

THEMATIC TITLE	PROBLEM ON INTEREST CHARGED OF BUSINESS OPERATOR NOT BEING FINIANCIAL INSTITUTION
KEYWORDS	INTERESTS OF NON-BANK ENTREPRENEUR
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ABSTRACT

At present, it is found out that there are a lot of illegal interest charged by non-bank entrepreneurs by favourably interpreting the unclear notification of Bank of Thailand in which it determines the criteria, method and conditions on the business operation. In the said notification, entrepreneurs are able to charge the interest including service fee, expenses and other fees in granting credits, the total amount of witch is not more than 28% per annum. This will give a chance to non-bank entrepreneurs to charge an interest at the rate more than that as specified under the law by relying on the wording "service fee, expense and other fees". This is a benefit in return, received form loan, being similar to interest. As there is no punishment measure in the notification of the Bank of Thailand on illegal interest charged. The problem on interest charged must be subject to the general principle of law by applying Section 654 of the Civil and Commercial Code determining the interest charged on loan not exceeding 15% per annum to the case. Should there be interest charged more than 15% per annum, the interest shall be reduced to 15% per annum. However, as the loan with interest charged more than that as specified by law is unlawful and considered an offense in accordance with the interest over Rate Prohibited Act B.E. 2475 and in such Act, the case of illegal interest charged is a criminal offense with imprisonment, it could contrarily not enforce such law according to its intention. This is because consumer, itself, is willing to enter into a contract with non-bank entrepreneur. Accordingly, consumer in this case is not considered an injured person to file a suit against business operator. As for the criminal aspect, consumer is, then, unable to make any legal proceedings against business

operator illegally charged an interest. In addition, the criminal punishment in the said law not actually suitable to social and economic condition, therefore, the non-bank entrepreneur is not afraid of such law. In terms of civil aspect, the amount of interest illegally charged shall be void only. This will cause the entrepreneur charged interest and other benefits in return in the similar form of interest in a big amount from the consumer using such kind of service. Further, at present, there are only two government units, i.e, Ministry of Finance and Bank of Thailand which are the auditing and supervising organization of non-bank business activities. As a result, it is not enough for auditing and supervising purposes while the number of non-bank business is increased and the forms of such business are charged in various forms so as to avoid the legal enforcement. Practically, the auditing of non-bank business will be made via a monthly report provided by entrepreneur to Bank of Thailand and Ministry of Finance. This will cause inefficiently auditing as there is no way to know the reality of business operation or whether it is correct according to the provided document. Accordingly, it causes the supervising and auditing units being unable to know the issues of illegal interest calculation of the non-bank business. Based on this fact, the problem on illegal interest charged of non-bank entrepreneur still remains in the society up to now.

This study is aimed at studying the development of financial business of entrepreneur of non-bank, meaning of interest and related laws, concerning the interest calculation, legal problems and legal enforcement burden on interest calculation including solutions of these issues so as to be a guideline for improvement and development of laws in the future. The author expects that the study will be an interest to be a guideline of improvement and development of Thai laws to efficiently serve the economic situation of the present society and create a justice for consumer to use the services of non-bank entrepreneurs.