

Summary of the Constitutional Court Ruling No. 57/2545

Dated 21st November B.E. 2545 (2002)*

Re : Are section 27 of the Emergency Decree on Reform of the Financial Institution System, B.E. 2540 (1997), section 30 bis of the Emergency Decree on Reform of the Financial Institution System (No. 2), B.E. 2541 (1998) and section 7 of the Emergency Decree on Asset Management Corporation, B.E. 2541 (1998) contrary to or inconsistent with section 29 and section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997)?

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1. Background and summarized facts

The Bangkok South Civil Court referred the objection of the fifth defendant in Civil Case No. 13272/2542, in which Thanachart Finance Public Limited Company, as plaintiff, filed a claim against Santipharb (Hua Peng 1958) Company Limited et al., as defendants, to the Constitutional Court for a ruling under section 264 of the Constitution. In summary, the second to fifth defendants guaranteed the issue of a promissory note by Santipharb (Hua Peng 1958) Company Limited, the first defendant, to Cathay Finance Securities Public Limited Company. Thereafter, Cathay Finance Securities Public Limited Company, by the Organisation for Reform of the Financial Institution System, agreed to dispose its credits and contracted the sale of other loan instruments and claim rights to the plaintiff. The plaintiff therefore received the assignment of all such assets over the defendants pursuant to section 27 of the Emergency Decree on Reform of the Financial Institution System, B.E. 2540 (1997) and section 30 bis of the Emergency Decree on Reform of the Financial Institution System (No. 2), B.E. 2541 (1998). Later, N.F.S. Asset Management Corporation Limited filed an application to the Bangkok South Civil Court stating that it had contracted to receive the assignment of claim rights in the loans and their securities which were poor quality assets from Thanachart Finance Public Limited Company, which included the debts of the debtors in this case, and therefore, a request was made for the assumption of rights as a plaintiff in lieu of the original plaintiff pursuant to section 7 of the Emergency Decree on the Asset Management Corporation, B.E. 2541 (1998). The fifth defendant filed an application to the Bangkok South Civil Court objecting that section 27 of the Emergency Decree on Reform of the Financial Institution System, B.E. 2540 (1997), section 30 bis of the Emergency Decree on Reform of the Financial Institution System (No. 2), B.E. 2541

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(1998) and section 7 of the Emergency Decree on Asset Management Corporation, B.E. 2541 (1998) were contrary to or inconsistent with section 29 and section 30 of the Constitution.

2. Preliminary issue

The Constitutional Court issued an order to accept the application for further proceedings and to accept the application for consideration under section 264 of the Constitution.

3. The issues considered by the Constitutional Court

The Constitutional Court held that the Constitutional Court had already ruled in Ruling No. 24/2545, dated 4th June B.E. 2545 (2003) that section 27 of the Emergency Decree on Reform of the Financial Institution System, B.E. 2540 (1997) and section 30 bis of the Emergency Decree on Reform of the Financial Institution System (No. 2), B.E. 2541 (1998) were neither contrary to nor inconsistent with section 29 and section 30 of the Constitution.

As for the issue of whether or not section 7 of the Emergency Decree on Asset Management Corporation, B.E. 2541 (1998) was contrary to or inconsistent with section 29 and section 30 of the Constitution, the Constitutional Court held as follows. The Emergency Decree on Asset Management Corporation, B.E. 2541 (1998) was a law enacted to remedy the problem of poor quality assets in financial institutions caused by debts owed by debtors to the financial institution. In order to enable financial institutions to continue to offer credit to the economy, the provisions of such law applied to the debts owed by debtors to the financial institutions which were poor quality assets. The provisions, however, were generally applicable. The principles and practical procedure stated in section 7 offered an opportunity to an asset management corporation, in its capacity as the assumer of rights of a party to a case as provided by law, who had no connection with the proving of facts from the beginning, to produce new evidence, object to evidence submitted, cross-examine witnesses who had been interrogated and object to evidence which had been investigated because such person was a right holder under the law in lieu of the original party to the case. The conferment of rights on the creditor did not in any manner restrict the rights and liberties of the debtor or affected the essential substance of rights and liberties recognised by the Constitution. Any defence which the debtor had under the original debt could be raised against the asset management corporation, including the right to fight a case in court under the Civil Procedure Code. Moreover, the provision in section 7 did not specifically apply to only the applicant. Debtors in other cases who were under similar circumstances with the applicant were also treated similarly to the applicant. Therefore, the present case was not one of an unjust discrimination.

4. Ruling of the Constitutional Court

4.1 Section 27 of the Emergency Decree on Reform of the Financial Institution System, B.E. 2540 (1997) was neither contrary to nor inconsistent with section 29 and section 30 of the Constitution.

4.2 Section 30 bis of the Emergency Decree on Reform of the Financial Institution System (No. 2), B.E. 2541 (1998) was neither contrary to nor inconsistent with section 29 and section 30 of the Constitution.

4.3 section 7 of the Emergency Decree on Asset Management Corporation, B.E. 2541 (1998) was neither contrary to nor inconsistent with section 29 and section 30 of the Constitution.
