

# **Summary of the Constitutional Court Ruling No. 9/2545**

**Dated 12<sup>th</sup> March B.E. 2545 (2002)\***

**Re : Is the Notification of the Ministry of Finance, dated 22<sup>nd</sup> December B.E. 2541 (1998), section 67 bis and 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 bis and section 38 ter of the Emergency Decree Amending the Commercial Bank Act, B.E. 2505 (1962) (No. 4), B.E. 2541 (1998) contrary to or inconsistent with section 26, section 27, section 28, section 29 and section 30 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997)?**

.....

## **1. Background and summarized facts**

Sethakarn Finance Company Limited, as plaintiff, filed a case against the defendant, Mr. Wanich Surapongwanichkul (the applicant), in Civil Case Decision No. 1323/2541 at the Thon Buri Civil Court. The plaintiff sought the repayment of debts under a bill of exchange and a guarantee contract. The plaintiff requested that the Court enforce the applicant and related persons to jointly or in lieu of the others repay the amount of 1,787,931 baht plus interest at the rate of 7.5 per cent per annum on the capital sum of 1,681,900 baht calculated as from the date of case filing to the date of complete repayment by the plaintiff.

Subsequently, Thai Thanakarn Public Company Limited assumed the rights as the party to the case on behalf of the plaintiff by virtue of the Notification of the Ministry of Finance, dated 22<sup>nd</sup> December, B.E. 2541 (1998) Re: Conferring Approval for the Project on the Business Merger Between Sahathanakarn Bank Public Limited Company, Krung Thai Thanakij Securities Public Limited Company and 12 Finance Companies.

On 3<sup>rd</sup> February B.E. 2543 (2000), the applicant made an application for the Thonburi Civil Court to submit a question on a point of law to the Constitutional Court for a ruling. The applicant asserted that the business merger between Sahathanakarn Bank Public Limited Company, Krung Thai Thanakij Securities Public Limited Company and 12 Finance Companies under the Notification of the Ministry of Finance was inconsistent with section 26, section 27, section 28, section 29 and section 30 of the Constitution because no regard was given to human dignity, rights and liberties in accordance with the provisions

---

\* Published in the Government Gazette, Vol. 119, Part 115a, dated 15<sup>th</sup> November B.E. 2545 (2002).

of the Constitution, especially the recognized rights and liberties under the Constitution, which were safeguarded and could not be restricted. In addition, 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), which stipulated the transfer of business in a company without the requirement under section 306 of the Civil and Commercial Code of having to notify the debtors, was also unlawful because a restriction had been imposed on the rights and liberties of the people thereby impeding upon the essence of the rights and liberties. The applicant therefore considered that the Notification of the Ministry of Finance, dated 22<sup>nd</sup> December, B.E. 2541 (1998) Re: Conferring Approval for the Project on the Business Merger between Sahathanakarn Bank Public Limited Company, Krung Thai Thanakij Securities Public Limited Company and 12 Finance Companies, section 67 bis and 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 bis and section 38 ter of the Emergency Decree Amending the Commercial Bank Act, B.E. 2505 (1962) (No. 4), B.E. 2541 (1998) was inconsistent with section 26, section 27, section 28, section 29 and section 30 of the Constitution. Moreover, owing that there had not yet been a ruling of the Constitutional Court on these provisions, the applicant requested that the Thon Buri Civil Court submit these arguments on the questions of law to the Constitutional Court for consideration.

## **2. Preliminary issue**

Can the Constitutional Court accept this application for consideration under section 264 of the Constitution?

The Constitutional Court held that this case was in accordance with section 264 of the Constitution and therefore accepted the case for consideration.

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

(1) Is the Notification of the Ministry of Finance, Re: Conferring Approval for the Project on the Business Merger between Sahathanakarn Bank Public Limited Company, Krung Thai Thanakij Securities Public Company Limited and 12 Finance Companies contrary to or inconsistent with section 26, section 27, section 28, section 29 and section 30 of the Constitution?

