

8 April 2024

THAILAND

Newsletter

Key Contacts



Pranee Klinratana

☎ +66-2-009-5101

✉ pranee.k@mhm-global.com



Sarunporn Chaianant

☎ +66-2-009-5103

✉ sarunporn.c@mhm-global.com



Jongkotchakorn Phantophas

☎ +66-2-009-5118

✉ jongkotchakorn.p@mhm-global.com



Supawich Nimmansomboon

☎ +66-2-009-5103

✉ supawich.n@mhm-global.com

Thailand: Recap on Interest Rate and Introduction of the New Draft BOT Notification on the Calculation of Default Interest and Application of Proceeds

Current Interest Rate and Default Interest Rate Regime for Commercial Contracts

In 2021, the interest rate and default interest rate regime under Thai law was updated pursuant to the Amendment to the Civil and Commercial Code. As a brief overview, the interest rate for any monetary obligation has been set at 3%, subject to periodic adjustments by the Ministry of Finance based on the economic situation. The default interest is the base interest rate plus 2% (i.e., 5% in general) and can only be charged on the due but unpaid principal amount of the default instalment. This, unless otherwise specified by mutual agreement or by law, applies to all general monetary obligations and claims under commercial contracts, including sale and purchase agreements, lease agreements, and loan agreements (only between individuals, intercompany loan or C2C). For further details on this Amendment to the Civil and Commercial Code, please refer to this [LINK](#)

BOT's Default Interest Rate Regime for Regulated Financial Institutions

On 23 November 2023, the Bank of Thailand ("BOT") released a draft notification re: the calculation of default interest and the application of proceeds (the "Bill") for public hearing until 11 December 2023. Once it becomes effective, the Bill will supersede the existing BOT Notification (No. Sor Kor Sor2. 9/2563 re: the calculation of default interest and the application of proceeds (the "Notification"). A key summary of the Notification can be found in this [LINK](#)

While the provisions for calculating default interest remain largely unchanged, the Bill expands its applicability to a larger array of financial service providers and types of debtors. It also introduces the provisions applicable to bullet loans and syndicated loans involving offshore lenders. Key provisions of the Bill (including key differences from the Notification) are summarized below:

1. Application of the default interest rate and the basis for calculating default interest for additional financial service providers and types of debtors

	The Notification	The Bill
Financial service providers	Financial institutions, specialized financial institutions, personal loan and nano-finance providers, leasing and hire-purchase business operators, asset management companies, and companies within financial business groups operating these types of businesses.	Credit card operators, peer-to-peer lending platform business operators, and financial business groups operating factoring and credit card businesses have been added into the current financial service providers.
Types of borrowers	Retail borrowers and small and medium sized enterprise ("SME") borrowers	All types of borrowers. ¹
Default interest rate	Maximum default interest rate is actual maximum interest rate plus 3% per annum	Same provision applies. Note that if the interest rate under the loan agreement is floating rate, the default interest rate will be based on the rate in effect on the actual date of default.
Basis for calculating default interest	The basis for calculating default interest depends on two types of loans as follows: 1) Instalment loan: calculated on principal of each instalment in default up until the court's acceptance of a complaint; and 2) Revolving facility: calculated on the entire outstanding amount.	The basis for calculating default interest depends on three types of loans as follows: 1) Multiple instalments loans (amortization): calculated on the principal of each instalment in default up until the court's acceptance of a complaint. 2) Single instalment loans (bullet payment): calculated on the outstanding principal once the principal is in default. 3) Loans without instalment: calculated on the entire outstanding amount.

¹Except borrowers which are the BOT, commercial banks, finance companies, securities companies, credit foncier companies, specialised financial institutions, savings and credit cooperatives, federations of savings and credit cooperatives, credit union cooperatives, insurance companies, the Financial Institutions Development Fund, the Specialized Financial Institutions Development Fund, international financial institutions of which Thailand is a member, banks or other financial institutions located offshore, or a repurchase transactions in the money market.

