments of debt, the short period of Entitlement can give rise the situation where banks do not accept the Entitlement as collateral. This is because the banks might be unconfident whether the collateral asset will remain until the debt is paid in full.

4.) The purposes of the Entitlement Act are to facilitate and support the business sectors by increasing the value of immovable property and also to boost investment by supporting the entrepreneurs. As a result, if the period of the Entitlement is longer, it will help encourage much more investors to invest on larger projects through relying on the Entitlement. In this regard, the author views that the period of using Entitlement should be at least fifty years, the same as provided in the Lease of Immoveable Property Act. Besides, the extension of the period will be beneficial for the growth of Thai economy as well.

5.4 Problem on the Prior Obligation of the Entitlement

The Entitlement Act prescribes that if the immovable property is mortgaged or bound under the Business Security Act or bound with any other rights, the registration shall be completed only when a mortgagee, a business receiver or holder of right gives written consent to the owner of such property.

This prior obligation is problematic because the mortgagee, security receiver or right holder might not be willing to give such consent as it may result in the decrease of the property value guaranteeing the debt, and thereby such debt might not get paid in full. Importantly, this is a critical issue as most of immovable properties located in urban areas of Thailand are being used as security against loans, so it will be a rare case to find a

registration for the Entitlement without requirement of consent. Apparently, this obstacle may cause this law to be both impracticable and ineffective.

In order to solve this issue, the Section regarding consent should be repealed or amended to require only a notice informing the mortgagee, security receiver, or right holder.

5.5 Problem on Mortgage of Entitlement

According to the Entitlement Act, it allows the holder of Entitlement to use Entitlement as security against loans. The problem for using Entitlement as security is that in case the holder of Entitlement infringes the law or breaches terms and conditions as agreed, the owner has the right to terminate the Entitlement by himself. Hence, when the Entitlement is terminated, the mortgagee will be affected since there is no security left to use against the debt.

In the UK, certain laws such as the Property Act 1925 and Common Law Procedure Act 1852 were adopted to protect the mortgagee in the leasehold case. These laws specify the right of mortgagees to relieve the problem arising from breach of contract or non-payment of rent in the case where tenants do not perform such relief, which may cause landlords to terminate the contract or exercise the right of re-entry over the leased property.

Though the Entitlement Act provides that the holder of Entitlement may use the Entitlement as security through applying mortgage provisions in the CCC, there remain no provisions to protect mortgagees. Therefore, to make the Entitlement Act more effective in applying this mortgaging right and protecting the third parties, the author proposes to add the following provision as Section 12/1 of the Entitlement Act:

“In the case where the Entitlement is used as security, the owner shall not immediately terminate the Entitlement if the holder of the

Entitlement utilizes the property contrary to the law or the Entitlement agreement or compensation of using the Entitlement is in arrears. The owner shall within a reasonable time give a notice to the holder of the Entitlement specifying the particular breach and require the holder of the Entitlement to remedy the breach if it is capable, or require to make compensation in money for the breach; or require the holder of the Entitlement to pay such arrears, and for all actions the holder of the Entitlement fails to do so.

If the holder of Entitlement does not perform such reliefs, a mortgagee or a security receiver under the Business Security Act can instead perform such reliefs.

If the owner has already terminated the Entitlement without requiring the holder of the Entitlement to perform the relief under paragraph 1, the mortgagee is entitled to request the owner to grant the new Entitlement to the mortgagee with the same terms and conditions and in the remaining period of the original Entitlement within 30 days from the date of termination of the Entitlement by the owner, provided that the mortgagee proves with reasonable that the mortgagee cannot perform the relief under paragraph 1. In this regard, the expenses occurring from the new Entitlement shall be borne to the holder of the Entitlement.”

5.6 Problem on Applying the Mortgage Provisions under the CCC to the Mortgage of the Entitlement

The Entitlement Act prescribes that the mortgage provisions under the CCC shall apply in the case where the Entitlement is used as security. To this end, if the holder of the Entitlement cannot repay a loan, and mortgagee wants to perform enforcement of the security given by the holder, mortgagee shall go through the court's proceedings to have the mortgaged property seized and sold in public auction. However, this process usually takes long time and is difficult for those who lack the knowledge of legal procedures.

Nowadays, the Business Security Act, B.E.2558 provides that the properties permitted under this law such as right of claim, intellectual property and business can be used to secure the debt. However, this law does not require the court proceedings in order to enforce the security unless there is a dispute over the enforcement process, which is generally faster than the enforcement of mortgages under the CCC. The security receiver is entitled to enforce the security through the business security agreement by way of sale by auction or foreclosure.

Leasehold is the right of claim that can also be used as security. Although the Entitlement has similar features to the leasehold, which could also be used as security under this law, the Entitlement Act does not clearly identify the type of the Entitlement.

Consequently, to provide certainty on the status of the Entitlement, the author suggests that the Business Security Act, instead of the mortgage provisions under the CCC, should apply to the mortgages of the Entitlement. In this regard, the author proposes to amend paragraph 1 of Section 12 in the Entitlement Act as follows:

*“The Entitlement can be assigned or used as security
for a repayment under Business Security Act...”*

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