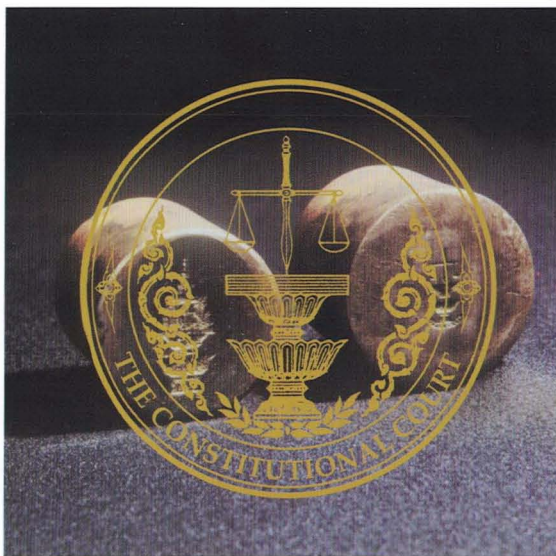


# The Constitutional Court of the Kingdom of Thailand



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**THE CONSTITUTIONAL COURT  
OF THE KINGDOM OF THAILAND**

**ห้องสมุดศาลรัฐธรรมนูญ**

*Library of Constitutional Court*

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*The Constitutional Court trial process contains the following stages:*

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*1. Acceptance of Application.*

*2. Consideration of the Application.*

*3. Notification of the Applicant and Service of Application to the Respondent.*

*4. Trial Proceedings.*

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ศาลรัฐธรรมนูญ

## PREFACE

The Constitution of the Kingdom of Thailand B.E. 2550 (2007) which came into force on 24<sup>th</sup> August B.E. 2550 (2007) provided for the establishment of a Constitutional Court to perform the function of safeguarding the supremacy of the Constitution. This principle was enshrined in section 6 of the Constitution, which states that “the Constitution is the supreme law of the State; the provisions of any law, rule or regulation, which are contrary to or inconsistent with this Constitution, shall be unenforceable.” Moreover, the Constitutional Court serves as a body which realizes the recognition and protection of the people’s rights and liberties in practice through rulings of the Constitutional Court. Such roles are apparent from the provisions of section 27 which states “rights and liberties recognised by this Constitution explicitly, by implication or by decisions of the Constitutional Court shall be protected and directly binding on the National Assembly, the Council of Ministers, the Courts, Constitutional organs and State agencies with respect to the enactment, application and interpretation of all laws,” and the provisions of section 216 paragraph five of the Constitution, which states that “the decision of the Constitutional Court shall be deemed final and binding on the National Assembly, Council of Ministers, Courts and other State organs.”

It is thus said that certain similarities and differences could be drawn between the powers and duties of the Constitutional Court under the Constitution of the Kingdom of Thailand B.E. 2550 (2007) and the Constitutional Court under the Constitution of the Kingdom of Thailand B.E. 2540 (1997), in particular with respect to the increase in access of the people to the Constitutional Court. An example is section 212 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), which states that “a person whose rights and liberties recognised by this Constitution are violated, has the right to submit a complaint to the Constitutional Court for its decision as to whether provisions of the law are contrary to or inconsistent with the Constitution”, and paragraph two of the same section stated an additional requirement that “the exercise of rights under paragraph one must be a case of an inability to exercise the right by other means as provided in the Organic Act on Constitutional Court Procedures.” The effect of this provision is to enable the people to exercise the right to file an action directly in the Constitutional Court as an additional channel. Details on the

exercise of such rights would be supplemented by the Organic Act on Constitutional Court Procedures. However, the Constitution of the Kingdom of Thailand B.E. 2550 (2007) contained transitory provisions to the effect that whilst the Organic Act on Constitutional Court Procedures has not yet been enacted, the Constitutional Court may issue Rules relating to procedures and ruling, but in any event, the Organic Act on Constitutional Court Procedures must be enacted within one year as from the date of this Constitution's promulgation. In the interim, the Constitutional Court issued the "Rules of the Constitutional Court on Procedures and Ruling B.E. 2550 (2007)" which came into force as from 22<sup>nd</sup> December B.E. 2550 (2007). Thus, the people are given a channel for exercising the right to file an application with the Constitutional Court for a ruling that a provision of law is contrary to or inconsistent with the Constitution under section 212 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) pursuant to such Rules of the Constitutional Court.

Lastly, the Office of the Constitutional Court sincerely hopes that this introductory book on the Constitutional Court would provide a basic text for building a further understanding of the Constitutional Court, as well as enhance the people's understanding and awareness of the channels for filing applications with the Constitutional Court, which in turn would enable the Constitutional Court to perform its functions in safeguarding and protecting the rights and liberties of the people deserving of its pledge to continually "uphold the rule of law, defend democracy, safeguard the rights and liberties of the people".



(Mr. Paiboon Varahapaitoon)  
Secretary-General of Office of the Constitutional Court



## THE COURTHOUSE OF THE CONSTITUTIONAL COURT

The Mansion of Chao Phraya Rattanathibet (Phum Srichaiyant) dates back in history for no less than 100 years. The construction had been influenced by Italian renaissance architecture due to the popularity of adopting western architecture to local houses and buildings during the reign of King Rama V. The general components of the building comprise the artistic values of Andrea Palladio and Vigrola, renowned Italian architects during the latter half of the sixteenth century.

Subsequent additions and renovations have converted the mansion into offices of various government agencies, such as guest accommodation for the Ministry of Interior, Offices of the Ministry of Dhamma (Ministry of Education), the Department of Agriculture and Fisheries, Office of Bangkok Metropolitan Agriculture, Department of Agricultural Development of the Ministry of Agriculture and Cooperatives respectively. Nevertheless, the additions and renovations have attempted to preserve as much of the original architecture in order to maintain the architectural value of the Chao Phraya Rattanathibet Mansion. The Mansion of Chao Phraya Rattanathibet was listed as a historical building on 30<sup>th</sup> September B.E. 2531 (1988).

When the Constitutional Court was inaugurated under the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the Mansion of Chao Phraya Rattanathibet, situated on No. 326, Chakphet Road, Khwaeng Wangburapha- phiom, Phra Nakorn District, Bangkok, was renovated into the courthouse of the Constitutional Court. Operations commenced on 27<sup>th</sup> August B.E. 2543 (2000)\*. The renovation of the

\* *The Constitutional Court has leased the Chao Phraya Building situated at No. 49/1, Phra Athit Road, Khwaeng Chanasongram, Phra Nakhorn District, Bangkok, as its temporary courthouse prior to the complete renovation of Mansion of Chao Phraya Rattanathibet as its permanent courthouse.*

Mansion of Chao Phraya Rattanathibet was conducted under the supervision of the Department of Art in order to preserve the original architectural structure of the building. Interior decorations followed the historical form in line with the western architectural influence mixed with Thai architecture. Teakwood has been the primary material used in almost all decorative items. The internal area of the building has been partitioned into two parts, namely:

First part. The Mansion of Chao Phraya Rattanathibet has been renovated into offices of the President of the Constitutional Court, Constitutional Court judges and administrators of the Office of the Constitutional Court.

Second part. The old Ministry of Dhamma building has been renovated into the offices of officials of the Office of the Constitutional Court and various meeting rooms, comprising the court trial room, deliberation room, meeting room of the Office, a museum and collection of memoirs of the Constitutional Court, library, praying room and press conference room.



1 2 3

- 1,2 *A part of the windows and doors, the original architecture of the old Ministry of Drama building, has been renovated into the offices of officials of the Office of the Constitutional Court.*
- 3 *A rear of the Courthouse has undergone major renovation.*





1

2

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4

1-4 *The Surrounding of  
the Courthouse of the  
Constitutional Court.*



The Mansion of  
Chao Phraya Rattanathibet  
(Phum Srichaiyant) dates  
back in history for no less  
than 100 years.

The construction had been  
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half of the sixteenth century.



The renovation of the Mansion of Chao Phraya Rattanathibet was conducted under the supervision of the Department of Art in order to preserve the original architectural structure

of the Building. Interior decorations followed the historical form in line with the western architectural influence mixed with Thai architecture.



The first part of the building has been renovated into offices of the President of the Constitutional Court, Constitutional Court Justices and administrators of the Office of the Constitutional Court.

1 2 3

- 1 *Office of the President of the Constitutional Court*
- 2,3 *Offices of Justices of the Constitutional Court*



1 2

3

1 *Office of the Head of the Administration,  
the Secretary-General of Office of  
the Constitutional Court*

2 *Reception Room*

3 *The Court Trial Room*





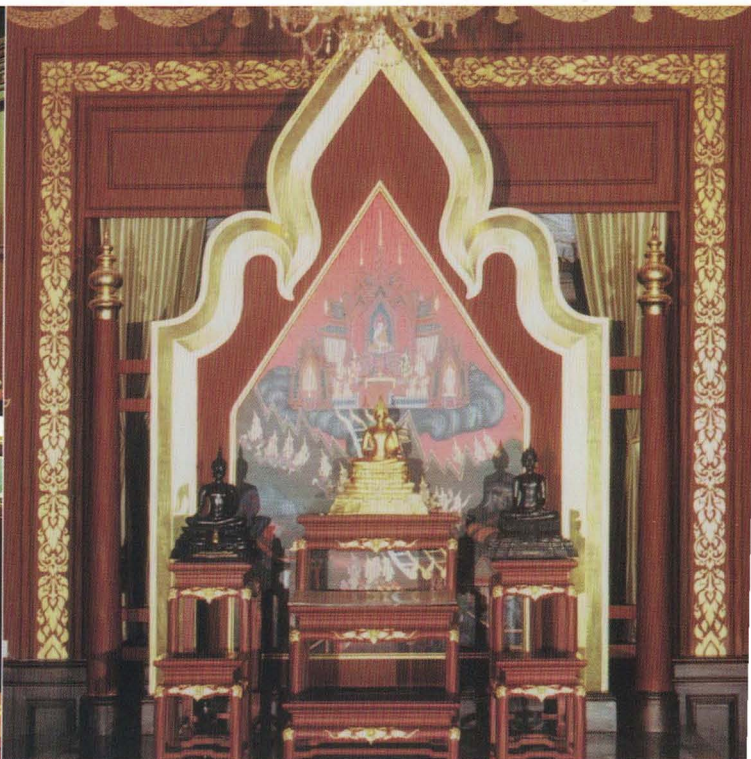
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- 1 *Deliberation Room*
- 2 *Meeting Room of the Office*
- 3,4 *Museum and Collection of Memoirs of the Constitutional Court*
- 5 *Library*
- 6 *Audio-Visual Operation Room*



