THE APPRAISAL OF BUSINESS ENTERPRISE AS COLLATERAL

BY

MS. VARARAT UDOMYINGCHAROEN

AN INDEPENDENT RESEARCH PAPER SUBMITTED IN PARTIAL
FULFILLMENT OF THE REQUIREMENT
FOR THE DEGREE OF MASTER OF LAWS
(IN BUSINESS LAW)

GRADUATE SCHOOL OF LAW
ASSUMPTION UNIVERSITY

SEPTEMBER 2005

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Research Title:	The Appraisal of Business Enterprise as Collateral
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Major:	Business Law (International Program)
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Faculty of Law, Assumption University approves this Independent Research Paper as the partial fulfillment of the requirement for the Degree Master of Laws.

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Degree: Master of Laws (International Program)
Academic: 2005
Advisor: Mr. Artit Pinpak

ABSTRACT

The main objective of this independent research on the "The Appraisal of Business Enterprise as Collateral" is to study secured transaction with enterprise as collateral. At present, Thailand has no provision to legally bind secured transactions in securities. Therefore, the investors have the problems of finding the source of fund to expand their businesses due to the fact that investors have properties that the Thai Civil and Commercial Code does not include as special property and there are limitations to apply as security. Any properties that are not stipulated in CCC cannot be secured under the law.

Business enterprise as collateral, the appraisal of enterprise and those of immoveable or moveable property are different. Mostly immovable property is included in the enterprise; The evaluation of such enterprise ought to have higher price than the immovable property alone. Therefore, this research would like to emphasize on the assets of an enterprise that may be used as collaterals, like the long history of the business, reputation and high goodwill or some other special properties such as trademarks, patents, copyrights. The aforementioned assets are more valuable under the business enterprise, properties such as land, buildings, company, trademarks, stock exchange, employees, factories and all properties together make higher worth in the business enterprise than individually appraised.

Valuation is the heart of all economic activities; everything we do as individuals or as groups of individuals in businesses or as members of society is influenced by the concept of value. A sound working knowledge of the principles and procedures of

valuation is essential in all sorts of decisions relating to real estate buying, selling, financing, developing, managing, owning, leasing, trading, and in the ever-more-important matters involving income tax considerations.

The country that is famous on appraisal is the United States of America. This research compares between Thai appraisal and US appraisal to find out the similarity between Thai appraisal and American appraisal and the difference between Thai appraisal and American appraisal. And it is found that Thai appraisal and American appraisal are different such as the definition of types of appraisal, types of appraised properties, establishment of appraisal organization and interested in the importance of appraisal and the establishment of the law concerning appraisal.

Moreover, this research analyses the problem of business enterprise as collateral that there are many problems such as the problem of the lacking of laws to apply to secured business enterprises in Thai law. Goodwill and reputation in business enterprises may make considerable difference in price valuation. Information of appraisal in Appraiser Company is trade secrete. The problem of appraisal standard troubles all appraiser companies and there is lacking of code of professional appraiser ethics.

Thailand has no law or regulation to be the standards of professional appraisal practice. If Thailand enacts the law or standards for professional appraisal practice, establishes specific law to provide for the secured transaction in which debtors can use various properties (more than in CCC) to be collateral or security, enacts regulation or laws that provide for the business appraisal and with the clearly stipulated method and enacts the draft of Profession Valuation Act; Thailand will be accepted in the international community.

Acknowledgement

I wish to express my sincere gratitude and appreciation to my advisor, A. Artit Pinpak for his valuable advice, continuous study which has enabled me to carry out this independent research paper successfully.

I do greatly appreciate the members of my advisory committee, Assoc. Prof. Nattapong Posakabutra, the Director of Master of Laws Program and Chairperson of the Master of Laws Program in Business Law (International Program) and A. Wutipong Vechayanon for his valuable comments and suggestions.

Sincere thanks are also expressed to all members in the department of laws for their help and providing facilities during my study. And special thanks are extended to my class mate and every one in the Legal Execution Department: Official Receiver Division 4 to provide convenience and their helpful provision and preparation of necessary materials and information without which this independent research paper would not be possible.

Finally, I greatly appreciate my parents for their kindness, granting the opportunity and understanding encouragement throughout my study.

Ms. Vararat Udomyingcharoen

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Chapter 1
Introduction

1.1 Historical Background

Investors may invest by their asset or cash, but if the investors need to get a lot more of capital in big projects to expand businesses or produce more products for the reason that their businesses will get higher profit from their bigger scale of projects or businesses. However, the investor investing with own capital is not the best choice because using own capital to invest exposes one's capital to high-risk of damage or loss. Therefore, less of the private sector will be willing or able to invest with own capital. Due to such reason, it is the problem resulting in slower development of Thai economic. In responding to that problem, commercial banks or other types of financial institutes have created credit systems for helping the investors who need to invest by using properties to be security in making loans.

This research would like to study secured transaction with an enterprise as security in this research. At present, Thailand has no provision for legally binding secured transactions with collaterals. Therefore, some investors may have problem of finding sources of fund to expand their businesses due to he reason that the investors have some properties that Thai Civil and Commercial Code does not recognize as security and therefore cannot be used as collaterals; since properties that are not stipulated in the CCC cannot be securitized under the current law.

1.1.1 Secured by Mortgage

Thai Civil and Commercial Code of the mortgage has provision in the Section 702-746 as follows,

Generally, the mortgage is an interest in property created by a written instrument providing security upon repayment of a loan or the performance of some other obligations. The borrower is known as the

"mortgagor", the lender as the "mortgagee" The mortgagor is still the owner of the property and may utilize such property during the mortgage term until the loan is in default; the mortgagee is entitled to be paid out of the mortgaged property in preference to ordinary creditors. When the loan becomes due and the debtor defaults, the mortgagee has the right to enforce the mortgage. The right to enforce the mortgaged property of the mortgages is dependent upon the mortgage law of each country.[1]

Thai mortgage law is governed under the Civil and Commercial Code and Civil Procedure Code. According to Section 702 under the Civil and Commercial Code, the meaning of the mortgage is a contract whereby a person, called the mortgagor assigns a property to another person, called the mortgagee, as the security for the performance of the obligation, without delivering the property to the mortgagee. Thai mortgage law has two different ways to enforce the mortgage: public auction and foreclosure of the mortgaged properties[2]. It is found that it is necessary that the process of mortgage enforcement in Thailand begins at the court. The mortgagee files his cases to the court in order to obtain a sell order from the court. Nevertheless, Thai court procedure is very complex and time consuming. Therefore, many fraudulent mortgagors use the loophole of the law to prolong the cases. Some mortgagors may use the loophole of the law in order to delay

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[1] Manisara Chulasamaya, "Is it time to use power of sale for solving mortgage enforcement problem in Thailand," Dhurakijoundit Law Journal 1 (January 2004): 123

[2] the CCC Section 728 "For enforcement of mortgage the mortgagee must notify the debtor in writing to perform his obligation within a reasonable time to be fixed in the notice. If the debtor fails to comply with such notice, the mortgagee may enter an action in Court for a judgment ordering the mortgaged property to be seized and sold by public auction."

their cases by asking the court to postpone the trail or to call for more witnesses. Moreover, after the court has passed a judgment they may appeal to the Appeal Court and the Highest Court, respectively. Therefore, the whole process of a case can be in the court proceeding for almost 10 years. Nonetheless, even the court has already issued judgments to foreclose the mortgage property; the mortgagee still has to wait for the executing officer who is on behalf of the Execution Department in selling the foreclosed property in order to sell such property through the process of execution of the said judgments or orders. At this stage, in the past (before the execution law has amended) the fraudulent debtors can prolong this process for a few more years[3].

All immovable properties can be security for performance of an obligation, including some movable properties.

Movables can also be mortgaged provided they are registered according to the law[4] (special type of movable property),

1) Ships or vessels of six tons or over, steam launches or motor-boats of five tons or over.
2) Floating houses.
3) Beasts of burden.
4) Any other movables with regard to which the law may provide registration for that purpose.

[3] Manisara Chulasamaya, "Is it time to use power of sale for solving mortgage enforcement problem in Thailand" Dhurakijoundit Law Journal, 1:124.

[4] the CCC Section 703.

(1) Enforcement of Mortgage

The mortgagee must notify the debtor in writing to perform his obligation within a reasonable time fixed in the notice. If the debtor does not comply with such notice the mortgagee may enter into the court process for a judgment ordering the mortgaged property to be seized and sold by public auction.

Enforcement of Mortgage can be separated into two types;

1. The mortgagee may enter into the court for a judgment ordering the mortgaged property to be seized and sale by public auction or
2. Mortgagee may enforce the pledged property by himself.

(2) The Problems of Mortgage

The problem of mortgage enforcement in Thailand has led to money borrowing problems in Thailand.

