

EMERGENCY DECREE
ON BORROWINGS WHICH ARE REGARDED
AS PUBLIC CHEATING AND FRAUD,
B.E. 2527 (1984)**

BHUMIBOL ADULYADEJ, REX;
Given on the 11th Day of November B.E. 2527 (1984);
Being the 39th Year of the Present Reign.

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:
Whereas it is expedient to have a law on borrowings which are regarded as public cheating and fraud;

By virtue of section 157 of the Constitution of the Kingdom of Thailand, an Emergency Decree is hereby enacted, as follows:

Section 1. This Emergency Decree is called the “Emergency Decree on Borrowings which are regarded as Public Cheating and Fraud, B.E. 2527 (1984).”

Section 2. This Emergency Decree shall come into force as from the day following the date of its publication in the Royal Gazette.¹

Section 3. In this Emergency Decree:
“borrowing”² means a receiving of money, property or any other benefits in form of deposit, raising of a loan, lending, selling of cards or any other things, acceptance of

* Translated by Legal Opinions and Translation Section, Foreign Law Bureau, and reviewed by Prof. Phijaisakdi Horayangkura under contract for the Office of the Council of State of Thailand's Law for ASEAN project. -Initial Version – pending review and approval by the Office of the Council of State.

** As amended up until Act Amending Emergency Decree on Borrowings which are regarded as Public Cheating and Fraud, B.E. 2527 (No. 2), B.E. 2545 (2002)

¹Published in the Government Gazette Vol. 101, Part 164, Special Issue, page 1, dated 12th November B.E. 2527 (1984).

members, acceptance of investors for joint venture, acceptance of people to do any act altogether, or any other forms whereby the borrower or other persons pay or agree to pay a return to the lender, irrespective of whether the lender accepts such return on his or her own or in the capacity of agent or employee of the borrower or of the lender or on any other status and whether such acceptance or payment of money, property, benefits or return is made by whatever method;

“return”³ means money, property or any other benefits which the borrower or other persons pay or agree to pay to the lender in return of the borrowing in form of interests, dividends or any other forms;

“borrower” means any person who conducts borrowing, including a person who signs in the loan agreement or instrument as a representative of a juristic person in the case where the borrower is a juristic person;

“lender” includes any person specified by the borrower as a receiver of principal or return from the borrower;

“competent official” means a person appointed by the Minister for the execution of this Emergency Decree;

“Minister” means the Minister having charge and control of the execution of this Emergency Decree.

Section 4.⁴ Any person who advertises or publishes to the public, or makes known to at least ten persons by any manner whatsoever, that he or any other person shall pay or may pay, in borrowing, the lender a return upon the circumstances of such borrowing at the rate which is higher than the highest interest rate to be paid by the financial institution under the law on interest on lending of the financial institution whereby such person knows or ought to know as to whether he or such person is going to pay the lender from money borrowed from that lender or other lenders, or he or such person knows or ought to know that he or such person is incapable to carry out any lawful business which generates sufficient incomes to be paid as a return at that rate, and the aforesaid act gives

²As amended by Section 3 of the Act Amending Emergency Decree on Borrowings which are regarded as Public Cheating and Fraud, B.E. 2527, B.E. 2534 (1991).

³As amended by Section 3 of the Act Amending Emergency Decree on Borrowings which are regarded as Public Cheating and Fraud, B.E. 2527, B.E. 2534 (1991).

⁴As amended by Section 3 of the Act Amending Emergency Decree on Borrowings which are regarded as Public Cheating and Fraud, B.E. 2527 (No. 2), B.E. 2545 (2002).

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rise to the borrowing. Such person is said to commit borrowings which are regarded as public cheating and fraud.

Any person having no license to carry out foreign exchange transaction business under the law on exchange control who causes or lets his employee or any person to advertise, publish or persuade the public to make an investment by:

- (1) purchasing or selling one or many foreign currencies; or
- (2) speculating or being able to obtain benefits from the changing of exchange rates; such person is deemed to commit borrowings which are regarded as public cheating and fraud.