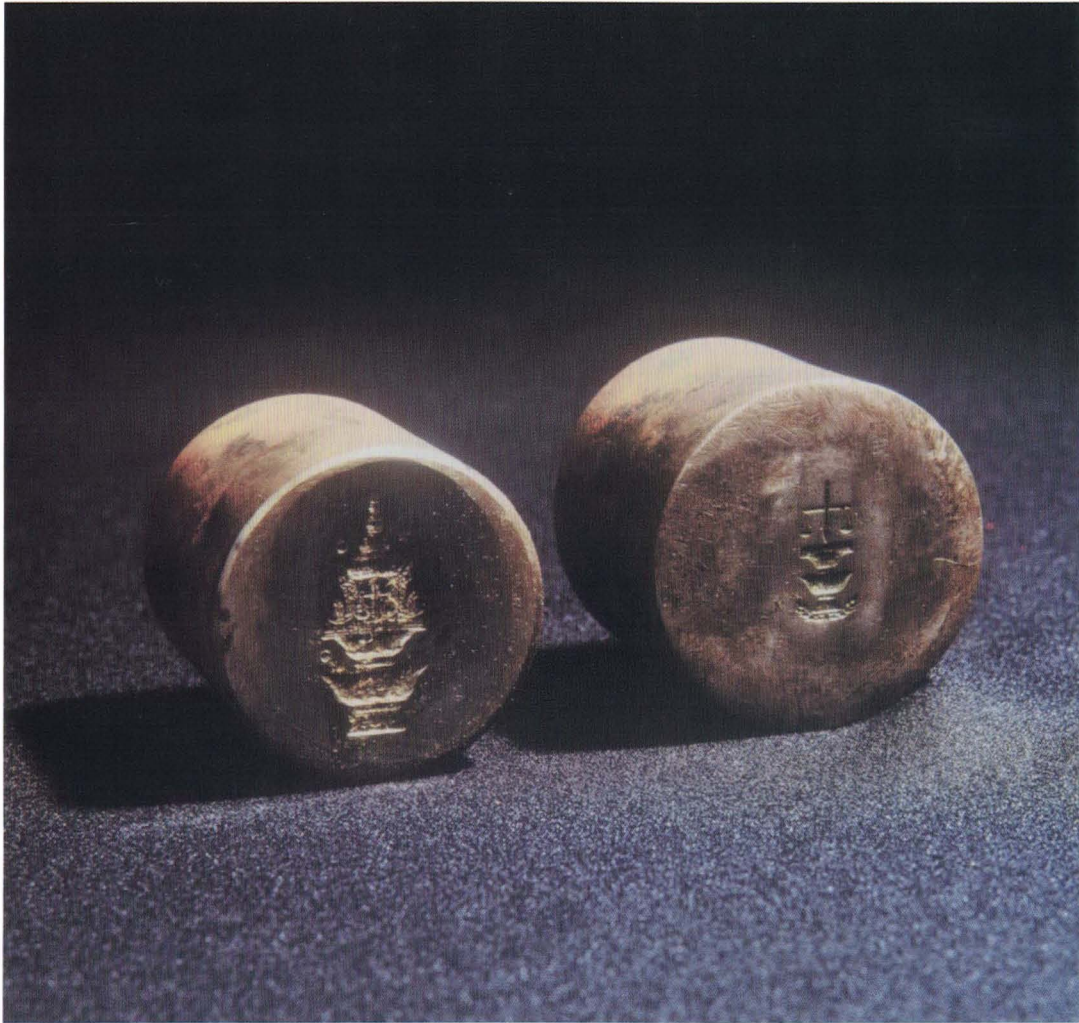




1 2 3 4

- 1 *Press Conference Room*
- 2,3 *Offices of Officials of the Office of the Constitutional Court*
- 4 *Praying Room*

# THE CONSTITUTIONAL COURT



## THE CONSTITUTIONAL COURT: AN ORGAN WHICH DECIDES ON QUESTIONS OF CONSTITUTIONALITY

The Constitutional Court is a specialized court. In other words, it is a judicial organ whose jurisdiction is distinctive from the Courts of Justice, Administrative Courts and Military Court, given the name “Constitutional Court”. The Constitutional Court was entrusted with the function of ruling on the constitutionality of laws, also known as constitutional cases. This form of specialized court was first adopted in Austria and subsequently recognized in other countries such as Germany, Belgium, Portugal, Spain, Italy, South Korea and Indonesia.

1

- 1 *A U-shaped staircase constructed of teakwood, ascends three storeys from the library to the offices of officials.*



## PRESIDENT AND JUSTICES OF THE CONSTITUTIONAL COURT



# Composition of the Constitutional Court under the Constitution of the Kingdom of Thailand B.E. 2550 (2007)

Section 204 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) provided that the Constitutional Court consists of the President of the Constitutional Court and 8 Justices of the Constitutional Court, appointed by the King upon the advice of the Senate.

## 1. Sources of Constitutional Court Justices

**1.1 Justices of the Supreme Court**, 3 of whom are elected at a General Assembly of the Supreme Court by secret ballot.

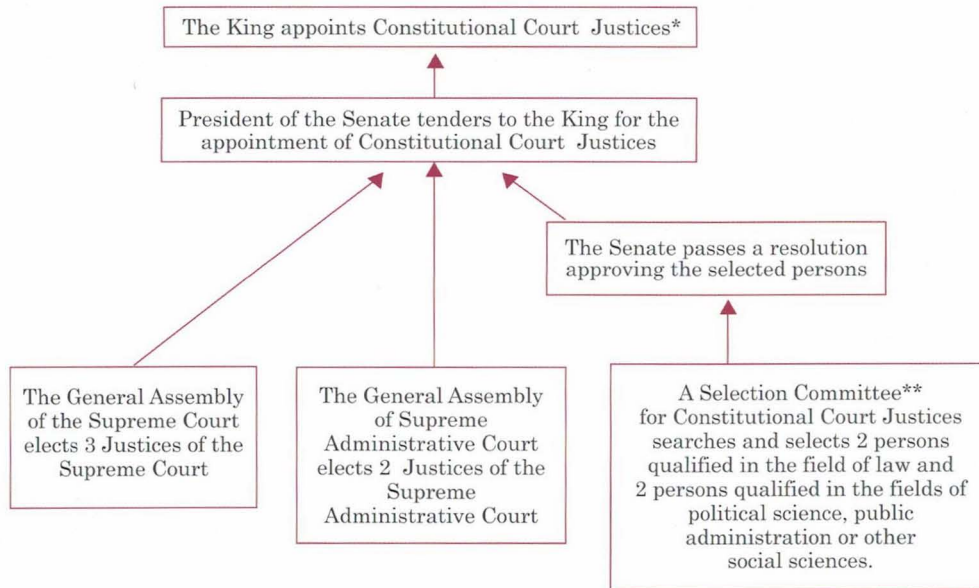
**1.2 Justices of the Supreme Administrative Court**, 2 of whom are elected at a General Assembly of the Supreme Administrative Court by secret ballot.

**1.3 Qualified persons in the field of law**, 2 persons who genuinely possess knowledge and expertise in law.

**1.4 Qualified persons in the field of political science, public administration or other social sciences**, 2 persons who genuinely possess knowledge and expertise in the administration of State affairs.

In the event that no Justice of the Supreme Court or Justice of the Supreme Administrative Court is elected to become a Constitutional Court Justice, the General Assembly of the Supreme Court or General Assembly of the Supreme Administrative Court, as the case may be, shall elect other persons having the qualifications and not being under a prohibition with regard to being a Constitutional Court Justice as provided by section 205 of the Constitution, and having suitable knowledge and qualifications in law for the performance of duties as a Constitutional Court Justice, to become a Constitutional Court Justices under 1.1 or 1.2 as the case may be.

## 2. Selection Process of Constitutional Court Justices

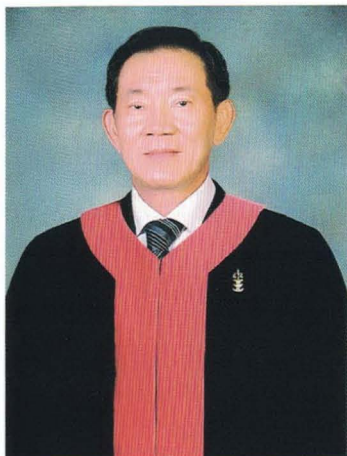


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- \* - 9 Constitutional Court Justices meet and select one amongst themselves to become the President of the Constitutional Court.
  - The President of the Senate shall countersign the Royal Appointment of the President of the Constitutional Court and Constitutional Court Justices.
  - The President of the Constitutional Court and Constitutional Court Justices shall hold office for 9 years as from the date of Royal Appointment and may hold office for only one term.

- \*\* - The Selection Committee comprises 5 members, consisting of:
  1. President of the Supreme Court;
  2. President of the Supreme Administrative Court;
  3. President of the House of Representatives;
  4. Leader of the Opposition in the House of Representatives;
  5. One person selected by and amongst Presidents of independent constitutional organs.

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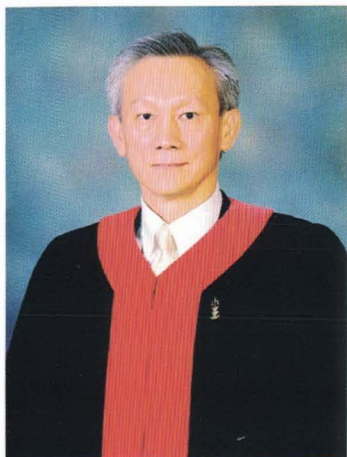
## PRESIDENT OF THE CONSTITUTIONAL COURT



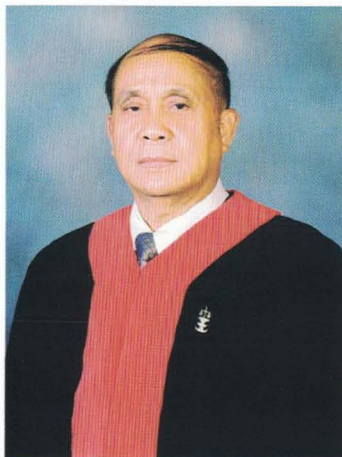
**H.E. Mr. Chat Chonlaworn**  
*President of the Constitutional Court*

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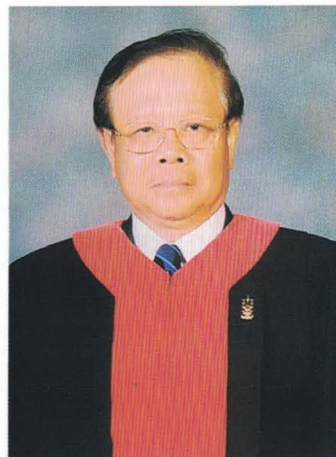
## JUSTICES OF THE CONSTITUTIONAL COURT



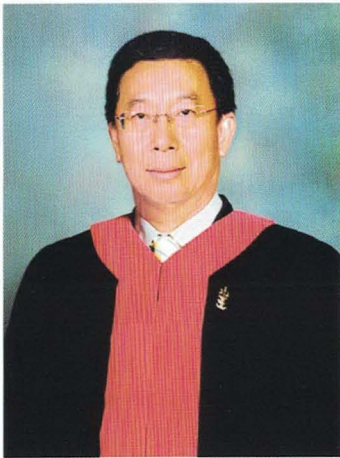
Mr. Jaran Pukditanakul



Mr. Charoon Intachan



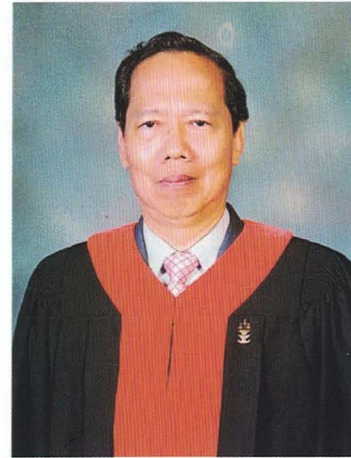
Mr. Chalermpon Ake-uru



Mr. Nurak Marpraneet



Mr. Boonsong Kulbupar



Mr. Wasan Soypisudh



Mr. Suphot Khaimuk



Mr. Udomsak Nitimontree

## Powers and Duties of the Constitutional Court

The Constitution of the Kingdom of Thailand B.E. 2550 (2007) provided for the Constitutional Court to have powers and duties in adjudicating and ruling constitutional cases. These powers and duties may be categorized into the following 9 functions:

- (1) constitutionality review of bills of law and draft rules of procedure of the legislature prior to promulgation so as to prevent any contrariness or inconsistencies with the Constitution;
- (2) constitutionality review of laws already in force so as to prevent any contrariness or inconsistencies with the Constitution;
- (3) constitutionality review of the conditions for enacting an Emergency Decree so as to avoid any contrariness or inconsistencies with the Constitution;
- (4) to rule on whether or not a member of the House of Representatives, senator or committee member has committed an act which results in a direct or indirect interest in the use of budgetary appropriations;
- (5) to rule on disputes of conflicts pertaining to the powers and duties of two or more organs with respect to the National Assembly, Council of Ministers or non-judicial constitutional organs.
- (6) to rule on resolutions or regulations of political parties, to consider appeals of members of the House of Representatives and to rule on cases concerning persons or political parties exercising political rights and liberties unconstitutionally;
- (7) to rule on the membership or qualifications of members of the National Assembly, Minister and Election Commissioners;
- (8) to rule on whether or not a treaty must be approved by the National Assembly;
- (9) powers and duties stipulated by the Organic Act on Political Parties B.E. 2550 (2007).



