

# **Summary of the Constitutional Court Ruling No. 9/2542**

**Dated 13<sup>th</sup> May B.E. 2542 (1999)\***

**Re : Lom Sak Provincial Court referred the objection of the defendants (Lom Sak Mueang Mai Company Limited and company) to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).**

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## **1. Background and summarized facts**

The facts, as stated in the application, were that Siam Commercial Bank Public Limited Company, as plaintiff in Civil Case No. 421/2541, filed claims against Lom Sak Mueang Mai Company Limited, the first defendant, and three other defendants for breaches of loans, overdrafts, avals, guarantees and enforcement of mortgage. The plaintiff sought to recover the repayment of debts by the defendants in the amount of Baht 25,425,650.79 together with interest at the annual rate of 19.75 per cent from the principal sum of Baht 21,349,478.86 as from the day following the date of case filing until the complete repayment of all debts.

The defendants (applicants) denied all claims made by the plaintiff, especially the interest calculations of the plaintiff. The applicant was of the opinion that the plaintiff was not entitled to calculate interest at the rate stated in the claims annexed to the writ because under the contract, the interest rate was stipulated as not exceeding 15.5 per cent per annum or the chargeable interest rate which could be lower or higher than the contractual stipulation as occasionally notified by the plaintiff. It was argued that the plaintiff's failure to notify the applicants of the adjustment of interest rate to a rate higher than 15 per cent per annum rendered the adjusted interest rate void. It was also argued that the plaintiff's calculation of interest rate was improper for being inconsistent with section 14 of the Commercial Banking Act, B.E. 2505 (1962), as amended by the Commercial Banking Act (No. 2), B.E. 2522 (1979), section 4 of the Interests on Loans by Financial Institutions Act, B.E. 2523 (1980), as amended by the Interests on Loans by Financial Institutions Act (No. 3), B.E. 2535 (1992) and section 6 and section 30 of the Constitution. The following reasons were given pursuant to such arguments. Section 14 of the Commercial Banking Act, B.E. 2505 (1962), as amended by the Commercial Banking Act (No. 2) B.E. 2522 (1979), empowered the Bank of Thailand, with the approval of the Minister of Finance, to prescribe practice directions for commercial banks in relation to interests and discounts chargeable by commercial banks. Section 4 of the Interests on Loans by Financial Institutions Act,

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B.E. 2523 (1980), as amended by the Interests on Loans by Financial Institutions Act (No. 3), B.E. 2535 (1992), stated that for the benefit of reviving the economic condition of the country, the Minister of Finance, with the advice of the Bank of Thailand, could prescribe the maximum rate of interest chargeable by financial institutions on borrowers at a rate higher than fifteen per cent per annum. It followed that the calculation of interest rates was the exclusive power of the Bank of Thailand with the approval of the Minister of Finance. Nevertheless, article 3(4) of the Notification of the Bank of Thailand, Re: Prescription of Practices for Commercial Banks in Relation to Interests and Discounts, dated 20<sup>th</sup> October B.E. 2536 (1993), stated that "...with the exception of cases where the customer breached a condition, a commercial bank may charge an interest or discount at a rate which does not exceed the maximum rate of interest prescribed by the commercial bank for customers who are in breach." Therefore, such a Notification issued by the Bank of Thailand was an unlawful Notification in violation of the two Acts mentioned earlier. This was a problem which had not yet been ruled by the Constitutional Court. The applicants therefore requested that the Lom Sak Provincial Court imposed a temporary stay on its trial and adjudication of the case and referred the applicants' objection to the Constitutional Court for a ruling under section 264 of the Constitution.

## **2. The issue considered by the Constitutional Court**

1. The first issue considered was whether or not the Notification of the Bank of Thailand, Re: Prescription of Practices for Commercial Banks in Relation to Interests and Discounts, dated 20<sup>th</sup> October B.E. 2536 (1993), was issued in violation of section 14 of the Commercial Banking Act, B.E. 2505 (1962), as amended by the Commercial Banking Act (No. 2), B.E. 2522 (1979), and section 4 of the Interests on Loans by Financial Institutions Act, B.E. 2523 (1980), as amended by the Interests on Loans by Financial Institutions Act (No. 3), B.E. 2535 (1992).

2. The second issue considered was whether or not such a Notification issued by the Bank of Thailand was contrary to or inconsistent with section 6 and section 30 of the Constitution.

On the first issue, the Commercial Banking Acts and the Interests on Loans by Financial Institution Acts were laws enacted via the legislative process by the exercise of legislative powers; hence, they were provisions of law within the meaning of section 264 of the Constitution. However, the Constitution did not provide for the Constitutional Court to have the power to rule on whether or not a Notification issued by virtue of the powers provided by law was inconsistent with or violated the provisions of such a law. Therefore, the applicants' request for the Constitutional Court to rule on whether or not the Notification of the Bank of Thailand, Re: Prescription of Practices for Commercial Banks in Relation to Interests and Discounts, dated 20<sup>th</sup> October B.E. 2536 (1993), issued by virtue of the Commercial Banking Act, B.E. 2505 (1962), as amended by the Commercial Banking Act (No. 2), B.E. 2522 (1979), was a Notification which violated the Commercial Banking Acts

and the Interests on Loans by Financial Institutions Acts was outside the Constitutional Court's adjudicative jurisdiction.

As for the second issue where the applicants requested for the Constitutional Court to rule on whether or not the Notification of the Bank of Thailand, Re: Prescription of Practices for Commercial Banks in Relation to Interests and Discounts, dated 20<sup>th</sup> October B.E. 2536 (1993), was inconsistent with section 6 and section 30 of the Constitution, the Constitutional Court had already made a ruling on such an issue in Ruling No. 4/2542, dated 1<sup>st</sup> April B.E. 2542 (1999) that such a Notification was issued by virtue of a primary legislation and had a scope of application limited to the scope of powers conferred upon it by such primary legislation. Such a Notification was not issued by an organ which exercised legislative powers. The Notification was therefore not a provision of law within the definition in section 264 of the Constitution. As a result, such a Notification was not within the Constitutional Court's adjudicative jurisdiction.

### **3. Ruling of the Constitutional Court**

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

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