

Tentative translation

EMERGENCY DECREE ON OBTAINING LOANS AMOUNTING TO PUBLIC
CHEATING AND FRAUD , B.E. 2527 ¹

BHUMIBOL ADULYADEJ , REX.

Given on the 11th Day of November B.E. 2527 ;

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 obtaining loans amounting to public cheating and fraud ;
Be it purview to does section 29 section 34 section 39 and section 50 of the Constitution of the Kingdom of
Thailand about fundamental rights and freedoms of persons.

Be it , therefore , enacted by the King , pursuant to section 157 of the Constitution
of the Kingdom of Thailand , as follows :

Section 1 This Emergency Decree is called the “ Emergency Decree on Obtaining Loans
Amounting to Public Cheating and Fraud , B.E. 2527. ”

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

Section 3 In this Emergency Decree :
“ obtaining a loan ” means the receipt of money , property or other benefits
in the form of a deposit , loan , bailment , the distribution of tokens or other items , investment scheme or other
schemes or in any other form where the borrower or others pays or agrees to pay a return to the lender regardless of
whether the return was received by the lender in his own capacity , as
a representative or employee of the borrower or the lender , or in any other capacity , and regardless

¹ (1) As last amended by the Act Amending the Emergency Decree on Obtaining Loans Amounting
to Public Cheating and Fraud , B.E. 2527 , B.E. 2534 (published in the Government Gazette
Vol. 108 , Part 129 , dated 23th July B.E. 2534). (2) As last amended by the Act Amending the
Emergency Decree on Obtaining Loans Amounting to Public Cheating and Fraud , B.E. 2527
(Issue 2) , B.E. 2545 (published in the Government Gazette Vol. 119 , Part 122 , dated 16th
December B.E. 2545).

² Published in the Government Gazette Vol. 101 , Part 164 , dated 12th November B.E. 2527

of the method by which the receipt or payment of monies , property , any other benefits or return was made ;³

“ return ” means any money , property or benefits which the borrower or others pay or agree to pay to the lender , which may be in the form of interests , dividends or any other methods of payment ;⁴

“ borrower ” means any person who borrows , and includes the signatory in the loan agreement or other loan instruments where the borrower is a juristic person ;

“ lender ” includes any person appointed by the lender to receive the repayment of capital sums or return from the borrower ;

“ competent official ” means a person appointed by the minister to act pursuant to this Emergency Decree

“ Minister ” means the minister in charge under this Emergency Decree.

Section 4 Any person who advertises or announces to the public , or does anything to convey to at least ten other persons that he or others will pay or belike pay a higher rate of return than the highest rate of interest for deposits payable by an authorised financial institution with the express or implied knowledge that he or such other person will pay each lender with the monies received from other lenders , or with the express or implied knowledge that he or such other person cannot carry out any legal activity with a sufficient yield to pay each lender at the rate of return , and where the act enabled that person or others to obtain a loan , such person commits the offence of obtaining a loan amounting to public cheating and fraud.

Any person who does not have the license to engage in the foreign means of payments abiding by the rules of exchange rates , procedure or employee or any person to advertise or announce other people to investment by :

(1) purchase or sell one or many foreigner currencies or :

(2) speculate or arbitrage from the exchange rates , such person

commits the offence of obtaining a loan amounting to public cheating and fraud.

³ As amended by Section 3 of the Emergency Decree on Obtaining Loans Amounting to Public Cheating and Fraud , B.E. 2527 Amendment Act , B.E. 2534

⁴ Ibid.

Section 5 Any person who does the following :

(1) before or at the time of obtaining a loan :

(a) advertises or announces to the general public or disseminates news in any other way ; or

(b) obtains loans as a regular business ; or

(c) arranges for other persons to receive the borrowed money at various locations ; or

(d) arranges for at least five other persons to persuade the general public to lend ; or

(e) obtain loans from more than ten lenders amounting to a total borrowed sum of at least five million Baht , not including those sums borrowed from a financial institution pursuant to the laws on rates of interest on loans by financial institutions ; and

(2) such person :

(a) pays or agrees to pay or advertises, announces or disseminates news that he will pay a return to the lender at a rate higher than the highest rate of interest payable by an authorised financial institution ; or

(b) refuses to comply with an order issued by a competent official pursuant to sections 7 (1) , (2) or (3) , or the evidence obtained from the business by a competent official pursuant to section 7 failed to suggest that the business generated a sufficient yield to pay the various lenders.

Such person shall be punished as if he committed the offence of obtaining loans amounting to public cheating and fraud under section 4 , unless he can prove that his business or his referred business yielded enough to pay the lenders as stated , or if the business failed to give a sufficient yield , he has to prove that this was caused by unusual economic conditions which could not have been expected , or by other reasonable causes.

Section 6 For the purposes of calculating the rate of return in section 4 and section 5 , where the borrower pays or agrees to pay the return in forms other than cash , the monetary value of the return shall be calculated.

