

● Powers and Duties of the Constitutional Court

The Constitution of the Kingdom of Thailand B.E. 2550 (2007) provided for the Constitutional Court to have powers and duties in adjudicating and ruling constitutional cases. These powers and duties may be categorized into the following 9 functions:

(1) constitutionality review of bills of law and draft rules of procedure of the legislature prior to promulgation so as to prevent any contrariness or inconsistencies with the Constitution;

(2) constitutionality review of laws already in force so as to prevent any contrariness or inconsistencies with the Constitution;

(3) constitutionality review of the conditions for enacting an Emergency Decree so as to avoid any contrariness or inconsistencies with the Constitution;

(4) to rule on whether or not a member of the House of Representatives, senator or committee member has committed an act which results in a direct or indirect interest in the use of budgetary appropriations;

(5) to rule on disputes of conflicts pertaining to the powers and duties of two or more organs with respect to the National Assembly, Council of Ministers or non-judicial constitutional organs.

(6) to rule on resolutions or regulations of political parties, to consider appeals of members of the House of Representatives and to rule on cases concerning persons or political parties exercising political rights and liberties unconstitutionally;

(7) to rule on the membership or qualifications of members of the National Assembly, Minister and Election Commissioners;

(8) to rule on whether or not a treaty must be approved by the National Assembly;

(9) powers and duties stipulated by the Organic Act on Political Parties B.E. 2550 (2007).

Details on the powers and duties of the Constitutional Court with respect to all nine functions are detailed below.

1. Constitutionality review of bills of law and draft rules of procedure of the legislature prior to promulgation so as to prevent any contrariness or inconsistencies with the Constitution.

1.1 Constitutionality review of Organic Bills (Constitution B.E. 2550 (2007), section 141)

An Organic Act under the Constitution of the Kingdom of Thailand B.E. 2550 (2007) holds a different status from general Acts. In other words, before an Organic Bill is presented to the King for royal assent, the Constitution provided for a constitutional review of the Organic Bill by the Constitutional Court.

There are 9 Organic Acts under the Constitution of the Kingdom of Thailand B.E. 2550 (2007), as follows:

- (1) Organic Act on Election of Members of the House of Representatives and Obtaining Senators;
- (2) Organic Act on Election Commission;
- (3) Organic Act on Political Parties;
- (4) Organic Act on Referendums;
- (5) Organic Act on Constitutional Court Procedures;
- (6) Organic Act on Criminal Procedures for Holders of Political Positions;
- (7) Organic Act on Ombudsmen;

(8) Organic Act on Counter Corruption;

(9) Organic Act on State Audit.

1.2 Constitutionality review of a Bill (Constitution B.E. 2550 (2007), section 154).

With regard to any Bill approved by the National Assembly prior to submission by the Prime Minister to the King for royal assent, or any Bill confirmed by the National Assembly and prior to re-submission of the Bill by the Prime Minister to the King for royal assent, if

(1) members of the House of Representatives, senators or members of both Houses of the National Assembly constituting no fewer than one tenth of the existing members of both Houses finds that such Bill contains provisions which are contrary to or inconsistent with this Constitution, or that the enactment process as provided by this Constitution was not properly complied with, an opinion may be submitted to the President of the House of Representatives or President of the Senate or President of the National Assembly, as the case may be, after which the President of the House receiving such opinion shall forward the opinion to the Constitutional Court for decision, and the Prime Minister shall be notified without delay;

(2) the Prime Minister is of the opinion that such Bill contains provisions which are contrary to or inconsistent with this Constitution or the enactment process as provided by this Constitution was not properly complied with, such opinion shall be sent to the Constitutional Court for ruling and the President of the House of Representatives and President of the Senate shall be notified without delay.

If the Constitutional Court rules that such Bill contains provisions which are contrary to or inconsistent with this Constitution, or has not been enacted in accordance with the

provisions of this Constitution, and such provisions constitute an essential substance, the entire bill shall lapse.

If the Constitutional Court rules that such Bill contains provisions which are contrary to or inconsistent with this Constitution, but does not constitute an essential substance, only such contrary or inconsistent provision shall lapse. The Bill shall, however, be able to come into force upon promulgation.

1.3 To review draft rules of procedure of the legislature in order to prevent contrariness or inconsistencies with the Constitution (Constitution B.E. 2550 (2007), section 155)

The Constitutional Court has the jurisdiction to carry out a constitutionality review of draft meeting rules of the House of Representatives, draft meeting rules of the Senate and draft meeting rules of the National Assembly that have already received approval but not yet published in the Government Gazette. The review examines whether those draft rules contain provisions which are contrary to or inconsistent with the Constitution or have not been enacted in accordance with the provisions of the Constitution. Persons having the standing to file such a case are members of the House of Representatives or senators in the number no fewer than one tenth of each respective House, or members of both Houses altogether constituting no fewer than one tenth of both Houses in the case of an application for review of the draft meeting rules of the National Assembly.