1. First of all, the mortgage cannot receive the repayment of debt with in the prescribed period. Accordingly, this has led to huge amount of non-performing loans in the lender's companies and has limited the ability of the lender companies to give loans to other borrowers. This problem had become more serious since Thailand's economic downturn in 1997 which spread out financial crisis in the region. Most Thai companies, which had loaned the money from oversea and domestic institutes, were in default. The financial creditability of Thai private sector has hugely reduced in the eyes of foreign creditors. The longer Thailand waits to solve this problem, the more difficult for Thai

private sectors to finance their investments using the oversea fund.

2. The long proceeding in the court may cost huge sum of money and it is also time consuming.

3. The parties or the witnesses may forget the facts or misunderstand the facts if the trial takes too long time.

4. The court procedure will no longer be just as it is said, "a delayed justice is an injustice." [5]

5. Mortgagor should be the owner of the mortgaged properties and can show the ownership over such properties to mortgagee.

6. Less type of property can be mortgaged.
   Mortgage is done to only immovable properties. In the case of land, the land must have land deed to be security for the loan. As for other propteries, movable properties that can be used as security are only ships or vessels of six tons or over, steam launches or motor-boats of five tons or over, Floating houses and Beasts of burden or Any other movables with regard to which the law may provide registration for that purpose.

1.1.2 Secured by Enterprise

The properties bound in the contract and in the future will be charged under the act but the properties that cannot be the charge are

[5] Pollop S. and Boonbumrung W., "The Procedure of Petty Cases and Simple Cases", Thammasart Law Joural (1999) 3: 428.

immovable unless the enterprise charge includes the immovable in the enterprise[6];

Civil and Commercial Code Title III Book I "Things"

The property to be bound in the contract and in the future will be charged refers to things that are corporeal objects[7], property includes things as well as incorporeal objects susceptible of having a value and of being appropriated[8]. Immovable property denotes land and things fixed permanently to the land or forming a body therewith. It includes real rights connected with land or things fixed to or forming a body with land[9]; and movable property denotes things other than immovable property, it includes rights connected therewith[10]. Therefore, every thing that has been mentioned can be the charged properties. However, the properties in an enterprise must be consisting of movable and immovable. If enterprise has not consisting of both properties, such enterprise cannot be security to performance of the debt.

It is found that another problem is that regarding the appraisal of mortgaged properties. Business enterprise as collateral, the appraisal of enterprise and immoveable or moveable property are done differently. Mostly immovable properties are included in an enterprise. Evaluation of such enterprise ought to yield higher price than that done on only immovable property excluded from the enterprise. Therefore,

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[6] อธึก อัศวานนท์, "ปัญหาทางกฎหมายเกี่ยวกับหลักประกันทางการเงินและแนวทางแก้ไข" (วิทยานิพนธ์ปริญญานิติศาสตร์มหาบัณฑิต ภาควิชานิติศาสตร์ มหาวิทยาลัย ธรรมศาสตร์, 2541), p.99.

[7] CCC. Section 137

[8] CCC. Section 138

[9] CCC. Section 139

[10] CCC. Section 140

this research would like to study scenario in which an enterprise has been in the business for a long period, generally well-known to people and with high goodwill or in which the enterprise may possess special properties such as trademarks, patents, copyrights. Due to the fact that a business enterprise may have many types of property such as land, buildings, companies, trademarks, stocks, employees, factories and all other properties in the business enterprise; how to appraise an enterprise is a problem. By the ownership of the enterprise, one can own some of the whole properties in an enterprise. In addition, there are many other laws that are concerned with those properties, such as Civil and Commercial Code: Title III. Things, Title XXII. Partnership and Companies, Trademark Act B.E. 2535, Labour Act, Security and Security Exchange Act etc.

1.2 Hypothesis

Presently, Thai law has not established the rule, principal or method to appraise an enterprise. Therefore, Thailand should be to establish the rule, principal regulation or standard to appraise enterprise charge otherwise the creditors or debtors will not get their fair benefit from the whole property as there is no standard for a fair price.

1.3 The Objective of the Study

1.3 1 To study the principle of appraisal of properties in Thai appraisal

1.3.2 To study the appraisal of the United States of America

1.3.3 To study the similarity and difference of Thai appraisal and American Appraisal

1.3.4 To study the Uniform Standards of Professional Appraisal Practice 2005 (USPAP)

1.3.5 To study the problems of collateralizing business enterprise

1.3.6 To study the improvement of the problems of business enterprise

1.4 Methodology

The researcher uses methodology of documentary research in the research. The researcher will do the research based on materials from the Civil and Commercial Code, textbook, internet and interview.

1.5 Scope of the Research

This research will do analysis in the appraisal of mortgaged property and the problems of appraisal of business enterprise and ethics and professionalism of appraiser under the Uniform Standard of Professional Appraisal Practice of the United States.

1.6 Expectations of the Research

1.6.1 To know the principle of appraisal of properties in Thai appraisal.

1.6.2 To study the property appraisal of the United States of America

1.6.3 To compare the similarities and differences of Thai appraisal and American Appraisal

1.6.4 To know U.S. appraisal process.

1.6.5 To know the Uniform Standards of Professional Appraisal Practice 2005 (USPAP)

1.6.6 To know the problems of collateralizing business enterprise

1.6.7 To know the improvement of the problem of business enterprise

1.7 Definition

"Business Enterprise" means the business organization including the assets therein such as tangible real estates, intangible real properties, tangible personal properties, intangible personal properties and businesses.

"Value" means the worth, usefulness, or utility of an object to someone for some purpose. Under this definition, the value of an object can vary, depending on the purpose for which it is to be used or the person seeking to use it. Thus, there are actually many different types of value, each appropriate to a particular appraisal purpose or need.[11]

"Business enterprise" means a commercial, industrial, or service organization pursuing an economic activity[12].

"Intangible Property" (Intangible Assets) means nonphysical assets, including but not limited to franchises, trademarks, patents, copyrights, goodwill, equities, securities, and contracts as distinguished from physical assets such as facilities and equipment.[13]

"Personal Property" means identifiable tangible objects that are considered by the general public as being "personal" - for example, furnishings, artwork, antiques, gems and jewelry, collectibles, machinery and equipment; all tangible property that is not classified as real estate.[14]

"Real Estate" means an identified parcel or tract of land, including improvements, if any.[15]

"Real Property" means the interests, benefits, and rights inherent in the ownership of real estate.[16]

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[11] Richard M. Betts and Silas J. Ely, Basic Real Estate Appraisal, 4th ed. (New Jersey: Prentice-Hall, Inc., 1998), p.2.

[12] Shannon P. Pratt, Robert F. Reilly and Robert P. Schweihs, Valuing a Business: The Analysis and Appraisal of Closely Held Companies, 3rd ed. (Chicago: IRWIN,1996), p.41.

[13] Uniform Standards of Professional Appraisal Practice 2005: Definition

[14] Ibid.

[15] Ibid.

[16] Ibid.

"Appraisal Practice" means valuation services performed by an individual acting as an appraiser, including but not limited to appraisal, appraisal review, or appraisal consulting.[17]

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[17] Ibid.

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Chapter 2
The Principle of Appraisal of property

2.1 Background

"Valuation is the heart of all economic activity. Everything we do as individuals or as groups of individuals in business or as members of society is influenced by the concept of value. A sound working knowledge of the principles and procedures of valuation is essential in all sorts of decisions relating to real estate buying, selling, financing, developing, managing, owning, leasing, trading, and in the ever-more-important matters involving income tax considerations. Sound valuation is basic to zoning, ad valorem taxation, city planning, and to effective management of urban affairs . . ."[1]

3931 c.5

This is a compilation of standards for valuers in Thailand set forth by the Valuers Association of Thailand and currently enforced among its certified valuers. These standards include:[2]

1. The guidance notes on asset valuations in Thailand enforced by the Valuers Association of Thailand in 1993, and
2. Standard construction costs announced on May 24, 2000.

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[1] Ring, Alfred A., and Boykin James H., The Valuation of Real Estate, 3rd ed. (Englewood Cliffs, NJ: Prentice-Hall, 1986), p.1.

[2] Thai Appraisal. The Valuers association of Thailand (Bangkok: Agency for Real Estate Affairs), 2004. In http://www.thaiappraisal.org/English/ThaiRealEstate/ThaiR6.htm, Access date August 8, 2005.