**1** *The Full Bench*

Details on the powers and duties of the Constitutional Court with respect to all nine functions are detailed below.

**1. Constitutionality review of bills of law and draft rules of procedure of the legislature prior to promulgation so as to prevent any contrariness or inconsistencies with the Constitution.**

**1.1 Constitutionality review of Organic Bills (Constitution B.E. 2550 (2007), section 141)**

An Organic Act under the Constitution of the Kingdom of Thailand B.E. 2550 (2007) holds a different status from general Acts. In other words,

before an Organic Bill is presented to the King for royal assent, the Constitution provided for a constitutional review of the Organic Bill by the Constitutional Court.

There are 9 Organic Acts under the Constitution of the Kingdom of Thailand B.E. 2550 (2007), as follows:

- (1) Organic Act on Election of Members of the House of Representatives and Obtaining Senators;
- (2) Organic Act on Election Commission;
- (3) Organic Act on Political Parties;
- (4) Organic Act on Referendums;
- (5) Organic Act on Constitutional Court Procedures;
- (6) Organic Act on Criminal Procedures for Holders of Political Positions;
- (7) Organic Act on Ombudsmen;
- (8) Organic Act on Counter Corruption;
- (9) Organic Act on State Audit.

### **1.2 Constitutionality review of a Bill (Constitution B.E. 2550 (2007), section 154).**

With regard to any Bill approved by the National Assembly prior to submission by the Prime Minister to the King for royal assent, or any Bill confirmed by the National Assembly and prior to re-submission of the Bill by the Prime Minister to the King for royal assent, if

**(1) members of the House of Representatives, senators or members of both Houses of the National Assembly constituting no fewer than one tenth of the existing members of both Houses** finds that such Bill contains provisions which are contrary to or inconsistent with this Constitution, or that the

enactment process as provided by this Constitution was not properly complied with, an opinion may be submitted to the President of the House of Representatives or President of the Senate or President of the National Assembly, as the case may be, after which the President of the House receiving such opinion shall forward the opinion to the Constitutional Court for decision, and the Prime Minister shall be notified without delay;

**(2) the Prime Minister** is of the opinion that such Bill contains provisions which are contrary to or inconsistent with this Constitution or the enactment process as provided by this Constitution was not properly complied with, such opinion shall be sent to the Constitutional Court for ruling and the President of the House of Representatives and President of the Senate shall be notified without delay.

If the Constitutional Court rules that such Bill contains provisions which are contrary to or inconsistent with this Constitution, or has not been enacted in accordance with the provisions of this Constitution, and such provisions constitute an essential substance, the entire bill shall lapse.

If the Constitutional Court rules that such Bill contains provisions which are contrary to or inconsistent with this Constitution, but does not constitute an essential substance, only such contrary or inconsistent provision shall lapse. The Bill shall, however, be able to come into force upon promulgation.

### **1.3 To review draft rules of procedure of the legislature in order to prevent contrariness or inconsistencies with the Constitution (Constitution B.E. 2550 (2007), section 155)**

The Constitutional Court has the jurisdiction to carry out a constitutionality review of draft meeting rules of the House of Representatives, draft meeting rules of the Senate and draft meeting rules of the National Assembly that have already received approval but not yet published in the Government

Gazette. The review examines whether those draft rules contain provisions which are contrary to or inconsistent with the Constitution or have not been enacted in accordance with the provisions of the Constitution. Persons having the standing to file such a case are members of the House of Representatives or senators in the number no fewer than one tenth of each respective House, or members of both Houses altogether constituting no fewer than one tenth of both Houses in the case of an application for review of the draft meeting rules of the National Assembly.

**1.4 To rule on whether or not the principles of a Bill are the same as or similar to the principles of a Bill which has been withheld (Constitution B.E. 2550 (2007), section 149).**

The Constitution has provided a legislative process whereby a Bill shall first be submitted to the House of Representatives for consideration. Once the House of Representatives has given its approval, the Bill would then be presented to the Senate for approval. At this stage, if the Senate does not concur with the House of Representatives, it shall be deemed that the Senate has withheld the Bill which shall be returned to the House of Representatives. Or if the Senate amends the Bill but the House of Representatives does not agree with the amendments, and a joint committee is subsequently formed but either House does not concur with the Bill considered by the joint committee, in such an event, it shall also be deemed that the Bill has been withheld. During the withholding of such Bill, the House of Representatives may reconsider the Bill only after the lapse of 180 days (except for fiscal Bills which the House of Representatives may consider immediately). Therefore, while such Bill is withheld, section 149 of the Constitution prohibits the Council of Ministers or members of the House of Representatives from submitting a Bill containing the same or similar principle to the withheld Bill.

In the case where the **House of Representatives** or **Senate** finds that a Bill that has been presented or submitted for consideration is a Bill which contains the same or similar principles to a withheld Bill, the **President of the House of Representatives** or **President of the Senate** shall submit such Bill to the

Constitutional Court for review. If the Constitutional Court rules that the Bill contains the same or similar principles to a withheld Bill, such Bill shall lapse.

The prohibition against submission of a Bill which has the same or similar principles to a withheld Bill shall apply *mutatis mutandis* to the submission of Organic Bills.

## **2. Constitutionality review of provisions of pro-mulgated laws.**

In the case where an Act has already been promulgated, if it subsequently appears that the provisions of such law contain substances which are contrary to or inconsistent with the Constitution, the Constitution has provided for controls over laws that have already been approved by the National Assembly in order to prevent contrariness or inconsistencies with the Constitution by providing 4 channels for filing applications with the Constitutional Court for review, as follows:

### **2.1 To rule whether a provision of law which is to be applied by the court to a case is contrary to or inconsistent with the Constitution (Constitution B.E. 2550 (2007), section 211).**

A constitutionality review of provisions of law to be applied by the Court to a case under section 211 of the Constitution must involve a case which had already arisen in the court, whether that may be the Courts of Justice, Administrative Courts or Military Court or any other court, and regardless of the court level which the case is pending trial. If the court finds on its own accord or a party (plaintiff-defendant or applicant-respondent) in the case raises an objection that a provision of law to be applied by the court to the case is contrary to or inconsistent with the Constitution and there has not yet been a decision of the Constitutional Court relating to such provision, a party may file an application in such court

requesting for the opinion to be referred to the Constitutional Court for a ruling that such provision of law is contrary to or inconsistent with the Constitution (in this case, the court may proceed with the trial but shall temporarily stay proceedings until the Constitutional Court gives a decision thereon).

The provision of law which is to be referred by the **court** to the Constitutional Court for decision means a law at the level of an Act which has been enacted by an organ exercising legislative powers, or the National Assembly, or a law which has the force of an Act such as an Emergency Decree that has been approved by the National Assembly.

## **2.2 Constitutional review of provisions of law as submitted by the Ombudsman (Constitution B.E. 2550 (2007) section 245).**

The controls against contrariness or inconsistencies with the Constitution exercised by the Ombudsman as the applicant to the Constitutional Court for ruling under section 245 of the Constitution does not necessarily involve an existing case in the court as in the case of 2.1. The submission of a matter by the Ombudsman to the Constitutional Court for ruling is, in principle, a case involving a prior complaint that has been filed with the Ombudsman. The exception is where the Ombudsman finds that a provision of law has a detrimental effect on the people generally, or in order to protect public interests, in which case the Ombudsman may consider and refer the matter to the Constitutional Court without any complaints filed.

The provisions of law which the Ombudsman may refer to the Constitutional Court for review have the same meaning as provisions of law under 2.1. In other words, the provisions of law subject to review consist of Acts enacted by an organ exercising legislative powers or the National Assembly, or a law which has the force of an Act such as an Emergency Decree that has been approved by the National Assembly.

### **2.3 Constitutional review of provisions of law as submitted by the National Human Rights Commission (Constitution B.E. 2550 (2007), section 257).**

The National Human Rights Commission has the power and duty to submit a matter together with an opinion to the Constitutional Court where it concurs with a complainant that a provision of law affects human rights and contains problems on constitutionality. The Constitution of the Kingdom of Thailand B.E. 2550 (2007) is the first Constitution which provided for the National Human Rights Commission to have such power and duty to submit a matter together with an opinion to the Constitutional Court, as provided by the Organic Act on Constitutional Court Procedures.

As for the provisions of law which the National Human Rights Commission may submit to the Constitutional Court, the same considerations already mentioned in 2.1 and 2.2 applies. In other words, the provisions of law subject to review consist of Acts enacted by an organ exercising legislative powers or the National Assembly, or a law which has the force of an Act such as an Emergency Decree that has been approved by the National Assembly.

### **2.4 To consider applications of persons whose rights and liberties have been violated in order to pass a ruling on whether or not a provision of law is contrary to or inconsistent with the Constitution (Constitution B.E. 2550 (2007), section 212).**

The Constitution of the Kingdom of Thailand B.E. 2550 (2007) is the first Constitution which provided that a person whose rights and liberties recognized by this Constitution has been violated shall have the right to file an application with the Constitutional Court for a ruling of the Constitutional Court on whether such provision of law is contrary to or inconsistent with the Constitution. However, the case has to be one where all means for exercising such rights have been exhausted. Details on the rules and procedures for filing an application are provided in the Organic Act on Constitutional Court Procedures.

During the period when the Organic Act on Constitutional Court Procedures has not yet been enacted, the Constitution contains a transitory provision which enables the Constitutional Court to issue rules on procedures and ruling. In any case, the Organic Act on Constitutional Court Procedures has to be enacted within one year of 24<sup>th</sup> August B.E. 2550 (2007), being the promulgation date of the Constitution B.E. 2550 (2007).

At present, the Constitutional Court has issued “Rules” which are already in force. Clause 21 and clause 22 state that:

“Clause 21. A person whose right or liberty as recognized by the Constitution has been violated has the right to submit an application to the Court for a ruling that a provision of law is contrary to or inconsistent with the Constitution.

The exercise of right under paragraph one must be a case which the exercise of rights by other means have been exhausted pursuant to section 211, section 245(1) and section 257 paragraph one subparagraph (2) of the Constitution.

Clause 22. A person who submits an application under clause 21, apart from having to proceed under clause 18, shall also specify the causes for exhaustion of other means for exercising rights.”

The exercise of personal right to file an application with the Constitutional Court must be a case where other means for exercising rights has been exhausted. In other words, if a person is able to exercise rights through the courts under 2.1 or is able to exercise rights by filing a complaint with the Ombudsman under 2.2, or is able to exercise rights by filing a complaint with the National Human Rights Commission under 2.3, such person must exercise the rights through those channels. It is only where one is not able to exercise rights through any of those channels that a right to file an application with the Constitutional Court arises.

