

Summary of Constitutional Court Ruling No. 5-7/2555 (2012)

Dated 22nd February B.E. 2555 (2012)*

Re: Whether or not the Emergency Decree Authorising the Ministry of Finance to Raise Loans for the Installation of a Water Management System and Building the Country's Future B.E. 2555 (2012) and the Emergency Decree on the Restructuring of Loans Raised by the Ministry of Finance in Aid of the Financial Institution Development Fund B.E. 2555 (2012) were in accordance with section 184 paragraph one and paragraph two of the Constitution.

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1. Summary of background and facts

The President of the House of Representatives referred the opinion of 117 Members of the House of Representatives and the President of the Senate referred the opinions of 68 Senators to the Constitutional Court for a ruling on whether or not the Emergency Decree Authorising the Ministry of Finance to Raise Loans for the Installation of a Water Management System and Building the Country's Future B.E. 2555 (2012) and Emergency Decree on the Restructuring of Loans Raised by the Ministry of Finance in Aid of the Financial Institution Development Fund B.E. 2555 (2012) were in accordance with section 184 paragraph one and paragraph two of the Constitution.

The facts in the application could be summarised as follows. The Council of Ministers, by Miss Yingluck Shinawatra, Prime Minister, passed a resolution to approve the enactment of the Emergency Decree Authorising the Ministry of Finance to Raise Loans for the Installation of a Water Management System and Building the Country's Future B.E. 2555 (2012) and Emergency Decree on the Restructuring of Loans Raised by the Ministry of Finance in Aid of the Financial Institution Development Fund B.E. 2555 (2012) on 10th January B.E. 2555 (2012). The Emergency Decrees were published in the Government Gazette on 26th January B.E. 2555 (2012) and came into force as from 27th January B.E. 2555 (2012). The group of Members of the House of Representatives who entered their opinions to the President of the House of Representatives were of the view that the enactment of those two Emergency Decrees were inconsistent with section 184 paragraph one and paragraph two of the Constitution since they were not enacted for the purpose of maintaining national security, public security, national economic security or to avert a public calamity,

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and they were not enacted in an event of an unavoidable urgent necessity. The group of Senators entering their opinions to the President of the Senate were of the view that the Emergency Decree on the Restructuring of Loans Raised by the Ministry of Finance in Aid of the Financial Institution Development Fund B.E. 2555 (2012) was not in accordance with section 184 paragraph two of the Constitution since it was not enacted in an event of an unavoidable urgent necessity.

2. Preliminary issue

The preliminary issue was whether or not the Constitutional Court had the competence to accept the applications for trial and ruling.

The Constitutional Court made the following findings. 117 Members of the House of Representatives, which constituted not less than one-fifth of the existing number in the House of Representatives, had entered their opinions to the President of the House of Representatives pertaining to the question of whether or not the two Emergency Decrees were in accordance with section 184 paragraph one and paragraph two of the Constitution. In addition, 68 Senators, which constituted not less than one-fifth of the existing number in the Senate, entered their opinions to the President of the Senate pertaining to the question of whether or not the Emergency Decree on the Restructuring of Loans Raised by the Ministry of Finance in Aid of the Financial Institution Development Fund B.E. 2555 (2012) was in accordance with section 184 paragraph two of the Constitution. The Presidents of both Houses referred the opinions to the Constitutional Court for a ruling. The cases were in accordance with section 185 of the Constitution. Thus, the Constitutional Court ordered the acceptance of both applications for trial and ruling, and the applications were consolidated into one trial.

3. The issues considered by the Constitutional Court

The Constitutional Court determined that the following issues had to be considered.

First Issue: whether or not the enactment of the Emergency Decree Authorising the Ministry of Finance to Raise Loans for the Installation of a Water Management System and Building the Country's Future B.E. 2555 (2012) was in accordance with section 184 paragraph one and paragraph two of the Constitution.

The issue to be considered was whether or not the enactment of the Emergency Decree Authorising the Ministry of Finance to Raise Loans for the Installation of a Water Management System and Building the Country's Future B.E. 2555 (2012) was done for the benefit of maintaining national economic security or averting public calamity as provided in section 184 paragraph one of the Constitution. On this issue, the Constitutional Court made the following findings. The Emergency Decree Authorising the Ministry of Finance to Raise Loans for the Installation of a Water Management System and Building the Country's Future B.E. 2555 (2012) was enacted for the benefit of preventing and mitigating losses arising from

the flood crisis as well as to foster the confidence of investors and the general public. This was a response to the flood crisis during the end of the year B.E. 2554 (2011) which caused serious damage to Thailand's economic system and damage to large amounts of the people's properties, in particular damage suffered by operators in inundated industrial estates. A total of 841 industrial plants were affected. Most of the industrial plants were sources of essential industrial raw materials, for example, the motor industry, electronic components, electrical appliances, food and beverages. There was an impact on the global economy as Thailand was a manufacturing base for components in those industries. If the Government failed to implement preventive and mitigating measures for the flood crisis in order to regain the confidence of Thai and foreign investors, operators in the industrial estates situated in the inundated areas might decide to relocate their business premises to other countries, which would affect the confidence and economic security of the country. Thus, it was found that the enactment of the Emergency Decree Authorising the Ministry of Finance to Raise Loans for the Installation of a Water Management System and Building the Country's Future B.E. 2555 (2012) was done for the benefit of maintaining national economic security and averting public calamity pursuant to section 184 paragraph one of the Constitution.

