

Summary of the Constitutional Court Ruling No. 16/2544

Dated 2nd May B.E. 2544 (2001) *

Re: Are section 67 ter of the Emergency Decree Amending the Finance, Securities and Credit Foncier Business Act, B.E. 2522 (1979) (No. 3), B.E. 2540 (1997), section 67 sex of the Emergency Decree Amending the Finance, Securities and Credit Foncier Business Act, B.E. 2522 (1979) (No. 5), B.E. 2541 (1998) and section 38 ter and section 38 septem of the Emergency Decree Amending the Commercial Banking Act, B.E. 2505 (1962) (No. 4), B.E. 2541 (1998) contrary to or inconsistent with section 35 paragraph two, section 48 and section 50 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) ?

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1. Background and summarized facts

The Bangkok South Civil Court referred the objection of Mr. Thanit Thanatit and company, the defendants, requesting for a Constitutional Court ruling under section 264 of the Constitution. In summary, the applicant was a defendant in Civil Case No. 22354/2538, against whom Krung Thai Thanakij Securities Public Limited Company, as plaintiff, filed claims at the Bangkok South Civil Court for breaches of guarantee contracts and a foreclosure of mortgage. The claim was made to impose on the defendants a joint liability to the debts owed to the plaintiff. Later, Thai Thanakarn Bank Public Limited Company reserved its right to become a party to the case in lieu of the plaintiff by claiming that on 22nd December B.E. 2541 (1998), the Minister of Finance, by the advice of the Bank of Thailand and by virtue of section 67 quarter of the Finance, Securities and Credit Foncier Business Act, B.E. 2522 (1979), as amended by the Emergency Decree Amending the Finance, Securities and Credit Foncier Business Act, B.E. 2522 (1979) (No. 3), B.E. 2540 (1997), and section 38 quarter of the Commercial Banking Act, B.E. 2505 (1962), as amended by the Emergency Decree Amending the Commercial Banking Act, B.E. 2505 (1962) (No. 4), B.E. 2541 (1998), conferred approval to the project on business merger between Sahathanakarn Bank Public Limited Company, Krung Thai Thanakij Public Limited Company and 12 other Finance Companies, pursuant to which Thai Thanakarn Bank Public Limited Company completed the receipt of transfer of business from Krung Thai Thanakij Securities Public Limited Company on 1st February B.E. 2542 (1999). Thai Thanakarn Bank Public Limited

* Published in the Government Gazette, Vol. 119, Part 27a, dated 28th March B.E. 2545 (2002)

Company therefore relied on the powers under section 38 septem of the Emergency Decree Amending the Commercial Banking Act, B.E. 2505 (1962) (No. 4), B.E. 2541 (1998) and section 67 sex of the Emergency Decree Amending the Finance, Securities and Credit Foncier Business Act, B.E. 2522 (1979) (No. 5), B.E. 2541 (1998), in its capacity as the transferee of businesses, to assume the rights as plaintiff in lieu of Krung Thai Thanakij Securities Public Limited Company in the case proceedings. The applicant dissented and requested that the Constitutional Court rule on the following issues:

The first issue was whether or not section 67 ter of the Emergency Decree Amending the Finance, Securities and Credit Foncier Business Act, B.E. 2522 (1979) (No. 3), B.E. 2540 (1997) and section 38 ter of the Emergency Decree Amending the Commercial Banking Act, B.E. 2505 (1962) (No. 4), B.E. 2541 (1998) were contrary to or inconsistent with section 306 of the Civil and Commercial Code.

The second issue was whether or not section 67 sex of the Emergency Decree Amending the Finance, Securities and Credit Foncier Business Act, B.E. 2522 (1979) (No. 5), B.E. 2541 (1998) was contrary to or inconsistent with the Civil Procedure Code.

The third issue was whether or not section 67 ter of the Emergency Decree Amending the Finance, Securities and Credit Foncier Business Act, B.E. 2522 (1979) (No. 3), B.E. 2540 (1997) and section 67 sex of the Emergency Decree Amending the Finance, Securities and Credit Foncier Business Act, B.E. 2522 (1979) (No. 5), B.E. 2541 (1998) were contrary to or inconsistent with section 35 paragraph two, section 48 and section 50 paragraph two of the Constitution.