### **3. Constitutional review of the conditions for enacting an Emergency Decree (Constitution B.E. 2550 (2007), section 184)**

The Constitution has laid down conditions for enacting an Emergency Decree which shall have the force of an Act, as follows:

3.1 the enactment is made in the interest of maintaining national security, public security, economic stability or the prevention of a public calamity;

3.2 the enactment of an Emergency Decree under 3.1 may only be made when the Council of Ministers is of the opinion that there is an urgent necessity which cannot be avoided.

When an Emergency Decree has come into force, the Council of Ministers must present the Emergency Decree to the National Assembly, and the latter shall thereafter approve or disapprove such Emergency Decree. During the period when the House of Representatives or Senate has not yet approved the Emergency Decree, members of the House of Representatives or senators numbering no fewer than one-fifth of the existing members of the respective House shall have the right to enter their signatures to present an opinion to the President of the respective House, stating that the Emergency Decree has not satisfied the conditions under 3.1 and 3.2. In such a case, the President of the House who receive such opinion shall then refer the opinion to the Constitutional Court for ruling.

### **4. To rule on whether or not a member of the House of Representatives, senator or committee member has committed an act in order to obtain a direct or indirect interest in the use of budgetary appropriations (Constitution B.E. 2550 (2007), section 168).**

The Constitution has provided measures for controls over the process of enacting the annual appropriations bill, supplemental appropriations bill and transfer of

appropriations bill. These measures monitor the proposal, debate or any act which may result in a member of the House of Representatives, senator or committee member obtaining a direct or indirect interest in the expenditure budget. Members of the House of Representatives or senators numbering no fewer than one-tenth of the existing members of the respective House shall have the right to submit an opinion to the Constitutional Court for decision, and if the Constitutional Court decides that a member of the House of Representatives, senator or committee member has a direct or indirect interest in the expenditure budget, such proposal, debate or act shall be voided.

## **5. To rule on disputes of conflicts pertaining to the respective powers and duties of two or more organs with respect to the National Assembly, Council of Ministers or non-judicial constitutional organs (Constitution B.E. 2550 (2007), section 214).**

The Constitution of the Kingdom of Thailand B.E. 2550 (2007) provides for 2 types of “constitutional organs”, as follows:

**5.1 Independent Constitutional Organs.** There are four of these organs, namely the Election Commission, Ombudsmen, National Counter Corruption Commission and the State Audit Commission.

**5.2 Other Constitutional Organs.** There are three of these organs, namely the State Attorney, National Human Rights Commission and National Economic and Social Council.

A dispute on the conflicts of powers and duties which may be submitted to the Constitutional Court for ruling must be a dispute on conflicts concerning the respective powers and duties of the National Assembly, Council of Ministers or constitutional organ, and must be a conflict between at least two organs. Questions on the powers and duties of a single organ with respect to its ability to take a certain action will not be admitted for consideration.

**6. To review resolutions or rules of political parties, to consider appeals of members of the House of Representatives and to rule on cases concerning the unconstitutional exercise of political rights and liberties by a person or political party.**

**6.1 Determining whether a resolution or rule of a political party is inconsistent with the status and performance of functions of a member of the House of Representatives under the Constitution, or contrary to or inconsistent with the fundamental principles of a democratic form of government with the King as Head of State (Constitution B.E. 2550 (2007), section 65).**

A member of the House of Representatives, executive committee member of a political party or member of a political party has the right to submit a case to the Constitutional Court for a ruling on whether or not a resolution or rule of a political party is inconsistent with the status or performance of functions of a member of the House of Representatives under the Constitution. This right provides a protection for members of the House of Representatives who are affiliated with political parties so as to enable them to perform their functions as representatives of the Thai people for the common interest of the Thai people above the interests of the political party. On the other hand, a ruling on whether or not a resolution or rule of a political party is contrary to or inconsistent with the fundamental principles of the democratic form of government with the King as head of state provides protection for members of a political party and the common interest of the people. Political parties are important institutions in the democratic form of government. Thus, activities undertaken by a political party or the prescription of political party rules should not be contrary to or inconsistent with the fundamental principle of the democratic form of government with the King as head of state.

**6.2 Considering an appeal of a member of the House of Representatives whose membership of a political party has been**

**terminated by resolution of the political party (Constitution B.E. 2550 (2007), section 106 (7)).**

A member of the House of Representatives whose political party membership has been terminated by resolution of the political party (also resulting in termination of membership of the House of Representatives) has the right to appeal to the Constitutional Court. An objection may be submitted that such political party resolution is inconsistent with the status and performance of functions of a member of the House of Representatives under this Constitution, or contrary to or inconsistent with the fundamental principles of the democratic form of government with the King as head of state. This measure provides protection for the member of the House of Representatives in the discharge of functions as a representative of the Thai people.

**6.3 Determining whether a person or political party has unconstitutionally exercised political rights or liberties (Constitution B.E. 2550 (2007), section 68 and section 237).**

A person who is aware that any person or political party has committed an act to overthrow the democratic form of government with the King as head of state under the Constitution, or committed an act in order to acquire the power to govern the country by means which are not in accordance with those provided in the Constitution, has the right to submit the matter to the Attorney-General for an inquiry into the facts and submission of an application to the Constitutional Court for an injunctive ruling to terminate such act or a dissolution order against such political party.

Moreover, section 237 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) provides a measure for the preservation of the democratic form of government with the King as head of state by determining the Constitutional Court with the power to revoke the election rights of election candidates, as well as the political party leader and political party executive committee members who had

connived with and allowed any action against an election candidate who infringed the Organic Act on Election of Members of the House of Representatives and Obtaining Senators, or rules or notifications of the Election Commission. In such an event, the person or political party concerned shall be deemed as having acquired the power to govern the country by means which are not in accordance with those provided in the Constitution.

## **7. Ruling on the membership or qualifications of a member of the National Assembly, Minister and Election Commissioner.**

### **7.1 Ruling on the membership of a member of the House of Representatives or senator (Constitution B.E. 2550 (2007), section 91).**

The Constitution of the Kingdom of Thailand B.E. 2550 (2007) provided for the following causes for termination of **membership of the House of Representatives**:

- (1) resignation (Constitution B.E. 2550 (2007), section 106(3));
- (2) lacking a qualification for eligibility to become a candidate in an election of members of the House of Representatives (Constitution B.E. 2550 (2007), section 101);
- (3) being under a prohibition from exercising the right to be a candidate in an election of members of the House of Representatives (Constitution B.E. 2550 (2007), section 102);
- (4) commission of an act which constitutes a conflict of interests (Constitution B.E. 2550 (2007), section 265 or section 266);
- (5) resignation from membership of a political party or the political party of one's affiliation passes a resolution by the votes of no fewer than three-fourths of a joint meeting of the political party executive committee and

members of the House of Representatives affiliated to such political party to terminate the membership of a member; in such cases, it shall be deemed that membership has terminated as from the date of resignation or party resolution, except where the member of the House of Representatives filed an appeal with the Constitutional Court within thirty days as from the date of party resolution objecting that such resolution is inconsistent with the status and performance of functions of a member of the House of Representatives under this Constitution; if the Constitutional Court rules that such resolution does not have the characteristics stated in the appeal, it shall be deemed that membership terminated as from the date of Constitutional Court ruling; however, if the Constitutional Court rules that such resolution has the characteristics stated in the appeal, the member of the House of Representatives may become a member of another political party within thirty days as from the date of Constitutional Court ruling (Constitution B.E. 2550 (2007), section 106(7));

(6) loss of membership of a political party in the event that the Constitutional Court issues an order dissolving the political party which such member of the House of Representatives was a member and the member is not able to become a member of another political party within sixty days as from the date of Constitutional Court order; in such a case, membership shall be deemed as terminated on the day following the completion of sixty days (Constitution B.E. 2550 (2007), section 106(8));

(7) being absent from more than one-fourth of the sitting dates in a session which has a scheduled duration of no fewer than one hundred and twenty days without permission of the President of the House of Representatives (Constitution B.E. 2550 (2007), section 106(10));

(8) being subject to a final sentence of imprisonment, regardless of such sentence being suspended, except a suspended sentence for an offence committed negligently, a minor offence or defamation (Constitution B.E. 2550 (2007), section 106(11)).

The Constitution of the Kingdom of Thailand B.E. 2550 (2007) provides for the following causes for the termination of membership of a **senator**:

(1) resignation (Constitution B.E. 2550 (2007), section 119(3));

(2) lacking a qualification or being under a prohibition for eligibility to become an election candidate or nomination for selection as a senator (Constitution B.E. 2550 (2007), section 115);

(3) being a Minister, holder of other political positions, or holder of a position in an independent constitutional organ, or committing an act which constitutes a conflict of interest (Constitution B.E. 2550 (2007), section 116 or section 265 or section 266);

(4) being absent from more than one-fourths of the sitting dates in a session which has a scheduled duration of no fewer than one hundred and twenty days without permission of the President of the Senate (Constitution B.E. 2550 (2007), section 119(7));

(5) being subject to a final sentence of imprisonment, regardless of such sentence being suspended, except a suspended sentence for an offence committed negligently, a minor offence or defamation (Constitution B.E. 2550 (2007), section 119(8)).

In the above cases, members of the House of Representatives or senators numbering no fewer than one-tenth of the existing members of the respective House shall have the right to file an application with the President of the House and the President of the house who receives such application shall refer the application to the Constitutional Court for a ruling on whether or not membership of such member of the House of Representatives or senator has terminated. Or in the case where the Election Commission finds that membership of a member of the House of Representatives or senator has terminated due to such cause, the matter shall be submitted to the President of the respective House of membership and the President of such House shall submit the matter to the Constitutional Court for ruling.

## **7.2 Ruling on whether or not the office of a Minister has terminated (Constitution B.E. 2550 (2007), section 182).**

The office of an individual **Minister** terminates in the following events:

(1) resignation (Constitution B.E. 2550 (2007), section 182(2));

(2) being subject to a sentence of imprisonment, regardless of such judgment not being final or a suspended sentence, except for a case not yet final or a suspended sentence for an offence committed negligently, a minor offence or defamation (Constitution B.E. 2550 (2007), section 182(3));

(3) lacking a qualification or being under a prohibition for holders of a ministerial office (Constitution B.E. 2550 (2007), section 174);

(4) commission of an act which constitutes a conflict of interests or a prohibited act with respect to being a partner or shareholder or retaining partnership status or shareholding in a partnership or company (Constitution B.E. 2550 (2007), section 267, section 268 or section 269);

(5) the ministerial office of the Prime Minister terminates in the case of the Prime Minister holding office for more than eight consecutive years (Constitution B.E. 2550 (2007), section 171 paragraph four).

Members of the House of Representatives or senators numbering no fewer than one-tenth of the existing members of the respective House have the right to file an application with the President of the House of membership questioning whether the office of a Minister has terminated, and the President of the House receiving the application shall refer the application to the Constitutional Court for ruling. The Election Commission shall also refer a matter to the Constitutional Court for ruling as in 7.1

## **7.3 Ruling on whether or not an Election Commissioner lacks a qualification or is under a prohibition (Constitution B.E. 2550 (2007), section 233).**

Members of the House of Representatives, senators or members of both Houses forming no fewer than one-tenth of the existing members of both Houses have the right to lodge an application with the President of the National Assembly stating that an Election Commissioner lacks a qualification or is under a prohibition or has committed a prohibited act under section 230 of the Constitution. In such an event, the President of the National Assembly shall refer the application to the Constitutional Court within three days as from the receipt date of the application for subsequent ruling by the Constitutional Court.

