

## ABSTRACT

Assets Capitalization is one of the vital policies of Pol. Lt. Col. Thaksin's Government operated with the concept to assist the people of grass root level having problems on the shortages of the operating capitals in carrying out their occupations to have chances of access into the sources of capital. This assets capitalization was influenced by the concept of Mr. Hernando De Soto, Peruvian Economist, who presented such concept in his Book, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*. The essence of the Book is that capital is the vital factor in the economic development and that an access into a source of capital will result in the increase in the products and the creation of economic wealth. The assets capitalization is the process of bringing forth the assets possessed by the people for conversion to the capital. The guidelines on the assets capitalization in Thailand categorize the assets which can be brought for participation under the Assets Capitalization Project, primarily, into 5 categories: namely; lands, leaseholds, domaine public, intellectual properties and machineries, whereby this Thesis is focused to reiterate the study on the assets capitalization in the category of the domaine public.

The important matter of law on the assets capitalization in the category of the domaine public then shall rest upon whether or not and how the right of utilization of the "domaine public" can be used as security to the extent of validly legal effects. Therefore, the study on the structure of legal relations and legal effects arising as a result of the carrying out of the Assets Capitalization Project in accordance with the government's policy including the principle of law governing security by assets, is necessary.

The study on the structure of legal relations and legal effects on the assets capitalization in the category of the domaine public found that the bringing forth of the right of utilization on the "domaine public" for use in the process of assets capitalization relied on legal mechanism in the nature of a contract and that in providing support on a credit for a person receiving a letter of authorization to use the domaine public or any other certificates for use in the assets capitalization, a Memorandum of Cooperation Agreement between the government organization monitoring and supervising each category of the assets and a financial institution shall be made. However, the granting of credit under the Assets Capitalization Project by bringing forth the right of utilization of

the “domaine public” for use as a guarantee in securing a credit is not at all in compatibility with the nature of a security by assets in accordance with the Civil and Commercial Code.

As for the right enforcement process and clearing house settlement which are mechanisms created for compulsory performance under the Assets Capitalization Project in the case of a default in debt payment, a creditor shall have the right to receive debt payment by way of letting a new entrepreneur subrogating the right of the original debtor on condition that the subrogee under this particular case shall be obligated with the debt burden in place of such original debtor which will result in the financial institution creditor under the Project to have the preferential right of debt payment before the other ordinary creditors in the same way as security by assets despite the fact that the assets capitalization is not in the nature of a security by assets in accordance with the Civil and Commercial Code and that, in accordance with Thai law, the parties to a contract cannot create such preferential right between themselves.

In addition, the study on the bringing forth of the right of utilization of the “domaine public” for use in the assets capitalization found that there are several legal matter problems whether they are matters in connection with the nature of the right of the utilization of the “domaine public” and consideration clauses in connection with the qualifications of the assets in the category of the domaine public to the extent whether or not they can be used as security including the legal effects of the right enforcement process and clearing house settlement as well as the rules on the appraisal of the asset values in bringing forth the right of utilization of the “domaine public” for use as a guarantee in securing credit form a financial institution.

The study on this Thesis can be concluded

(1) That the allocation on the utilization in accordance with the right of utilization of the “domaine public” which can be brought forth for use as a security should be clearly specified by preparing the document of right in systematic registration which can be disclosed to the general public including the period of time authorized for such utilization which should be fixed to be longer than the previous ones shall virtually make the right of utilization of the “domaine public” to be stable and certain enough for use as a security.

(2) That in the interest of bringing forth the right of utilization of the “domaine public” which have been allocated for public use upon approval of the government

organization as security, the people should be able to transfer such right upon approval of the government organization monitoring and supervising over such assets.

(3) That the suitable security method may be in the form of mortgage to be used with the right of utilization of the "domaine public" in order to make the creditor receiving guarantee become under the status of a mortgaged creditor which shall result in such creditor to have preferential right in receiving payment from such guarantee given by the debtor, before the other ordinary creditors and to be protected under the Bankrupt Law, as well. Moreover, the mortgage registration is yet another system disclosing the right of a creditor and security burden of the mortgaged assets to the outsiders which is an importantly fundamental principle on security by assets.

(4) That the system on the enforcement of right and compulsory performance from guarantee when there has been a dispute in the case of default in debt payment should stipulate that a person receiving the right derived from the execution of the case from the guarantee shall have the right identical to the right received from the beginning by the original debtor, in the capacity of the person receiving a new license due to the reason that the period of time authorized for the utilization thereof may not likely be too long. The stipulation of such right will apparently build up confidence in the creditor which will consequently enhance the people who are small business operators to have the chances of access into the sources of capital.