THE PROTECTION OF THE GUARANTOR IN THE DEBT OF THE EDUCATION LOAN FUND (ELF)

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Abstract - The purposes of this research are 1. To study the qualifications and liability of the guarantor in the educational loan fund, and 2.To provide recommendations for the protection of the guarantor on the debt. This research is a documentary research which studies from various documents for both legal and non-legal documents, including various websites on Internet. Then, analyze the obtained information to see the impact that the guarantor has on the debt see the impact that the guarantor has on the debt. According to the research, it was found that despite the enactment of the Educational Load Act, 1998, the authority to establish Educational Loan Fund (ELF) was established to support and promote the studies by providing Educational Loan to a student or other students who are in need of financial resources. However, when considering the criteria for borrowing money from such fund, there must be a guarantor. The person who is the guarantor must have the qualifications as specified by the ELF, thus, the person who shall be the guarantor is limited only for certain groups of people. As a result, the guarantor must guarantee in the amount of such debt without limiting the number of a student or other students that the guarantor has guaranteed. In addition, there is no protection for the guarantor when the borrower does not pay back the debt to the fund, causing the guarantor to bear the burden that would have to be enforced to pay for the debts, and it greatly affects the guarantor. The author considered that there should be an amendment to the Education Loan Fund Act, 2017 for further prescription of measures to protect the guarantor as it is deemed appropriate.

Keywords - Education Loan Fund Act, 2017, Guarantor, Protection

I. INTRODUCTION

Education is very important in the development of people and it affects the development of the country. However, many people are unable to access education as needed due to limitations of economic (Surasak Mibua, 2561, Nor. 186). Although the Ministry of Education has a policy to learn 15 years for free with quality education to improve the quality of education in the country as defined in the statement of policy and in the four-year national administration plan of the government (the Royal Thai Army, good education policy, free 15 years of quality, online); nevertheless, a student or other students still have to pay some other expenses, causing the government to see the importance of this section.

Thus, enacting the Educational Loan Fund Act, 1998 by granting the power to establish a Educational Loan Fund so that a student or other students who are in need of money can borrowed money for tuition fees, expenses related to education, and the expenses necessary for living during the study (Education Loan Fund, Background, Online).

Anyway, the said Act has many problems until it leads to the promulgation of the Education Loan Fund Act, 2017 when considering the essence of the Act. This issue clearly defines that borrowing money from the fund requires a guarantor, and the guarantor must have the qualifications required by the Educational Loan Fund as a government officials or government officials who receive pension under the State Official Identification Act, 1999, governor of Bangkok or the head of the school where the students who need the loans are studying. In this case, the author has seen that it is a limiting feature regarding the job status or occupation of the guarantor without allowing any other person in the society to be a guarantor of such debt.

As a result, the guarantor must guarantee in the amount of such debt without limiting the numbers of students that the guarantor has guaranteed. Additionally, there is no protection for the guarantor when the borrower does not pay back the debt to the fund, causing the guarantor to bear the burden that the guarantor might be enforced to pay for these debts as it can be seen that the legal provisions of the said Act has some of the flaws that affect the guarantor. Hence, it is necessary to study and take a research to analyze and search for ways to protect the liability of the guarantor.

II. SCOPE OF RESEARCH

This research aims to study on the qualifications and liability of the guarantor in the debt for educational loans fund in order to know the problems and impacts to the guarantors in such debt until it leads to the analysis and recommendations for further amendments to the legal provisions.

III. OBJECTIVE OF THE RESEARCH

1. To study the qualifications and liability of the guarantor in the debt for educational loan fund.
2. To suggest guidelines for the protection of the guarantor in the debt for educational loan fund.

IV. EXPECTED BENEFITS

1. To know the qualifications and liability of the guarantor in the educational loan fund.
2. To know the guidelines for the protection of the guarantor in the appropriate amount of the educational loan fund.

V. RESEARCH METHODOLOGY

This research is a documentary research which has been studied from various documents for both legal and non-legal documents such as the Educational Loan Fund Act, 2017, academic articles, including internet sites and then analyze the obtained information obtained to see the impact that the guarantor has on the debt.