1.4 To rule on whether or not the principles of a Bill are the same as or similar to the principles of a Bill which has been withheld (Constitution B.E. 2550 (2007), section 149).

The Constitution has provided a legislative process whereby a Bill shall first be submitted to the House of Representatives for consideration. Once the House of Representatives has given its approval, the Bill would then be

presented to the Senate for approval. At this stage, if the Senate does not concur with the House of Representatives, it shall be deemed that the Senate has withheld the Bill which shall be returned to the House of Representatives. Or if the Senate amends the Bill but the House of Representatives does not agree with the amendments, and a joint committee is subsequently formed but either House does not concur with the Bill considered by the joint committee, in such an event, it shall also be deemed that the Bill has been withheld. During the withholding of such Bill, the House of Representatives may reconsider the Bill only after the lapse of 180 days (except for fiscal Bills which the House of Representatives may consider immediately). Therefore, while such Bill is withheld, section 149 of the Constitution prohibits the Council of Ministers or members of the House of Representatives from submitting a Bill containing the same or similar principle to the withheld Bill.

In the case where the **House of Representatives** or **Senate** finds that a Bill that has been presented or submitted for consideration is a Bill which contains the same or similar principles to a withheld Bill, the **President of the House of Representatives** or **President of the Senate** shall submit such Bill to the Constitutional Court for review. If the Constitutional Court rules that the Bill contains the same or similar principles to a withheld Bill, such Bill shall lapse.

The prohibition against submission of a Bill which has the same or similar principles to a withheld Bill shall apply *mutatis mutandis* to the submission of Organic Bills.

2. Constitutionality review of provisions of promulgated laws.

In the case where an Act has already been promulgated, if it subsequently appears that the provisions of such law contain

substances which are contrary to or inconsistent with the Constitution, the Constitution has provided for controls over laws that have already been approved by the National Assembly in order to prevent contrariness or inconsistencies with the Constitution by providing 4 channels for filing applications with the Constitutional Court for review, as follows:

2.1 To rule whether a provision of law which is to be applied by the court to a case is contrary to or inconsistent with the Constitution (Constitution B.E. 2550 (2007), section 211).

A constitutionality review of provisions of law to be applied by the Court to a case under section 211 of the Constitution must involve a case which had already arisen in the court, whether that may be the Courts of Justice, Administrative Courts or Military Court or any other court, and regardless of the court level which the case is pending trial. If the court finds on its own accord or a party (plaintiff-defendant or applicant-respondent) in the case raises an objection that a provision of law to be applied by the court to the case is contrary to or inconsistent with the Constitution and there has not yet been a decision of the Constitutional Court relating to such provision, a party may file an application in such court requesting for the opinion to be referred to the Constitutional Court for a ruling that such provision of law is contrary to or inconsistent with the Constitution (in this case, the court may proceed with the trial but shall temporarily stay proceedings until the Constitutional Court gives a decision thereon).

The provision of law which is to be referred by the **court** to the Constitutional Court for decision means a law at the level of an Act which has been enacted by an organ exercising legislative powers, or the National Assembly, or a law which has the force of an Act such as an Emergency Decree that has been approved by the National Assembly.

2.2 Constitutional review of provisions of law as submitted by the Ombudsman (Constitution B.E. 2550 (2007) section 245).

The controls against contrariness or inconsistencies with the Constitution exercised by the Ombudsman as the applicant to the Constitutional Court for ruling under section 245 of the Constitution does not necessarily involve an existing case in the court as in the case of 2.1. The submission of a matter by the Ombudsman to the Constitutional Court for ruling is, in principle, a case involving a prior complaint that has been filed with the Ombudsman. The exception is where the Ombudsman finds that a provision of law has a detrimental effect on the people generally, or in order to protect public interests, in which case the Ombudsman may consider and refer the matter to the Constitutional Court without any complaints filed.

The provisions of law which the Ombudsman may refer to the Constitutional Court for review have the same meaning as provisions of law under 2.1. In other words, the provisions of law subject to review consist of Acts enacted by an organ exercising legislative powers or the National Assembly, or a law which has the force of an Act such as an Emergency Decree that has been approved by the National Assembly.

2.3 Constitutional review of provisions of law as submitted by the National Human Rights Commission (Constitution B.E. 2550 (2007), section 257).

The National Human Rights Commission has the power and duty to submit a matter together with an opinion to the Constitutional Court where it concurs with a complainant that a provision of law affects human rights and contains problems on constitutionality. The Constitution of the Kingdom of Thailand B.E. 2550 (2007) is the first Constitution which provided for the National Human Rights Commission to have such power and duty to submit a matter

together with an opinion to the Constitutional Court, as provided by the Organic Act on Constitutional Court Procedures.

As for the provisions of law which the National Human Rights Commission may submit to the Constitutional Court, the same considerations already mentioned in 2.1 and 2.2 applies. In other words, the provisions of law subject to review consist of Acts enacted by an organ exercising legislative powers or the National Assembly, or a law which has the force of an Act such as an Emergency Decree that has been approved by the National Assembly.