The Constitutional Court held that a ruling had been made on this issue in Constitutional Court Ruling No. 4/2542, Dated 1<sup>st</sup> April B.E. 2542 (1999) and therefore no further ruling was necessary.

(2) Is section 67 bis and 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) contrary to or inconsistent with section 26, section 27, section 28, section 29 and section 30 of the Constitution?

The Constitutional Court held the following opinion. Section 26 of the Constitution was a provision which stipulated that regard shall be had to human dignity, rights and liberties in the exercise of powers by all State authorities. Section 27 of the Constitution provided for the recognition of rights and liberties whose application was made effective by stipulating that the exercise of State powers at all levels and in every section in enacting, applying and interpreting laws shall be bound by such rights. Section 28 of the Constitution was a provision which recognized the right of a person to invoke human dignity or exercise his or her rights and liberties in so far as it was not in violation of rights and liberties of other persons or contrary to the Constitution or good morals of the people. The section also provided a guarantee for the rights of a person by stating that a person whose rights and liberties recognized by the Constitution were violated could invoke the provisions of this Constitution to bring a lawsuit or to defend himself or herself in the Court. Such provision guaranteed that whenever the right of a person was violated, a remedy was available in the Court. Section 29 of the Constitution guaranteed the stability of the rights. The restriction of such rights and liberties as recognized by the Constitution should not be imposed on a person except by virtue of provisions of the law specifically enacted for the purpose determined by the Constitution and only to the extent of necessity and provided that it should not affect the essential substances of such rights and liberties. Finally, section 30 of the Constitution provided for the protection of rights and liberties of the Thai people whereby all persons are equal before the law and shall enjoy equal protection under the law. In juxtaposition, section 67 bis of the Emergency Decree Amending the Finance, Securities and Credit Foncier Business Act, B.E. 2522 (1979) (No. 3), B.E. 2540 (1997) provided for the merger of companies, which did not have the effect of transferring the licenses of the original companies to the new company not related to the applicant. Such provision contained no wording to the effect of restricting the rights and liberties of the people or in any way impeded upon the essence of the rights and liberties. Section 67 ter provided for the assignment of claim rights. Such an assignment of claim rights by the transfer of business was an assignment by virtue of the law, for which an exemption had been made from the requirement of notice to the debtor under section 306 of the Civil and Commercial Code. The assignment was thus allowed for the laws were at the same level. Therefore, section 67 bis and 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) were neither contrary to nor inconsistent with section 26, section 27, section 28, section 29 and section 30 of the Constitution.

(3) Is section 38 bis and section 38 ter of the Emergency Decree Amending the Commercial Bank Act, B.E. 2505 (1962) (No. 4), B.E. 2541 (1998) contrary to or inconsistent with section 26, section 27, section 28, section 29 and section 30 of the Constitution?

The Constitutional Court held that section 38 bis of the Emergency Decree Amending the Commercial Bank Act, B.E. 2505 (1962) (No. 4), B.E. 2541 (1998) provided for the case of a business merger between commercial banks or a merger with a financial institution as not having the effect of transferring the licenses from the original commercial banks to the new commercial bank or financial institution unrelated to the applicant. No wording was present in such provision which restricted the rights and liberties of the people or impeded upon the essence of rights and liberties. Section 38 ter provided for the assignment of claim rights. Such an assignment of claim rights by the transfer of business was an assignment by virtue of the law, for which an exemption had been made from the requirement of notice to the debtor under section 306 of the Civil and Commercial Code. The assignment was thus allowed for the laws were at the same level. Therefore, 38 bis and section 38 ter of the Emergency Decree Amending the Commercial Bank Act, B.E. 2505 (1962) (No. 4), B.E. 2541 (1998) was neither contrary to nor inconsistent with section 26, section 27, section 28, section 29 and section 30 of the Constitution.

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

Section 67 bis and 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 bis and section 38 ter of the Emergency Decree Amending the Commercial Bank Act, B.E. 2505 (1962) (No. 4), B.E. 2541 (1998) were neither contrary to nor inconsistent with section 26, section 27, section 28, section 29 and section 30 of the Constitution.

---