The following factors constitute a lack of qualification or presence of a prohibition or commission of a prohibited act which are causes for the retirement from office of an Election Commissioner:

- (1) an Election Commissioner must be at least forty years of age (Constitution B.E. 2550 (2007), section 230(1));
- (2) an Election Commissioner must have completed education at a level not lower than a bachelor's degree or its equivalent (Constitution B.E. 2550 (2007), section 230(2));
- (3) lacking a qualification and having a prohibited quality under section 205 subsections (1), (4), (5) and (6) (Constitution B.E. 2550 (2007), section 230(3));
- (4) not being a Constitutional Court Justice, Ombudsmen, National Counter Corruption Commissioner, State Audit Commissioner or National Human Rights Commissioner (Constitution B.E. 2550 (2007), section 230(4));
- (5) not being a government official who holds a permanent position or draws a fixed salary (Constitution B.E. 2550 (2007), section 207(1));
- (6) not being an officer or employee of a state agency, state enterprise or local administration, or not being a director or advisor of a state enterprise or state agency (Constitution B.E. 2550 (2007), section 207(2));
- (7) not holding a position in a partnership, company or profit-seeking

or profit-sharing business organization, or being an employee of any person (Constitution B.E. 2550 (2007), section 207(3));

(8) not engaging in any other independent profession (Constitution B.E. 2550 (2007), section 207(4)).

## **8. Ruling on whether a treaty requires prior approval of the National Assembly**

The Constitution of the Kingdom of Thailand B.E. 2550 (2007) is the first Constitution which provides the Constitutional Court with jurisdiction to rule on questions of whether or not a treaty concluded by the executive with other nations or with an international organization requires the prior approval of the National Assembly. The relevant provisions are stated in section 190 paragraph two of the Constitution. Treaties govern by such provisions are:

- 1) treaties which alter Thai territorial boundaries;
- 2) treaties which alter extra-territorial boundaries subject to Thailand's sovereign rights exercised under treaties or international laws;
- 3) treaties which require the enactment of implementing legislation;
- 4) treaties which have a wide scale impact on national economic and social security;
- 5) treaties which imposes a significant obligation on the country's trade, investment or budget.

Where members of the House of Representatives, senators or members of both Houses forming no fewer than one-tenth of the existing members of both Houses are of the opinion that a treaty requires a prior approval of the National Assembly, a submission shall be made to the President of the House of

Representatives, President of the Senate or President of the National Assembly, as the case may be. The President of the House receiving such opinion shall refer the opinion to the Constitutional Court for a ruling on whether the treaty requires approval of the National Assembly under section 190 paragraph six of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

## **9. Powers and duties under the Organic Act on Political Parties B.E. 2550 (2007).**

The powers and duties of the Constitutional Court under the Organic Act on Political Parties B.E. 2550 (2007) consist of 8 functions, as follows:

### **9.1 Ruling on an order of the Political Party Registrar which denies the registration of a political party (Organic Act on Political Parties B.E. 2550 (2007), section 13 or section 14).**

An applicant for registration of a political party who disagrees with an order of the Political Party Registrar denying the registration of a political party may file an application to object the order of the Political Party Registrar with the Constitutional Court within thirty days as from the receipt date of the letter giving notice of such order.

### **9.2 Ruling on an order of the Political Party Registrar which denies the registration of changes to a political party's policies, rules of the political party, name change, occupation, address and signatures of political party executive committee members as registered with the Political Party Registrar, or detail changes in the notice of establishment of political party branches (Organic Act on Political Parties B.E. 2550 (2007), section 41).**

A political party leader who does not agree with an order of the Political Party Registrar which denies the registration of changes in the following 3 cases

may file an objection against the order of the Political Party Registrar with the Constitutional Court within thirty days as from the receipt date of the letter giving notice of such order which denied the registration. The first case involves changes in the political party's policies or political party rules. The second case involves a change in the names, occupations, addresses and signatures of political party executive committee members as registered with the Registrar. Finally, the third case involves a change in the details stated in the letter giving notice of establishment of political party branches.

**9.3 Determining whether a resolution or rule of a political party is inconsistent with the status or performance of functions of a member of the House of Representatives or contrary to or inconsistent with the fundamental principles of democratic government with the King as head of state (Organic Act on Political Parties B.E. 2550 (2007), section 33).**

Members of a political party who are also members of the House of Representatives numbering no fewer than one-fourth of the members who are members of the House of Representatives, political party executives numbering no fewer than one-third of the number of political party executives, or members of a political party numbering no fewer than one hundred persons who are of the opinion that a resolution or rule on any matter of their political party of membership is inconsistent with the status and performance of functions of a member of the House of Representatives, or contrary to or inconsistent with the fundamental principles of the democratic form of government with the King as head of state, have the right to file an application with the Constitutional Court for a ruling.

In addition, a resolution or rule of a political party determined under section 33 of the Organic Act on Political Parties B.E. 2550 (2007) as a resolution or rule which is contrary to or inconsistent with the fundamental principles of the democratic form of government may also include provisions of political party rules governing disciplinary or ethical proceedings that fail to give the alleged person due notice of the allegations and an appropriate opportunity to reply to the allegations,

or political party rules which provide for proceedings to expel a member who is a member of the House of Representatives from membership of the political party for voting or failing to vote in a resolution of the House of Representatives or a joint sitting of the National Assembly, or in any other cases as prescribed by the Election Commission.

The powers and duties of the Constitutional Court in ruling on a resolution or rule of a political party which is inconsistent with the status and performance of duties of a member of the House of Representatives or contrary to or inconsistent with the fundamental principle of the democratic form of government with the King as head of state under section 33 of the Organic Act on Political Parties B.E. 2550 (2007) is an elaboration of the powers and duties of the Constitutional Court under section 65 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) already stated in 6.1 above.

#### **9.4 Ruling on the membership of a political party member who holds office as a member of the House of Representatives (Organic Act on Political Parties B.E. 2550 (2007), section 20(4)).**

Termination of membership of a political party member who holds office as a member of the House of Representatives may be a result of the political party of membership passing a resolution expelling the member pursuant to political party rules for the commission of a serious disciplinary or ethical offence, or for other serious causes under section 20(4) of the Organic Act on Political Parties B.E. 2550 (2007). In such an event, the expelled member has the right to appeal to the Constitutional Court within thirty days as from the date of political party resolution in order to object that such resolution is inconsistent with the status and performance of duties of a member of the House of Representatives under the Constitution, or contrary to or inconsistent with the fundamental principle of the democratic form of government with the King as head of state. The appeal shall be in accordance with the Organic Act on Constitutional Court Procedures.

The jurisdiction of the Constitutional Court in ruling on the membership of a political party member who holds office as a member of the House of Representatives under section 20 of the Organic Act on Political Parties B.E. 2550 (2007) is an elaboration of the Constitutional Court's jurisdiction under section 106(7) of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), as already stated in 6.2 above.

**9.5 Ruling that a political party leader, political party executive committee or political party executive should cease or remedy any act which constitutes a violation of political party policies or political party rules, or that a political party leader or some or all political party executives should retire from office (Organic Act on Political Parties B.E. 2550 (2007), section 31).**

When it appears that a political party leader, political party executive committee or political party executive has provided for the political party to commit any act which is in violation of the political party policy or political party rules under section 31 of the Organic Act on Political Parties B.E. 2550 (2007), the Registrar shall have the power to issue a written warning to the political party leader, political party executive committee or political party executive to cease or remedy the act within the period determined by the Registrar.

If the political party leader, political party executive committee or political party executive fails to comply with the Registrar's warning, the Registrar, with the approval of the Election Commission, has the power to file an application to the Constitutional Court for an injunction to cease or remedy, or for the political party leader or some or all political party executives to retire from office. In the event that the Constitutional Court issues an order that the political party leader or some or all political party executives to retire from office, such person will lose the right to become a political party executive until the expiration of two years as from the date of Constitutional Court order.

## **9.6 Ruling on the termination of political party status (Organic Act on Political Parties B.E. 2550 (2007), section 91).**

A political party's status terminates upon the following causes:

- (1) Within one year as from the date of political party registration by the Registrar, the political party fails to admit no fewer than five thousand members, which must consist at least of members residing in each region pursuant to the list of regions and provinces prescribed by the Registrar, and with at least one political party branch in each region.
- (2) The political party fails to nominate candidates in two consecutive elections of members of the House of Representatives, or for eight consecutive years, whichever is the longer.
- (3) The political party has fewer than five thousand members for a consecutive period of one year.
- (4) The political party does not hold a general meeting or does not carry out any political activities for a consecutive period of one year without reasonable cause allowable by law.

When it appears to the Registrar or when an applicant files a complaint to the Registrar claiming the existence of such cause, the Registrar shall carry out a factual investigation. If it is found that such cause has occurred to a political party, the Registrar, with the approval of the Election Commission, shall publish a notice in the Government Gazette declaring the termination of such political party's status.

In the case where the leader of the political party whose status has been declared as terminated finds that the Registrar's notice was not made pursuant to a cause for termination of political party status under section 91 of the Organic Act on Political Parties B.E. 2550 (2007), the leader or executive of such

political party may file an application with the Constitutional Court for an order to revoke such notice, in accordance with the rules and procedures prescribed by the Organic Act on Constitutional Court Procedures.

The provisions of section 91 do not apply to a political party having a member who is also a member of the House of Representatives.

### **9.7 Ruling on the dissolution of a political party (Organic Act on Political Parties B.E. 2550 (2007), section 93 or section 94).**

Dissolution rulings of political parties under the Organic Act on Political Parties B.E. 2550 (2007) may be divided into two cases. The first deals with political party administration under section 93. The second deals with acts of a political party which has an impact on the government or security of the State under section 94.

Causes for the dissolution of a political party which require an application filed with the Constitutional Court for a political party dissolution ruling, in the case of political party administration under section 93, may fall under one of the following categories. The first category consists of political parties under a cause for dissolution pursuant to the political party rules, but such political party still has members of the House of Representatives. The second category involves cases where a political party failed to prepare an operational report of the political party's activities in the proceeding year which must be filed with the Registrar (section 42 paragraph two). The third category involves cases where a political party fails to prepare a true and accurate expenditure report of political party contributions which must be filed with the Election Commission (section 82).

The following events constitute causes for the dissolution of a political party where an application is filed with the Constitutional Court for a political party dissolution ruling due to the political party's act having an impact on national government and security under section 94:

(1) commission of an act to overthrow the democratic form of government with the King as head of state, or to acquire national governing powers by means which are not provided in the Constitution, or the commission of an act which the Constitution deems as an act to acquire powers by such means;

(2) commission of an act which constitutes a violation of the Organic Act on Election of members of the House of Representatives and Obtaining Senators, or regulations or notifications of the Election Commission, which results in an election that has not been carried out in a fair and just manner;

(3) commission of an act which may be detrimental to the democratic form of government with the King as head of state under the Constitution;

(4) commission of an act which may pose a threat to national security, whether committed domestically or overseas, or an act which is inconsistent with the law, public order or morals; or

(5) the political party admits a person who does not hold Thai nationality by birth, or a person who holds Thai nationality by naturalization where the Thai nationality was held for less than five years, as a member or holder of any position in the political party, or allows such person to commit an act for the benefit of the political party (section 21); or the political party, political party executive, holder of a position in the political party or political party officer assists or sponsors a candidate in an election of senators or a candidate in the selection of senators, whether directly or indirectly, in order to win the election or selection as a senator (section 43); or the political party and holder of a political position in the political party accepts monies, properties or other benefits of monetary value with knowledge that such values were obtained unlawfully, or there is reasonable cause to suspect that the source of such value is unlawful (section 65); or the political party and political position holder in the political party accepts a donation from any person for the commission of an act or in aid of an act which impairs the security of the nation, royalty, national economy or national administration, or an act which interferes with or impinges upon public order or good morals of the people, or an act

which destroys the country's natural resources (section 66); or the political party receives a donation for the political party's activities from a person, organization or juristic person which is prohibited under the Organic Act on Political Parties B.E. 2550 (2007) or under a notification of the Election Commission (section 69); or the political party or any person connives, conspires or aid and abet a person to carry out an act in order that other persons or the Election Commission believe or understand that another political party or person has committed an offence under the Organic Act on Political Parties B.E. 2550 (2007) without any truthful grounds (section 104).

