

## On Enterprise Value Security Interest

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Recently, there has been active discussion regarding financing methods for small and medium-sized enterprises (SMEs). Against this backdrop, the “Act on the Promotion of Business-Based Financing, etc.” (Act No. 52 of 2024; hereinafter referred to as the “Business-Based Financing Promotion Act”) will finally come into force on May 25, 2026.

The Business-Based Financing Promotion Act aims to rectify the conventional lending practices that rely heavily on real estate collateral and personal guarantees provided by business owners, while facilitating smoother financing necessary for corporate business activities. At the same time, it seeks to ensure appropriate protection for employees and business counterparties, and to promote financial institutions’ support for business continuity and growth.

The “Enterprise Value Security Interest,” a new type of security interest established under this Act, has been attracting significant attention as a new option that aligns with financing practices focusing on the business value of a company.

In this newsletter, we provide an overview of the Enterprise Value Security Interest.

### **I. The Enterprise Value Security Interest**

#### **1 Overview**

The Enterprise Value Security Interest is a system under which the value generated by a company’s “entire business” is taken as collateral in an integrated manner, rather than creating security interests over individual assets such as real estate or accounts receivable on a piecemeal basis (Article 7, paragraph 1 of the Act; hereinafter, statutory references are to this Act unless otherwise specified).

The “enterprise value” referred to here is not merely an abstract concept. Legally, it is understood as encompassing the entirety of the company’s assets, including assets to be acquired in the future, as a single object of collateral. In other words, the scope of evaluation extends beyond tangible assets to include intangible elements such as goodwill, know-how, technological capabilities, and customer networks, thereby capturing the overall earning capacity of the business.

Key features of the Enterprise Value Security Interest include that, in principle, the secured party is not permitted to enforce the security interest against individual assets, and that the method of

enforcement of such security interest is, in principle, carried out through a transfer of the business.

## **2 Basic Structure and Parties**

The Enterprise Value Security Interest is created based on an enterprise value security trust agreement, under which the debtor acts as the settlor and an Enterprise Value Security Trust Company acts as the trustee.

The collateral subject to the security interest consists of the entirety of the company's assets (Article 7). The security interest becomes effective upon registration in the commercial register at the location of the debtor's head office (Article 15), and the priority among competing security interests is determined by the order in which the requirements for perfection are satisfied (Article 18).

The debtor is limited to a "company" as defined under the Companies Act (Article 2, paragraph 2, etc.). Unless otherwise provided in the articles of incorporation, the creation of the Enterprise Value Security Interest requires a resolution of the board of directors. Even after creating such security interest, the debtor may, within the ordinary course of business, use, profit from, and dispose of its assets (Article 20, paragraph 1).

An Enterprise Value Security Trust Company, which acts as the trustee, must be a company licensed by the Prime Minister. It is responsible for the management and disposition of the Enterprise Value Security Interest, receipt, management, and distribution of proceeds, and the enforcement of the security interest (Article 6, paragraph 2, etc.).

## **II. Significance as a Financing Method**

### **1 Shift Away from Asset-Dependent Financing**

The introduction of the Enterprise Value Security Interest enables financing that does not rely on fixed assets such as real estate, as has traditionally been the case. In particular, for companies whose sources of value lie in intangible assets or future growth potential, it can serve as an effective means of financing. In addition, as it allows for the avoidance of personal guarantees by company representatives, it is expected to facilitate closer collaboration between companies and financial institutions.

### **2 Business-Based Valuation**

Under the Enterprise Value Security Interest, the valuation of collateral is expected to be based not merely on liquidation value, but on the earning capacity of the business on a going-concern

basis. Accordingly, it is anticipated that this framework will expand financing opportunities even for growth-stage companies and those undergoing business transformation.

### **3 Transformation of Relationships with Financial Institutions**

The Enterprise Value Security Interest is a framework that is highly compatible with continuous monitoring and management support by financial institutions (so-called “accompaniment-type support”). It is characterized not merely by the provision of funds, but by fostering relationships that include support for the growth and development of the business.

## **III. Key Considerations for Borrowers**

When utilizing the Enterprise Value Security Interest, there are important considerations that differ from those associated with traditional forms of security.

### **1 Contractual Restrictions**

Financing agreements with financial institutions are expected to include financial covenants and affirmative/negative covenants. For example, certain restrictions may be imposed on the disposal of material assets, new borrowings, and organizational restructurings, which may affect managerial flexibility.

While the debtor is generally permitted to use, profit from, and dispose of the collateral assets, any actions that go beyond the ordinary course of business require the consent of the holder of the Enterprise Value Security Interest. It should be noted that any such actions taken without consent will be deemed invalid.

### **2 Enhanced Monitoring**

Since the entire enterprise value is subject to the security interest, financial institutions are likely to strengthen their ongoing monitoring and understanding of the company’s business and financial condition. As a result, companies may face increased requirements to disclose financial information and business plans.