In case of the behavior of obtaining a loan does not show the gain and benefit or cannot exactly calculate. This should evaluate from the lowest gain suspected from the lender's gain , if they have any gain's payment. ⁵

⁵ Add by Section 4 of the Emergency Decree on Obtaining Loans Amounting to Public Cheating and Fraud , B.E. 2527 Amendment Act , (Issue 2) B.E. 2545

Section 7 In the case where there are reasonable grounds to believe that a person committed an offence under section 4 or carried out an activity under section 5 (1) or 5 (2) (a) , a competent official shall have the following powers :

(1) issue summons to such person or any other person, whose testimony the competent official believe will be useful in the investigation of the loan ;

(2) order such person in (1) to report on the status of his activities including all his assets and liabilities ;

(3) order such person in (1) to produce accounts, documents or other evidence in relation to the loan for examination ;

(4) enter any premises between the time of sunrise and sunset or during the business hours of the business in order to examine or search for accounts, documents or other evidence from the person in (1). In this event, the competent official shall have the power to order any person in the premises to act as necessary in the circumstances for the purposes of the examination or the search , and the competent official shall also have the power to seize those accounts , documents or evidence for examination.

The summons or order pursuant to (1) , (2) or (3) must give at least seven days notice from the day when the summons or order was received , except in urgent cases.

Once the competent official has entered the premises and commenced his examination pursuant to (4) , he may continue into the night to finish the examination.

Section 8 If a competent official has reasonable grounds to believe that a borrower suspected of committing an offence under section 4 or section 5 is a bankrupt under the law on bankruptcy or has insufficient assets to repay his debts, and the competent official sees that it is necessary to seize the assets of such person to protect the interest of the public who lent to the borrower , the competent official, with the consent of the Minister of Finance, shall have the power to order the seizure of such person's assets , but the assets cannot be seized for more than ninety days , unless there is a court action under section 9 or section 10 for a continuation of the seizure order , in which case the seizure may continue until ordered otherwise by the court.

In the case where there is a seizure under paragraph one, or the competent official has reasonable ground to believe that the borrower suspected of committing an offence under section 4 or section 5 is a bankrupt under the law on bankruptcy or has insufficient assets to repay his debts , but it is not appropriate to order a seizure order pursuant to paragraph one , the competent official shall send the case to a public prosecutor who may , after consideration , commence bankruptcy proceedings under section 10.

The provisions of the Fiscal Code , where related to the seizure of

Assets , shall apply mutatis mutandis.

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Section 9 When a public prosecutor prosecutes a person for an offence under section 4 or section 5 , the public prosecutor, upon a request by the lender , shall have the power to demand the repayment of the loan capital and other return which are the lender's legal entitlement , to the lender. In this event , the provisions on filing civil cases in connection with an offence under the Criminal Procedure Code shall apply mutatis mutandis.

Section 10 In order to protect the interest of the public , a public prosecutor shall have the power to commence bankruptcy proceedings against a borrower suspected to have committed an offence under section 4 section 5 when :

(1) the borrower is a bankrupt or does not have sufficient assets to repay his debts ;

(2) the borrower owes a lender or many lenders a total sum of not less than one hundred thousand Baht ; and

(3) the exact amount of the debt can be determined, regardless of whether the repayment is due immediately or at a time in the future.

The bankruptcy action under paragraph one shall proceed under the law on bankruptcy , where the public prosecutor shall have the status and rights of a plaintiff creditor , and shall be exempt from all fees, costs or indemnities imposed by such laws.

In a bankruptcy proceeding, if the court considers the facts to be as stated in paragraph one , the court may take the debtor's assets into its absolute custody.

In deciding a bankruptcy case under this section , the court shall have the power to prescribe a method for determining the creditor's share of the assets in accordance with order (8) of section 130 of the Bankruptcy Act , B.E. 2483 , in fairness to the creditor ,and after taking into consideration the return received by each creditor before the commencement of the bankruptcy proceedings.

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

A competent official shall show his identity card to the relevant persons when performing his duties.

The form of the identity card shall be prescribed by the Minister by a notification published in the Government Gazette.

Section 11/1 In the case that the offender who offends under section 4 or section 5 was arrested. Person who fingers the offence and the competent official who inspects or arrests the offender have the right to get the bribe and prize which the prosecuting attorney will request the court to give the bribe and prize getting from the offender's fine when the case is over.

The payment of bribe and prize will pay as 25 percents of the total fine from the offender seized by court.

The rules and procedure of asking and sharing among people who have the right in the bribe and prize were regulated by the Ministry of Finance prescribe.⁶

Section 12 Any person who commits an offence under section 4 or section 5 shall be liable to imprisonment of five to ten years and a fine from five hundred thousand Baht to one million Baht , and a further fine not exceeding then thousand Baht for each day of the continuation of the offence for the duration of such offence.