When it is apparent to the Registrar, or when the Registrar receives notice from a political party executive committee and has carried out an investigation and finds that a political party has committed an act under section 94, the Registrar, with the approval of the Election Commission, shall notify the Attorney-General along with evidence. Upon receipt of such notice, the Attorney-General shall complete consideration of the matter within thirty days as from the date of notice receipt. If the Attorney-General considers it appropriate, an application shall be filed with the Constitutional Court for a dissolution order against such political party. If the Attorney-General does not file an application with the Constitutional Court, the Registrar shall appoint a working group comprising representatives of the Registrar and the representatives of the Office of the Attorney-General to compile evidence to be submitted to the Attorney-General for subsequent filing of an application with the Constitutional Court. In the event that such working group fails to reach a resolution on the application filing proceedings within thirty days as from the date of appointment of the working group, the Registrar, with the approval of the Election Commission shall have the power to file an application.

If the Registrar finds it appropriate to suspend the operations of a political party that has committed an act under section 94, the Registrar, with the approval of the Election Commission, shall notify the Attorney-General who shall file a motion with the Constitutional Court for an interlocutory injunction before

the Constitutional Court issues a dissolution order against such political party pursuant to section 95 of the Organic Act on Political Parties B.E. 2550 (2007).

**9.8 Ruling on the revocation of election rights of a political party leader and political party executive (Organic Act on Political Parties B.E. 2550 (2007), section 98).**

The Constitutional Court has the power to order the dissolution of a political party for a cause arising from an infringement of regulations on the expenditure of political party contributions (section 82), or for a cause for dissolution of a political party by the Constitutional Court (section 94). Also, where there is evidence showing reasonable cause to believe that a political party leader or political party executive participated, connived or disregarded or had knowledge of such act but failed to restrain or remedy the act, the Constitutional Court has the power to order the revocation of election rights of such political party leader and political party executives for a period of five years as from the date of political party dissolution order.

**10. Powers and duties of introducing draft laws to the National Assembly**

The powers and duties of the Constitutional Court in the introduction of draft laws to the National Assembly are powers and duties which are not related to the consideration and ruling of cases. The Constitution of the Kingdom of Thailand B.E. 2550 (2007) is the first Constitution which provides for the Constitutional Court, Supreme Court or independent constitutional organs to have powers and duties in the introduction of organic bills, organic bills on the establishment of organs and bills under the charge and control of the President of Courts and chairpersons of organs. These provisions are found in section 139(3) and section 142(3) of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

## **11. Powers and duties of the President of the Constitutional Court pursuant to provisions of law.**

Section 9 of the Office of the Constitutional Court Act B.E. 2542 (1999) provides that there shall be a Secretary-General of the Office of the Constitutional Court in the Office of the Constitutional Court responsible for the operations of the Office of the Constitutional Court. The Secretary-General of the Office of the Constitutional Court reports directly to the President of the Constitutional Court and exercises the functions of the superior official of officials and employees of the Office of the Constitutional Court. The Office of the Constitutional Court may also have no more than two Deputy Secretary-Generals to assist the Secretary-General in exercising charge and control of the Office of the Constitutional Court.

Section 10(1) of the Office of the Constitutional Court Act B.E. 2542 (1999) provides for the recruitment and appointment of a person to the position of Secretary-General of the Office of the Constitutional Court and Deputy Secretary-Generals of the Office of the Constitutional Court by stating that the President of the Constitutional Court, with the approval of the meeting of Constitutional Court Justices, shall have the power to issue a recruitment order. Section 16 provides that the President of the Constitutional Court has charge and control over the execution of this Act.

### **Exercising rights in the Constitutional Court**

The Constitution of the Kingdom of Thailand B.E. 2550 (2007) provides that the Courts of Justice, Administrative Courts, Military Court, constitutional organs, holder of certain important political positions, members of the House of Representatives, senators, Attorney-General and persons whose rights and liberties have been infringed have the right to file an application with the Constitutional Court for a ruling or order in accordance with one of the procedures and conditions stated in the following table:

**1. Constitutional review of provisions of law and rules of procedure of the legislature prior to promulgation:**

(1) constitutional review of an organic bill (section 141);

President of the National Assembly

- All organic bills approved by the National Assembly, prior to presentation to the King for royal assent, shall be sent to the Constitutional Court for constitutional review.
- The Constitutional Court shall complete its consideration within thirty days as from the receipt date of the matter.

(2) constitutional review of a bill of law (section 154);

- President of the House of Representatives;  
 - President of the Senate;  
 - President of the National Assembly;  
 - Prime Minister.

- Bill approved by the National Assembly but prior to the Prime Minister's presentation to the King for royal assent.
- Members of the House of Representatives, senators or members of both Houses constituting no fewer than one-tenth of the existing members of both Houses finding that such a bill contains provisions which are

contrary to or inconsistent with the Constitution, or has been enacted inconsistently with the provisions of the Constitution shall submit an opinion to the President of the House of Representatives, President of the Senate or President of the National Assembly, as the case may be, and the President of the House receiving such an opinion shall refer the opinion to the Constitutional Court for ruling as well as notify the Prime Minister without delay.

- In the case where the Prime Minister finds that such bill contains provisions which are contrary to or inconsistent with the Constitution, or has been enacted inconsistently with provisions of the Constitution, such opinion shall be sent to the Constitutional Court for ruling and the President of the House of Representatives and President of the Senate shall be notified without

**Issues****Eligible Applicant (s)****Procedures and Conditions**

		<p>delay. While pending review by the Constitutional Court, the Prime Minister shall suspend proceedings to promulgate the bill until the Constitutional Court passes a ruling.</p>
<p>(3) ruling on whether or not the principle of a bill or organic bill is the same as or similar to a bill that must be withheld (section 149 paragraph two and section 140 paragraph two in conjunction with section 149 paragraph two);</p>	<ul style="list-style-type: none"><li>- President of the House of Representatives.</li><li>- President of the Senate</li></ul>	<ul style="list-style-type: none"><li>- The bill or organic bill is sent to the Constitutional Court for ruling. If the Constitutional Court finds that the principle is the same as or similar to a bill that must be withheld, the bill will lapse.</li></ul>
<p>(4) constitutional review of draft rules of procedure of the legislature (section 155).</p>	<ul style="list-style-type: none"><li>- President of the House of Representatives.</li><li>- President of the Senate.</li><li>- President of the National Assembly</li></ul>	<ul style="list-style-type: none"><li>- In the case where members of the House of Representatives, senators or members of both Houses constituting no fewer than one-tenth the total number of existing members finds that the draft meeting rules of the House of Representatives, draft meeting rules of the Senate and draft meeting rules of the National Assembly approved</li></ul>

by the House of Representatives, Senate or National Assembly, as the case may be, prior to publication in the Government Gazette, contains provisions which are contrary to or inconsistent with the Constitution, or has been enacted inconsistently with provisions of the Constitution, an opinion shall be submitted to the President of the House of Representatives, President of the Senate or President of the National Assembly, as the case may be.

The President of the House receiving such an opinion shall refer the opinion to the Constitutional Court for ruling.

## 2. Constitutional review of provisions of promulgated laws:

(1) ruling on whether or not a provision of law to be applied in a case is contrary to or inconsistent with the Constitution (section 211);

- Courts of Justice.
- Administrative Courts.
- Military Court.

- The court finds on its own accord or a party objects with reasons that a provision of law to be applied in a case is contrary to or inconsistent

(2) constitutional review of a provision of law submitted by the Ombudsman (section 245(1));

- Ombudsman.

- with the Constitution.
  - The case must have already arisen in the court and the court is required to apply the law which is contrary to or inconsistent with the Constitution to the case.
  - The law has the force of an Act, i.e. includes Emergency Decrees and Organic Acts.
  - There has not yet been a ruling of the Constitutional Court on such provision.
  - The party's objection contains substances which merit a ruling.
  - The opinion shall be sent to the Constitutional Court for ruling.
  - The court may continue with the proceedings, subject to a temporary stay until the Constitutional Court passes a ruling.
- 
- The matter is submitted together with an opinion that a provision of law raises a question of constitutionality.
  - Rules and procedures are as

**Issues****Eligible Applicant (s)****Procedures and Conditions**

provided by the Organic Act on Constitutional Court Procedures (Rules of the Constitutional Court on Procedures and Ruling B.E. 2550 (2007)).

(3) constitutional review of a provision of law submitted by the National Human Rights Commission (section 257 paragraph one subparagraph (2));

- National Human Rights Commission.

- The matter is submitted together with an opinion that a provision of law affects human rights and raises a question of constitutionality.
- Rules and procedures are as provided by the Organic Act on Constitutional Court Procedures (Rules of the Constitutional Court on Procedures and Ruling B.E. 2550 (2007)).

(4) ruling on whether or not a provision of law is contrary to or inconsistent with the Constitution pursuant to the application of a person whose rights and liberties has been violated (section 212).

- A person whose rights and liberties recognized by the Constitution has been violated.

- A person whose rights and liberties recognized by the Constitution has been violated may file an application with the Constitutional Court for a ruling that a provision of law is contrary to or inconsistent with the Constitution.

Issues	Eligible Applicant (s)	Procedures and Conditions
<p><b>3. Constitutional review of the conditions for enacting an Emergency Decree</b> (section 185).</p>	<ul style="list-style-type: none"> <li>- President of the House of Representatives.</li> <li>- President of the Senate.</li> </ul>	<ul style="list-style-type: none"> <li>- The exercise of rights in this case must be a case where the exercise of rights by other means has been exhausted, pursuant to section 211, section 245(1) and section 257 paragraph one subparagraph (2) of the Constitution.</li> <li>- Members of the House of Representatives or senators constituting no fewer than one-fifth of the total number of existing members in each House have the right to enter their signatures in an opinion submitted to the President of the House of membership that an Emergency Decree is not consistent with section 184 paragraph one or paragraph two.</li> <li>- The President of such House shall send the opinion to the Constitutional Court for ruling within thirty days as from the receipt date of the opinion.</li> <li>- The President of such House shall suspend the consideration of such Emergency Decree until</li> </ul>

**4. Ruling on constitutionality in the case where a member of the House of Representatives, senator or committee member commits an act in order to obtain a direct or indirect participation in the expenditure of budgetary appropriations** (section 168 paragraph seven).

- Members of the House of Representatives.
- Senators.

notice of a ruling of the Constitutional Court.

- In the case where members of the House of Representatives or senators constituting no fewer than one-tenth of the total number of existing members of the respective House find that an act results in a member of the House of Representatives, senator or committee member having a direct or indirect participation in the expenditure of budgetary appropriations, an opinion shall be submitted to the Constitutional Court for ruling.
- The Constitutional Court must complete its ruling within seven days as from the receipt date of the opinion.

**5. Ruling on a question arising from conflicts between the powers and duties of the National Assembly, Council of Ministers or other constitutional organs** (section 214).

- President of the National Assembly.
- Council of Ministers.
- Chairperson of a constitutional organ.

