

Summary of the Constitutional Court Ruling No. 22/2546

Dated 5th June B.E. 2546 (2003)*

Re : Are section 9 paragraph one and section 10 of the Emergency Decree on Asset Management Company, B.E. 2541 (1998) contrary to or inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) ?

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1. Background and summarized facts

The Nonthaburi Provincial Court submitted an objection of the applicant who was the defendant in Civil Pending Case No. 875/2543 requesting the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), which could be summarized as follows. The DBS Thai-Thanu Bank Public Company Limited, as plaintiff, filed a case against Krungthep Piyaphun Company Limited and others, as defendants, for breaches of loan agreement, overdrawing, promissory notes, and enforcement of mortgage and guarantee. All five defendants raised, in defense of the plaintiff's claims, the issues of power to sue, ambiguous claims and unlawful calculation of interest, and denied all plaintiff's claims. Later, NFS Asset Management Company Limited submitted an application for assuming the right as the plaintiff of the case under the Emergency Decree on Asset Management Company, B.E. 2541 (1998). The five defendants submitted an application to the Nonthaburi Provincial Court objecting that the assignment of claim right without the notice of assignment to debtors under section 9 paragraph one of the Emergency Decree on Asset Management Company, B.E. 2541 (1998) and the calculation of interest rate by an asset management company under section 10 of the same Act were deemed as giving rise to the right of the asset management company over general people in the light that the asset management company was exempt from the compliance with section 306 and section 654 of the Civil and Commercial Code. The provisions of section 9 paragraph one and section 10 of the Emergency Decree on Asset Management Company, B.E. 2541 (1998) were therefore contrary to or inconsistent with section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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2. Preliminary issue

The Constitutional Court ordered the acceptance of the application for operation and for consideration and decision under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

3. The issue considered by the Constitutional Court

On the issue of whether or not section 9 paragraph one of the Emergency Decree on Asset Management Company, B.E. 2541 (1998) was contrary to or inconsistent with section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the Constitutional Court already held, in its Ruling No. 40/2545 dated 9th July B.E. 2545 (2002), that such section 9 was neither contrary to nor inconsistent with section 30 of the Constitution. This issue therefore needed not be re-considered. On the issue of whether or not section 10 of the Emergency Decree on Asset Management Company, B.E. 2541 (1998) was contrary to or inconsistent with section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the Constitutional Court held the following opinions. Section 30 of the Constitution was the provision guaranteeing that all persons had to be equal before the law and enjoy equal protection under the law, and unjust discrimination could not be permitted. The reason for promulgation of the Emergency Decree on Asset Management Company, B.E. 2541 (1998) was in order that financial institutions facing problem a great number of low quality assets could solve such problem by sale or assignment thereof to an asset management company. Particularly, section 10 of the Emergency Decree on Asset Management Company, B.E. 2541 (1998) was on the purpose as to protect debtors transferred by financial institutions to the asset management company from fixing excessive interest rate which caused debtors inability for reorganization. That provision accordingly provided that the asset management company imposed interest on debtors at the rate of not exceeding the rate under previous contracts at the date of transfer. In other words, the provision did not provide the asset management company for rights in excess of liabilities bearing on debtors under the previous contracts. In the case where the previous contract fixed floating interest rate without reference computing base, the asset management company had to fix interest at the average rate set forth by 5 giant commercial banks as reference base, which such average rate was lower than the rate set forth by general commercial banks. Furthermore, in the case where additional loan was made in order to add value of transferred properties, the said provision provided for fixing of agreed interest rate by the reason that the asset management company was increased flexibility to impose interest on debtors basing on the evaluation of status or ability to repay debts of debtors on individual basis.

The reason why section 654 of the Civil and Commercial Code was not exceptionally applied to the imposition of interest by the asset management company was as to be compliance with the interest rate imposed by financial institutions on debtors under previous contracts. Such section 654 was exempt from the application under 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). Section 10 of the Emergency Decree on Asset Management Company, B.E. 2541 (1998) was therefore the provision of law protecting all persons on equal basis. The said provision was not deemed as unjust discrimination against a person on the grounds of the difference in personal status or economic or social standing.

4. Ruling of the Constitutional Court

The Constitutional Court held that section 9 paragraph one and section 10 of the Emergency Decree on Asset Management Company, B.E. 2541 (1998) were neither contrary to nor inconsistent with section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997)