2.4 To consider applications of persons whose rights and liberties have been violated in order to pass a ruling on whether or not a provision of law is contrary to or inconsistent with the Constitution (Constitution B.E. 2550 (2007), section 212).

The Constitution of the Kingdom of Thailand B.E. 2550 (2007) is the first Constitution which provided that a person whose rights and liberties recognized by this Constitution has been violated shall have the right to file an application with the Constitutional Court for a ruling of the Constitutional Court on whether such provision of law is contrary to or inconsistent with the Constitution. However, the case has to be one where all means for exercising such rights have been exhausted. Details on the rules and procedures for filing an application are provided in the Organic Act on Constitutional Court Procedures.

During the period when the Organic Act on Constitutional Court Procedures has not yet been enacted, the Constitution contains a transitory provision which enables the Constitutional Court to issue rules on procedures and ruling. In any case, the Organic Act on Constitutional Court Procedures has to be enacted within one year of 24th August B.E. 2550 (2007), being the promulgation date of the Constitution B.E. 2550 (2007).

At present, the Constitutional Court has issued “Rules” which are already in force. Clause 21 and clause 22 state that:

“Clause 21. A person whose right or liberty as recognized by the Constitution has been violated has the right to submit an application to the Court for a ruling that a provision of law is contrary to or inconsistent with the Constitution.

The exercise of right under paragraph one must be a case which the exercise of rights by other means have been exhausted pursuant to section 211, section 245(1) and section 257 paragraph one subparagraph (2) of the Constitution.

Clause 22. A person who submits an application under clause 21, apart from having to proceed under clause 18, shall also specify the causes for exhaustion of other means for exercising rights.”

The exercise of personal right to file an application with the Constitutional Court must be a case where other means for exercising rights has been exhausted. In other words, if a person is able to exercise rights through the courts under 2.1 or is able to exercise rights by filing a complaint with the Ombudsman under 2.2, or is able to exercise rights by filing a complaint with the National Human Rights Commission under 2.3, such person must exercise the rights through those channels. It is only where one is not able to exercise rights through any of those channels that a right to file an application with the Constitutional Court arises.

3. Constitutional review of the conditions for enacting an Emergency Decree (Constitution B.E. 2550 (2007), section 184)

The Constitution has laid down conditions for enacting an Emergency Decree which shall have the force of an Act, as follows:

3.1 the enactment is made in the interest of maintaining national security, public security, economic stability or the prevention of a public calamity;

3.2 the enactment of an Emergency Decree under 3.1 may only be made when the Council of Ministers is of the opinion that there is an urgent necessity which cannot be avoided.

When an Emergency Decree has come into force, the Council of Ministers must present the Emergency Decree to the National Assembly, and the latter shall thereafter approve or disapprove such Emergency Decree. During the period when the House of Representatives or Senate has not yet approved the Emergency Decree, members of the House of Representatives or senators numbering no fewer than one-fifth of the existing members of the respective House shall have the right to enter their signatures to present an opinion to the President of the respective House, stating that the Emergency Decree has not satisfied the conditions under 3.1 and 3.2. In such a case, the President of the House who receive such opinion shall then refer the opinion to the Constitutional Court for ruling.

4. To rule on whether or not a member of the House of Representatives, senator or committee member has committed an act in order to obtain a direct or indirect interest in the use of budgetary appropriations (Constitution B.E. 2550 (2007), section 168).

The Constitution has provided measures for controls over the process of enacting the annual appropriations bill, supplemental appropriations bill and transfer of appropriations bill. These measures monitor the proposal, debate or any act which may result in a member of the House of Representatives, senator or committee member obtaining a direct or indirect interest in the expenditure budget. Members of the House of Representatives or senators numbering no fewer than one-tenth of the existing members of the respective House shall have the right to submit an opinion to the Constitutional Court for decision, and if the Constitutional Court decides that a member of the House of Representatives, senator or committee member has a direct or indirect interest in the expenditure budget, such proposal, debate or act shall be voided.

5. To rule on disputes of conflicts pertaining to the respective powers and duties of two or more organs with respect to the National Assembly, Council of Ministers or non-judicial constitutional organs (Constitution B.E. 2550 (2007), section 214).

The Constitution of the Kingdom of Thailand B.E. 2550 (2007) provides for 2 types of “constitutional organs”, as follows:

5.1 Independent Constitutional Organs. There are four of these organs, namely the Election Commission, Ombudsmen, National Counter Corruption Commission and the State Audit Commission.

5.2 Other Constitutional Organs. There are three of these organs, namely the State Attorney, National Human Rights Commission and National Economic and Social Council.

A dispute on the conflicts of powers and duties which may be submitted to the Constitutional Court for ruling must be a dispute on conflicts concerning the respective powers and duties of the

National Assembly, Council of Ministers or constitutional organ, and must be a conflict between at least two organs. Questions on the powers and duties of a single organ with respect to its ability to take a certain action will not be admitted for consideration.