- An organ which is eligible to file an application must be a constitutional organ established by and having powers and duties under the Constitution.
- A question concerning a constitutional organ must be a

case on a conflict of powers and duties and a question on the powers and duties has already arisen, not being a consultation or advice-seeking nature.

**6. Ruling on the protection of democratic principles in the political party and the preservation of the democratic form of government with the King as head of state:**

(1) ruling on whether or not a resolution or political party rule is inconsistent with the status and performance of functions of a member of the House of Representatives, or contrary to or inconsistent with the fundamental principles of the democratic form of government with the King as head of state (section 65).

- Members of the House of Representatives.

- Members of the House of Representatives who are political party members, political party executives or members of a political party in the number prescribed by the Organic Act on Political Parties have the right to file an application with the Constitutional Court for ruling.

- This is a case where there is an opinion that a resolution or political party rule on any matter is inconsistent with the status and performance of functions of a member of the

(2) hearing an appeal of a member of the House of Representatives whose membership of the political party has been terminated by resolution of the political party (section 106(7));

- Members of the House of Representatives.

House of Representatives, or contrary to or inconsistent with the fundamental principle of the democratic form of government with the King as head of state.

- A member of the House of Representatives whose political party membership has been terminated by resolution of the political party may appeal to the Constitutional Court within thirty days as from the date of such political party resolution objecting that such resolution has the characteristics stated under section 65 paragraph three.
- If the Constitutional Court finds that such resolution does not have the characteristics under section 65 paragraph three, it shall be deemed that membership terminated as from the date of Constitutional Court ruling.
- However, if the Constitutional Court finds that such resolution has the characteristics under

(3) ruling on the unconstitutional exercise of political rights and liberties by a person or political party (section 68 and section 237);

- Attorney- General.

section 65 paragraph three, such member of the House of Representatives may become a member of another political party within thirty days as from the date of Constitutional Court ruling.

- A person who is aware of such act has the right to submit the matter to the Attorney-General for a factual investigation and filing of an application with the Constitutional Court for an injunctive ruling or dissolution order against such political party.
- Upon a dissolution order against such political party, the election rights of the political party leader and executives of the dissolved political party that had committed the wrongful act are revoked for a period of five years as from the date of Constitutional Court order.
- The above constitutional proceedings do not prejudice criminal actions against such offenders.

**7. Ruling on the membership or qualifications of a member of the National Assembly, Minister and Election Commissioner:**

(1) ruling on the membership of a member of the House of Representatives or Senate (section 91);

- President of the House of Representatives;
- President of the Senate.

- Members of the House of Representatives or senators constituting no fewer than one-tenth of the total number of existing members of the respective House have the right to enter their names in a motion to the President of the House of membership that the membership of a member has terminated under section 106 subsections (3), (4), (5), (6), (7), (8), (10) or (11) or section 119 subsections (3), (4), (5), (7) or (8), as the case may be, and the President of the House receiving the motion shall refer the matter to the Constitutional Court for ruling.
- In the case where the Election Commission finds that the membership of a member of the House of Representatives

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(2) ruling on whether or not the office of a Minister has terminated (section 182 in conjunction with section 91 and section 92);

- President of the House of Representatives.
- President of the Senate.
- Election Commission.

or senator has terminated under section 106 subsections (3), (4), (5), (6), (7), (8), (10) or (11) or section 119 subsections (3), (4), (5), (7) or (8), as the case may be, the matter shall be submitted to the President of the House of membership of such person and such President of the House shall refer the matter to the Constitutional Court for ruling.

- Members of the House of Representatives or senators constituting no fewer than one-tenth of the total number of existing members of each House have the right to enter their names in a motion to the President of the respective House of membership that the office of a Minister has terminated under section 182 subsections (2), (3), (5) or (7). The President of the House receiving the motion shall refer the matter to the Constitutional Court for ruling.

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(3) ruling on whether or not an Election Commissioner lacks a qualification or is under a prohibition (section 233).

- President of the National Assembly.

- In the case where the Election Commission finds that the office of a Minister has terminated under section 182 subsections (2), (3), (5) or (7), the matter may be referred to the Constitutional Court for ruling.

- Members of the House of Representatives or senators or members of both Houses constituting no fewer than one-tenth of the total number of existing members of both Houses have the right to enter their names in a motion to the President of the National Assembly that an Election Commissioner lacks a qualification or is under a prohibition under section 230.

- The President of the National Assembly shall refer the application to the Constitutional Court within three days as from the receipt date of the application for ruling.

**8. Ruling on whether or not a treaty requires prior approval of the National Assembly**

(section 190 last paragraph in conjunction with section 154(1)).

- President of the House of Representatives.
- President of the Senate.
- President of the National Assembly.

- Upon a ruling of the Constitutional Court, notice of the ruling shall be sent to the President of the National Assembly and Chairman of the Election Commission.

- Members of the House of Representatives, senators or members of both Houses together constituting no fewer than one-tenth of the total number of existing members of both Houses who find that a treaty requires the approval of the National Assembly before conclusion with other countries or international organization under section 190 paragraph two shall submit an opinion to the President of the House of Representatives, President of the Senate or President of the National Assembly, as the case may be, and the President of the House receiving such opinion shall refer the opinion to the Constitutional Court for a

ruling on whether such treaty requires the approval of the National Assembly under section 190 paragraph six of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

**9. Powers and duties under the Organic Act on Political Parties B.E. 2550 (2007):**

(1) review of a Political Party Registrar's order rejecting the registration of a political party (Organic Act on Political Parties B.E. 2550 (2007), section 13 and section 14);

- Applicant for registration of a political party.

- An applicant for registration of a political party who disagrees with an order of the Registrar rejecting the registration of a political party under section 13 or section 14 has the right to file an application with the Constitutional Court for a review of the order within 30 days as from the receipt date of the letter giving notice of the rejection of political party registration from the Registrar.

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(2) review of a Political Party Registrar's order rejecting the registration of changes in a political party's policies, political party rules, changes in the name, occupation, address and signature of a political party executive as registered with the Registrar, or a change in the details stated in the notice of establishment of political party branch (Organic Act on Political Parties B.E. 2550 (2007), section 41 in conjunction with section 13);

- Political party leader.

- A political party leader who disagrees with the rejection of registration of changes in the political party's policies, political party rules, changes in the name, occupation, address and signature of a political party executive as registered with the Registrar, or a change in the details stated in the notice of establishment of a political party branch, may exercise the right to file an application with the Constitutional Court for a review of the order within 30 days as from the receipt date of the notice of order rejecting the registration of such changes from the Registrar.

(3) ruling on whether a resolution or political party rule is inconsistent with the status or performance of functions of a member of the House of Representatives under the Constitution, or contrary

- Political party members who are members of the House of Representatives constituting no fewer than one-fourth of the number of members who are members of the House of Representatives,

- The eligible applicants who find that a resolution or rule of their political party of membership would be inconsistent with the status and performance of functions of a member of the House of Representatives under the

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to or inconsistent with the fundamental principles of the democratic form of government with the King as head of state (Organic Act on Political Parties B.E. 2550 (2007), section 33 in conjunction with section 10 paragraph two subparagraphs (3), (4) or (5));

political party executives constituting no fewer than one-third of the total number of political party executives, or no fewer than one hundred political party members.

Constitution, or contrary to or inconsistent with the fundamental principles of the democratic form of government with the King as head of state, may file an application with the Constitutional Court for a ruling.

(4) ruling on the membership of a political party member holding the office of a member of the House of Representatives (Organic Act on Political Parties B.E. 2550 (2007), section 20);

- A political party member who is a member of the House of Representatives.

- In the event of a termination of membership under section 20 paragraph one subparagraph (4) of the Organic Act on Political Parties B.E. 2550 (2007), being a case where a political party passes a resolution expelling a member under political party rules as a result of a serious disciplinary or ethical offence, or other serious causes, if such member is also a member of the House of Representatives, the member has the right to appeal to the Constitutional Court within thirty days as from the date of

(5) ruling that a political party leader, political party executive committee or political party executive should suspend or remedy an act which violates political party policies or political party rules, or that a political party leader or all or some political party executives retire from office (Organic Act on Political Parties B.E. 2550 (2007), section 31);

- Political Party Registrar with the approval of the Election Commission.

political party resolution objecting that the resolution is inconsistent with the status or performance of functions of a member of the House of Representatives under the Constitution, or contrary to or inconsistent with the fundamental principles of the democratic form of government with the King as head of state. Such appeal shall be in accordance with the Organic Act on Constitutional Court Procedures.

- When it appears that a political party leader, political party executive committee or political party executive has arranged for a political party to commit an act in violation of a political party policy or rule, the Registrar has the power to issue a written warning to the political party leader, political party executive committee or political party executive to suspend or remedy the act within the period prescribed

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by the Registrar. In the case where the Registrar's written warning is issued to a person other than the political party leader, a copy of the written warning must forthwith be sent to the political party leader for acknowledgement.

- If the political party leader, political party executive committee or political party executive does not comply with the Registrar's warning under paragraph one, the Registrar, with the approval of the Election Commission, has the power to file an application with the Constitutional Court for an injunctive order to suspend or remedy such act, or for the political party leader or some or all of the political party executives to retire from office.

(6) ruling on the termination of political party status (Organic Act on Political Parties B.E. 2550 (2007), section 91 in

- Political party leader or political party executive.

- In the case where the leader of a political party which has been declared as terminated under paragraph two finds that the Registrar's declaration was

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conjunction with section 26);

not made in accordance with this Organic Act, the political party leader or political party executive may file an application with the Constitutional Court for an annulment of the declaration in accordance with the rules and procedures prescribed in the Organic Act on Constitutional Court Procedures.

- The provisions of this section shall not apply to a political party whose members are also members of the House of Representatives.

(7) dissolution of a political party (Organic Act on Political Parties B.E. 2550 (2007), section 93 in conjunction with section 42 paragraph two or section 82);

- Political Party Registrar with the approval of the Election Commission.

- There are 3 cases under section 93 where an application may be filed with the Constitutional Court for a dissolution order against a political party. The first case is where there is a cause for termination of a political party under the political party's rules but such political party's membership still has members of the House of Representatives. The second

(8) dissolution of a political party (Organic Act on Political Parties B.E. 2550 (2007), section 94 in conjunction with section 21 paragraph one, section 43, section 65, section 66, section 69 or section 104).

- Attorney- General.

case is where a political party fails to file a report of political party activities for the preceding calendar year with the Political Party Registrar under section 42 paragraph two. The third case is where a political party fails to file an accurate and truthful report of expenditures from political party contributions with the Election Commission under section 82.

- When a political party commits one of the following acts, the Constitutional Court may order the dissolution of that political party:

(1) an act to overthrow the democratic form of government with the King as head of state under the Constitution, or an act to acquire national governing powers by means that are not provided by the Constitution, or an act deemed by the Constitution as an act to acquire powers by such means;

- (2) an act in violation of the Organic Act on Election of Members of the House of Representatives and Obtaining Senators or rules or notices of the Election Commission which results in a dishonest and unfair election;
- (3) an act which could be detrimental to the democratic form of government with the King as head of state;
- (4) an act which could pose a threat to state security, domestically and overseas, or in contravention of the law or public order or good morals of the people; or
- (5) an act in violation of section 21 paragraph one, section 43, section 65, section 66, section 69 or section 104.