2.2 What is Appraisal?

Appraisal as "an estimated value set upon property"
Financial Institutions Reform, Recovery, and Enforcement Act (FTRREA) as A federal law passed in 1989 to provide guidelines for the regulation of financial institutions. One part of law requires a state license or certification for the performance of federally related real estate transactions (with de minimus exceptions).[3]

FTRREA dictates that an appraisal must be "a written statement used in connection with a federally related transaction that is independently and impartially prepared by a licensed or certified appraiser setting forth an opinion of defined value of adequately described property as of a specific date, supported by presentation and analysis of relevant market information."[4]

Uniform Standards of Professional Appraisal Practice (USPAP) as a set of standard and ethics originally developed by nine appraisal association to guide members in the development and reporting of appraisals. Now maintained by the Appraisal Standard Board of the Appraisal Foundation.[5]

USPAP Defines appraisal as follows: "(noun) the act or process of estimating value; an estimate of value. (adjective) of or pertaining to appraising and related functions; e.g., appraisal practice, appraisal services."[6]

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[3] Richard M. Betts and Silas J. Ely, Basic Real Estate Appraisal, 4th ed. (New Jersey: Prentice-Hall Inc., 1998), p.498.

[4] George H. Miller and Katy R. Gallagher, Residential Real Estate Appraisal, 3rd ed. (New Jersey: Prentice-Hall Inc., 1998), p.3.

[5] Richard M. Betts and Others, Basic Real Estate Appraisal, p.508.

[6] George H. Millar and and Other, Residential Real Estate Appraisal, p.4.

However, the generalized field of "appraisal" (defined by The Appraisal Foundation as "the process of estimating value"[7]) is dominated by real estate appraisers. Among individual members of professional member organizations comprising The Appraisal Foundation, real estate appraisers outnumber business appraisers more than 20 to 1. The field of real estate appraisal is far more familiar to both the public and the courts than is the field of business appraisal.[8]

2.3 Steps in the Appraisal Process.[9]

The traditional appraisal process consists of:

1. Clearly defining the appraisal problem.
2. Formulating an efficient appraisal plan.
3. Collecting and analyzing the pertinent data.
4. Applying the appropriate value approaches.
5. Arriving at a conclusion of value.
6. Reporting the conclusion of value.

2.3.1 Defining the Appraisal Problem

The beginning of any formal appraisal requires a clear and concise statement of what the appraisal is to accomplish. By clearly defining the questions to be answered in the appraisal, the appraiser can better plan the appraisal and seek out the exact information required by the client and the appraisal assignment.

---

[7] Uniform Standard of Professional Appraisal Practice (Washington DC: The Appraisal Foundation, 1995), p.7.

[8] Shannon P. Pratt, Robert F. Reilly and Robert P. Schweihs, Valuing a Business: The Analysis and Appraisal of Closely Held Companies, 3rd ed. (Chicago:IRWIN,1996), p.41.

[9] See Appendix: Figure 1

In order to define the appraisal problem, seven critical factors must be examined.[10]

1) Identification of the property.
2) Property rights to be appraised.
3) The purpose and intended use of the appraisal.
4) The extent of the data-collection process.
5) Any special limiting conditions.
6) The effective date of the appraisal.
7) Definition of the value being considered.

2.3.2 Formulating the Appraisal Plan

The second step in the appraisal process is to develop an appraisal plan. A well-organized plan increases efficiency by scheduling, with the time required for each. A good plan can also help reduce the chance of oversight or errors when collecting necessary information. The appraisal plan may take the form of a simple checklist of tasks to be performed, or it may become an elaborate work schedule, designed to organize and expedite a complex assignment. Whatever the format, a workable appraisal plan should include the following step :[11]

1) Preliminary inspection of the property.
2) List of needed data.
3) Outline and work schedule.

[10] Richard M. Betts and Others, Basic Real Estate Appraisal, p.39.

[11] Ibid., p.41.

2.3.3 Collecting and Analyzing the Data

Most market value appraisals require:[12]

1) General data on the region, city, and neighborhood.
2) Specific data on the subject property.
3) Specific data on comparable properties.

2.3.4 Applying the Value Approaches

The fourth step in the appraisal process is to group the collected market data for further analysis, and apply the appropriate value approach or approaches. The sale comparison approach uses data on current sales of comparable properties. The prices people are willing to pay are usually a good indication of the value of any commodity. The cost approach relies on the appraiser's estimate of the amount required to buy vacant land and the cost to construct the existing or proposed buildings or structures on it. Any loss in value from age or other causes is subtracted. Last, the income approach analyzes the income producing capability of rental investment property to indicate its market value.[13]

In a complete appraisal, all three value approaches may be considered. However, in many such assignments, only the approach or approaches that clearly appear to be the most pertinent need be applied, In the report itself, the exclusion of any value approach should of cause be fully explained. An outline of the three value approaches is included.

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[12] Ibid., p.43.

[13] Ibid., p.45.

2.3.5 Reporting the Conclusion of Value

The sixth and last step in the appraisal process is reporting the appraisal conclusion. On occasion, only an oral report is required, but most often the client wants some form or written report. The content of all appraisal reports should follow the Uniform Standard of Professional Appraisal Practice (USPAP). When reporting the results of a real property appraisal, USPAP requires that each analysis, opinion, and conclusion be clearly communicated.[14]

2.4 Valuation Approaches

Property type and the purpose of the valuation will determine the valuation approach to be adopted for a specific property. AREA[15] employs a range of valuation approaches to meet the requirements of the modern real estate market.

1. cost approach
2. market comparable approach
3. income approach
4. discounted cash flow analysis
5. residual approach
6. modeling for mass appraisal
7. combinations of the above approaches

Most appraisers usually apply three approaches:

2.4.1 Cost Approach

The cost approach to determining value is to estimate what it would cost to replace or reproduce the improvements as of the date of the

[14] Ibid., p.47.

[15] AREA means Agency for Real Estate Affairs (Thai Affairs)

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appraisal less the physical deterioration, the functional obsolescence and the economic obsolescence. The remainder is added to the land value[16].

2.4.2 Market Comparable Approach

The comparison approach to determining value makes use of other "benchmark" properties of similar size, quality and location that have been recently sold. A comparison is made to the subject property[17].

2.4.3 Income Approach

The income approach to determining value is of primary importance in ascertaining the value of income-producing properties and has little weight in residential properties. This approach provides an objective estimate of what a prudent investor would pay based upon the net income the property produces[18].

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[16] American Appraisal, Real Estate Appraisal (New York: Mortgage101, 2004),
In http://nt.mortgage101.com/partner-scripts/1086.asp?p=dmehbod, Access date June 8, 2005.

[17] American Appraisal, Real Estate Appraisal (New York: Mortgage101, 2004),
In http://nt.mortgage101.com/partner-scripts/1087.asp?p=dmehbod, Access date June 8, 2005.

[18] American Appraisal, Real Estate Appraisal (New York: Mortgage101, 2004),
In http://nt.mortgage101.com/partner-scripts/1088.asp?p=dmehbod, Access date June 8, 2005.

Agency for Real Estate Affairs is Thailand's independent professional property valuation company and operates in strict accordance with the Standard Guidance Notes issued by the Valuers Association of Thailand. AREA's list of accreditations is comprehensive and it is one of the selected few property valuation providers on all three approved short lists of The Bank of Thailand (BOT), The Securities & Exchange Commission of Thailand (SEC) and The Property Loan Management Organization (PLMO).

2.5 Valuation Purposes

A valuation is a professional opinion of the quality, value, or utility of a specific property. Valuations may be required for just about any type of property, including single-family homes, apartment buildings and condominiums, office buildings, shopping centres, industrial sites, and farms. The reasons for performing a property valuation are just as varied. AREA performs valuations:

1. for mortgage lending purposes
2. for tax assessments and appeals of eminent domain
3. during negotiations between buyers and sellers
4. when the government acquires private property for public use
5. for pending business mergers or dissolutions
6. for appraising the assets of publicly listed companies
7. during company audits
8. for property inheritance purposes
9. when financial institutions evaluate non-performing loans (NPLs)
10. on behalf of authorized property funds

to value the property assets of financial institutions for the purpose of evaluating their capital-to-risk assets ratio in accordance with the standards set by the Bank of International Settlements (BIS).

2.6 The Current State of Thailand's Valuation Profession

At the time of the savings and loan crisis, valuers in Thailand, similar to in the United States during the 1980s, were starting to face greater public scrutiny. While the valuers could hardly be blamed for the economic collapse, questions were being asked about their profession-including question about public confidence in both the products and in the valuer ethics, the valuers' education levels, the availability and reliability of data, and finally, the valuation standards.

2.7 Appraisal of Business Enterprise

In the contract of enterprise charge there are two parties the charger and the charge-holder. Normally, the charge-holder has to know the price of the enterprise charge. Therefore, in the contract it shall be provided a valuer for the appraisal of such enterprise charge by the charge-holder. If the charge-holder is a financial institute of Thailand. Banks have power to designate the valuer and most valuers will be such financial institutes.[19]

In the case of Thai commercial banks, they need to establish departments of appraisal property by themselves; but for the international commercial banks in Thailand, they will appoint a third party to do the appraisal. Mostly third parties will be valuer companies, and the total expense for the appraisal for international commercial banks will be burdened by the borrower.[20]

If the enterprise charge involves trademarks, the researcher divides the cases into two types.

