

# Summary of the Constitutional Court Ruling

No. 53/2548

Dated 16<sup>th</sup> August B.E. 2548 (2005)\*

**Re: The Civil Court of Southern Bangkok referred the objection of the defendant (Mr. Thanit Jantayasakorn) to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) in the case where section 30 of the Emergency Decree on Reform of Financial Institution System, B.E. 2540 (1997) was contrary to or inconsistent with section 26, section 27 and section 30 of the Constitution.**

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## 1. Background and summarized facts

The Civil Court of Southern Bangkok referred the application of the applicant being the defendant in Pending Case No. 2396/2545 to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The facts could be summarized as follows. Gramma Capitol Mutual Fund by One Asset Management Company Limited, as plaintiff, brought an action against Mr. Thanit Jantayasakorn, as defendant, to the Civil Court of Southern Bangkok in disputes concerning the breach of a securities broker agreement, securities loan, and current account. The defendant signed an application for a securities trading customer, a securities broker agreement, and an application for opening an account to advance the payment for securities trading. In this connection, S.C.F. Finance and Securities Public Company Limited (S.C.F. Company) was appointed and generally authorized to act as an agent or broker in securities trading on behalf of the defendant. After the execution of such agreement, the defendant ordered S.C.F. Company to purchase securities (stocks) in the sum of 5,371,408.43 Baht. The defendant's debt resulting from loss in securities trading was in the sum of 999,546.22 Baht. The total of debt was in the sum of 6,370,954.65 Baht. Thereafter, the plaintiff made an agreement purchasing, from Organization for Reform of the Financial Institution System, assets and business loans containing claims under credit facilities agreements, loan agreements, loan instruments and any other claims of finance companies and finance and securities companies, including claims of S.C.F. Company over the defendant, whose operations had been suspended according to the Order of Minister of Finance and whose business could not be repaired or recovered, by virtue of the Emergency Decree on Reform of Financial Institution System, B.E. 2540 (1997). The plaintiff, in this connection, demanded the repayment of debts from the defendant and also delivered written notices for such purpose,

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but the defendant did not respond. Consequently, the plaintiff filed a claim against the defendant in the lawsuit.

The defendant filed the deposition denying the plaintiff's complaint and submitted to the Civil Court of Southern Bangkok the application objecting that section 30 of the Emergency Decree on Reform of Financial Institution System, B.E. 2540 (1997) was contrary to or inconsistent with section 26, section 27, section 29, section 30, and section 50 of the Constitution. Accordingly, the Civil Court of Southern Bangkok was requested to refer such application to the Constitutional Court for a ruling under section 264 paragraph one of the Constitution.

## **2. Preliminary issue**

The Constitutional Court held the followings. According to the application, the applicant objected that section 30 of the Emergency Decree on Reform of Financial Institution System, B.E. 2540 (1997) was contrary to or inconsistent with section 26, section 27, section 29, section 30, and section 50 of the Constitution. It was the case where the Civil Court of Southern Bangkok referred such objection to the Constitutional Court for a ruling under section 264 of the Constitution. The Constitutional Court could therefore accept the application for consideration.

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

The issue to be considered by the Constitutional Court was whether or not section 30 of the Emergency Decree on Reform of Financial Institution System, B.E. 2540 (1997) was contrary to or inconsistent with section 26, section 27, section 29, section 30, and section 50 of the Constitution.

The Constitutional Court considered the application and held the followings. Although the applicant referred to the whole provision of section 30 of the Emergency Decree on Reform of Financial Institution System, B.E. 2540 (1997), the details in the application presented that the applicant objected to only section 30 paragraph one and paragraph five thereof. In addition, the Constitutional Court already held in the Ruling No. 61/2545 dated 12<sup>th</sup> December, B.E. 2545 (2002) that section 30 of the Emergency Decree on Reform of Financial Institution System, B.E. 2540 (1997) was neither contrary to nor inconsistent with section 29 and section 50 of the Constitution.

Hence, the only issue left to be considered was whether or not section 30 paragraph one and paragraph five of the Emergency Decree on Reform of Financial Institution System, B.E. 2540 (1997) were contrary to or inconsistent with section 26, section 27 and section 30 of the Constitution.

The Constitutional Court held the following opinions. Section 30 paragraph one and paragraph five of the Emergency Decree on Reform of Financial Institution System,

B.E. 2540 (1997) were the provisions of law authorizing Organization for Reform of the Financial Institution System and the Committee thereof, being a State organization, to repair and rehabilitate the status of the companies whose operations had been suspended in order to restore the financial institution system and to protect depositors and creditors of financial institutions with an aim to recall the confidence in the financial institution system. A committee appointed by the Committee of Organization for the Reform of the Financial Institution System under section 30 paragraph one of the Emergency Decree on Reform of Financial Institution System, B.E. 2540 (1997) had powers and duties to operate the sale of assets for companies' liquidation by means of open auction pursuant to section 30 paragraph five thereof until the liquidation process was completed. It was for the purpose as to expedite the process to timely resolve the economic crisis, since the delay could cause damage to the economy of the country. Although those provisions restricted some rights and liberties of companies whose operations had been suspended, they were to be applied after the stage that the companies were ordered the suspension of operations and unable to repair or recover their businesses. This could be seen in the following reasons for the promulgation of the Emergency Decree on Reform of Financial Institution System, B.E. 2540 (1997). Whereas there is necessity to remedy problems of financial institution system, to restore the operations of some weak financial institutions which are unable to continue their regular operations, and to protect depositors and creditors of those financial institutions in order to recall confidence in the financial institution system, it should prescribe measures for a systematic remedy of the problems in financial institutions in line with international practice and establish a State organization to take charge and control of implementing such measures so as to rehabilitate the status of financial institutions as well as assist good faith depositors and creditors of such financial institutions. Accordingly, section 30 paragraph one and paragraph five of the Emergency Decree on Reform of Financial Institution System, B.E. 2540 (1997) were not contrary to human dignity, rights and liberties in exercising powers of all State authorities under section 26 of the Constitution. The said provisions were equally applied to finance companies and finance and securities companies whose operations were suspended by the Order of Minister of Finance and which were unable to continue their operations. In addition, the said provisions did not constitute the unjust discrimination against a person on the grounds of personal status or economic or social standing, etc. pursuant to section 30 of the Constitution. As for section 27 of the Constitution, it provided that rights and liberties recognized by the Constitution, including those recognized by decisions of the Constitutional Court shall be protected and directly binding on the National Assembly, the Council of Ministers, Courts and other State organs in enacting, applying and interpreting laws. The provision of section 27 did not contain any statement recognizing any specific rights and liberties, because such rights and liberties were specifically provided in other provisions of the Constitution. Therefore, section 30 paragraph one and paragraph five of the Emergency Decree on Reform of Financial Institution System, B.E. 2540 (1997) were neither contrary to nor inconsistent with section 27 of the Constitution.

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

By the aforesaid reasons, the Constitutional Court held that section 30 paragraph one and paragraph five of the Emergency Decree on Reform of Financial Institution System, B.E. 2540 (1997) were neither contrary to nor inconsistent with section 26, section 27, and section 30 of the Constitution.

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