Section 13 Any person who obstructs , does not comply with an order or does not cooperate with a competent official acting pursuant to section 7 (4) or section 8 shall be liable to imprisonment not exceeding one year and a fine not exceeding one hundred thousand Baht.

Section 14 Whoever , without reasonable ground , does not comply with a summons or order by a competent official acting pursuant to section 7 (1) , (2) or (3) or refuses to provide answers when interrogated shall be liable to imprisonment not exceeding three months and a fine not exceeding thirty thousand Baht.

Section 15 In the case where the offender under this Emergency Decree is a juristic person , a director or manager or whoever is responsible for the activities of the juristic person shall also be liable for the same offence , unless he can prove that he did not participate in the offence of that juristic person.

The text in paragraph one uses to control the clerks or employees of the juristic person which has witness and evidence proving that is a person who responsible for juristic person 's business

⁶ Add by Section 5 of the Emergency Decree on Obtaining Loans Amounting to Public Cheating and Fraud , B.E. 2527 Amendment Act , (Issue 2) B.E. 2545

⁷ As amended by Section 6 of the Emergency Decree on Obtaining Loans Amounting to Public Cheating and Fraud , B.E. 2527 Amendment Act , (Issue 2) B.E. 2545

Section 15/1 Any person who commits shall be punished following Section 4 or Section 5 If the offender offends again during the waiting for the decision or during in five years started from the quit date , the court can judge by adding the penalty as much as the latest penalty.⁸

Section 15/2 In case of the foreigner is a person who commits an offence under Section 4 or Section 5 should be banished abiding by the law of banishing. If the offerder must be punished , he will be punished before banished.⁹

Section 16 In the case where the competent official has reasonable grounds to believe that a person has committed a crime under section 343 of the Penal Code prior to the commencement of this Emergency Decree , and the act of such person has all the elements of the offence under section 4 and section 5 , the competent official shall have the power under section 7 and section 8 and shall enforce the provisions in section 9 , section 10 , section 11 , section 13 and section 14.

Section 17. For a loan having all the elements of the offence under section 4 or section 5 , which was made under a loan contract or agreement made before the commencement of this Emergency Decree , such contract or agreement , to the extent in which it is legally enforceable , shall continue to be enforceable under the following conditions :

(1) If the contract or agreement does not have a fixed date of termination , such contract or agreement shall continue to be binding , and shall be terminated upon the expiration of one year from the commencement date of this Emergency Decree, unless the parties agree to terminate the contract or agreement at an earlier date, or one of the parties decide to exercise his right to call for the repayment of the debt or terminate the contract or agreement before the prescribed date.

⁸ Add by Section 7 of the Emergency Decree on Obtaining Loans Amounting to Public Cheating and Fraud , B.E. 2527 Amendment Act , (Issue 2) B.E. 2545

⁹ Add by Section 8 of the Emergency Decree on Obtaining Loans Amounting to Public Cheating and Fraud , B.E. 2527 Amendment Act , (Issue 2) B.E. 2545

(2) If the date of termination in the contract or agreement is not later than one year from the commencement date of this Emergency Decree , such contract or agreement shall be terminated as contracted or agreed , unless the parties agree to terminate the contract or agreement at an earlier date or one of the parties exercises his right to terminate the contract or agreement before the prescribed date.

(3) If the date of termination in the contract or agreement is later than one year from the commencement date of this Emergency Decree , such contract or agreement shall terminate upon the completion of one year from the commencement date of this Emergency Decree , unless the parties register with the officer under paragraph two within ninety days from the commencement date of this Emergency Decree , in which case the contract or agreement shall terminate as registered , without prejudice to the parties' right to agree to terminate the contract or agreement at an earlier date , or the exercise of either parties' right to agree to terminate the contract or agreement at an earlier date.

The rules and procedure for the registration of the contract or agreement under (3) of paragraph one shall be prescribed by the minister by a notification published in the Government Gazette, and in the case of a request for registration by only one of the parties , the officer shall only register after sending a written request to the other party and that other party consents and approves of the terms in the contract or agreement to proceed with the registration.

The officer shall have the power to refuse registration , with reasons to the applicant , if it appears to the officer that the contract or agreement was made after the commencement date of this Emergency Decree. If the applicant disagrees , then he shall have the right to request the court , within fifteen days from the date when he acknowledged the officer's order , to issue a decision that the contract or agreement was made before the commencement date of this Emergency Decree , and the provisions of the Civil Procedure Code shall apply mutatis mutandis.

The provisions of this section are applicable to civil matters , and does not have the effect of quashing any criminal conviction.

Section 18. The Minister of Finance and the Interior Minister shall be the Ministers having charge and control of the execution of this Emergency Decree and shall have the power to appoint competent officials to act pursuant to this Emergency Decree.

Countersigned by :

General Prachuab Sunthrangkul

Deputy Prime Minister