The fourth issue was whether or not section 38 ter and section 38 septem of the Emergency Decree Amending the Commercial Banking Act, B.E. 2505 (1962) (No. 4), B.E. 2541 (1998) were contrary to or inconsistent with section 35 paragraph two, section 48 and section 50 paragraph two of the Constitution.

2. Preliminary issue

The Constitutional Court considered the first and second issues and held that even though the application posed issues to the Constitutional Court to rule whether or not section 67 ter of the Emergency Decree Amending the Finance, Securities and Credit Foncier Business Act, B.E. 2522 (1979) (No. 3), B.E. 2540 (1997) and section 38 ter of the Emergency Decree Amending the Commercial Banking Act, B.E. 2505 (1962) (No. 4), B.E. 2541 (1998) were contrary to or inconsistent with section 306 of the Civil and Commercial Code and whether or not section 67 sex of the Emergency Decree Amending the Finance, Securities and Credit Foncier Business Act, B.E. 2522 (1979) (No. 5), B.E. 2541 (1998) was contrary to or inconsistent with the Civil Procedure Code, the Constitutional Court could not accept such issues for consideration because the applicant or party did not object that such

provisions of law were contrary to or inconsistent with the Constitution. These issues were therefore not in accordance with section 264 of the Constitution.

The Constitutional Court considered the third and fourth issues and held that such issues were cases where the parties objected that the provisions of law to be applied to a case were contrary to or inconsistent with the Constitution. These issues were therefore accepted for consideration under section 264 of the Constitution.

3. The issues considered by the Constitutional Court

The following issues were considered:

(1) Whether or not section 67 ter of the Emergency Decree Amending the Finance, Securities and Credit Foncier Business Act, B.E. 2522 (1979) (No. 3), B.E. 2540 (1997) and section 67 sex of the Emergency Decree Amending the Finance, Securities and Credit Foncier Business Act, B.E. 2522 (1979) (No. 5), B.E. 2541 (1998) were contrary to or inconsistent with section 35 paragraph two, section 48 and section 50 paragraph two of the Constitution.

(2) Whether or not section 38 ter and section 38 septem of the Emergency Decree Amending the Commercial Banking Act, B.E. 2505 (1962) (No. 4), B.E. 2541 (1998) were contrary to or inconsistent with section 35 paragraph two, section 48 and section 50 paragraph two of the Constitution.

The Constitutional Court held the following opinion. The grant of a right to a financial institution which merged with a company or received the transfer of business from a company to assume the rights as a party in a case to enforce claim rights in a Court, the grant of a right to such a financial institution to submit new evidence in order to refute evidence which had already been submitted and object to evidence which had already been investigated, and the assuming of the rights of a judgment-creditor in such a case, were all issues which did not have any relevance to the restriction of the liberty in dwelling recognized by section 35 of the Constitution. Such issues were also not relevant to the right of property recognized by section 48 of the Constitution because the claim rights under the contended provisions were the claim rights of a creditor in enforcing the repayment of debts by the debtor, which was not the right of a person in property. Finally, the issues did not involve the restriction liberty to engage in an enterprise or an occupation under section 50 of the Constitution.

4. Ruling of the Constitutional Court

The Constitutional Court unanimously held that section 67 ter of the Emergency Decree Amending the Finance, Securities and Credit Foncier Business Act, B.E. 2522 (1979) (No. 3), B.E. 2540 (1997), section 67 sex of the Emergency Decree Amending the Finance,

Securities and Credit Foncier Business Act, B.E. 2522 (1979) (No. 5), B.E. 2541 (1998) and section 38 ter and section 38 septem of the Emergency Decree Amending the Commercial Banking Act, B.E. 2505 (1962) (No. 4), B.E. 2541 (1998) were neither contrary to nor inconsistent with section 35 paragraph two, section 48 and section 50 paragraph two of the Constitution.