6. To review resolutions or rules of political parties, to consider appeals of members of the House of Representatives and to rule on cases concerning the unconstitutional exercise of political rights and liberties by a person or political party.

6.1 Determining whether a resolution or rule of a political party is inconsistent with the status and performance of functions of a member of the House of Representatives under the Constitution, or contrary to or inconsistent with the fundamental principles of a democratic form of government with the King as Head of State (Constitution B.E. 2550 (2007), section 65).

A member of the House of Representatives, executive committee member of a political party or member of a political party has the right to submit a case to the Constitutional Court for a ruling on whether or not a resolution or rule of a political party is inconsistent with the status or performance of functions of a member of the House of Representatives under the Constitution. This right provides a protection for members of the House of Representatives who are affiliated with political parties so as to enable them to perform their functions as representatives of the Thai people for the common interest of the Thai people above the interests of the political party. On the other hand, a ruling on whether or not a resolution or rule of a political party is contrary to or inconsistent with the fundamental principles of the democratic form of government with the King as head of state provides

protection for members of a political party and the common interest of the people. Political parties are important institutions in the democratic form of government. Thus, activities undertaken by a political party or the prescription of political party rules should not be contrary to or inconsistent with the fundamental principle of the democratic form of government with the King as head of state.

6.2 Considering an appeal of a member of the House of Representatives whose membership of a political party has been terminated by resolution of the political party (Constitution B.E. 2550 (2007), section 106 (7)).

A member of the House of Representatives whose political party membership has been terminated by resolution of the political party (also resulting in termination of membership of the House of Representatives) has the right to appeal to the Constitutional Court. An objection may be submitted that such political party resolution is inconsistent with the status and performance of functions of a member of the House of Representatives under this Constitution, or contrary to or inconsistent with the fundamental principles of the democratic form of government with the King as head of state. This measure provides protection for the member of the House of Representatives in the discharge of functions as a representative of the Thai people.

6.3 Determining whether a person or political party has unconstitutionally exercised political rights or liberties (Constitution B.E. 2550 (2007), section 68 and section 237).

A person who is aware that any person or political party has committed an act to overthrow the democratic form of government with the King as head of state under the Constitution, or committed an act in order to acquire the power to govern the country by means which are not in accordance with those provided in the Constitution, has the right to submit the matter to the Attorney-General for an inquiry into the facts and submission of an

application to the Constitutional Court for an injunctive ruling to terminate such act or a dissolution order against such political party.

Moreover, section 237 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) provides a measure for the preservation of the democratic form of government with the King as head of state by determining the Constitutional Court with the power to revoke the election rights of election candidates, as well as the political party leader and political party executive committee members who had connived with and allowed any action against an election candidate who infringed the Organic Act on Election of Members of the House of Representatives and Obtaining Senators, or rules or notifications of the Election Commission. In such an event, the person or political party concerned shall be deemed as having acquired the power to govern the country by means which are not in accordance with those provided in the Constitution.

7. Ruling on the membership or qualifications of a member of the National Assembly, Minister and Election Commissioner.

7.1 Ruling on the membership of a member of the House of Representatives or senator (Constitution B.E. 2550 (2007), section 91).

The Constitution of the Kingdom of Thailand B.E. 2550 (2007) provided for the following causes for termination of **membership of the House of Representatives:**

(1) resignation (Constitution B.E. 2550 (2007), section 106(3);

(2) lacking a qualification for eligibility to become a candidate in an election of members of the House of Representatives (Constitution B.E. 2550 (2007), section 101);

(3) being under a prohibition from exercising the right to be a candidate in an election of members of the House of Representatives (Constitution B.E. 2550 (2007), section 102);

(4) commission of an act which constitutes a conflict of interests (Constitution B.E. 2550 (2007), section 265 or section 266);

(5) resignation from membership of a political party or the political party of one's affiliation passes a resolution by the votes of no fewer than three-fourths of a joint meeting of the political party executive committee and members of the House of Representatives affiliated to such political party to terminate the membership of a member; in such cases, it shall be deemed that membership has terminated as from the date of resignation or party resolution, except where the member of the House of Representatives filed an appeal with the Constitutional Court within thirty days as from the date of party resolution objecting that such resolution is inconsistent with the status and performance of functions of a member of the House of Representatives under this Constitution; if the Constitutional Court rules that such resolution does not have the characteristics stated in the appeal, it shall be deemed that membership terminated as from the date of Constitutional Court ruling; however, if the Constitutional Court rules that such resolution has the characteristics stated in the appeal, the member of the House of Representatives may become a member of another political party within thirty days as from the date of Constitutional Court ruling (Constitution B.E. 2550 (2007), section 106(7));

(6) loss of membership of a political party in the event that the Constitutional Court issues an order dissolving the political party which such member of the House of Representatives was a member and the member is not able to become a member of another political party within sixty days as from the date of Constitutional Court order; in such a case, membership shall be deemed as

terminated on the day following the completion of sixty days (Constitution B.E. 2550 (2007), section 106(8));

(7) being absent from more than one-fourth of the sitting dates in a session which has a scheduled duration of no fewer than one hundred and twenty days without permission of the President of the House of Representatives (Constitution B.E. 2550 (2007), section 106(10));

(8) being subject to a final sentence of imprisonment, regardless of such sentence being suspended, except a suspended sentence for an offence committed negligently, a minor offence or defamation (Constitution B.E. 2550 (2007), section 106(11)).