VI. RESULTS OF THE RESEARCH

When it is due to repay the educational loan according to the contract that the borrower and the loan fund for education have made together, if the borrower fails to pay the debt to the fund, it will determine various methods in tracking for debt collection in order to pay off debt, including sending invoices, sending debt collection letters, and hiring a debt collection company, all of which, even if it is done for the borrower before having the prosecution by law, but it was found that the borrower was not able to pay all the debts, and there are only some borrowers who made the payment; hence, it causes the problem of overdue debt and it affects the next generation of students who borrow money from the fund because the fund does not have cash flow for students to borrow. With this reason, the Fund will proceed to enforce the debt payment from the guarantor who guarantees in such debt, causing the debt burden to fall to the guarantor to pay the debt. Instead, by assuming that the guarantor is a joint debtor without the protection or limitation of the guarantor's liability as it should be, and when considering the qualifications of the guarantor, it was found that the guarantor must be a government official or a government official who receive a pension according to the State Official Identification Act, 1999, a member of the district council, a member of the Bangkok Metropolitan Council, the governor or the head of the education institution that the applicant is studying. The author considered that this Act defined the very less qualifications of the person who shall be a guarantor as there are only a few career types of guarantors. As a result, the guarantor has to bear the burden of guarantee for many borrowers if the borrower fails to pay back the loan to the Education Loan Fund, as can be seen from the presentation of Teacher Wipa news. Banyen, Director of Ban Huay Noi School, Mae Lat Sub-district, Khlong Khlung District, Kamphaeng Phet Province, who guaranteed for the debt for education loans to 60 students who borrowed money from the fund (Online Thairath!, Shocking news to the whole nation for the case that the teacher has been sued for the confiscate of property as being a ELF guarantee for students!, online) and the borrowers do not pay such debt, so the Fund must prosecute the case and the Legal Execution Department must seize money to pay to the Fund.

VII. DISCUSSION OF RESEARCH

The Education Loan Fund Act, 2017 does not determine the limits on the guarantor in the amount of such debt as it should be, and there are many legal problems and limitations including:

1. Guarantees for loans from the Fund in accordance with the Education Loan Fund Act, 2017 required the guarantors for the money borrowing from the Fund. The researcher agrees on the issue because it is a general payment guarantee. However, the act defines the qualifications of the guarantor only for those who have a certain occupation. This allows the borrower to find a guarantor that who is trustworthy and meets the qualification to be a guarantor; otherwise, it is not possible to request a loan from the fund. The researcher disagrees with this case because some students who are lacking in education are unable to find a qualified guarantor will have no right to request loans from the Fund, resulting in the lack of educational opportunities. The determination of such measures does not comply with the intent of the Fund which was established to support and promote education by providing loans for education as compared to Section 48, second paragraph, the Education Loan Fund Act, 1998, stated that, in the loan agreement, there will be a guarantor for payment of debt, but it cannot be determined until it has an obstacle to those who are lack of funds to borrow money. It means that if the applicant is a student or a student who is really in need of funding and cannot find a guarantor for the loan under this Act, they still have the opportunity to borrow money from the fund. That is, the fund committee does not have strict rules that require a guarantor, but it may use discretion in the case of making students to have the opportunity to request loans from the fund.
2. Such Act stipulated that one guarantor can guarantee for a certain numbers of borrowers, so some guarantors guaranteed the borrower from many funds, and that affected the severe results for guarantors who have seen the importance of education or has compassion for students when students come to ask for guarantees. The guarantors voluntarily guaranteed for students and hope that those children would use the borrowing money from the fund for maximum

benefits. However, when students who borrowed money completed their studies and had stable jobs, but lacking of consciousness to pay back the debt to the fund as well as not taking the impact that the guarantor has caused on the debt payment into account, the debt burden fall to the guarantor.

CONCLUSIONS

As in the aforementioned, the researcher has stated that the education is an important issue and is a driving force in developing countries in many ways, but some students are unable to access education due to financial constraints and a shortage of fund. Thus, the government has seen the importance and enacted the Educational Loan Fund Act, 1998. The Act authorized the establishment of an Educational Loan Fund for students who are lacking fund to borrow money from the fund and used as a scholarship for study.