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[19] Ministry of Interior by Thammasat University Research and Consultancy Institute, "Report on Elevation of the Property Valuation office, Department of Lands, into a Public Organization," October 15, 2001.

[20] Security and Exchange Commission,"Property Valuation in Thailand : Evolution and Trend," State-of-the-Art Housing Bank (January-March 2005) 40:23.

In bankruptcy cases, the valuers will be the official receivers; they will appraise the properties by separating them into two parts namely property and intellectual property. Also in public auctions the prices will be separated into the price of intellectual property and the price of property. Therefore, appraisal of bankruptcy cases might be similar to the appraisal of enterprise charges[21].

Charge-holder will designate the valuer; the charge-holder may do the appraisal by themselves, or hire an appraisal company such as N&A as the valuer.[22]

Therefore, the part of valuer of enterprise charge does not pose problem, but appraisal encounters problems in immovable property valuation due to problems of the standard and professional ethics of appraisal, because at present Thailand has two different associations of profession valuers,

1. Valuers Association of Thailand (VAT)
2. Thai Valuers Association (TVA)

Both of associations have different standards, and the practices of appraisal are not clear[23].

Nowadays, Thailand is going to provide the Draft of Standard and professional ethics that is the solution of this problem. It is found that the appraisals of projects or businesses are secretes of the appraisers or appraisal companies because the appraisal processes are copyrighted by them. for example, the theses for the degree of master of Evaluation (GPV), Most of them have "NO COPY" written in the abstract and "not

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[21] Interview with Sangiem Kijkosul, Chief, Official Receivers Division 4, Legal Execution Department, 4 July 2005.

[22] Security and Exchange Commission, State-of-the-Art Housing Bank, 40:41.

[23] Ibid., p.43.

allowed to be published" because each author (appraiser) has the different criteria or principles of appraisal. However, they all base on the following three approaches[24].

For example:

To study the feasibility of Sa-Torn Hospital project[25]

For the possibility of investment and the appraisal of hospital, the valuer applies income approach to appraise the project. In addition, in the feasibility study of the Pat-tra Hospital project, there are three approaches as follows,

1. Market comparable approach to appraise the land of the hospital.
2. Cost approach to appraise the building value
3. Income approach to appraise the feasibility of the project

Another example, the appraisal of Grand Sukhumvit Hotel[26] was done by the three approaches, the same as the other project.

To summarize the chapter, in doing the appraisal of businesses or projects that are consisted of movable, immovable, tangible and intangible assets which altogether are called "the properties of Going-Concern," the appraiser cannot appraise whole

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[24] Interview with Sontaya Tinnovech, Chief, Official Receivers Division 4, Legal Execution Department, 4 July 2005.

[25] งานวิจัยนักศึกษาปริญญาโทโครงการประกาศนียบัตรบัณฑิตทางการประเมินราคาทรัพย์สิน (GPV)

[26] ปรีชา ปกรณ์, กาญจน์วัฑฒนา จันทร์จรัสวัฒนา และวรวงศ์ ฉลองกิจเจริญ. การประเมินราคาโรงแรม Grand Sukhumvit งานวิจัยนักศึกษาปริญญาโทโครงการประกาศนียบัตรบัณฑิตทางการประเมินราคาทรัพย์สิน(GPV)(กรุงเทพมหานคร: มหาวิทยาลัยธรรมศาสตร์, 2004) http://library.tu.ac.th/acc/gpv/gpv1.html, Access date June 8, 2005.

businesses or projects applying only one approach of appraisal, instead the appraiser ought to apply three approaches of appraisal like as follows,

1. Market comparable approach to appraise the land of the hospital
2. Cost approach to appraise the building value
3. Income approach to appraise the feasibility of the project

2.8 Standards of Practice

2.8.1 General Understanding[27]

"In the United States of America, the state governments regulate real estate valuers. . . public regulation of real estate appraisers is beneficial to the economy while at the same time it provides modest advantages to the appraisers themselves". . . "Licensing appraisers, then, is necessary to protect the public, not the appraisers' clients. Licensing is necessary to protect customers and investors of the clients, not the clients themselves. . public regulation of real property valuers can achieve more favourable economic consequences than is likely from their private regulation."[28]

1) Valuation standards generally refer to codes of ethics and standards of practice. Both should be accepted by all valuers and disseminated to clients and parties involved for general understanding on the valuers' commitment to proper valuation.

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[27] Appraisal Foundation. Thai appraisal (Bangkok: Non- Profit Organization 2005), In http://www.thaiappraisal.org/English/ThaiRealEstate/ThaiR1.htm, Access date June 8, 2005.

[28] Anthony Reynolds, "Real Estate Appraisers Ought To Be Regulated," Valuers & Land Economists Vol. 34 (May 1996) 2:177.

2) It must be understood that professional standards of competence require both proper education and sufficient experience on the part of the valuers. Hence, organizations involved must provide proper education and examinations and evaluate the experience of their valuer members.

3) Professional-standard practices can be examined from standard guidelines and data collected. In practice, if a valuer follows the standard guidelines in his valuation with proper care and collects adequate relevant data for analysis of the value, he will be of professional standard.

4) In detail, the expression of professional standard practices is the elaboration of the appropriate methods of valuation applicable to the subject properties as well as the hypothesis made with reasons and supporting evidence.

5) The International Assets Valuation Standards Committee (TIAVSC) produces two related booklets or manuals i.e. IVS (International Valuation Standard) 1 - 4 and Preface to Standards and the Guidance Notes and Background Papers on the Valuation of Fixed Assets for Financial Statements. They contain some basic standards which could be translated and made appropriate in the Thai context.

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Chapter 3
Comparative American Appraisal

3.1 Similarities of Thai appraisal and American Appraisal

1. The purposes of appraisal
2. Methods of Appraisal

3.2 The Differences of Thai Appraisal and American Appraisal

Thai appraisal and American appraisal are different in several areas, such as the defined types of appraisal, types of appraised property, establishment of appraisal organizations, and concern in the importance of appraisal and establishment of the law to apply for appraisals.

3.2.1 Define Type of Appraisal

American appraisal define type of appraisal into two type

1) Informal Appraisals

An informal appraisal is common part of our lives. Whenever we buy groceries, household appliances, or automobiles, we usually make an informal appraisal to judge if the prices are reasonable. We do this by consciously or unconsciously comparing one product to another, or by matching the price of one item against that of similar one. As we become more experienced I comparing items and prices, we develop an intuitive understanding of the value of things. Such an intuitive knowledge of value can also be applied to real estate.[1]

[1] Richard M. Betts and Others, Basic Real Estate Appraisal, 4:2.

2) Formal Appraisals

A formal appraisal is an estimate of value that is reached by the collection and analysis of relevant data. Most often reported in writing, formal appraisals are usually made by people specially trained for this work. Since the value conclusion is based on the analysis of factual material, a client or disinterested party can easily review the appraisal and understand how the conclusion was reached. This is in contrast to the informal appraisal, where the conclusion is reached by using intuition, past experience, and general knowledge, which cannot easily be reviewed. To better understand the difference between formal and informal appraisal.[2]

3.2.2 Types of Appraised Property

For economic analysis and valuation purpose, it is often necessary to distinguish between tangible and intangible assets, as well as between real and personal assets. These distinctions are important for a variety of accounting, taxation, legal, and financial reasons. In fact, for valuation purposes, all assets or property types may be categorized into the following four groups[3]:

1) Tangible real estate.
2) Intangible real property.
3) Tangible personal property.
4) Intangible personal property.

Each of these four categories of assets will be described

[2] Ibid.

[3] Pratt Reilly and Others, Valuing a Business: The Analysis and Appraisal of Closely Held Companies, 3:538.

1) Tangible Real Estate.

Real estate is the physical land and appurtenances affixed to the land, such as structures. Real estate is immobile and can be tangible or intangible. The legal definition of real estate includes land and all things that are natural parts of the land (e.g., tree, minerals), as well as all things that are attached to it by people (e.g., building, site improvement). All permanent building attachments (e.g., plumbing, electrical wiring, heating system), as well as built-in items (e.g., cabinets, elevators), are usually considered parts of the real estate. Real estate includes all attachments to the land, both below and above the ground.

2) Intangible Real Property.

Intangible real property includes all interest, benefits, and rights inherent in the ownership of physical real estate. A right or interest in real estate is also referred to as an estate. Specifically, an estate in land is the degree, nature, or extent of interest that a person has in it. Interest varies, so real property is said to include a "bundle of rights" that are inherent in the ownership of the real estate. Real property ownership rights include, among others as follows[4]:

(1) The right to use real estate.
(2) The right to sell it.
(3) The right to lease it.
(4) The right to enter it.
(5) The right to give it away.
(6) The ability to choose to exercise all or none of these rights.

The bundle of rights is often compared to a bundle of sticks, with each stick representing a distinct and separate right or interest.

