

# Summary of the Constitutional Court Ruling No. 46/2545

**Dated 13<sup>th</sup> August B.E. 2545 (2002)\***

**Re : Is section 14 of the Commercial Banking Act, B.E. 2505 (1962), as amended by the Commercial Banking Act (No. 2), B.E. 2522 (1979), contrary to or inconsistent with section 87, section 92 and section 218 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997)?**

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

Krungthai Bank Public Company Limited, the plaintiff, filed a lawsuit against D.B. (Thailand) Company Limited and Mr. Preecha Punnakitikasem, the defendants (applicants), at the Civil Court for breaches of current account, overdraft and guarantee contracts. The plaintiff requested the court to enforce the applicants to jointly repay debts to the plaintiff in the amount of Baht 649,246.69 with interest at 14.5 per cent per annum on the principal sum of Baht 504,889.94 as from the day following the date of the lawsuit until the complete repayment of all debts to the plaintiff.

The applicants denied the plaintiff's claims and objected that the plaintiff did not have the power to charge interests in accordance with Notification of the Bank of Thailand Re: Prescribing Practices of Commercial Banks in Relation to Interests and Discounts, which was issued pursuant to section 14 of the Commercial Banking Act, B.E. 2505 (1962) and which was a Notification issued under a law which was inconsistent with section 87 of the Constitution because such provision of law did not protect the consumers and did not prevent direct and indirect monopolies, which were directive principles of fundamental State policies. The enactment of a law which was consistent with directive principles of fundamental State policies had to be made by an Act or an Emergency Decree pursuant to section 92 or section 218 of the Constitution in order that such a law be carefully considered by the National Assembly before enforcing them on the people. As section 14 of the Commercial Banking Act, B.E. 2505 (1962) provided that the Bank of Thailand had the powers to prescribe commercial banking practice in relation to interests or discounts chargeable by commercial banks without the consent of the National Assembly, the provision amounted to a delegation of legislative powers to the executive. Such a provision was therefore inconsistent with section 87, section 92 and section 218 of the Constitution.

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The Civil Court considered that the applicants raised arguments that the interest rates calculated by the plaintiff were made under the Notification of the Bank of Thailand issued pursuant to section 14 of the Commercial Banking Act, B.E. 2505 (1962), as amended by the Commercial Banking Act (No. 2), B.E. 2522 (1979), contrary to or inconsistent with section 87, section 92 and section 218 of the Constitution. The matter was therefore referred to the Constitutional Court for a ruling under section 264 of the Constitution.

## **2. Preliminary issue**

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

The Constitutional Court held that this was a case where the applicants, who were defendants in a case, objected that a provision of law which was to be applied by the court to the case was contrary to or inconsistent with the Constitution and there had not yet been a ruling of the Constitutional Court on such provisions. The Constitutional Court therefore accepted the case for consideration under section 264 of the Constitution when the objection was referred to it by the Civil Court.

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

The Constitutional Court held that, on the issue of whether section 14 of the Commercial Banking Act, B.E. 2505 (1962), as amended by the Commercial Banking Act (No. 2), B.E. 2522 (1979), was contrary to or inconsistent with section 87 of the Constitution, the Constitutional Court had made a ruling in Ruling No. 13/2545 dated 18 April B.E. 2545 (2002) that section 14 of the Commercial Banking Act, B.E. 2505 (1962), as amended by the Commercial Banking Act (No. 2), B.E. 2522 (1979), was neither contrary to nor inconsistent with section 87 of the Constitution. Such issue would therefore not be reconsidered. The only issue which remained to be considered by the Constitutional Court was whether or not section 14 of the Commercial Banking Act, B.E. 2505 (1962), as amended by the Commercial Banking Act (No. 2), B.E. 2522 (1979), was contrary to or inconsistent with section 92 and section 218 of the Constitution.

It was held as follows. Section 92 of the Constitution stated that “a bill or an organic law bill may be enacted as law only by and with the advice and consent of the National Assembly”, which meant that laws at the level of an Act or an Organic Act could be enacted by the King only by and with the advice and consent of the National Assembly. This was an incident of the King’s sovereign powers as the Head of State, exercisable through the National Assembly. Section 218 paragraph one of the Constitution stated that “for the purpose of maintaining national or public safety or national economic security, or averting public calamity, the King may issue an Emergency Decree which shall have the force of an Act.” Section 218 paragraph two of the Constitution stated that “the issuance

of an Emergency Decree under paragraph one shall be made only when the Council of Ministers is of the opinion that it is the case of emergency and necessary urgency which is unavoidable.” In other words, the King possessed the power to issue an Emergency Decree as suggested by the Council of Ministers which would have the force of an Act for the purpose of maintaining national or public safety, national economic security or for averting public calamity. The Emergency Decree could only be issued when the Council of Ministers was of the opinion that the case was an emergency and unavoidable because of a necessary urgency. Section 14 of the Commercial Banking Act, B.E. 2502 (1962), as amended by the Commercial Banking Act (No. 2), B.E. 2522 (1979), stated in paragraph one that “the Bank of Thailand shall have the power to prescribe commercial banking practice in relation to the following matters: (1) interests payable by a commercial bank; (2) interests or discounts chargeable by a commercial bank; (3) fees which are chargeable by a commercial bank; (4) the deposit to be charged by a commercial bank; and (5) securities in the form of property which should be required by a commercial bank.” This showed that such provision of law conferred powers on the Bank of Thailand to prescribe commercial banking practices in relation to interests, discounts, fees, deposits and securities in the form of properties in order to comply with the intentions of the law, which was enacted in the interests of national economy and finance as well as to extend protection to the people who deposit money with banks. No terms were relevant to the origin or the process of enacting an Act or an Organic Act under section 92 of the Constitution or relevant to the reasons and process for the issuance of an Emergency Decree under section 218 of the Constitution. The case was an objection which did not contain matters worthy of consideration under section 264 of the Constitution.

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

The Constitutional Court, by the majority votes of 9 Constitutional Court judges, dismissed the application. The minority of 6 Constitutional Court judges considered that section 14 of the Commercial Banking Act, B.E. 2505 (1962), as amended by the Commercial Banking Act (No.2), B.E. 2522 (1979), was neither contrary to nor inconsistent with section 92 and section 218 of the Constitution.

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