On the other hand, there are many borrowers who refuse to pay back the fund. In accordance with the Education Loan Fund Act 2017, it is stipulated that when the borrower refuses to pay the debt as specified in the contract, the burden of repayment will come to the guarantor. Therefore, there is a need to have measures for limitation of liability and protection of the guarantor in such debt. In this case, the author considered that such act should be amended and improved to provide the protection to a guarantor as much as it should be.

SUGGESTIONS

From the research study, the researcher suggests ways to protect the liability of the guarantor when the borrower fails to pay back the debt to the fund as follows.

1. The Educational Loan Fund Act, 2017 stipulated that the guarantor must be government officials or government officials who receive pensions according to the State Official Identification Act, 1999, governor of Bangkok or the head of the school where the students who need the loans are studying.

   The author has seen that there is too much limitations on the person who will be the guarantor, and students or other students who will be the borrower cannot access, and they lose the opportunity to request a loan from this fund. With this reason, it is deemed appropriate to allow individuals who have other professions are also qualified to be guarantors such as persons who are business owners, individuals who own a foundation that is a legal entity, people who have a monthly income of more than 50,000 baht or a family member with a monthly income of more than 50,000 baht, etc. The wide determination of a guarantor will allow the borrower to find a guarantor more easily and will provide the opportunity to request loans from the fund.
2. The Educational Loan Fund Act, 2017 stipulated that the guarantor must be a natural person only; therefore, the researcher considers that the juristic person should be allowed to be a guarantor in the amount of such debt or that the juristic person may become a co-guarantor with a natural person. Such juristic person must be a guarantor as a natural person working. When the borrower does not pay back the debt to the Fund, the Fund shall be entitled to enforce such payment from the juristic person first. Once the debt has been fully paid, the juristic person who is being the guarantor shall enforce the money in the part of the guarantor as an individual person should pay. The Fund shall prescribe that the guarantors who are a natural person and a juristic person must share the debt in order to pay back to the fund half by half. The juristic person shall pay the whole debt first, and then the individual person shall pay in the part that he shall pay. Thus, the guarantors may agree that they will pay in full at once or pay in installments, depending on the agreement. In the case that the guarantor is a natural person, refusing to pay the debt in the part that must be paid to the juristic person , the juristic person can deduct the salary of the guarantor who is a natural person to come to pay the debt for juristic person himself.
3. According to the Education Loan Fund Act, 2017, it does not specify that one guarantor can guarantee for how many borrowers, which the author considered that some guarantors may be forced to provide guarantees to many students due to the very high qualifications set forth by the said Act as mentioned above. When the borrower fails to pay the debt to the fund, the guarantor shall bare very heavy burden of the debt. With this reason, it should be determined whether one guarantor must be the guarantor for not more than 5 people.
4. If the borrower does not pay the debt to the fund, the debt burden will be on the guarantor. In the case that the guarantor will not have to bear the burden and suffer too much about the debt, the fund may determine that the guarantor can pay in installments and do not charge interest. The guarantor can extend the repayment period according to the necessity of each guarantor, and when the guarantor pays this fund in full amount, the guarantor is entitled to track money back from the borrower by charging the loan interest rate by 0.5%.

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REFERENCES

[1] Educational Loan Fund, Background, retrieved on 24th September, 2018 from https://www.studentloan.or.th/en/aboutus.

[2] Thai Rath Online. Shocking news to the whole nation for the case that the teacher has been sued forthe confiscate of property as being a ELF guarantee for students, retrieved on 27th September, 2018 from https://www.thairath.co.th/content/1345681#.

[3] Somboon Chumthap, good learning policy and free effective education for 15 years, retrieved on 25th September, 2018 from http://www.moe.go.th/moe/th/news/detail.php?NewsID=22874&Key = news20

[4] Surasak Mebua, Analysis of the "Draft Act on Education Fund ..." that is appropriate for the enforcement, "Journal of Political Administration, Year 8, Issue 1, January-April 2018 Mahasarakham University.

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