The Constitution of the Kingdom of Thailand B.E. 2550 (2007) provides for the following causes for the termination of membership of a **senator**:

(1) resignation (Constitution B.E. 2550 (2007), section 119(3));

(2) lacking a qualification or being under a prohibition for eligibility to become an election candidate or nomination for selection as a senator (Constitution B.E. 2550 (2007), section 115);

(3) being a Minister, holder of other political positions, or holder of a position in an independent constitutional organ, or committing an act which constitutes a conflict of interest (Constitution B.E. 2550 (2007), section 116 or section 265 or section 266);

(4) being absent from more than one-fourths of the sitting dates in a session which has a scheduled duration of no fewer than one hundred and twenty days without permission of the President of the Senate (Constitution B.E. 2550 (2007), section 119(7));

(5) being subject to a final sentence of imprisonment, regardless of such sentence being suspended, except a suspended

sentence for an offence committed negligently, a minor offence or defamation (Constitution B.E. 2550 (2007), section 119(8)).

In the above cases, members of the House of Representatives or senators numbering no fewer than one-tenth of the existing members of the respective House shall have the right to file an application with the President of the House and the President of the house who receives such application shall refer the application to the Constitutional Court for a ruling on whether or not membership of such member of the House of Representatives or senator has terminated. Or in the case where the Election Commission finds that membership of a member of the House of Representatives or senator has terminated due to such cause, the matter shall be submitted to the President of the respective House of membership and the President of such House shall submit the matter to the Constitutional Court for ruling.

7.2 Ruling on whether or not the office of a Minister has terminated (Constitution B.E. 2550 (2007), section 182).

The office of an individual **Minister** terminates in the following events:

(1) resignation (Constitution B.E. 2550 (2007), section 182(2));

(2) being subject to a sentence of imprisonment, regardless of such judgment not being final or a suspended sentence, except for a case not yet final or a suspended sentence for an offence committed negligently, a minor offence or defamation (Constitution B.E. 2550 (2007), section 182(3));

(3) lacking a qualification or being under a prohibition for holders of a ministerial office (Constitution B.E. 2550 (2007), section 174);

(4) commission of an act which constitutes a conflict

of interests or a prohibited act with respect to being a partner or shareholder or retaining partnership status or shareholding in a partnership or company (Constitution B.E. 2550 (2007), section 267, section 268 or section 269);

(5) the ministerial office of the Prime Minister terminates in the case of the Prime Minister holding office for more than eight consecutive years (Constitution B.E. 2550 (2007), section 171 paragraph four).

Members of the House of Representatives or senators numbering no fewer than one-tenth of the existing members of the respective House have the right to file an application with the President of the House of membership questioning whether the office of a Minister has terminated, and the President of the House receiving the application shall refer the application to the Constitutional Court for ruling. The Election Commission shall also refer a matter to the Constitutional Court for ruling as in 7.1

7.3 Ruling on whether or not an Election Commissioner lacks a qualification or is under a prohibition (Constitution B.E. 2550 (2007), section 233).

Members of the House of Representatives, senators or members of both Houses forming no fewer than one-tenth of the existing members of both Houses have the right to lodge an application with the President of the National Assembly stating that an Election Commissioner lacks a qualification or is under a prohibition or has committed a prohibited act under section 230 of the Constitution. In such an event, the President of the National Assembly shall refer the application to the Constitutional Court within three days as from the receipt date of the application for subsequent ruling by the Constitutional Court.

The following factors constitute a lack of qualification or presence of a prohibition or commission of a prohibited act

which are causes for the retirement from office of an Election Commissioner:

(1) an Election Commissioner must be at least forty years of age (Constitution B.E. 2550 (2007), section 230(1));

(2) an Election Commissioner must have completed education at a level not lower than a bachelor's degree or its equivalent (Constitution B.E. 2550 (2007), section 230(2));

(3) lacking a qualification and having a prohibited quality under section 205 subsections (1), (4), (5) and (6) (Constitution B.E. 2550 (2007), section 230(3));

(4) not being a Constitutional Court Judge, Ombudsmen, National Counter Corruption Commissioner, State Audit Commissioner or National Human Rights Commissioner (Constitution B.E. 2550 (2007), section 230(4));

(5) not being a government official who holds a permanent position or draws a fixed salary (Constitution B.E. 2550 (2007), section 207(1));

(6) not being an officer or employee of a state agency, state enterprise or local administration, or not being a director or advisor of a state enterprise or state agency (Constitution B.E. 2550 (2007), section 207(2));

(7) not holding a position in a partnership, company or profit-seeking or profit-sharing business organization, or being an employee of any person (Constitution B.E. 2550 (2007), section 207(3));

(8) not engaging in any other independent profession (Constitution B.E. 2550 (2007), section 207(4)).