Section 5. Any person who acts as follows:

- (1) in or for borrowing;
 - (a) advertises or publishes to the public or disseminates information by whatever means; or
 - (b) carries out borrowing as his or her normal business; or
 - (c) provides a receiver for the borrowing of every source; or
 - (d) establishes a group of at least five persons to persuade any other persons to conduct borrowing; or
 - (e) borrows money from more than ten lenders and the total amount of borrowing is more than five million Bath which is not the borrowing from the financial institution under the law on interest on lending of the financial institution; and
- (2) such person;
 - (a) pays, or advertises, publishes, disseminates or agrees to pay a return to the lender at the rate which is higher than the highest interest rate to be paid by the financial institution under the law on interest on lending of the financial institution; or
 - (b) fails to comply with the order issued by the competent official under section 7 (1), (2) or (3), or the evidences presented to the competent official under section 7 by such person are insufficient to prove that business run by such person is capable to generate adequate incomes to be paid as return to all lenders;

Such person shall be liable as if he or she commits the offence of borrowings which are regarded as public cheating and fraud under section 4, unless such person is able to prove that his or her business, or business of the referred person, is capable of generating adequate incomes to be paid as claimed. If such business is incapable to generate adequate incomes, such person shall have to prove that such situation resulting from unusual and unexpected economic conditions or from other reasonable causes.

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Section 6. For the purposes of calculating the rate of return under section 4 and section 5, in the case where the borrower pays or agrees to pay return in any form other than cash, that return shall be calculated in terms of money.

In the case where it is unable, upon the circumstances of the borrowing, to calculate the return in terms of money, such return shall be calculated at the lowest rate of return expected to be paid to the lender if there is a payment of such return.⁵

Section 7. In the case where there is a reasonable ground to suspect that any person commits an offence under section 4 or an act under section 5 (1) or (2) (a), the competent official shall have the powers as follows:

(1) to summon, in writing, such person or any person whom the competent official is of the opinion that he or she may be beneficial to an investigation on the borrowing to give statement;

(2) to order the person under (1) to report the status of his or her business as well as total assets and liabilities;

(3) to order the person under (1) to render accounts, documents or other evidences in relation to the borrowing for examination;

(4) to enter into any place between sunrise and sunset or during the working hours of that place in order to examine or search for accounts, documents or other evidences of the person under (1). In this regard, the competent official shall have the power to order any person who is present at that place to perform any act as necessary for such examination and search and shall have the power to seize all those accounts, documents or evidences for examination.

The summon or order under (1), (2) or (3) shall be informed to the person under such summon or order at least seven days in advance, except in case of emergency.

Once the competent official enters into any place during the period under (4) and such examination or search is unable to finish within that period, the competent official may continue such examination or search during the night time.

Section 8. If there is a reasonable ground to believe that the borrower who is an alleged offender under section 4 or section 5 becomes insolvent under the law on bankruptcy, or has insufficient assets to cover his debt, and the seizure or attachment of

⁵As added by Section 4 of the Act Amending Emergency Decree on Borrowings which are regarded as Public Cheating and Fraud, B.E. 2527 (No. 2), B.E. 2545 (2002).

properties of such person may be beneficial to protect interest of the lenders, the competent official shall, with the approval of the Minister of Finance, have the power to make an order to seize or attach properties of such person temporarily for not more than ninety days. If there is litigation in the Court under section 9 or section 10, an order to seize or attach properties of such person shall be continued until otherwise order is issued by the Court.

If the properties of any person are seized or attached under paragraph one, or if there is a reasonable ground to believe that the borrower who is an alleged offender under section 4 or section 5 becomes insolvent under the law on bankruptcy, or has insufficient assets to cover his debt, but it is improper to seize or attach his properties under paragraph one, the competent official shall submit the case to the public prosecutor to institute bankruptcy proceedings under section 10.

