

# Summary of the Constitutional Court Ruling No. 41/2542

Dated 20<sup>th</sup> July B.E. 2542 (1999)\*

**Re : The Bangkok South Civil Court referred the application of the defendant (Vista Land 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

Kasikorn Thai Bank Public Company Limited, as plaintiff, filed a plaint against Vista Land Company Limited (the applicant) as first defendant and Mr. Chatree Boondeejareon as second defendant at the Bangkok South Civil Court in disputes arising out of loan, mortgage and suretyship. Under the plaint, the plaintiff requested the applicant and the second defendant to repay a debt in the amounts of Baht 262,968,664.32 together with interest at the rate of 19 per cent per annum on the principal sum of Baht 200,000,000. The plaintiff fixed the interest rate by virtue of the Commercial Banking Act, B.E. 2505 (1962) which conferred powers on the Bank of Thailand to issue notifications allowing commercial banks to fix their own highest interest rate. The problem was whether such the provision of law was contrary to or inconsistent with section 6 and section 57 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The applicant accordingly requested the Bangkok South Civil Court to temporarily stay the trial and adjudication of the case and submit the matter to the Constitutional Court for ruling.

## 2. The issues considered by the Constitutional Court

Was the Notification of Kasikorn Thai Bank Public Company Limited fixing the highest interest rate issued by virtue of the Notification of the Bank of Thailand, Re: Prescribing commercial bank practices in relation to interest rates and discounts, dated 20<sup>th</sup> October B.E. 2536 (1993) which was in force at the time of entering into the contract pursuant to the application, contrary to or inconsistent with section 57 and section 6 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997)?

The Constitutional Court held the following opinion:

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\* Published in the Government Gazette, Vol. 116, Part 85a, dated 21<sup>st</sup> September B.E. 2542 (1999).

The issue raised by the applicant for the Constitutional Court ruling had been ruled by the Court in its Ruling No.4/2542 dated 1<sup>st</sup> April B.E. 2542 (1999) that the Notification of the Bank of Thailand, Re: Prescribing commercial bank practices in relation to interest rates and discounts, dated 20<sup>th</sup> October B.E. 2536 (1993) was issued by virtue 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 it was applicable within the scope of powers in the primary Act. Such Notification was not issued by an organ exercising legislative power. It was therefore not the provision of law in the meaning of section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). As for the Notification of Kasikorn Thai Bank Public Company Limited, it was an analogy with the Notification of Thai Commercial Bank Public Company Limited which was not the Notification issued by a State authority. It was therefore not a provision of law which the Constitutional Court could consider. Hence, the issue needed not be reconsidered.

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

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

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