8. Ruling on whether a treaty requires prior approval of the National Assembly

The Constitution of the Kingdom of Thailand B.E. 2550 (2007) is the first Constitution which provides the Constitutional Court with jurisdiction to rule on questions of whether or not a treaty concluded by the executive with other nations or with an international organization requires the prior approval of the National Assembly. The relevant provisions are stated in section 190 paragraph two of the Constitution. Treaties govern by such provisions are:

- 1) treaties which alter Thai territorial boundaries;
- 2) treaties which alter extra-territorial boundaries subject to Thailand's sovereign rights exercised under treaties or international laws;
- 3) treaties which require the enactment of implementing legislation;
- 4) treaties which have a wide scale impact on national economic and social security;
- 5) treaties which imposes a significant obligation on the country's trade, investment or budget.

Where members of the House of Representatives, senators or members of both Houses forming no fewer than one-tenth of the existing members of both Houses are of the opinion that a treaty requires a prior approval of the National Assembly, a submission shall be made to the President of the House of Representatives, President of the Senate or President of the National Assembly, as the case may be. The President of the House receiving such opinion shall refer the opinion to the Constitutional Court for a ruling on whether the treaty requires approval of the National Assembly

under section 190 paragraph six of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

9. Powers and duties under the Organic Act on Political Parties B.E. 2550 (2007).

The powers and duties of the Constitutional Court under the Organic Act on Political Parties B.E. 2550 (2007) consist of 8 functions, as follows:

9.1 Ruling on an order of the Political Party Registrar which denies the registration of a political party (Organic Act on Political Parties B.E. 2550 (2007), section 13 or section 14).

An applicant for registration of a political party who disagrees with an order of the Political Party Registrar denying the registration of a political party may file an application to object the order of the Political Party Registrar with the Constitutional Court within thirty days as from the receipt date of the letter giving notice of such order.

9.2 Ruling on an order of the Political Party Registrar which denies the registration of changes to a political party's policies, rules of the political party, name change, occupation, address and signatures of political party executive committee members as registered with the Political Party Registrar, or detail changes in the notice of establishment of political party branches (Organic Act on Political Parties B.E. 2550 (2007), section 41).

A political party leader who does not agree with an order of the Political Party Registrar which denies the registration of changes in the following 3 cases may file an objection against the order of the Political Party Registrar with the Constitutional Court within thirty days as from the receipt date of the letter giving notice

of such order which denied the registration. The first case involves changes in the political party's policies or political party rules. The second case involves a change in the names, occupations, addresses and signatures of political party executive committee members as registered with the Registrar. Finally, the third case involves a change in the details stated in the letter giving notice of establishment of political party branches.

9.3 Determining whether a resolution or rule of a political party is inconsistent with the status or performance of functions of a member of the House of Representatives or contrary to or inconsistent with the fundamental principles of democratic government with the King as head of state (Organic Act on Political Parties B.E. 2550 (2007), section 33).

Members of a political party who are also members of the House of Representatives numbering no fewer than one-fourth of the members who are members of the House of Representatives, political party executives numbering no fewer than one-third of the number of political party executives, or members of a political party numbering no fewer than one hundred persons who are of the opinion that a resolution or rule on any matter of their political party of membership is inconsistent with the status and performance of functions of a member of the House of Representatives, or contrary to or inconsistent with the fundamental principles of the democratic form of government with the King as head of state, have the right to file an application with the Constitutional Court for a ruling.

In addition, a resolution or rule of a political party determined under section 33 of the Organic Act on Political Parties B.E. 2550 (2007) as a resolution or rule which is contrary to or inconsistent with the fundamental principles of the democratic form of government may also include provisions of political party rules governing disciplinary or ethical proceedings that fail to give the alleged person due notice of the allegations and an appropriate opportunity to reply to the allegations, or political party rules which

provide for proceedings to expel a member who is a member of the House of Representatives from membership of the political party for voting or failing to vote in a resolution of the House of Representatives or a joint sitting of the National Assembly, or in any other cases as prescribed by the Election Commission.

The powers and duties of the Constitutional Court in ruling on a resolution or rule of a political party which is inconsistent with the status and performance of duties of a member of the House of Representatives or contrary to or inconsistent with the fundamental principle of the democratic form of government with the King as head of state under section 33 of the Organic Act on Political Parties B.E. 2550 (2007) is an elaboration of the powers and duties of the Constitutional Court under section 65 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) already stated in 6.1 above.

9.4 Ruling on the membership of a political party member who holds office as a member of the House of Representatives (Organic Act on Political Parties B.E. 2550 (2007), section 20(4)).

