

# Summary of the Constitutional Court Ruling No. 86/2547

Dated 7<sup>th</sup> December B.E. 2547 (2004)\*

**Re: The South Bangkok Civil Court referred the objection of defendants (Mr. Sahas Treetipyabuth and others) in Civil Case No. 12605/2544 to the Constitutional Court for a ruling under section 264 of the Constitution on whether or not section 31 of the Emergency Decree on Thai Asset Management Corporation, B.E. 2544 (2001), was contrary to or inconsistent with section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).**

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## 1. Background and summarized facts

The South Bangkok Civil Court referred the objection of applicants, who were defendants in Civil Case No. 12605/2544, requesting a Constitutional Court ruling under section 264 of the Constitution on whether or not section 31 of the Emergency Decree on Thai Asset Management Corporation, B.E. 2544 (2001), was contrary to or inconsistent with section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The facts could be summarized as follows. Mr. Sahas Treetipyabuth, the first defendant, entered into a loan contract with Teerachai Trust Finance Company Limited (the “Company”) on 13<sup>th</sup> August B.E. 2536 (1993). Mrs. Thananuch Treetipyabuth, the second defendant, entered into a personal guarantee contract and registered a mortgage of land and buildings to the Company. The first defendant defaulted on its loan from the Company. Subsequently, the Minister of Finance issued an order instructing the Company to suspend its business operations and terminate operations in December B.E. 2540 (1997) under the supervision of and winding up by the Organisation for Reform of the Financial Institution System (ORFIS). Mutual Funded Asia Recovery 3, the plaintiff, was the lawful buyer and assignee of the claim rights in the commercial credit assets, certain credits of sellers which were finance companies and securities companies, whose operations were terminated, including the defendants’ debts owed to Teerachai Trust Finance Company Limited. In this instance, the plaintiff had already made demands for repayment but both defendants took no action. The plaintiff therefore filed a lawsuit in court requesting for a judgment against the defendants for loan debts and interests as well as a foreclosure of the mortgage.

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Both defendants filed defences against the plaintiff's claims and also filed an objection that section 31 of the Emergency Decree on Thai Asset Management Corporation, B.E. 2544 (2001), was inconsistent with the fundamental equal rights conferred upon a person under the law of which there could be no unjust discrimination. Such a provision was therefore contrary to or inconsistent with section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The South Bangkok Civil Court considered the issue and held that the case of this application was in accordance with section 264 paragraph one of the Constitution. The application was therefore submitted to the Constitutional Court for consideration.

## **2. Preliminary issue**

The preliminary issue was whether or not the Constitutional Court had the power to accept this application for consideration under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held that, under the application, the applicant objected that section 31 of the Emergency Decree on Thai Asset Management Corporation, B.E. 2544 (2001), was contrary to or inconsistent with section 30 of the Constitution and this was a case submitted by the South Bangkok Civil Court to the Constitutional Court for a ruling under section 264 of the Constitution. The Constitutional Court therefore had the power to accept this application for consideration.

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

The issue considered by the Constitutional Court was whether or not section 31 of the Emergency Decree on Thai Asset Management Corporation, B.E. 2544 (2001), was contrary to or inconsistent with section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held as follows. Section 30 of the Constitution was a provision in Chapter 3 on rights and liberties of the Thai people, which contained provisions protecting the rights and liberties of the Thai people, securing equality of persons under the law and equal protection under the law. The provisions further stated that unjust discrimination against a person by reason of differences in personal, economic or social status was prohibited.

As for section 31 of the Emergency Decree on Thai Asset Management Corporation, B.E. 2544 (2001), it was found that the primary objective of the Thai Asset Management Corporation (TAMC) was to administer low quality assets, to restructure debts and to restructure the operations of law quality assets which were claim rights or debtors' debts of financial institutions or asset management corporations of the State. For this reason, the law provided the mandatory transfer of all low quality assets of financial institutions or asset

management corporations of the State to the TAMC on 31<sup>st</sup> December B.E. 2543 (2000). However, the law did not require that private financial institutions or asset management corporations transfer their low quality assets to the TAMC because such a requirement would affect the rights of private parties. Nonetheless, there was a reliance on the principles of consent or voluntariness as well as the prescription of criteria that transfers should be in accordance with section 31 subsection (1) to subsection (4) in order that the State would employ the least amount of operating capital for the greatest benefits and in order for the TAMC to avoid excessive risks of losses. Such detriments would have an impact on the people's taxes and could have damaging consequences on the State. Moreover, there were already laws dealing with low quality assets of private financial institutions, such as the Emergency Decree on Asset Management Corporation, B.E. 2541 (1998), which provided for the transfer of private financial institutions' low quality assets to asset management corporations for further administration under such laws. Therefore, it was held that section 31 of the Emergency Decree on Thai Asset Management Corporation, B.E. 2544 (2001), provided for criteria and conditions which were generally applicable. Such criteria and conditions were beneficial to the public or for the maintenance of public benefits. It was not a provision of law that was mandatory, but a provision which relied on the principles of consent and voluntariness and was applicable to low quality assets of financial institutions or asset management corporations which had the same characteristics. Thus, section 31 of the Emergency Decree on Thai Asset Management Corporation, B.E. 2544 (2001), was a provision of law that provided equal protection for the people, and not in any way an unjust discrimination against a person by reason of differences in personal or economic or social statuses.

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

The Constitutional Court therefore held that section 31 of the Emergency Decree on Thai Asset Management Corporation, B.E. 2544 (2001), was neither contrary to nor inconsistent with section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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