[4] George H. Millar and and Other, Residential Real Estate Appraisal, 3: 3.

The right to use real estate and the right to sell it are concerned in the Civil and Commercial Code Book IV Property Chapter II Extent and Exercise section 1336. Within the limits of the law, an owner of property has the right to use and dispose of it and acquires its fruits; he has the right to follow and recover it from any person not entitled to detain it, and has the right to prevent any unlawful interference with it[5].

3) Tangible Personal Property

Tangible personal property includes movable items of property that are not permanently affixed to, or parts of, the real estate. Tangible personal property is not endowed with the rights of real property ownership. Examples of tangible personal property include furniture and fixtures, tools and dies, machinery and equipment, trucks and automobiles, and so forth[6].

It is sometimes difficult to determine whether a particular asset should be considered tangible personal property or real estate. A fixture is an article that was once personal property but has since been installed or attached to the land or building in a rather permanent manner; thus it is regarded as part of the real estate. Although fixtures are real estate, trade fixtures are not. A trade fixture, also called a chattel fixture, is an article that is owned and attached to a rented space or building by a tenant and used in conducting business.

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[5] Kamol Sandhikshetrin, The Civil and Commercial Code (Bangkok: Nitibannakarn, 2000), p.259.

[6] Ibid., p.260.

4) Intangible Personal Property.

Intangible personal property includes the two attributes of;

(1) Not having substantial physical form or substance (at least to the extent that value of the property is not dependent on the physical form or substance).

(2) Not being physically attached to the land or other real estate.

Accordingly, intangible personal property is mobile. As with intangible real property, intangible personal property typically encompasses a specific bundle of legal rights, benefits, and interests. Other than real estate-related intangibles (e.g., leases, easements, etc.) most intangible assets generally fall into the category of intangible personal property; this definition of intangible personal property includes the Common Categories of Intangible Assets and Common Categories of Intellectual Properties[7].

a) Common Categories of Intangible Assets

Generally, appraiser and economists will categorize individual intangible assets into several distinct categories. This categorization of intangible assets is used for general asset identification and classification purposes. Intangible assets in each category are generally similar in nature and in function. Also, intangible assets are grouped in the

[7] Ibid., p.261.

same category when similar valuation methods apply to that group of assets[8].

A common categorization of intangible assets is presented as follows:

(a) Technology-related(e.g., engineering drawings).
(b) Customer-related (e.g., customer list).
(c) Contract-related(e.g., favorablesupplier contracts).
(d) Data processing-related (e.g., computer software).
(e) Human capital-related (e.g., a trained and assemblage workforce).
(f) Marketing-related (e.g., trademarks and trade names).
(g) Location-related (e.g., leasehold interests).
(h) Goodwill-related (e.g., going-concern value).

b) Common Categories of Intellectual Properties

There is a specialized classification of intangible assets called intellectual property. Intellectual properties manifest all the legal existence and economic value attributes of other intangible assets. However, because of their special status, intellectual properties enjoy special legal recognition and protection.

[8] George H. Millar and and Other, Residential Real Estate Appraisal, 3: 312.

Unlike other intangible assets, which may be created in the normal course of business operations, intellectual properties are created by human intellectual and/or inspirational activity. Such activity (although not always planned) is specific and conscious. And such creativity can be attributed to the activity of identified, specific individuals. Because of this unique creation process, intellectual properties are generally registered under, and protected by, specific federal and state statutes[9].

Like other intangible assets, intellectual properties are generally grouped into like categories. The intellectual properties in each category are generally similar in nature, feature, method or creation, and legal protection. Likewise, similar valuation methods and economic analysis procedures would apply to the intellectual properties in each category.

A common categorization of intellectual properties is presented as follows:

(a) Creative (e.g., copyrights).

(b) Innovative (e.g., patents).

3.3 Specific Methods of Appraisal of Intangible Real Property and Intangible Real Estate

This research will focus on intangible real property because it is problematic for Thai appraisals.

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[9] Ibid., p.315.

3.3.1 Intangible Real Property

Intangible real property assets represent intangible legal claims on tangible real estates. The types of assets encompassed by this category include: leasehold interests (and various other leasehold estates), possessory interests (associated with franchise ordinances or other permits), exploration rights, exploitation rights, air rights, water rights, land rights, mineral rights, use rights, development rights, easements (including scenic easements), and associated intangible rights and privileges related to the use or exploitation of real estate.

As intangible claims on tangible real estate, the value of these assets is generally a subset of, or a derivative of, the value of the associated tangible real estate.

As with tangible real estate, there are many individual methods and techniques to appraise intangible real property. However, as with real estate, all these methods can be conveniently grouped into the three traditional appraisal approaches: the cost approach, the income approach, and the sales comparison approach.

Each of these three approaches (and some associated methods) was discussed above, with respect to the value of tangible real estate. Accordingly, we will not reiterate those general discussions here[10].

1) The Cost Approach

It is noteworthy, however, that the cost approach is rarely used to value intangible real property. Intangible real property typically represents a legal claim on the use of, exploitation of, development of, or forbearance of real estate.

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[10] Kamol Sandhikshetrin, The Civil and Commercial Code (Bangkok: Nitibannakarn, 2000), p.277.

2) The Income Approach

Accordingly, the cost of the underlying real estate is generally irrelevant to the intangible property right holder. Rather, the income approach is typically the most widely used approach with respect to the valuation of intangible real estate interests.

3) The Sales Comparison Approach (Market Approach)

The sales comparison approach (Market Approach) is also used to value certain intangible real estate interests. For example, there is a reasonable secondary market for certain intangible real estate interests—such as the unexpired portion of assignable below-market industrial and commercial leases (i.e., lease-hold interests).

As with the appraisal of real estate, the appraisal of intangible real property interests is based on a synthesis of all available valuation data and the conclusions of whatever valuation approaches were used. The appraiser considers and synthesizes the results of various valuation approaches and concludes a final value estimate for the subject intangible real property interests.

3.3.2 Intangible Assets that are often Appraised Using a Cost Approach

Some intangible assets lend themselves very well to the application of the cost approach to valuation. These intangible assets are typically used-or used up-in the generation of income for the company. Examples of intangible assets that may be likely candidates for the cost approach to valuation include[11]:

1. Computer software and automated databases.
2. Technical drawings and documentation.

[11] Ibid., p.562.

3. Blueprints and engineering drawings.
4. Laboratory notebooks.
5. Technical libraries.
6. Chemical formulations.
7. Food and other product recipes, and so on.

Obviously, for intangible assets that are used or used up in the production of income for the company-and for which accurate replacement cost estimates are available-the appraiser should seriously consider the application of the cost approach as one method in the appraisal of the subject intangible asset[12].

3.3.3 Ability to Value Intangible Assets Using Market Approach Methods

The various market approach methods have broad applications with regard to the valuation of numerous categories of intangible assets. The following list presents several examples of the types of intangible assets that are often appraised using one or more variations of market approach method[13]:

1) Customer-related intangible assets. Analysts often use the market transaction method to appraise credit card portfolios, core deposit customer lists, and mortgage servicing portfolios.

2) Marketing-related intangible assets. Analysts often use the market rate method or income differential method to appraise trademarks and trade names and advertising programs.

3) Proprietary technology-related intangible assets. Analysts often use the market transaction method, market license/royalty rate

[12] Ibid., p.563.

[13] Pratt, Reilly and Others, Valuing a Business: The Analysis and Appraisal of Closely Held Companies, 3:566.

method, or the income differential method to appraise commercialized computer software and patented and unpatented propriety technology.

3.4 Accepted Business Valuation Approaches and Methods

American appraisal defines the business valuation as the one type of appraisal property.

Business valuation as it is practiced today reflects a blending of two streams of academic and professional background[14]:

1. The securities profession, which deals with financial analysis of stocks, bonds, and other financial instruments and with business acquisitions, divestitures, and mergers.

2. The real estate profession, which deals with land and the improvements affixed thereto.

Consequently, the American Society of Appraisers Business Valuation Standard recognizes "income approach," "market approach" (or sales comparison approach), and an "asset-based approach" (somewhat analogous to real estate's "cost" approach), thus following the three-pronged structure familiar to real estate appraisers. The term "method" is often used to refer to more specific ways to implement a business valuation within one of the three broad "approaches." For example, discounted cash flow is a method within the broader category of the income approach, the guideline company method would fall within the market approach, and the "capitalization of excess earnings" could be one method within the "asset-based approach."

[14] Ibid., p.41.

3.4.1 Enterprise Value

The term "enterprise value" unfortunately is used at best very ambiguously and at worst very carelessly. It means different things to different people, each whom may believe that their definition is the right definition.

It is generally used to present some sort of aggregate value of the company. However, that could mean aggregate value of minority stock, value of either all common equity or all equity on a control basis, value of all invested capital, value of some portion (or all) of the assets, or something else[15].