The provisions of the Revenue Code in relation to seizure or attachment of property shall be applied to the seizure or attachment under paragraph one *mutatis mutandis*.

Section 9. If the public prosecutor prosecutes any person for an offence under section 4 or section 5, the public prosecutor shall, upon request of the lender, have the power to claim the principal, and may also claim a legal return for such lender. In this regard, the provisions on filing of civil case in connection with criminal case under the Criminal Procedure Code shall apply *mutatis mutandis*.

Section 10. In order to protect interest of the public who are lenders, the public prosecutor shall have the power to file the borrower who is alleged offender under section 4 section 5 to become bankrupt if he or she:

- (1) becomes insolvent or has insufficient assets to cover his debt;
- (2) owes one or more lenders in an amount of not less than one hundred thousand Baht; and
- (3) the exact amount of such debt may be determined irrespective of whether the repayment thereto may be demanded forthwith or in the future.

The filing under paragraph one shall be subjected to the proceedings under the law on bankruptcy. In this regard, the public prosecutor is deemed to have legal status and powers and duties as the creditor who is plaintiff and shall be exempted from all fees, costs or securities imposed by such law.

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In bankruptcy proceedings, if the fact under paragraph one appears to the Court, he or she shall order an absolute receivership of the debtor's assets.

In adjudicating the bankruptcy case under this section, the Court shall have the power to determine fair partition rule for the creditors under (8) of section 130 of the Bankruptcy Act, B.E. 2483 (1940). In this regard, the Court shall take the amount of return received by each lender prior to the bankruptcy proceedings into its consideration.

Section 11. In the performance of duties under this Emergency Decree, the competent official shall be the official under the Penal Code.

In the performance of duties, the competent official shall produce an identification card to any person concerned.

The identification card shall be in the form as determined by the Minister and published in the Royal Gazette.

Section 11/1.⁶ When the offender under section 4 or section 5 being under arrest, an informer shall be entitled to prize and the competent official who conducts search or arrest shall be entitled to reward. In this regard, the public prosecutor shall request the Court to have payment order of such prize and reward from fines paid to the Court by the offender when the case becomes final.

The total sum of prize and reward shall be twenty-five per cent of fines paid to the Court.

The rules and procedures for making a request for bribe and reward, partitioning among entitled persons, and payment thereof shall be in accordance with the regulation as determined by the Ministry of Finance.

Section 12. Whoever commits an offence under section 4 or section 5 shall be liable to imprisonment for a term of five years to ten years and to a fine from five hundred thousand Baht to one million baht, and to a daily fine of not exceeding ten thousand baht per day throughout the period of violation.

Section 13. Whoever obstructs, fails to comply with the order of, or fails to render facilities to, the competent official performing duty under section 7 (4) or section 8,

⁶As added by Section 5 of the Act Amending Emergency Decree on Borrowings which are regarded as Public Cheating and Fraud, B.E. 2527 (No. 2), B.E. 2545 (2002).

shall be liable to imprisonment for a term of not exceeding one year and to a fine of not exceeding one hundred thousand baht.

Section 14. Whoever, without reasonable ground, fails to comply with a written summons or order of the competent official under section 7 (1), (2) or (3) or fails to answer in an interrogation shall be liable to imprisonment for a term of not exceeding three months and to a fine of not exceeding thirty thousand baht.

Section 15.⁷ In the case where the offender under this Emergency Decree is a juristic person, a director, manager or any person who is responsible for the execution of such juristic person shall be liable for the punishment as prescribed for such offence, except such person can prove that he or she takes no part in so doing.

The provisions under paragraph one shall apply to the employee of a juristic person if there is evidence indicating that such employee behaves as a person who is responsible for an execution of that juristic person.