In addition, because the claims of other lenders are uniformly subordinated to those of the financial institution holding a first-ranking Enterprise Value Security Interest, this framework is considered to be more compatible with a primary banking relationship centered on a single main bank.

Where transactions are centered on a single main bank, companies will be required to provide

sufficient explanations regarding matters such as cash flow in order to build a strong relationship with the financial institution. Correspondingly, financial institutions will be expected to establish systems to promptly grasp the company's financial condition.

### **3 Misunderstandings Regarding the Authority of the Secured Party**

Importantly, the creation of an Enterprise Value Security Interest does not grant the secured party immediate control over management, nor does it confer authority to determine employment conditions or similar matters. The company remains the primary decision-maker in management, and undue intervention by financial institutions is restricted under applicable laws and regulations. Nevertheless, from the perspective of protecting employees, it is considered desirable that, including in cases where an Enterprise Value Security Interest is created, business operators engage in communication with labor unions or employee representatives (representing a majority of employees), and promote information sharing regarding the business environment, management challenges, and financing methods.

## **IV. Key Features upon Enforcement (Fundamental Differences from Traditional Security Interests)**

The most significant feature of the Enterprise Value Security Interest lies in its method of enforcement.

### **1 Business Transfer as the Principal Method**

Under the Enterprise Value Security Interest, the principal method of realizing value upon enforcement is through a transfer of the business as a going concern.

Specifically, the enforcement procedure is initiated by a petition to the court, followed by a commencement order and the appointment of an insolvency administrator. The appointed administrator then conducts the realization process, including maintaining the business as a going concern and implementing a business transfer, after which distributions are made to creditors.

Accordingly, as noted in Section 1(1) above, recovery through the sale of individual assets—commonly seen in traditional security enforcement—becomes an exceptional measure, permitted only where a business transfer is not feasible.

It should also be noted that, in insolvency proceedings, the Enterprise Value Security Interest is deemed to be equivalent to a mortgage and is treated as a right of separate satisfaction.

## **2 Concept of Value Maximization**

Another distinguishing feature is that enforcement is not solely focused on maximizing the sale price. Instead, various factors are taken into consideration, such as whether the business value can be preserved, as well as the maintenance of employment and business relationships.

This reflects the design of the system itself, which places emphasis on the continuation of the business as a going concern.

## **V. Impact on Business Counterparties (General Unsecured Creditors)**

The Enterprise Value Security Interest has significant practical implications not only for the borrowing company but also for its business counterparties.

### **1 No Automatic Transfer of Contracts**

An important point is that the creation or enforcement of an Enterprise Value Security Interest does not automatically bind contractual relationships with counterparties. Accordingly, even in the case of a business transfer carried out as part of enforcement, the transfer of contractual status generally requires the individual consent of each counterparty, as is the case with business transfers under the Companies Act.

As a result, counterparties may be required, at the stage of business succession, to reassess whether to continue the transaction and under what terms, including the possibility of revising existing conditions.

### **2 Impact on Priority Relationships**

Since the secured party holds a preferential position over the entire enterprise value, the recoverability of general unsecured claims in situations of credit uncertainty may be affected differently from traditional frameworks.

Even general unsecured creditors may, as holders of unspecified secured claims, receive distributions in liquidation proceedings if they are beneficiaries under the Enterprise Value Security Interest (Article 6, paragraph 5).

On the other hand, because the holder of an Enterprise Value Security Interest is not permitted to participate in distributions from compulsory execution against individual assets (Article 7, paragraph 3), it remains possible for creditors holding an enforceable title to pursue recovery separately through compulsory execution against specific assets.

### **3 Practical Responses for Counterparties**

In light of the above, counterparties should consider refining their contractual provisions. By enhancing clauses such as acceleration clauses, information covenants, and termination rights, counterparties can better identify and manage risks at an early stage.

## **VI. Positioning of the System and Future Outlook**

The Enterprise Value Security Interest is positioned not merely as an extension of traditional security frameworks, but as a new financing model premised on the continuation and growth of business. A notable feature of the system is that it incorporates the adjustment of various stakeholder interests, including not only recovery for secured parties but also the maintenance of employment and business relationships.

As of March 2026, discussions on model forms of trust agreements have been progressing (Note 5), and practical arrangements for the implementation of the system are steadily advancing. With the expected spread of the system, it will become increasingly important for borrowing companies to carefully review financing terms, and for counterparties to reassess their credit management and risk control frameworks.




That said, due to the nature of the Enterprise Value Security Interest—where intangible business value forms the basis of the collateral—difficulties in valuation may prevent financing from proceeding as smoothly as anticipated. In addition, unless a sufficient level of understanding is achieved among financial institutions and other stakeholders, its practical use may remain limited. It is expected that, through actual implementation, practical knowledge and best practices will gradually accumulate. Companies should therefore properly understand the implications of the Enterprise Value Security Interest, not only when utilizing it themselves but also when their business counterparties adopt it, and should consider appropriate measures at an early stage.

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