

Summary of the Constitutional Court Ruling No. 3/2542

Dated 30th March B.E. 2542 (1999)*

Re : The President of the House of Representatives referred the opinion of members of the House of Representatives that the Bankruptcy Bill (No. ...), B.E. was enacted contrary to the provision of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) to the Constitutional Court for a ruling.

.....

1. Background and summarized facts

The President of the House of Representatives referred the opinion of 112 members of the House of Representatives that the Bankruptcy Bill (No. ...), B.E., which was approved by the National Assembly, was enacted contrary to the provision of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) to the Constitutional Court for a ruling under section 262 paragraph one subparagraph (1) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The facts as appeared in the documents submitted by the President of the House of Representatives were as follows. The House of Representatives passed the resolution approving the Bankruptcy Bill (No. ...), B.E. and then submitted to the Senate for consideration under the Constitution. After consideration, the Senate resolved to amend the Bill and returned it to the House of Representatives under section 175 paragraph one subparagraph (3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The House of Representatives, in its sittings, passed the resolution approving the amendment by the Senate. However, a group of members of the House of Representatives was of the opinion that the Bankruptcy Bill (No. ...), B.E. was not freely initiated by Mr. Chuan Leekpai's Government. Rather, the Bill was introduced according to obligations which the Government entered into in the negotiation with a foreign country as appeared in the letter submitted by Mr. Chuan Leekpai, the Prime Minister, to the President of the House of Representatives. The introduction of the Bill was consistent with and in compliance with the Fourth Letter of Intent dated 26th May B.E. 2541 (1998) and the Fifth Letter of Intent dated 25th August B.E. 2541 (1998) which were submitted by the Thai Government through Ministry of Finance and Governor of the Bank of Thailand to the International Monetary Fund (IMF) for approval. Under those Letters of Intent, the Thai Government had to enact an Act amending the bankruptcy law. The letters specified further what part of substances in the bankruptcy law should be amended and what date the amendment bill should be approved by the National Assembly. In addition, in the case where the Thai Government failed to comply with the obligations under those letters, the approval from the IMF for any assistance and condition set forth in next Letters of Intent would be affected. Accordingly,

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the enactment of the Bankruptcy Bill (No. ...), B.E. had to be in compliance with section 224 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), which it was not a normal voluntary operation in public administration. When it occurred that the Council of Ministers failed to submit the agreement with the IMF, especially the agreement under the Fourth and the Fifth Letters of Intent, to the National Assembly for approval before introducing the Bankruptcy Bill (No. ...), B.E., the enactment of such Bill was therefore contrary to the provision of the Constitution.

2. The issues considered by the Constitutional Court

The issue to be considered was whether the Bankruptcy Bill (No. ...), B.E. was enacted contrary to the provision of the Constitution.

The Constitutional Court held that the enactment of an Act was under Chapter 6: the National Assembly of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). According to the report of the Senate Re: The consideration of the Bankruptcy Bill (No. ...), B.E., the sitting of the Senate considered and resolved approval of the principle of the Bankruptcy Bill (No. ...), B.E. and then appointed an ad hoc committee to consider it in details. After finishing the consideration of the Bill by the ad hoc committee, the Bill was submitted to the Senate for reconsideration. The Senate considered and resolved the amendment of certain sections of the Bill and returned it to the House of Representatives on the same day. The President of the House of Representatives submitted a letter to the President of the Senate notifying that the sitting of the House of Representatives approved the amendment of the Senate. Therefore, it was deemed that the Bankruptcy Bill (No. ...), B.E. was approved by the National Assembly under section 175 paragraph one subparagraph (3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) which provided that further proceedings under section 93 had to be taken. The enactment of the Bankruptcy Bill (No. ...), B.E. was therefore in compliance with the proceedings of enacting an Act by the National Assembly under the provisions of the Constitution. As for section 224 paragraph two which provided that “A treaty which provides for a change in the Thai territories or the jurisdiction of the State or requires the enactment of an Act for its implementation must be approved by the National Assembly,” the Constitutional Court held that if any treaty entered into by the Thai Government with other countries or international organizations required the enactment of an Act for its implementation, the Government had to submit such treaty to the National Assembly for approval. The provision of section 224 was in Chapter 7: the Council of Ministers of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The said provision was the requirement for the Government to enter into any treaty with other countries or international organizations, but it was not the provision of the Constitution applied for the enactment of an Act.

3. Ruling of the Constitutional Court

By reasons stated above, the Constitutional Court dismissed the application.
