

## The Updated Supreme Court Judgment on Interest Overcharging under the Loan Agreement

Pursuant to the Civil and Commercial Code of Thailand (“CCC”), the entering into the loan agreement, having the principal amount more than Baht 2,000 shall not be enforceable by action unless there is a written evidence of the loan signed by the borrower.

The parties to the loan agreement could commercially negotiate and determine the interest rate to be applied under the loan agreement which shall not exceed 15% per annum. Should the interest is to be paid but the parties have not fixed the specific rate, it shall be 7.5% per annum. Charging the interest exceeding the rate prescribed by the law, not only causes the whole interest amount to be void but the lender would also face with the criminal sanctions for the imprisonment of not more than 2 years or a fine of not more than Baht 200,000, or both. However, if the loan has been granted by the financial institution, it could charge the interest at the rate more than 15% per annum according to the notifications announced by the Bank of Thailand.

With respect to the interest rate of the loan agreement among parties other than the financial institution, there are a number of precedent cases regarding the cause of overcharging the interest exceeding the rate prescribed by law. Please find more details below:

### Previous Precedent Cases

Many Supreme Court judgments in the past have set a standard of the determining and paying the interest under the loan agreement, having the rate exceeds the rate prescribed by law, that the whole amount of interest (not only the amount exceeding the maximum interest rate prescribed by law) shall be void.

If the borrower has paid such overcharging interest to the lender, the Supreme Court opined that the lender has received such overcharging interest as an “undue enrichment”. However, the borrower could not claim restitution (i.e. claiming the amount of excessive interest back) since such act is done by his voluntary payment which he knows that he is not bound to perform and is, therefore, not entitled to restitution according to Section 407 of the CCC. In this regard, the borrower could not receive such amount of overcharging interest back and the result of which is that such overcharging interest amount could not be deducted from the principal amount of the loan.

### Updated Case in 2018

Recently, the **Supreme Court judgment no. 2131/2560** has overruled the precedent cases by rendering a judgment that the amount of overcharging interest paid by the borrower to the lender is no longer deemed as an undue enrichment according to the Section 407 of the CCC.

According to such judgment, the borrower (as a defendant) entered into the loan agreement with the individual lender (as a plaintiff), by having the interest

of the loan agreement at the rate of 1.3 % per month or 15.6 % per annum, which was exceeding the maximum rate prescribes by law (i.e. 15% per annum). Such action violates both the Excessive Interest Rate Prohibition Act and the CCC, resulting in such amount of interest be void.

In this case, the Supreme Court expressed its views that the factual situation of this case could not be deemed that the borrower made a payment with an intention to violate the law or freely done an act as if in performance of an obligation, knowing that he was not bound to perform and was, therefore, not entitled to restitution according to Section 407 of the CCC like the previous precedent cases.

The Supreme Court also expressed its views that since the amount of interest is void, it means that the loan agreement between the lender and the borrower has no mutual agreement on the interest matter. Therefore, the lender could not obtain the interest prior to the default date and also could not deduct the received amount from the borrower from the outstanding interest because there is no provision regarding the interest specified in the loan agreement. In this case the borrower has the right to receive such amount of overcharging interest back or deducting such overcharging interest from the principal amount of its loan outstanding. Therefore, pursuant to this Supreme Court judgment no. 2131/2560, the lender could deduct the received amount (which is the overcharging interest) from the principal amount owed by the borrower.

The Supreme Court judgment no. 2131/2560 has overruled the key point of its previous precedent cases. It is the type of judgment which took into consideration the consumer protection ideas in its decision making to protect borrower from being taken advantage of by lender. However, it is uncertain that the Supreme Court in later cases will follow this overruled decision. This might subject to case by case basis and subject to the description of the plaint of the plaintiff and the testimony of the defendant.

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