

# Summary of the Constitutional Court Ruling No. 10/2542

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

**Re : The Civil Court referred the objections of the defendants (River Group Company Limited and others) 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 according to the application stated that Sitka Securities Public Limited Company, as plaintiff in Civil Case No. 14789/2540, filed claims against River Group Company Limited, as first defendant, and others, as defendants in a case on breaches of loans, guarantees and liabilities under pawn agreements. The plaintiff sought for the repayment of debts by the four defendants, either jointly or severally, in the amount of Baht 33,616,437.44 together with interest at the rate of 25 per cent per annum on the principal sum of Baht 30,000,000 as from the day following the date of case filing until the final repayment of all debts.

The applicants (defendants) denied all of the plaintiff's claims, especially the calculation of interest rate at 25 per cent per annum as stated in the plaintiff's interest rates notification. The applicants argued that the rate was inconsistent with section 654 of the Civil and Commercial Code, which capped interest rates at 15 per cent per annum, and was also inconsistent with the Prohibition of Usury Act, B.E. 2475 (1932), which prohibited a person from overcharging interests where a violation would result in imprisonment. It was submitted that any notification or regulation inconsistent with both laws would be rendered void for being inconsistent with public order and good morals of the people and inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Hence, all the interests charged by the plaintiff on the applicants should be completely void.

The applicant had submitted an application to the Civil Court requesting for a temporary stay of the trial and adjudication of the case and a reference of an opinion to the Constitutional Court for a ruling on whether or not the Notification of the Ministry of Finance, Re: Interest Rates Chargeable by Financial Institutions on Borrowers, B.E. 2535 (1992), dated 11<sup>th</sup> May B.E. 2535 (1992); 4 Notifications of the Bank of Thailand, viz (1) Re: Interests or Discounts Payable or Chargeable by Finance Companies, dated 19<sup>th</sup> April B.E. 2538 (1995), (2) Re: Prescription of Practice for Finance Companies in Lending to or

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Receiving Monies from the Public and Prescription of Interest Rates or Discounts Payable or Chargeable by Finance Companies, dated 23<sup>rd</sup> November B.E. 2533 (1990), (3) Re: Prescription of Practices for Finance Companies in Lending to or Receiving Monies from the Public and the Prescription of Interest Rates or Discounts Payable or Chargeable by Finance Companies, dated 28<sup>th</sup> May B.E. 2535 (1992) and (4) Re: Prescription of Practices for Finance Companies in Lending to or Receiving Monies from the Public and the Prescription of Interest Rates or Discounts Payable or Chargeable by Finance Companies (No. 2), B.E. 2535 (1992), dated 20<sup>th</sup> November B.E. 2535 (1992); Notification of Sitka Securities Public Limited Company, Re: Interest Rates or Discounts on Loans, dated 13<sup>th</sup> March B.E. 2539 (1996); and 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), in relation to the part on charging interest rates higher than 15 per cent per annum; were inconsistent with section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) for the following reasons. (1) Section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) stated that “all persons are equal before the law and shall enjoy equal protection under the law.” (2) Section 654 of the Civil and Commercial Code stated that “the calculation of interest at a rate which exceeds fifteen per cent per annum is prohibited. If a contract stipulates an interest which exceeds such limit, the rate shall be reduced to 15 per cent per annum.” (3) Section 3 of the Prohibition of Usury Act, B.E. 2475 (1932) stated that “any person who (a) lends money to another person and charges interests more than the rate provided by law... such a person commits the offence of usury and shall be liable to...”. For this reason, any law or Notification issued by virtue of a law which made people receive unequal protections under the law was inconsistent with section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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

(1) The first issue considered was whether or not the Notification of the Ministry of Finance, Re: Interest Rates Chargeable by Financial Institutions on Borrowers, B.E. 2535 (1992), dated 11<sup>th</sup> May B.E. 2535 (1992), and the 4 Notifications of the Bank of Thailand stated above were inconsistent with section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

(2) The second issue considered was whether or not 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), in relation to the part on charging interest rates higher than 15 per cent per annum, was inconsistent with section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held the following opinion:

On the first issue, the Constitutional Court considered the Notification of the Ministry of Finance, Re: Interest Rates Chargeable by Financial Institutions on Borrowers, B.E. 2535 (1992), dated 11<sup>th</sup> May B.E. 2535 (1992), the Notification of the Bank of Thailand, Re:

Interests or Discounts Payable or Chargeable by Finance Companies, dated 19<sup>th</sup> April B.E. 2538 (1995), the Notification of the Bank of Thailand, Re: Prescription of Practice for Finance Companies in Lending to or Receiving Monies from the Public and Prescription of Interest Rates or Discounts Payable or Chargeable by Finance Companies, dated 23<sup>rd</sup> November B.E. 2533 (1990) and the Notification of the Bank of Thailand, Re: Prescription of Practices for Finance Companies in Lending to or Receiving Monies from the Public and the Prescription of Interest Rates or Discounts Payable or Chargeable by Finance Companies (No. 2), B.E. 2535 (1992), dated 20<sup>th</sup> November B.E. 2535 (1992). The 3 Notifications of the Bank of Thailand were issued by the Bank of Thailand, by virtue of section 27, section 30 (1) and section 30 (2) of the Finance, Securities and Credit Foncier Businesses Act, B.E. 2522 (1979) with the approval of the Minister of Finance. This Act and 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), were both Acts which authorised the issue of a Notification of the Ministry of Finance and a Notification of the Bank of Thailand whose application were limited within the scope of powers conferred on it by such Acts. Such Notifications were not issued by an organ which exercised legislative powers and were therefore not provisions of law under the definition in section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Therefore, the applicants' request for the Constitutional Court to rule on whether or not the Notification of the Ministry of Finance and the three Notifications of the Bank of Thailand as stated above were inconsistent with section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) was outside the adjudicative jurisdiction of the Constitutional Court.

As for the Notification of the Bank of Thailand, Re: Prescription of Practices for Finance Companies in Lending to or Receiving Monies from the Public and the Prescription of Interest Rates or Discounts Payable or Chargeable by Finance Companies, dated 28<sup>th</sup> May B.E. 2535 (1992), the Constitutional Court had already made a ruling on such a Notification in Ruling No. 5/2542, dated 22<sup>nd</sup> April B.E. 2542 (1999). As regards the Notification of Sitka Securities Public Limited Company, Re: Interest Rates or Discounts on Loans, dated 13<sup>th</sup> March B.E. 2539 (1996), a comparison could be made with the Notification of Asia Securities Public Limited Company for which the Constitutional Court had made a ruling in the above mentioned case. Therefore, the Constitutional Court did not have to consider these Notifications.

On the second issue of whether or not the Interests on Loans by Financial Institutions Act, B.E. 2523 (1980) in relation to the part on charging interest rates higher than 15 per cent per annum was inconsistent with section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the Constitutional Court had already held in Ruling No. 5/2542, dated 22<sup>nd</sup> April B.E. 2542 (1999), that the Interests on Loans by Financial Institutions Act, B.E. 2523 (1980) in relation to the part on charging interest rates higher than 15 per cent per annum was not inconsistent with section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Therefore, this issue did not have to be reconsidered.

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

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

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