Termination of membership of a political party member who holds office as a member of the House of Representatives may be a result of the political party of membership passing a resolution expelling the member pursuant to political party rules for the commission of a serious disciplinary or ethical offence, or for other serious causes under section 20(4) of the Organic Act on Political Parties B.E. 2550 (2007). In such an event, the expelled member has the right to appeal to the Constitutional Court within thirty days as from the date of political party resolution in order to object that such resolution is inconsistent with the status and performance of duties of a member of the House of Representatives under the Constitution, or contrary to or inconsistent with the fundamental principle of the democratic form of government with the King as head of state. The appeal shall be in accordance with the Organic

Act on Constitutional Court Procedures.

The jurisdiction of the Constitutional Court in ruling on the membership of a political party member who holds office as a member of the House of Representatives under section 20 of the Organic Act on Political Parties B.E. 2550 (2007) is an elaboration of the Constitutional Court's jurisdiction under section 106(7) of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), as already stated in 6.2 above.

9.5 Ruling that a political party leader, political party executive committee or political party executive should cease or remedy any act which constitutes a violation of political party policies or political party rules, or that a political party leader or some or all political party executives should retire from office (Organic Act on Political Parties B.E. 2550 (2007), section 31).

When it appears that a political party leader, political party executive committee or political party executive has provided for the political party to commit any act which is in violation of the political party policy or political party rules under section 31 of the Organic Act on Political Parties B.E. 2550 (2007), the Registrar shall have the power to issue a written warning to the political party leader, political party executive committee or political party executive to cease or remedy the act within the period determined by the Registrar.

If the political party leader, political party executive committee or political party executive fails to comply with the Registrar's warning, the Registrar, with the approval of the Election Commission, has the power to file an application to the Constitutional Court for an injunction to cease or remedy, or for the political party leader or some or all political party executives to retire from office. In the event that the Constitutional Court issues an order that the political party leader or some or all political party executives to retire from office, such person will lose the right to

become a political party executive until the expiration of two years as from the date of Constitutional Court order.

9.6 Ruling on the termination of political party status (Organic Act on Political Parties B.E. 2550 (2007), section 91).

A political party's status terminates upon the following causes:

(1) Within one year as from the date of political party registration by the Registrar, the political party fails to admit no fewer than five thousand members, which must consist at least of members residing in each region pursuant to the list of regions and provinces prescribed by the Registrar, and with at least one political party branch in each region.

(2) The political party fails to nominate candidates in two consecutive elections of members of the House of Representatives, or for eight consecutive years, whichever is the longer.

(3) The political party has fewer than five thousand members for a consecutive period of one year.

(4) The political party does not hold a general meeting or does not carry out any political activities for a consecutive period of one year without reasonable cause allowable by law.

When it appears to the Registrar or when an applicant files a complaint to the Registrar claiming the existence of such cause, the Registrar shall carry out a factual investigation. If it is found that such cause has occurred to a political party, the Registrar, with the approval of the Election Commission, shall publish a notice in the Government Gazette declaring the termination of such political party's status.

In the case where the leader of the political party whose status has been declared as terminated finds that the Registrar's

notice was not made pursuant to a cause for termination of political party status under section 91 of the Organic Act on Political Parties B.E. 2550 (2007), the leader or executive of such political party may file an application with the Constitutional Court for an order to revoke such notice, in accordance with the rules and procedures prescribed by the Organic Act on Constitutional Court Procedures.

The provisions of section 91 do not apply to a political party having a member who is also a member of the House of Representatives.

9.7 Ruling on the dissolution of a political party (Organic Act on Political Parties B.E. 2550 (2007), section 93 or section 94).

Dissolution rulings of political parties under the Organic Act on Political Parties B.E. 2550 (2007) may be divided into two cases. The first deals with political party administration under section 93. The second deals with acts of a political party which has an impact on the government or security of the State under section 94.

Causes for the dissolution of a political party which require an application filed with the Constitutional Court for a political party dissolution ruling, in the case of political party administration under section 93, may fall under one of the following categories. The first category consists of political parties under a cause for dissolution pursuant to the political party rules, but such political party still has members of the House of Representatives. The second category involves cases where a political party failed to prepare an operational report of the political party's activities in the proceeding year which must be filed with the Registrar (section 42 paragraph two). The third category involves cases where a political party fails to prepare a true and accurate expenditure report of political party contributions which must be filed with the Election Commission (section 82).

