

Summary of the Constitutional Court Ruling* No. 50/2554 (2011)

Dated 28th December B.E. 2554 (2011)

Re: Whether or not section 42 paragraph two of the Accounting Act B.E. 2543 (2000) was contrary to or inconsistent with section 26, section 27, section 29 and section 43 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007)?

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1. Summary of background and facts

The Central Administrative Court referred the objections of the first plaintiff (Association of Accounting and Law Offices) and others, a total of eighteen plaintiffs, requesting for a Constitutional Court ruling under section 211 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). The application could be summarised as follows. The first plaintiff and others submitted a plaint against the Department of Business Development, represented by the Director-General of the Department of Business Development, as the first defendant, and the Ministry of Commerce, represented by the Minister of Commerce, as the second defendant, in the Central Administrative Court stating that the plaintiffs had been accountants for persons under an obligation to prepare accounts pursuant to the Announcement of the National Executive Council No. 285 dated 24th November B.E. 2515 (1972) until the year B.E. 2543 (2000) when the Accounting Act B.E. 2543 (2000) was enacted repealing the said Announcement of the National Executive Council. A transitory provision in section 42 paragraph two provided that any accountant of a person under an obligation to prepare an account engaging in the profession prior to the coming into force of this Act for a period of not less than five years, but who did not have the qualifications of an accountant as prescribed by the Director-General under section 7(6), wishing to continue as an accountant under this Act, should file a notice with the Director-General in accordance with the rules, procedures and conditions prescribed by Notification of the Director-General within sixty days as from the coming into force of this Act. Upon attending and completing the training pursuant to the rules, procedures and time period prescribed by Notification of the Director-General, such person would remain as an accountant for a period of eight years as from the coming into force of this Act. An objection was raised that section 42 paragraph two of the Accounting Act B.E. 2543 (2000) was either contrary to or inconsistent with section 26, section 27, section 29 and section 43 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

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2. Preliminary issue

The Constitutional Court ordered the admittance of this application for a ruling under section 211 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) in conjunction with article 17(13) of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007).

3. The issues considered by the Constitutional Court

The issues considered by the Constitutional Court were whether or not section 42 paragraph two of the Accounting Act B.E. 2543 (2000) was contrary to or inconsistent with section 26, section 27, section 29 and section 43 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

After deliberations, the Constitutional Court found as follows. The Accounting Act B.E. 2543 (2000) was a law enacted to revise and modernize the law on accounting in line with advancements in accounting, account preparation and changes in economic trade conditions. The purpose was to ensure that registered partnerships, limited companies and public limited companies incorporated under Thai law, juristic persons established under foreign laws engaging in businesses in Thailand and joint ventures under the Revenue Code, which were under an obligation to prepare accounts, were able to prepare accounts in accordance with the Generally Accepted Accounting Principles so as to allow relevant persons to be able to apply accounting data to business administration, as well as to be used as a base for tax collection by the state. The essential substances of this Act consisted of: (1) a definition for the word “accounting standard” meaning accounting principles and practices which were generally accepted or accounting standards prescribed by the law governing the matter concerned, and a definition of a person under an obligation to prepare an account and accountant in section 4, i.e. “a person under an obligation to prepare an account” was defined as a person under a duty to prepare an account under this Act and “accountant” was defined as a person responsible for preparing an account for a person under an obligation to prepare an account regardless of whether or not such action was taken in the capacity of an employee of the person under an obligation to prepare an account; (2) qualifications of an accountant as provided under section 7(6) paragraph two and paragraph three, i.e. the Director-General had the power to issue a notification on the qualifications and prerequisites for an accountant which had to take due regard of the accounting standards and opinions of relevant agencies and the accounting profession institution, and the said notification had to receive the approval of the Minister. Under previous laws, there was no distinction between a person under an obligation to prepare an account and accountant and as a result thereof the qualifications of an accountant had not been prescribed. (3) The powers and duties of an accountant were prescribed under section 20, which stated that an accountant had to prepare an account accurately and in accordance with accounting standards, and section 19 further provided that the person under an obligation to prepare an account had to supervise the accountant to ensure that the

account prepared was accurate and in accordance with this Act. (4) Penalties were provided for violations or non-compliance with the notification of the Director-General prescribing qualifications and prerequisites for an accountant under section 7(6) as well as for the case where a person under an obligation to prepare an account failed to provide an accountant having the qualifications under such notification of the Director-General for preparing an account under this Act.

Section 42 paragraph two of the Accounting Act B.E. 2543 (2000) provided that any person who was an accountant for a person under an obligation to prepare an account prior to the coming into force of this Act for a period of not less than five years but did not have the qualifications of an accountant as prescribed by the Director-General under section 7(6), and who wished to continue being an accountant under this Act should notify the Director-General in accordance with the rules, procedures and conditions prescribed by notification of the Director-General within sixty days as from the coming into force of this Act. Upon such person's attendance and completion of training in accordance with the rules, procedures and period prescribed by notification of the Director-General, such person could remain as an accountant for a period of eight years as from the effective date of this Act. After considering such provisions, the Constitutional Court found that the Accounting Act B.E. 2543 (2000) provided that an accountant had to meet the qualifications set by the Director-General under section 7(6) in order to ensure that accounts were prepared in accordance with accounting standards. The prescription of qualifications for accountants was an essential factor in ensuring that accounts were prepared with qualities consistent with accounting standards. Even though the prescription of a rule requiring qualifications for an accountant as prescribed by the Director-General under section 7(6) affected the accountant, i.e. where a person engaged in the accounting profession without such qualifications would be liable for an offence and penalties as provided by law thus constituting a provision of law which restricted certain liberties to engage in a profession, such prescription of qualities for an accountant were provided to ensure that accountants possessed knowledge and capabilities relating to accounting principles and practices under the generally accepted accounting principles and, as a result, the general public would receive accurate financial information on the business in accordance with accounting standards, being the purpose of this law. The law therefore amounted to the organization of a profession and consumer protection, which was permitted as an exception by section 43 paragraph two of the Constitution. Such provision of law had also taken due consideration of its application to achieve the purposes and the protection of rights and liberties of persons whose rights and liberties to engage in the profession had been restricted. A balance was struck between the liberty to engage in a profession as recognized under the Constitution and the benefits to the state as stated in the purpose of the law. The restriction of rights and liberties were imposed to the extent of necessity without affecting the essential substances of the rights and liberties. The provisions were also generally applicable in accordance with the rule under section 29 of the Constitution. Section 42 paragraph two of the Accounting Act B.E. 2543 (2000) granted protection for the liberty to engage in the accounting profession existing prior to the coming into force of this Act by allowing the

continuance of accounting services for a period of eight years in order to avoid criminal liability and sanctions under the law. The purpose of the provision was to enable such persons to undertake further studies in order to acquire the qualifications prescribed by the Director-General. The provision granted a right for those who did not have the qualifications prescribed by law to comply with section 7(6) in conjunction with section 42 paragraph two of the Accounting Act B.E. 2543 (2000). The provision therefore did not restrict a person's rights. On the other hand, it was a transitory provision which granted a right to those who did not have the qualifications under section 7(6) to be able to continue engaging in the profession for another eight years. The provision thus sufficiently relaxed and remedied the effects of this Act in relation to the qualifications of an accountant and did not constitute an exercise of powers by a state organ in violation of human dignity and the rights and liberties recognized by the Constitution.

4. Ruling of the Constitutional Court

The Constitutional Court held that section 42 paragraph two of the Accounting Act B.E. 2543 (2000) was neither contrary to nor inconsistent with section 26, section 27, section 29 and section 43 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).
