

# **Summary of the Constitutional Court Ruling No. 47/2545**

**Dated 20<sup>th</sup> August B.E. 2545 (2002)\***

**Re : Is section 30 of the Finance, Securities and Credit Foncier Business Act, B.E. 2522 (1979) contrary to or inconsistent with section 30, section 50, section 57 and section 87 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997)?**

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

Gamma Capital Mutual Fund was managed by One Mutual Fund Management Securities Company Limited who was the plaintiff in a lawsuit against Phongsirichai Development Company Limited, the first defendant, Mr. Pichai Jongsaritwang, the second defendant, and Mrs. Boonphrom Jongsaritwang, the third defendant, at the Thon Buri Civil Court for breaches in relation to the assignment of claim rights, monetary loans, confirmation of debts and guarantees. The defendants were the applicants in the proceedings. The plaintiff requested the court to enforce all three applicants to jointly repay the amount of Baht 14,023,761.20 with interest at the rate of 21 per cent per annum from the principal sum of Baht 9,528,455.27 as from the day following the date of lawsuit until the complete repayment of debts to the plaintiff. The case was recorded as Case No. 5823/2543.

The applicants denied the claims of the plaintiff and objected that section 30 of the Finance, Securities and Credit Foncier Business Act, B.E. 2522 (1979), which conferred powers on the Bank of Thailand to issue a Notification to prescribe practices for finance companies in relation to interests, constituted a cause for various financial institutions to prescribe interest rates at over 15 per cent per annum. Such a provision allowed financial institutions to rise above the rules of society by virtue of their greater economic position. These institutions exploited and took advantage of the people and the consumers, creating a monopolistic economy and unjust discrimination inconsistent with section 30, section 50, section 57 and section 87 of the Constitution. An application was therefore submitted to the Thon Buri Civil Court to refer the objection to the Constitutional Court for consideration.

The Thon Buri Civil Court referred the objection of the applicants (defendants) in Case No. 5823/2543 to the Constitutional Court in request of a ruling under section 264 of the Constitution.

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## **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. When the objection was referred to it by the Thon Buri Civil Court, the Constitutional Court therefore accepted the case for consideration under section 264 of the Constitution.

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

The issue considered by the Constitutional Court was whether or not section 30 of the Finance, Securities and Credit Foncier Business Act, B.E. 2522 (1979) was contrary to or inconsistent with section 30, section 50, section 57 and section 87 of the Constitution.

The Constitutional Court held the following opinion. Section 30 of the Constitution aimed at the protection of rights and liberties of the Thai people by guaranteeing that all persons were equal before the law and were accorded with equal protections under the law. The provision disapproved of unjust discrimination against a person on the grounds of differences in origin, race, language, sex, age, physical or health conditions, economic or social status of a person, religious belief, education or constitutionally consistent political views. Section 50 aimed at the protection of the liberties to engage in an enterprise or occupation and to undertake a fair and free competition. A restriction on such liberties could not be imposed except by virtue of the law specifically enacted for maintaining the security and safety of the State or economy of the country, protecting the public with regard to public utilities, maintaining public order and good morals, regulating the engagement in an occupation, consumer protection, town and country planning, preserving natural resources or the environment, public welfare, preventing monopoly, or eliminating unfair competition. Section 57 laid down the principle for the protection of the rights of a person as a consumer. However, the rules and procedures of such protection would be provided by law. Such a law should provide for an independent organization consisting of representatives of consumers for giving opinions on the enactment and issuance of law, rules and regulations and on the determination of various measures for consumer protection. Finally, section 87 was a provision in Chapter 5, Directive Principles of Fundamental State Policies, which provided that the State should encourage a free economic system through market force, ensure and supervise fair competition, protect consumers, and prevent direct and indirect monopolies, repeal and refrain from enacting laws and regulations to control businesses which do not correspond with the economic necessity, and the State should not engage in an enterprise in competition with the private sector unless it is necessary for the purpose of maintaining the security of the State, the preservation of common interests or the provision of public utilities.

The Finance, Securities and Credit Foncier Business Act, B.E. 2522 (1979) was a law enacted to regulate finance, securities and credit foncier businesses and to provide a more effective means of protecting the interest of the people. Section 30 conferred powers on the Bank of Thailand to prescribe, with the consent of the Minister of Finance, practices for finance companies in relation to interests or discounts in order to comply with the intentions of such law. The law was applied to all finance companies and to every person who used the services of finance companies. No person was unjustly discriminated against. There was no restriction on the liberties to engage in an enterprise or occupation or to undertake fair and free competition. There was no relevance to the requirement that an independent organization had to be established and consist of representatives of consumers. In fact, the provision encouraged a free economic system through market forces in accordance with the intentions of the law. There were no provisions which were contrary to or inconsistent with the directive principles of fundamental State policies.

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

The Constitutional Court, by 14 Constitutional Court judges, held that section 30 of the Finance, Securities and Credit Foncier Business Act, B.E. 2522 (1979) was neither contrary to nor inconsistent with section 30, section 50, section 57 and section 87 of the Constitution. One Constitutional Court judge considered that the application should be dismissed.

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