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## Possible Amendments to Interest Rate for Commercial Transactions under Thai Law

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### Background

The Law Reform Commission of the Office of the Council of State (the “**Commission**”) held a public hearing in relation to the proposed bill of amendment of the Civil and Commercial Code (“**CCC**”) in relation to the provisions concerning interest rate (the “**Bill**”) on 18 January 2021. The Commission aims to change the rate of interest under the CCC, which is not the interest on loan of financial institutions, to adapt to the current economic situation, since Thailand has been adopting the current interest rate of seven and a half percent (7.5 %) per annum for more than ninety (90) years. As a result of the public hearing, the Commission has concluded the details of the Bill at the end of February 2021, details are provided in this newsletter.

### Details of the New Interest Rate under the Bill

The significant amendments are summarized as follows:

#### 1. **Proposed Amendment: Standard interest rate (Section 7 of the CCC)**

Currently, unless the agreement or the laws stipulated otherwise, the fixed interest rate of seven and a half percent (7.5 %) per annum is applicable to the agreement<sup>1</sup>.

Under the Bill, the standard rate of interest is to be decreased to three percent (3%) per annum. However, the said new standard rate of three percent (3%) is subject to increase or decrease by Royal Decree, which may be issued from time to time, to align with the economic situation. In addition, such standard rate is subject to revision every three (3) years by the Ministry of Finance taking into account the average rate, as between the deposit interest rate and loan interest rate of commercial banks<sup>2</sup>.

#### 2. **Proposed Amendment: Default interest rate (Section 224 of the CCC)**

At present, if a debtor defaults, a creditor can automatically charge the default interest at the rate of seven and a half percent (7.5%) per annum, unless there are other legal grounds allowing the creditor to demand the interest at a higher rate<sup>3</sup>.

Under the Bill, the new default interest rate would be the sum of (i) the standard interest rate prescribed in Section 7, and (ii) the add-on interest of two percent (2%) per annum. Therefore, in case the Bill came into force, the new default interest rate would be five percent (5%) per annum, i.e., the standard interest rate of three percent (3%), plus two percent (2%) added on.

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<sup>1</sup>**Section 7 of the CCC.** Whenever interest is to be paid, and the rate is not fixed by a juristic act or by an express provision in the law, the rate shall be seven and a half percent per annum.

<sup>2</sup>**Proposed Section 7 of the Bill.** Whenever interest is to be paid, and the rate is not fixed by a juristic act or by an express provision in the law, the rate shall be three percent per annum.

The rate of interest upon paragraph 1 may be subject to decrease or increase by issuance of Royal Decree, so as to be consistent with the national economic status. In particular, the Ministry of Finance shall consider the revision of the rate every three years to be approximated to the average rate as between the deposit interest rate and the loan interest rate of commercial banks.

<sup>3</sup>**Section 224 of the CCC.** A money debt bears interest during default of seven and half percent per annum. If the creditor can demand higher interest on any other legitimate ground, this shall continue to be paid.

Similar to the proposed standard interest rate as set forth in 1 above, such default rate can be varied as a result of the change of the rate pursuant to Section 7. Further, it should be also noted that the creditor is still entitled to demand the interest at a higher rate upon other legitimate grounds<sup>4</sup>.

**3. Proposed Clarification: Default interest rate in case of payment by installment (Section 224/1 of the CCC)**

The Bill also clarifies the default interest in case of a debtor is under a duty to make payment of debt in installments. The newly introduced provision of Section 224/1 of the CCC prescribes that in the case where a debtor fails to make any payment of installments, the creditor is entitled to demand the default interest based on the amount of principal of such default installment only (in other words, the creditor will no longer be able to legally charge the default interest based on the whole amount of unperformed principal of debt)<sup>5</sup>. In this connection, if there is a provision stipulating upon the agreement in contrary to this calculation of the default interest under Section 224/1, such provision shall be void.

As a side note, this proposed Section 224/1 may not be applicable to the case of principal acceleration where all remaining installments are accelerated and become due owing to the occurrence of a default in respect of payment of any installment as prescribed in the agreement (in other words, after the default, the creditor does not allow the debtor to continue the payment of the installment and subsequently demands payment of the remaining installments in their entirety).

Please note that the new interest rate under the Bill shall only be applicable for the debt or the installment payment of which is due on the effective date of the Bill onwards.

In conclusion, the Bill indicates a good intention to enhance the law so as to be in harmony with the social context and economic trends, especially in the matter of interest rate. At present, the Bill has passed the public hearing stage and will be proposed to the Cabinet Meeting for further consideration and approval. We will closely monitor and keep you updated on the progress of this matter.

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<sup>4</sup>**Proposed Section 224 of the Bill.** A money debt bears interest during default at the rate prescribed upon Section 7 plus the add-on interest rate of two percent per annum. If the creditor is entitled to demand higher interest on any other legitimate grounds, this shall continue to be paid.

<sup>5</sup>**Proposed Section 224/1 of the Bill.** In the case where the debtor is under a duty to pay a money debt in installments and the debtor is in default, regardless of which installment, the creditor is entitled to claim for the interest only from the principal of such default installment during the default period. If any clause of the agreement is contrary to paragraph 1, such clause is void.

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