The following events constitute causes for the dissolution of a political party where an application is filed with the Constitutional Court for a political party dissolution ruling due to the political party's act having an impact on national government and security under section 94:

(1) commission of an act to overthrow the democratic form of government with the King as head of state, or to acquire national governing powers by means which are not provided in the Constitution, or the commission of an act which the Constitution deems as an act to acquire powers by such means;

(2) commission of an act which constitutes a violation of the Organic Act on Election of members of the House of Representatives and Obtaining Senators, or regulations or notifications of the Election Commission, which results in an election that has not been carried out in a fair and just manner;

(3) commission of an act which may be detrimental to the democratic form of government with the King as head of state under the Constitution;

(4) commission of an act which may pose a threat to national security, whether committed domestically or overseas, or an act which is inconsistent with the law, public order or morals; or

(5) the political party admits a person who does not hold Thai nationality by birth, or a person who holds Thai nationality by naturalization where the Thai nationality was held for less than five years, as a member or holder of any position in the political party, or allows such person to commit an act for the benefit of the political party (section 21); or the political party, political party executive, holder of a position in the political party or political party officer assists or sponsors a candidate in an election of senators or a candidate in the selection of senators, whether directly or indirectly, in order to win the election or selection as a senator (section 43); or the political party and holder of a political position in the political

party accepts monies, properties or other benefits of monetary value with knowledge that such values were obtained unlawfully, or there is reasonable cause to suspect that the source of such value is unlawful (section 65); or the political party and political position holder in the political party accepts a donation from any person for the commission of an act or in aid of an act which impairs the security of the nation, royalty, national economy or national administration, or an act which interferes with or impinges upon public order or good morals of the people, or an act which destroys the country's natural resources (section 66); or the political party receives a donation for the political party's activities from a person, organization or juristic person which is prohibited under the Organic Act on Political Parties B.E. 2550 (2007) or under a notification of the Election Commission (section 69); or the political party or any person connives, conspires or aid and abet a person to carry out an act in order that other persons or the Election Commission believe or understand that another political party or person has committed an offence under the Organic Act on Political Parties B.E. 2550 (2007) without any truthful grounds (section 104).

When it is apparent to the Registrar, or when the Registrar receives notice from a political party executive committee and has carried out an investigation and finds that a political party has committed an act under section 94, the Registrar, with the approval of the Election Commission, shall notify the Attorney-General along with evidence. Upon receipt of such notice, the Attorney-General shall complete consideration of the matter within thirty days as from the date of notice receipt. If the Attorney-General considers it appropriate, an application shall be filed with the Constitutional Court for a dissolution order against such political party. If the Attorney-General does not file an application with the Constitutional Court, the Registrar shall appoint a working group comprising representatives of the Registrar and the representatives of the Office of the Attorney-General to compile evidence to be submitted to the Attorney-General for subsequent filing of an

application with the Constitutional Court. In the event that such working group fails to reach a resolution on the application filing proceedings within thirty days as from the date of appointment of the working group, the Registrar, with the approval of the Election Commission shall have the power to file an application.

If the Registrar finds it appropriate to suspend the operations of a political party that has committed an act under section 94, the Registrar, with the approval of the Election Commission, shall notify the Attorney-General who shall file a motion with the Constitutional Court for an interlocutory injunction before the Constitutional Court issues a dissolution order against such political party pursuant to section 95 of the Organic Act on Political Parties B.E. 2550 (2007).

9.8 Ruling on the revocation of election rights of a political party leader and political party executive (Organic Act on Political Parties B.E. 2550 (2007), section 98).

The Constitutional Court has the power to order the dissolution of a political party for a cause arising from an infringement of regulations on the expenditure of political party contributions (section 82), or for a cause for dissolution of a political party by the Constitutional Court (section 94). Also, where there is evidence showing reasonable cause to believe that a political party leader or political party executive participated, connived or disregarded or had knowledge of such act but failed to restrain or remedy the act, the Constitutional Court has the power to order the revocation of election rights of such political party leader and political party executives for a period of five years as from the date of political party dissolution order.

10. Powers and duties of introducing draft laws to the National Assembly

The powers and duties of the Constitutional Court in the introduction of draft laws to the National Assembly are powers and duties which are not related to the consideration and ruling of cases. The Constitution of the Kingdom of Thailand B.E. 2550 (2007) is the first Constitution which provides for the Constitutional Court, Supreme Court or independent constitutional organs to have powers and duties in the introduction of organic bills, organic bills on the establishment of organs and bills under the charge and control of the President of Courts and chairpersons of organs. These provisions are found in section 139(3) and section 142(3) of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

11. Powers and duties of the President of the Constitutional Court pursuant to provisions of law.

Section 9 of the Office of the Constitutional Court Act B.E. 2542 (1999) provides that there shall be a Secretary-General of the Office of the Constitutional Court in the Office of the Constitutional Court responsible for the operations of the Office of the Constitutional Court. The Secretary-General of the Office of the Constitutional Court reports directly to the President of the Constitutional Court and exercises the functions of the superior official of officials and employees of the Office of the Constitutional Court. The Office of the Constitutional Court may also have no more than two Deputy Secretary-Generals to assist the Secretary-General in exercising charge and control of the Office of the Constitutional Court.

Section 10(1) of the Office of the Constitutional Court Act B.E. 2542 (1999) provides for the recruitment and appointment of a

person to the position of Secretary - General of the Office of the Constitutional Court and Deputy Secretary-Generals of the Office of the Constitutional Court by stating that the President of the Constitutional Court, with the approval of the meeting of Constitutional Court Judges, shall have the power to issue a recruitment order. Section 16 provides that the President of the Constitutional Court has charge and control over the execution of this Act.