

# Summary of the Constitutional Court Ruling No. 37-39/2544

Dated 1<sup>st</sup> November B.E. 2544 (2001)\*

**Re : Are section 90/46 and section 90/58 of the Bankruptcy Act, B.E. 2483 (1940) contrary to or inconsistent with section 29, section 30 and section 48 of the Constitution?**

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## 1. Background and summarized facts

The Central Bankruptcy Court referred to the Constitutional Court the objections of creditors in bankruptcy cases (business rehabilitation), a total of 3 applications, which made the following objections. Section 90/46 of the Bankruptcy Act, B.E. 2483 (1940) provided that any creditor or group of creditors with a sufficient value had a financial and economic status which granted them the bargaining power to reach a resolution to accept or to not accept a plan. This was a cause for unjust discrimination and granted unequal rights to the creditors. Moreover, section 90/58 of the said Act provided for the restriction of the Court's discretionary powers to accept a plan if such a plan satisfied all the criteria prescribed by the Bankruptcy Act, B.E. 2483 (1940). This was a restriction of the Court's discretionary powers. The Court would not be able to consider justly for the benefit of the greater number but lower valued creditors. Hence, section 90/46 and section 90/58 of the Bankruptcy Act, B.E. 2483 (1940) were therefore contrary to or inconsistent with section 29, section 30 and section 48 of the Constitution.

The planners and debtors who requested for business rehabilitation, and whose business rehabilitation plans were objected to in all 3 applications, objected to the applications.

## 2. Preliminary issue

2.1 The Constitutional Court held that the issues which the creditors (the applicants) requested for the Constitutional Court to consider in all the applications were the same issues. The three applications were therefore jointly considered in one case.

2.2 The Constitutional Court issued an order accepting the application for consideration under section 264 of the Constitution.

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

The issues considered by the Constitutional Court were whether or not section 90/46 and section 90/58 of the Bankruptcy Act, B.E. 2483 (1940) were contrary to or inconsistent with section 29, section 30 and section 48 of the Constitution.

The Constitutional Court held that such issues had been ruled upon in Ruling No. 35-36/2544, dated 30<sup>th</sup> October B.E. 2544 (2001) that section 90/46 and section 90/58 of the Bankruptcy Act, B.E. 2483 (1940) were provisions consistent with section 29 and section 48 of the Constitution because they were restrictions of rights in property within the scope of the Constitution. In addition, there was no effect on the essential substance of the rights of creditors in the same class who received equal treatment. The provisions also did not unjustly discriminate against a person by reason of differences in the status of persons under section 30 of the Constitution. Section 90/46 and section 90/58 of the Bankruptcy Act, B.E. 2483 (1940) were therefore neither contrary to nor inconsistent with section 29, section 30 and section 48 of the Constitution. The Constitutional Court did not have to reconsider the issues in these three applications.

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

The Constitutional Court dismissed the applications.

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