	The Notification	The Bill
Basis for calculating default interest	<p>The basis for calculating default interest depends on two types of loans as follows:</p> <ol style="list-style-type: none"> 1) Instalment loan: calculated on principal of each instalment in default up until the court's acceptance of a complaint; and 2) Revolving facility: calculated on the entire outstanding amount. 	<p>The basis for calculating default interest depends on three types of loans as follows:</p> <ol style="list-style-type: none"> 1) Multiple instalments loans (amortization): calculated on the principal of each instalment in default up until the court's acceptance of a complaint. 2) Single instalment loans (bullet payment): calculated on the outstanding principal once the principal is in default. 3) Loans without instalment²: calculated on the entire outstanding amount.

2. Application of proceeds

Similar to the Notification, the application of proceeds will be applicable to all types of debtors. While the application of proceeds under the Notification applies to instalment loans and revolving loans, the Bill provides a basis for three types of loans. For a multiple instalment loan, any repayment amount will be applied respectively to fees, interest and the principal amount of the amount outstanding for the longest time. Subsequently, the repayment amount will be applied to the following outstanding amounts in the same order of application (horizontal application). For a single instalment loan and a loan without instalments, any repayment amount will be applied to all fees, interest, and then the principal amount, respectively.

3. Foreign-law-governed loan agreements

The calculation of default interest and the application of proceeds under a loan agreement governed by foreign law will comply with that specific foreign law. However, if the laws in the respective jurisdiction do not specifically impose any requirements on default interest and the application of proceeds, financial service providers may opt to adopt the provisions of the Bill as appropriate. It is important to note that choosing foreign law as the governing law must not serve as a means to circumvent compliance with the Bill.

4. Offshore branches and offshore companies in the financial group of the service provider

In cases where financial service providers have branches or companies in their financial group located in other jurisdictions, such branches or companies in their financial group must comply with the specific legal requirements concerning default interest calculation and the application of proceeds in those respective jurisdictions. If the laws of these jurisdictions do not stipulate specific requirements for default interest and the application of proceeds, the financial service providers may choose to adopt the provisions under the Bill as appropriate.

²This includes loans that are not categorised as either multiple instalments loans or single instalment loans, such as overdraft facilities and cash cards, where the debtor may elect to repay the loan either in full or in part.

5. Syndicated loans with offshore lender

The Bill will have retroactive effect on agreements entered into prior to the Bill's enactment date if any outstanding obligations remain to be performed by the parties.

With respect to syndicated loan agreements involving at least one of the lenders being an offshore entity not subject to the supervision by the BOT, the provisions regarding the calculation of default interest will apply to such agreements with SME borrowers executed from 1 April 2021 (the effective date of the Notification) and to such agreements with corporate borrowers executed on or after the effective date of the Bill. The provisions regarding the application of proceeds will apply to syndicated loan agreements with all types of borrowers executed from 1 April 2021 and the criteria outlined for such matter will become effective from 1 July 2021.

The Bill is set to come into effect on 1 April 2024. Given that the Bill broadens the scope of the Notification and introduces certain provisions with retroactive effects on loan agreements (including syndicated loans with offshore lenders), lenders and borrowers are advised to review their existing loan agreements to ensure compliance with the Bill and familiarize themselves with the provisions of the Bill for their future loan agreements after the Bill becomes effective.

We will continue to closely monitor any updates regarding interest rates as well as the outcomes of the Bill's public hearing.

Please feel free to contact any of the authors if you require further information on any topics covered in this newsletter.

Contact Us

Chandler MHM Limited
17th and 36th Floors
Sathorn Square Office Tower
98 North Sathorn Road
Silom, Bangrak, Bangkok 10500
Thailand
www.chandlermhm.com

This publication is intended to highlight an overview of key issues for ease of understanding, and not for the provision of legal advice. If you have any questions about this publication, please contact your regular contact persons at Mori Hamada & Matsumoto or Chandler MHM Limited. If you should have any inquiries about the publications, or would like more information about Chandler MHM Limited, please contact bd@mhm-global.com.