Both the Uniform Standard of Professional Appraisal Practice and the American Society of Appraisal define a business enterprise as " a commercial, industrial, or service organization pursuing an economic activity". However, neither USPAP nor ASA offers a definition of enterprise value. The ASA Business Valuation Standards Committee has discussed this term since 1985 and thus far has failed to find a consensus as to its definition[16].

3.5 Business Valuation Principles.

The specific methods and procedures for valuing a business or a fractional business interest vary from one situation to another. However, several basic principles are fundamental to the business valuation discipline[17]:

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[15] Ibid., p.19.

[16] Shannon P. Pratt and Others, Valuing a Business: The Analysis and Appraisal of Closely Held Companies, 3: 19

[17] Ibid., p.49.

1. From a financial point of view, the value of a business or business interest is the sum of the expected future economic benefits to its owner, each discounted back to a present value at an appropriate discount rate.

2. The appropriate discount rate is usually dependent upon the market for capital. The discount rate is the expected rate of return that would be required to attract capital to the investment, which takes in to account the rate of return available from other investments of comparable risk.

3. Projecting future economic benefits and determining an appropriate discount rate is difficult, especially when trying to bring two sides to a transaction or dispute to an agreement. There are accepted methods of estimating value by using current or historical rather than projected financial data. These often require adjustments to the historical data to reflect the impact of future expectations. Values estimated from such procedures should be reconcilable with estimates of value from a discounted economic income approach.

4. When relying on specific comparative market transactions for guidance in estimating the value of a subject business or interest, investors' specific expectations regarding future returns and risk that are incorporated into capitalization rates, multipliers, and other valuation parameters are not known. This makes it imperative that financial variables used in the valuation be define on a consistent basis between the guideline and subject companies and that measurements for estimating variables be take as of the same point in time or over the same time period relative to the valuation date for the guideline companies and the subject company.

5. Shareholders have no direct claim on a corporation's assets because a corporate entity intervenes between the assets and the shareholder. Therefore, the value of a share of stock can be more than or less than a proportionate share of the underlying net asset value and sometimes bears little relationship to the underlying net asset value.

6. Lack of control and lack of marketability are distinct concepts, although they are related. Both controlling and minority interests may suffer somewhat from lack of marketability, defined as the ability to convert the asset to cash very quickly, at minimal costs, with a high degree of certainty of realizing the anticipated amount of proceeds. The impact of both minority and marketability factors is influenced by both internal and external facts and circumstances as of the valuation date.

7. Minority shareholders lack control over various decisions affecting the business enterprise. Therefore, minority interests may be worth considerably less than a pro rata portion of the business value if it were valued as a single 100 percent ownership interest.

8. The market pays a premium for liquidity or, conversely, demands a discount for lack of liquidity. Business interests that lack ready marketability generally are worth less than otherwise comparable business interests that are readily marketable.

9. The sum of values of individual fractional interests in a business is not necessarily (or even usually) equal to the value of a 100 percent ownership interest in the business.

Within the scope of these business valuation principles, different standards, characteristics, and premises of value apply for different valuation purposes and within different legal contexts. These can affect both the valuation procedures to be utilized and the final estimation of value. The appraiser should understand the applicable purpose and objective for the assignment and the implications of each.

These principles, though broad, provide a framework for consistency in the practice of the business valuation discipline. Many errors and unreasonable valuation conclusions can be avoided if these principles are understood and implemented. These principles

provide the business appraisal user with a basis perspective from which to review and evaluate a business appraisal work product[18].

3.6 Establishment of US Appraisal Organizations

There are non-profit educational organizations to develop professional appraisal standard and increase appraiser qualification. There are two boards to take care of them, such as The Appraisal Qualification Board (AQB) and the Appraisal Standard Board (ASB) that are recognized around the world[19].

When this research compares the above two organizations with the Thai appraisal organizations, it is found that there is no any board to control or monitor such organizations.

3.6.1 Interest in the Importance of Appraisal

1) Organization

Thailand had not been concerned regarding the importance of appraisal, as can be observed there are few relevant information or data, either in documents or websites, for the public studying.; unless for the persons who are interested in appraisal, they would pursue the appraisal education in the universities or academic institutes where relevant information and knowledge is restrictedly available.

The developed countries have already had valuation specialists for more than 200 years; England has had valuation specialists to appraise the property for more than 60 years; Australian Institute of Valuers supported Australia appraisal. When this research compare them with Thailand, it is found that the valuation profession here

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[18] Ibid.

[19] Security and Exchange Commission, State-of-the-Art Housing Bank, 40:51.

only started to develop in B.E.2527. However, now Thailand still has no valuation specialists[20]. (The speech of Mr. Neville J. Newton, Australian valuation expert in Colliers International Property Consultants) That means Thailand has only developed its appraisal for around 20 years, and that is greatly different from Australia and the United States.

2) Ethic Standards[21]

The Ethics Provision of USPAP places ethical obligations on the appraiser in the following general areas of practice.

Conduct-requires that the appraiser perform all assignments ethically and competently, and do so with impartiality, objectivity, and independence[22].

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[20] พัลลภ กฤตยานวัช, "การประเมินค่าทรัพย์สินในประเทศไทย: พัฒนาการและแนวโน้ม", วารสารธนาคารอาคารสงเคราะห์ (มกราคม-มีนาคม 2548) 40: 19.

[21] Richard M. Betts and Others, Basic Real Estate Appraisal, 3: 7.

[22] Uniform Standards of Professional Appraisal Practice 2005:

Conduct (Ethics Rule)

An appraiser must perform assignments ethically and competently, in accordance with USPAP and any supplemental standards agreed to by the appraiser in accepting the assignment. An appraiser must not engage in criminal conduct. An appraiser must perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests.

In appraisal practice, an appraiser must not perform as an advocate for any party or issue.

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Management-requires that the appraiser have no undisclosed interest in the appraisal outcome, in the property, or in the appraisal fee; allows no false or misleading advertising. Any compensation that is contingent upon the value conclusion is forbidden.

Confidentiality-requires that the appraiser not reveal confidential factual data obtained from the client, or the value conclusion, to anyone (except a duly authorized professional practice committee) unless authorized by the client or pursuant to court order[23].

An appraiser must not accept an assignment that includes the reporting of predetermined opinions and conclusions.

An appraiser must not communicate assignment results in a misleading or fraudulent manner. An appraiser must not use or communicate a misleading or fraudulent report or knowingly permit an employee or other person to communicate a misleading or fraudulent report.

An appraiser must not use or rely on unsupported conclusions relating to characteristics such as race, color, religion, national origin, gender, marital status, familial status, age, receipt of public assistance income, handicap, or an unsupported conclusion that homogeneity of such characteristics is necessary to maximize value.

[23] Uniform Standards of Professional Appraisal Practice 2005:
Confidentiality (Ethics Rule)
An appraiser must protect the confidential nature of the appraiser-client relationship.

An appraiser must act in good faith with regard to the legitimate interests of the client in the use of confidential information and in the communication of assignment results.

An appraiser must be aware of, and comply with, all confidentiality and privacy laws and regulations applicable in an assignment.

Record Keeping-requires that the appraiser prepare and keep written records on all assignments for at least five years after preparation, or at least two years after final disposition of any judicial proceeding where testimony was given.

In addition to the ethics standards imposed upon the appraiser, USPAP includes a competency provision, requiring that appraisers accept only that work that they have the experience necessary to perform, either individually, or, if needed, in association with others.

However, Thailand is going to enact the draft of Professional Appraisal Practice. This research is exactly to support this draft of Professional Appraisal as the standard for all appraiser practice in Thailand.

3) Appraisal Standards[24]

The Uniform Standards of Professional Appraisal Practice 2005 contain the following general standards for real estate appraisers:

Standard 1. In developing a real estate appraisal, an appraiser must be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal.

An appraiser must not disclose confidential information or assignment results prepared for a client to anyone other than the client and persons specifically authorized by the client; state enforcement agencies and such third parties as may be authorized by due process of law; and a duly authorized professional peer review committee except when such disclosure to a committee would violate applicable law or regulation. It is unethical for a member of a duly authorized professional peer review committee to disclose confidential information presented to the committee.

[24] Ibid., p.8.

Standard 2. In reporting the results of a real estate appraisal, an appraiser must communicate each analysis, opinion, and conclusion in a manner that is not misleading.

Standard 9: Business Appraisal

In developing a business or intangible asset appraisal, an appraiser must identify the problem to be solved and the scope of work necessary to solve the problem and correctly complete the research and analysis steps necessary to produce a credible appraisal.