As for whether or not the enactment of the Emergency Decree Authorising the Ministry of Finance to Raise Loans for the Installation of a Water Management System and Building of the Country's Future B.E. 2555 (2012) was an unavoidable urgent necessity, the Constitutional Court found that the flood crisis at the end of the year B.E. 2554 (2011) was a problem which had a serious impact on people's properties and the Thai economic system. The Government had employed resources to resolve the crisis and aid victims, industrial operators, and had repaired infrastructure through the use of enormous amounts of budget and other resources. Even though the Government had at its disposal the Annual Expenditure Budget for the Fiscal Year B.E. 2555 (2012), which was promulgated on 8th February B.E. 2555 (2012), as a tool for resolving and restoring the country, by way of setting aside a central expenditure fund of 120,000 million baht and emergency reserve of 66,000 million baht at various ministries, sub-ministries and departments, the Government had already committed certain funds in advance for remedying and mitigating the suffering of flood victims. Moreover, the Government did not have the option of increasing its budget deficit by 150,000 million baht in an Expenditure Budget Bill because the time limit for agencies to submit budgetary requests to the Budget Bureau had already lapsed and the annual expenditure budget limit had already exceeded. The preparation of an Expenditure Budget Bill for B.E. 2555 (2012) (Supplemental) was also not viable since deliberations of such a bill would require substantial time and not provide a timely response to the situation where the Government had to urgently prevent a calamity arising from a flood which indicators show Thailand could face with another crisis in the year B.E. 2556 (2013). The Government's action to install an integrated water management system pursuant to flood mitigation strategy in the Chao Phraya flood plain which required the sum of 350,000 million baht under the Emergency Decree Authorising the Ministry of Finance to Raise Loans for the Installation of a Water Management System and Building the Country's Future B.E. 2555 (2012) therefore added confidence to the public's engagement in occupations

and investors in the area. The measure also provided protection against an imminent calamity. The Constitutional Court therefore found that the enactment of the Emergency Decree Authorising the Ministry of Finance to Raise Loans for the Installation of a Water Management System and Building the Country's Future B.E. 2555 (2012) was an unavoidable urgent necessity under section 184 paragraph two of the Constitution.

Second Issue: whether or not the enactment of the Emergency Decree on the Restructuring of Loans Raised by the Ministry of Finance in Aid of the Financial Institution Development Fund B.E. 2555 (2012) on 10th January B.E. 2555 (2012) was done for the benefit of maintaining national economic security pursuant to section 184 paragraph one of the Constitution. The Constitutional Court made the following findings. The Government had taken efforts to resolve the public debt problem due to the Ministry of Finance's obligation to allocate an expenditure budget for the repayment of principal and interests arising from the financial crisis of B.E. 2540 (1997). The Government had allocated expenditure budgets for the repayment of interests on such loans for the last 15 years in the amount of 670,502 million baht, but repaying only 13 percent of the loan principal. At the time, the outstanding debt amount was 1,140,000 million baht. If the Government had to continue allocating expenditure budgets to repay such debt amount, there would be a burden on the Government's budget. In the B.E. 2555 (2012) expenditure budget, the Government had allocated an expenditure sum for repayment of loan interest in the amount of 68,430 million baht, leaving the Government with less to invest in infrastructures of the economic and social system. Furthermore, such debts arose from a financial crisis caused by the financial institutions and remained under the supervision of the Bank of Thailand. The Government's assignment to the Bank of Thailand of supervision and control of the repayment of loan debts of the Financial Institution Restructuring Fund by applying the net earnings of the Bank of Thailand, monies or properties of the Financial Institution Restructuring Fund, including remittances of financial institutions to the Bank of Thailand in the amount not exceeding 1 percent of the balance received by the financial institutions from the public, was a way of resolving the debts used by the Government to systematically aid the financial institutions. As a consequence, the Government was left with a budget sum which was not applied to repayment of debt interests each year, and which could be used for the development of the country. The Constitutional Court therefore found that the Emergency Decree on the Restructuring of Loans Raised by the Ministry of Finance in Aid of the Financial Institution Development Fund B.E. 2555 (2012) on 10th January B.E. 2555 (2012) was enacted for the benefit of maintaining national economic security pursuant to section 184 paragraph one of the Constitution.