Section 15/1.⁸ In the case where a person who having been sentenced by a final judgement of the Court under section 4 or section 5 recommitts such offence during the period of suspension of sentence or the period of suspension of determination of the punishment, or within five years as from the completion date of that punishment, if the Court is of the opinion to punish such offender for the recommitted offence, the Court shall increase the punishment to be imposed to such person one time of the punishment determined for the recommitted offence.

Section 15/2.⁹ If an alien having been sentenced by a final judgement of the Court under section 4 or section 5, such alien shall be deported under the law on deportation. If such alien has to be punished, the deportation shall be made upon the completion of such punishment.

⁷As amended by Section 6 of the Act Amending Emergency Decree on Borrowings which are regarded as Public Cheating and Fraud, B.E. 2527 (No. 2), B.E. 2545 (2002).

⁸As added by Section 7 of the Act Amending Emergency Decree on Borrowings which are regarded as Public Cheating and Fraud, B.E. 2527 (No. 2), B.E. 2545 (2002).

⁹As added by Section 8 of the Act Amending Emergency Decree on Borrowings which are regarded as Public Cheating and Fraud, B.E. 2527 (No. 2), B.E. 2545 (2002).

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Section 16. If the competent official has reasonable grounds to believe that any person commits an offence under section 343 of the Penal Code prior to the date this Emergency Decree comes into force and such commission being the offence under section 4 or section 5, the competent official shall have the powers under section 7 and section 8. In this case, the provisions of section 9, section 10, section 11, section 13 and section 14 shall apply thereto.

Section 17. The borrowing which fall under the elements under section 4 or section 5 with contract or agreement of borrowing that are consistent with the law and have been concluded prior to the date this Emergency Decree comes into force shall be bind the parties thereto under the following conditions:

(1) If such contract or agreement provides no termination date, it shall come to an end upon the expiration of one year as from the date this Emergency Decree comes into force, except where the parties thereto agree to end the contract or agreement before that or where any party thereto exercise his or her right by demanding the performance, performing his or her obligation, or rescinding the contract or agreement before that;

(2) If the termination date of the contract or agreement is within one year as from the date this Emergency Decree comes into force, it shall come to an end on that date, except where the parties thereto agree to end the contract or agreement before that or where any party thereto exercise his or her right by rescinding the contract or loan agreement before that;

(3) If the termination date of the contract or agreement is after one year as from the date this Emergency Decree comes into force, it shall come to an end upon the expiration of one year as from the date this Emergency Decree come into force, except where the parties thereto register with the competent official, under paragraph two, within ninety days as from the date this Emergency Decree comes into force. In this regard, such contract or agreement shall come to an end on the date as specified in the registration. The aforesaid is not prejudice to the right of the parties to the contract or agreements to mutually agree to end the contract or agreement before that or where any party exercise his or her right by rescinding the contract or agreement before that.

The rules and procedure for registration of contract or agreement under (3) of paragraph one shall be determined by the Minister and published in the Royal Gazette. If a request for registration is made *ex parte*, the competent official shall have a written inquiry to another party as to whether he or she consents to the registration and agrees with the

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proposed terms of contract or agreement. The registration shall be made upon receiving such consent and acceptance.

In considering a request for registration, the competent official shall, if it appears that any contract or agreement has been executed after the date this Emergency Decree comes into force, have the power to dismiss such request and inform that order with reasons to the applicant. In this case, the applicant who disagrees with that order shall have the right to make a request to the Court within fifteen days as from the date he acknowledges that order with a view to declare that such contract or loan agreement has been executed prior to the date this Emergency Decree comes into force. In this regard, the provisions of the Civil Procedure Code shall apply *mutatis mutandis*.

The provisions of this section shall be applicable to civil matters and shall not affect criminal offence.

Section 18. The Minister of Finance and the Minister of Interior shall have charge and control of the execution of this Emergency Decree and shall have the power to appoint the competent officials for the execution of this Emergency Decree.

Countersigned by:

General Prachuab Suntharangkul
Deputy Prime Minister

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