Standard Rule 9-1

In developing a business or intangible asset appraisal, an appraiser must to do under rule 9-1[25]

Standards Rule 9-2

In developing a business or intangible asset appraisal, an appraiser must identify[26]

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[25] Uniform Standards of Professional Appraisal Practice 2005:
Standard 9: Business Appraisal, Development
Standards Rule 9-1
In developing a business or intangible asset appraisal, an appraiser must:

(a) be aware of, understand, and correctly employ those recognized methods and procedures that are necessary to produce a credible appraisal;

(b) not commit a substantial error of omission or commission that significantly affects an appraisal; and

(c) not render appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of an appraisal, in the aggregate affect the credibility of those results.

[26] Uniform Standards of Professional Appraisal Practice 2005:
Standard 9: Business Appraisal, Development
Standards Rule 9-2

Standards Rule 9-3[27]

In developing a business or intangible asset appraisal relating to an equity interest with the ability to cause liquidation of the enterprise, an appraiser must investigate the possibility that the business enterprise may have a higher value by liquidation of all or part of the enterprise than by continued operation as is. If liquidation of all or part of the enterprise is the indicated basis of valuation, an appraisal of any real estate or personal property to be liquidated may be appropriate.

Standards Rule 9-4

In developing a business or intangible asset appraisal, an appraiser must collect and analyze all information pertinent to the appraisal

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In developing a business or intangible asset appraisal, an appraiser must identify

(a) the client and any other intended users of the appraisal and the client's intended use of the appraiser's opinions and conclusions;

(b) the type and definition of value;

(c) the effective date of the appraisal;

(d) the business enterprises, assets, or equity to be valued;

(i) identify any buy-sell agreements, investment letter stock restrictions, restrictive corporate charter or partnership agreement clauses, and any similar features or factors that may have an influence on value; and

(ii) ascertain the extent to which the interests contain elements of ownership control.

(e) the scope of work that will be necessary to complete the assignment;

(f) any extraordinary assumptions necessary in the assignment; and

(g) any hypothetical conditions necessary in the assignment.

[27] Uniform Standards of Professional Appraisal Practice 2005: Standard 9: Business Appraisal, Development

problem, given the scope of work identified in accordance with Standards Rule[28]

Standards Rule 9-5

In developing a business or intangible asset appraisal, an appraiser must reconcile the indications of value resulting from the various approaches to arrive at the value conclusion.

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[28] Uniform Standards of Professional Appraisal Practice 2005:
Standard 9: Business Appraisal, Development
Standards Rule 9-4

(a) An appraiser must develop value opinion(s) and conclusion(s) by use of one or more approaches that apply to the specific appraisal assignment; and

(b) include in the analyses, when relevant, data regarding:

(i) the nature and history of the business;

(ii) financial and economic conditions affecting the business enterprise, its industry, and the general economy;

(iii) past results, current operations, and future prospects of the business enterprise;

(iv) past sales of capital stock or other ownership interests in the business enterprise being appraised;

(v) sales of similar businesses or capital stock of publicly held similar businesses;

(vi) prices, terms, and conditions affecting past sales of similar business equity; and

(vii) economic benefit of intangible assets.

Chapter 4

Analysis of the Problem of Collateralizing Business Enterprises

4.1 Is Business Enterprise a Property Under CCC?

In the Civil and Commercial Code Title III Book I, "Things" are provided the definition of property

1. Things are corporeal object.[1]
2. Property includes thing as well as incorporeal objects, susceptible of having a value and of being appropriated.[2]
3. Immovable property denotes land and things fixed permanently to land or forming a body therewith. It includes real rights connected with land or things fixed to or forming a body with land.[3]
4. Movable property denotes things other than immovable property. It includes rights connected therewith.[4]

The problem of business enterprise is that the definition of the business enterprise has been not provided in the CCC, because the business enterprises consist of all properties that include tangible property, intangible property, movable property and immovable property, and that means the business enterprise is not the property under CCC. Moreover, there is no definition of business enterprise that puts it into the category of the specific property and commercial property. In addition, there may occur problems due to the lacking of the law to provide for certifying securing enterprises as collaterals, when the owners of business enterprises would like to use their enterprises as the collaterals for expanding businesses. While Thailand has no law to provide for securing transactions by using business enterprises, if anyone to do

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[1] CCC. Section 137

[2] CCC. Section 138

[3] CCC. Section 139

[4] CCC. Section 140

loan agreement and there are the business enterprise is collateral, all parties in such agreements may risk injustice as there is no law to regulate such activities.

4.2 The Problems of Lacking the Laws to Regulate Collateralizing Business Enterprises in Thai Law

According to the Thai law, which has been mentioned and explained in Chapter 1, the collateralizing business enterprises seems difficult to regulate in Thailand because of the limitation of the law.

In the Civil and Commercial Code under Pledge and Mortgage, the pledge requires the securing party to hand over the secured pledged property, i.e. pledge requires the pledger to hand over the pledged property to the pledgee, this will prevent the pledger from taking benefit from the pledged property to take any economic benefit, like to produce or, sell it etc.

Mortgage, the law has limited the types of the property which is able to be secured as mortgage even though there are many kinds and types of the securable property that can be used as collaterals to creditors.

When someone uses their business enterprise as collateral, they cannot know about which property in their business can be collateral, how much each property in their business is, whether all property in there can be collateral or which is more beneficial between collateralizing the whole business or part of it.

4.3 The Problem of Evaluation of Business Enterprise

Business enterprises are different from other things because business enterprises consist of many kinds of property, such as tangible property, intangible property, movable property and immovable property; therefore, each of property in business enterprises has different values, it is difficult to appraise the values of business enterprises.

Thailand has no law to regard business enterprise valuation. Borrowers, debtors and chargers will lose their benefits and there may be problem with goodwill and reputation.

4.3.1 Goodwill and Reputation in Business Enterprise may Result in Difference of Price Valuation.

Example: One business enterprise may have intangible, tangible, movable and immovable properties and intellectual properties which consist of intangible property. On the lending date, the borrowers who collateralize their ownership of the businesses will try to bid up the value of their enterprises by taking in the goodwill or good reputation of the companies in the valuation. On the other hand, on the payment date, these business enterprises may not be in as good shape as before financially or in the wise of goodwill. The impacts to payments of borrowers or lenders requires enforcement of law in such business transactions as enterprise as collateral. The owners of appraised properties have not opportunity to know about which properties in business are subject to appraisal.

4.3.2 Information of Appraisal in Appraiser Company is Trade Secrete.

It is found that in Thai appraisal industry, the appraisal of each project or business is regarded as secretes of the appraisers or Appraisal Companies because the appraisal processes are copyrighted by each appraiser. For example, a thesis for the degree of master of Evaluation (GPV), Most of Thesis had "NO COPY" written in the abstract and "not allowed to be published," because each researcher (appraiser) has the different standards or regulation/ principles to appraise. That means, each company of appraiser has different standards of appraisal and approaches to the problems of professional appraisers.

4.4 The Problems of Applying the Appraisal Standard in all Appraiser Companies

Normally, debtor would like to appraiser estimate in total of his or her enterprises because everyone believes that the appraisal of the whole business enterprise will get higher price than appraising parts of the business enterprise individually. Appraiser company or appraisal institution has no established regulations to be the standard for appraising the business enterprise. Whereas the US. has already the standard of appraisal and there are many text books explaining about the valuation of real estates.

4.5 Lack of Code of Professional Appraiser Ethics

Thailand has no professional appraiser law to control every appraiser to conduct fair appraisal.

Example: If lender and borrower are friends of appraiser, actually that appraiser shall appraise in unfair price

Lawyers have the Lawyer Act to control their professional ethic. Therefore, appraisal professional also should provide their code of ethics for professional appraisers.

When this research is considering the appraisal principle of the USA, it is found that in the USA there is standard of professional appraisal practice. Every appraiser shall practice with ethics and there shall be institutes to monitor and control the appraisal conducts, like the Ethic Administration Division and the Appellate Division, The Appraisal Standards Council and Uniform Standards of Professional Appraisal Practice (USPAP).

In conclusion, at present Thailand has no law and regulation that can be used as the standards of professional appraisal practices. If we enact the law or establish the standards for professional appraisal practice, Thailand will be acceptable in international communities.

Chapter 5
Conclusion and Recommendations

5.1 Conclusion

At present, Thailand has many economic and commercial problems, this research sees that there are certain problems that can be solved by collateralizing businesses or enterprises. Therefore, this research would focus the study on the secured transactions, it is also because there are many people concerned with issues of collateralization or security of loans. Charge-holder/Creditor or Charger/debtor in various transactions can be natural persons, companies, partnerships, commercial banks, accountants, economists, financial institutions or lawyers. If Thailand cannot solve these problems with secured transaction in the economic system, we will lack trustworthy among the parties in our society, in addition the investors would not come to invest in Thailand. Therefore, this research has studied the CCC, and tried to form solutions to the problem concerning mortgages.