The next issue considered by the Constitutional Court was whether or not the enactment of the Emergency Decree on the Restructuring of Loans Raised by the Ministry of Finance in Aid of the Financial Institution Development Fund B.E. 2555 (2012) on 10th January B.E. 2555 (2012) was a case of an unavoidable urgent necessity under section 184 paragraph two of the Constitution. The Constitutional Court made the following findings. Despite the financial crisis having occurred more than 15 years ago, resolution of

the problem was not yet realized. The losses assumed by the Financial Institution Restructuring Fund amounted to 1,401,450 million baht. The Ministry of Finance still had an outstanding debt obligation of 87 percent, or the amount of 1,140,000 million baht. Such debts were part of the public debt under the Ministry of Finance's responsibility. The Emergency Decree on the Restructuring of Loans Raised by the Ministry of Finance in Aid of the Financial Institution Development Fund B.E. 2555 (2012) prescribed a debt management procedure whereby the Financial Institution Development Fund would be responsible for the repayment of principal and interests under the supervision of the Bank of Thailand. It was expected that full repayment would be achieved within 21-26 years. In the Fiscal Year B.E. 2555 (2012), the Ministry of Finance allocated an expenditure budget for repayment of loan interests in the amount of 68,430 million baht, which was 2.9 percent of the expenditure budget for B.E. 2555 (2012), allocated in the amount of 2,380,000 million baht. If determined as a proportion of the investment budget of 423,387 million baht, this amount constituted 16.2 percent, a significant proportion of the country's investments. The government could have applied such sums for loan interest payment in the amount of approximately 60,000 million baht per annum to investments in plans and projects to alleviate the grievances of the people or to investments for national economic and social development. Moreover, it was the government's intention to apply the Emergency Decree on the Restructuring of Loans Raised by the Ministry of Finance in Aid of the Financial Institution Development Fund B.E. 2555 (2012) from early B.E. 2555 (2012) so as to allow sufficient time for the collection of funds from the Deposit Protection Fund for the first six-month period of B.E. 2555 (2012) in order to render unnecessary the allocation of expenditure budget for repayment of such loan interests in the preparation of the B.E. 2556 (2013) expenditure budget. Furthermore, the Emergency Decree Authorising the Ministry of Finance to Raise Loans for the Installation of a Water Management System and Building the Country's Future B.E. 2555 (2012) provided that the Government could borrow in Thai baht or foreign currency, but the loan must be obtained within 30th June B.E. 2556 (2013). The period of implementing the Emergency Decree fell in between the fiscal years of B.E. 2555 (2012) and B.E. 2556 (2013), consistent with the Government's intent to refrain from allocating an expenditure budget for repayment of loan interests in the fiscal year B.E. 2556 (2013), which would lessen the fiscal burden in the same period when it was necessary to obtain a loan under such Emergency Decree. The Emergency Decrees therefore had objectives and necessities requiring concurrent application and were mutually interlinked. The enactment of the Emergency Decree on the Restructuring of Loans Raised by the Ministry of Finance in Aid of the Financial Institution Development Fund B.E. 2555 (2012) was intended to ensure efficiency in the management of debts of the Financial Institution Development Fund to foster national economic confidence. The Emergency Decree would enable the Government to apply monies which would otherwise be required for repayment of loan interests in an amount more than 60,000 million baht each year for the collective benefit of economic and social development.

The Court, after having considered all the facts, made the following findings. The enactment of both Emergency Decrees did not constitute violations of constitutional

provisions as stated in the opinions of the petitioners to the Presidents of both Houses of the National Assembly. There was a necessity which arose from an actual flooding disaster, and there was an urgent need to implement measures to prevent and remedy losses. The measures were interrelated with the prevention and remedy of such problem. Furthermore, at this stage there was no cause to indicate that the Council of Ministers had enacted the Emergency Decrees in bad faith or exercised discretion to distort the constitutional principles. Hence, the Constitutional Court found that there was an unavoidable urgent necessity under section 184 paragraph two of the Constitution.

4. Ruling of the Constitutional Court

The Constitutional Court, by a unanimous vote, held that the enactment of the Emergency Decree Authorising the Ministry of Finance to Raise Loans for the Installation of a Water Management System and Building the Country's Future B.E. 2555 (2012) was consistent with section 184 paragraph one and paragraph two of the Constitution. The Constitutional Court held further, by 7 to 2 votes, that the enactment of the Emergency Decree on the Restructuring of Loans Raised by the Ministry of Finance in Aid of the Financial Institution Development Fund B.E. 2555 (2012) was consistent with section 184 paragraph one and paragraph two of the Constitution. Thus, it was held that the Emergency Decree Authorising the Ministry of Finance to Raise Loans for the Installation of a Water Management System and Building the Country's Future B.E. 2555 (2012) and Emergency Decree on the Restructuring of Loans Raised by the Ministry of Finance in Aid of the Financial Institution Development Fund B.E. 2555 (2012) were enacted in the interest of preserving national economic security and constituted an unavoidable urgent necessity under section 184 paragraph one and paragraph two of the Constitution.