The law in security of mortgage has some limitations as follows,

1. Mortgagee is stipulated to be the owner of the property mortgaged.
2. Mortgage applies on only limited types of property

Mortgage applies on only immovable properties; in case of the land, there must be certificate of the landlord. Moreover for moveable properties to be used as securities, only the following assets is included, they are ships or vessels of six tons and over, steam launches or motor-boats of five tons and over, floating houses and beasts of burden or any other movables with regard to which the law may provide registration for that purpose.

However, some investors still have problem of accessing the sources of fund to expand their businesses due to the fact that these investors have the properties that

Thai Civil and Commercial Code dose not recognize as collateralizable properties e.g. intellectual properties, enterprise or properties that there are limitations of not being provided by the law as they are not included in the list properties of security under the CCC.

For the benefit of everyone and to develop Thai economic system, Thailand must have the Draft of Secured Transaction Act B.E.....to provide for the other properties to be the charges.

After this research studied the cases in the security by property in pledge and mortgage to find that there is similarity in right and property in as enterprise charge i.e. we can pledge and mortgage the properties in an enterprise because an enterprise usually consists of moveable and immoveable properties and also intangible properties (intellectual properties, good will, reputation)

This research regarded the one problem that many people have overlooked, it is the Evaluation of Business Enterprise as Security. But how to appraise business enterprise? Have the law be applied in business enterprise appraisal for the benefit of everyone, and the criteria for the fair value and fair price?

For most of appraisals, every country has the same standard as follows:

1. The cost approach to determining value is to estimate what it would cost to replace or reproduce the improvements as of the date of the appraisal, less the physical deterioration, the functional obsolescence and the economic obsolescence. The remainder is added to the land value.

2. The comparison approach to determining value makes use of other properties of similar size, quality and location that have been recently sold. A comparison is made to the subject property.

3. The income approach to determining value is of primary importance in ascertaining the value of income producing properties and has little weight in residential properties. This approach provides an objective estimate of what a prudent investor would pay based upon the net income the property produces.

In the appraisal of businesses or projects consisting of movable, immovable, tangible and intangible asset that called "the property under the Going-Concern", the appraiser cannot appraise the whole businesses or projects by applying only one approach to appraise, but the appraiser ought to use the three approaches of appraisal as follows,

1. Market comparable approach to appraise the land hospital
2. Cost approach to appraise building value
3. Income approach to appraise the possible of project

In the chapter 3 this research has presented about the similarities and differences between Thai Appraisal and US Appraisal. For the Thai appraisal and the American Appraisal, the purposes of appraisal and methods of appraisal are similar. The Differences between the Thai Appraisal and the American Appraisal is that in American there defined types of appraisals into informal appraisals and formal appraisal, and also the types of appraisal properties.

1. Tangible real estate.

   Real estate is the physical land and appurtenances affixed to the land as well as all things that are attached to it by people (e.g., building, site improvement)

2. Intangible real property.

   Intangible real property includes all interest, benefits, and rights inherent in the ownership of physical real estate.

3. Tangible personal property.

   Tangible personal property includes movable items of property that are not permanently affixed to, or part of, the real estate. Tangible personal property is not endowed with the rights of real property ownership.

4. Intangible personal property.

   Intangible personal property includes the two attributes of;

   1) Not having substantial physical form or substance (at least to the extent that value of the property is not dependent on the physical form or substance).
   2) Not being physically attached to the land or other real estate.

And there are the same appraisal processes in both countries but Thai appraisal of business enterprise has not been provided regulation for justice practices in appraisal. For example, for appraisal of real estate, the regulation to appraise is based on internal data of appraisal institutions. Moreover, Thailand has not provided ethics of appraiser but USA had provided. Therefore, the problem in the Thai appraisal is the lacking of the law to certify the secured enterprises as collaterals and the lacking of code of professional appraiser ethics.

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5.2 Recommendations

5.2.1 The Problem of Mortgage in CCC.

This research would like to recommend Thailand to enact specific law to provide for the secured transactions so that debtors can use many properties (more than in CCC) to be collateral or security. For example business enterprises that include all properties in the business enterprises, such as tangible property, intangible property, intellectual property to be collateral, or security to performance of debt, and the business owners can use his or her properties to expand the business. The foreign investors will have confidence in Thai economic system. .

5.2.2 The Problems of Business Appraisal.

Thailand should enact regulations or laws that are concerned with business appraisals and provide clear methods of practice, such as definition of business enterprise, appraisal on the lump sum or individual property in business enterprise, each property in business enterprise should have established specialist to appraise respectively; There should be definitions of types of appraisal property such as those of tangible real estate, intangible real property, tangible personal property and intangible personal property for increase type of collateral and develop law system and economic system.

5.2.3 The Problem of the Professional Valuation.

At present, Thailand is going to enact the draft of Profession Valuation Act. This is the standard for every appraiser in the appraisal industry. As in America there is the Uniform Standard of Professional Appraisal Practice (USPAP) and there are non-profit education organizations to develop the professional appraisal standard and increase appraiser

qualification; in addition there are two boards of appraisal monitoring and control such as the Appraisal Qualification Board (AQB) and the Appraisal Standard Board (ASB) that are recognized around the world. Therefore, this research would like to support the draft of Professional Valuation Act, for confidence and increase in the economic quality in Thailand.

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Appendix

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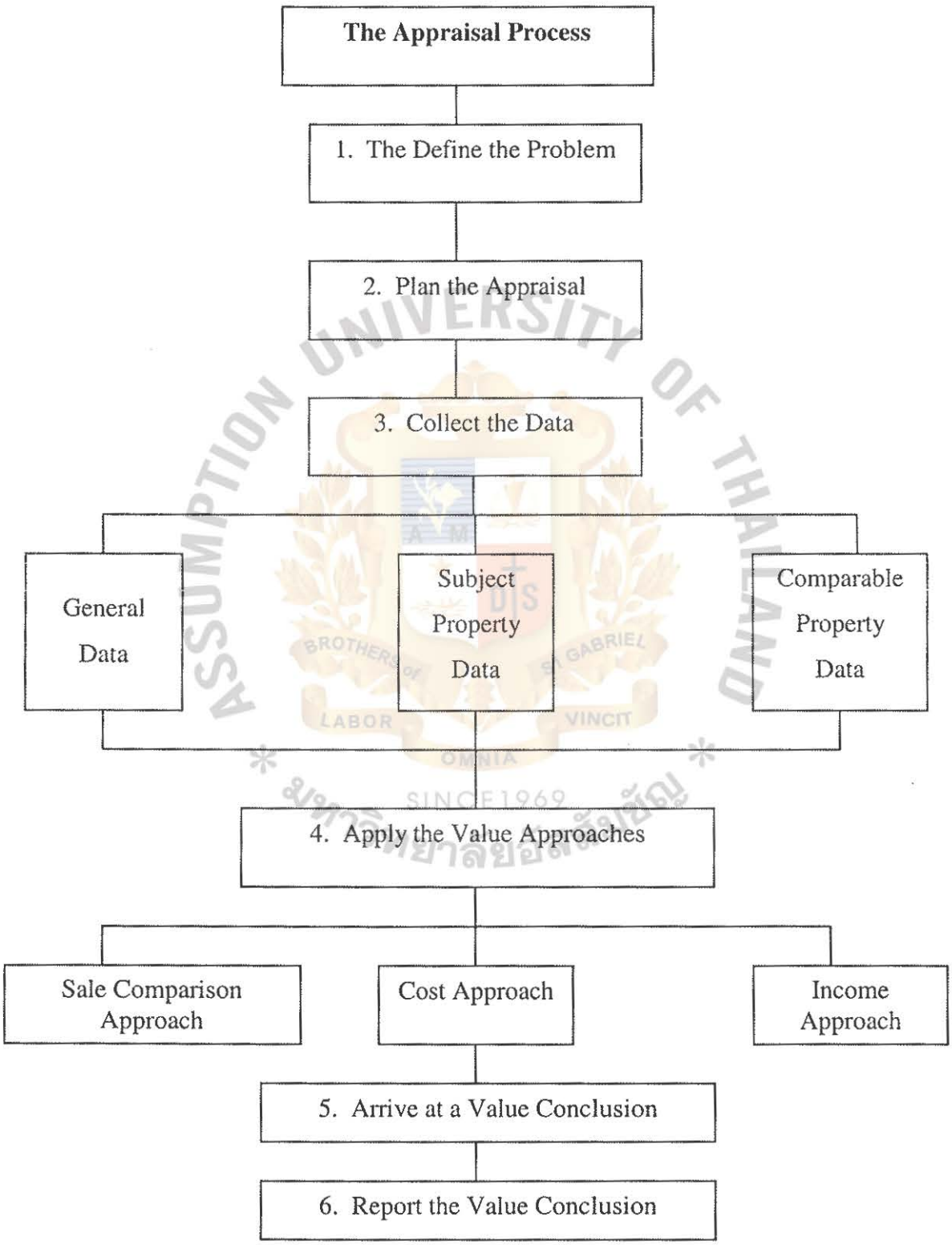

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