# RULINGS OF THE CONSTITUTIONAL COURT AND THE EFFECT OF CONSTITUTIONAL COURT RULINGS.

Section 216 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) prescribed the following essential rules on Constitutional Court rulings and effects of Constitutional Court rulings:

1. A quorum of Constitutional Court Justices in a hearing and giving of a decision must comprise no fewer than five Constitutional Court Justices (there are a total of 9 Constitutional Court Justices).
2. A ruling of the Constitutional Court shall be made by a majority of votes unless otherwise provided by the Constitution as an exception. The only exception provided in the Constitution of the Kingdom of Thailand B.E. 2550 (2007) is the constitutionality review of the conditions for enacting an Emergency Decree, which requires the votes of no fewer than two-thirds of the total number of Constitutional Court Justices.
3. The Constitution requires all Constitutional Court Justices constituting the quorum to prepare an individual opinion in the ruling. The opinion shall be declared orally in a meeting before voting on a resolution. The Constitutional Court ruling and opinions of each Constitutional Court Justice will be published in the Government Gazette. The essential substance of a Constitutional Court ruling must at least contain the background or allegation, a summary of the facts obtained from the trial, the reasons behind a factual and legal ruling, and the provisions of the Constitution and laws which were invoked.



4. A ruling of the Constitutional Court is final and binding on the National Assembly, Council of Ministers, courts and other state organs. The effects of a Constitutional Court ruling may be divided into two instances, namely:

4.1 A ruling of the Constitutional Court is final, meaning that once the Constitutional Court passes a ruling, the parties, related persons or applicant to the Constitutional Court may not file an appeal to an appellate or supreme court, or object such ruling of the Constitutional Court, or file an action in another court to reverse such ruling of the Constitutional Court;

4.2 Upon a ruling of the Constitutional Court, the decision of the Constitutional Court would also be binding upon third parties who are not parties, related persons or the applicant to the Constitutional Court; in other words, the ruling is binding upon the National Assembly, Council of Ministers, courts or other state organs pursuant to the protection principle of constitutional supremacy.

The binding force of a Constitutional Court ruling is provided under the Constitution of the Kingdom of Thailand B.E. 2550 (2007) which contains provisions recognizing and preserving the supremacy of the Constitution relating to the binding force of Constitutional Court rulings. Section 27 of the Constitution states that *“rights and liberties recognised by this Constitution expressly, by implication or by decisions of the Constitutional Court shall be protected and directly binding on the National Assembly, the Council of Ministers, courts, constitutional organs and State agencies with respect to the enactment, application and interpretation of all laws.”* In other words, once the Constitutional Court passes a ruling on rights and liberties on any matter, the ruling would be directly binding on the National Assembly, Council of Ministers, courts as well as constitutional organs and state agencies in the enactment of laws, application of laws and interpretation of laws.

# CONSTITUTIONAL COURT PROCEDURES

Section 216 paragraph six of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) states that “the procedures of the Constitutional Court shall be in accordance with the Organic Act on Constitutional Court Procedures” and the transitory provisions under section 300 paragraph five states that “while the Organic Act on Procedures of the Constitutional Court has not yet been enacted, the Constitutional Court has the powers to prescribe rules on procedures and rendering of decisions but such organic law shall be enacted within one year as from the date of promulgation of this Constitution.”

At present, the Constitutional Court has issued and applied the “Rules of the Constitutional Court on Procedures and Ruling B.E. 2550 (2007)” (published in the Government Gazette, volume 124, part 96a, dated 21<sup>st</sup> December B.E. 2550 (2007)).

## The Constitutional Court trial process contains the following stages:

Constitutional Court procedures under the “Rules of the Constitutional Court on Procedures and Ruling B.E. 2550 (2007)” provided for an inquisitorial system. Any procedure which is not specifically provided for under these Rules are governed by provisions of the Civil Procedure Code to the extent that such provisions are applicable and not inconsistent with these Rules (clause 6 of the Rules).

### **1. Acceptance of Application.**

An application filed with the Constitutional Court must be in writing. The application must contain polite words and must at least contain details relating to: (1) the name and address of the applicant, (2) a specification of the section of the Constitution and laws relevant to the cause of application, (3) a specification of the matter giving rise to the cause for exercise of rights together with the relevant facts and circumstances, (4) a request specifying an intent for the Court to proceed in a

certain manner together with clear supporting reasons, and (5) signature of the applicant. In the event that the application is filed and submitted on behalf of another person, a power of attorney to carry out the following act must also be attached.

Once an application has been filed with the Constitutional Court, the President of the Constitutional Court shall appoint no fewer than three Constitutional Court Justices to have charge of the case. Exceptions are provided in the case of filing an application for a constitutional review of an Act approved by the National Assembly pursuant to clause 17(5) of the Rules of the Constitutional Court on Procedures and Ruling B.E. 2550 (2007), or the case of filing an application for ruling on whether there has been a proposal, motion or any act by a member of the House of Representatives, senator or committee member in the deliberation of an Annual Appropriations Bill, Supplemental Appropriations Bill and Transfer of Appropriations Bill which results in the member of the House of Representatives, senator or committee member having a direct or indirect interest in the expenditure of appropriations budget pursuant to clause 17(9) of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007), or a case of urgent necessity where the President of the Constitutional Court may elect to not appoint a Constitutional Court Justice in charge (clause 25 of the Rules). In the aforementioned cases, the Constitutional Court must consider and issue an order accepting the application for consideration within three days as from the receipt date of the application.

## **2. Consideration of the Application.**

Upon consideration of an application by the Constitutional Justices in charge, two opinions may be delivered:

- in the event of an opinion accepting the application, an order accepting the application for consideration shall be made within fifteen days as from the date of appointment (clause 27 paragraph one of the Rules);

- in the event of an opinion of non-acceptance for consideration, the

Constitutional Court Justices in charge shall submit the matter to the Constitutional Court for consideration within seven days of the date of opinion, and if the Constitutional Court concurs, an order of the Constitutional Court shall be made (clause 27 paragraph two of the Rules); however, if the Constitutional Court does not concur with the opinion of the Constitutional Court Justice in charge, the case shall proceed in accordance with the Constitutional Court's opinion (clause 27 paragraph three of the Rules).

### **3. Notification of the Applicant and Service of Application to the Respondent.**

Upon an order of the Constitutional Court or the Constitutional Court Justices in charge accepting a party's application for consideration, as the case may be, a copy of the application shall be served on the respondent, or an order issued to notify the respondent to collect a copy of the application within the period stipulated by the Constitutional Court. Once the respondent has received a copy of the application, he/she shall submit a statement in reply to the allegations within fifteen days as from the receipt date of the application copy, or within the period stipulated by the Constitutional Court. In the event that the respondent fails to submit a statement in reply of the allegations within fifteen days as from the receipt date of application copy, or within the period stipulated by the Constitutional Court, or fails to collect an application copy within the period stipulated by the Constitutional Court, the Constitutional Court shall proceed with the trial process (clause 29 of the Rules).

### **4. Trial Proceedings.**

"Trial proceedings" under the definition in clause 4 of the Rules means an inquiry or consultation meeting for deliberation or ruling.

**4.1 Inquiry** means inspection of evidence, hearing or examination of evidence (clause 4 of the Rules) pursuant to the following important principles:

**4.1.1 Open Trial.** In other words, an inquiry of the Constitutional Court must be conducted openly, except where the Constitutional Court considers

it appropriate in the interest of order in the courthouse vicinity or the preservation of public interests, the Constitutional Court has the power to determine the persons entitled to remain in the trial room. The dates and times of all inquiry hearings shall be posted at the Constitutional Courthouse. Copies of the notice of the first inquiry hearing date shall be sent to the parties at least fifteen days prior to the scheduled date (clause 32 of the Rules).

#### **4.1.2 Giving the Parties an Opportunity to Present Evidence.**

- A party has the right to adduce oneself, a person or other items as evidence as the Constitutional Court considers appropriate, and **the right to inspect evidence and make copies of evidence of oneself or the other party** at the courthouse during official hours as the determined by the Constitutional Court. A party shall submit a schedule of evidence as well as state the reasons, necessities for adducing the evidence and the procedures of obtaining such evidence. A party may submit a supplemental schedule of evidence as well as state the reasons and necessities as considered appropriate by the Constitutional Court. Any evidence not included in the schedule of evidence submitted by the party may not be introduced in the trial proceedings, except where otherwise allowed by the Constitutional Court in the interest of justice (clause 33 of the Rules).

- In order that trial proceedings proceed expeditiously and fairly, the Constitutional Court may determine a prior inspection of evidence. In such a case, the parties shall be notified at least fifteen days in advance of the evidence inspection date. Seven days prior to the evidence inspection date, the parties shall submit a schedule of evidence to the Constitutional Court. Any supplemental schedule of evidence must be submitted before the completion of evidence inspection. Submission of a supplemental schedule of evidence after the completion of evidence inspection may only be made by permission of the Constitutional Court, in which case the requestor must show reasonable cause for the inability to become aware of such evidence or that there is a necessity for the interest of justice to do so (clause 34 of the Rules).

- On the date of evidence inspection, the parties shall present

all the evidence submitted to the court in order to enable both parties to inspect such evidence. The Constitutional Court or a designated Constitutional Court Justice in charge will question the parties on the relevance of the evidence adduced to the issues and necessities for examination as well as acceptance of the opposing party's evidence. Such proceedings shall be noted in the trial record. Upon completion, the Constitutional Court shall schedule a date for witness examination and notify the parties at least seven days in advance (clause 35 of the Rules).

- In an inquiry of the Constitutional Court, the parties shall pose questions only on the issues determined by the Constitutional Court and the examination shall only be carried out with respect to the evidence not accepted by both parties (clause 36 of the Rules). In such an inquiry, if the Court finds that the case contains sufficient facts and evidence to render a ruling, the Court may refrain from carrying out an inquiry (clause 37 of the Rules). Inquiry of a witness or relevant expert witness shall be as determined by the Court and shall only be conducted to the extent of necessity. In such an event, the Court shall by itself examine the witness or expert witness, subject that prior to the inquiry the Court shall inform the witness of the issues and facts that will be subject to inquiry. The witness shall testify on those issues by a self-statement or in reply to the Court's questions. In the interest of justice, the Court may allow the parties to carry out additional examination pursuant to the issues and facts already determined by the Court. In such a case, the party adducing the witness shall be the first to examine (clause 38 of the Rules).

**4.1.3 Giving the Parties an Opportunity to Examine Evidence Located Outside the Courthouse.** The Constitutional Court may allow for an examination of evidence located outside the courthouse by video conference as requested by either party or both parties. The party making the request shall arrange for such a system and be liable for all the expenses incurred in this regard (clause 39 of the Rules).

**4.1.4 Giving the Parties an Opportunity to Make an Opening or Closing Statement.** Either one or both parties have the right to request to make

an opinion or closing statement. Such statements would be allowed by the Court as it considers appropriate. The opening or closing statement of a party must be in writing, except where the Court finds an oral statement appropriate. When making an oral opening or closing statement, the applicant shall be the first to make a statement followed by the respondent. At the opening or closing statement of each party, the Court may question for further facts from the party making the statement during the statement or after the statement (clause 43 of the Rules).

#### **4.2 Consultation Meeting for Deliberation and Ruling**

- In a consultation meeting for deliberation and ruling, a party, witness or related person may, with the Court's permission, give facts or opinions, as the case may be, in writing (clause 44 of the Rules).

- A quorum of the Constitutional Court in deliberations and rulings must consist of no fewer than five Justices (clause 24 paragraph one of the Rules).

### **5. Ruling and Order Making.**

5.1 A quorum of the Constitutional Court in deliberations and rulings must consist of no fewer than five Justices. A Justice who is not eligible to participate in the proceedings of a case does not have the power to make a ruling for that case. A ruling of the Constitutional Court shall be made by a majority vote, except where provided otherwise by the Constitution (clause 24 of the Rules).

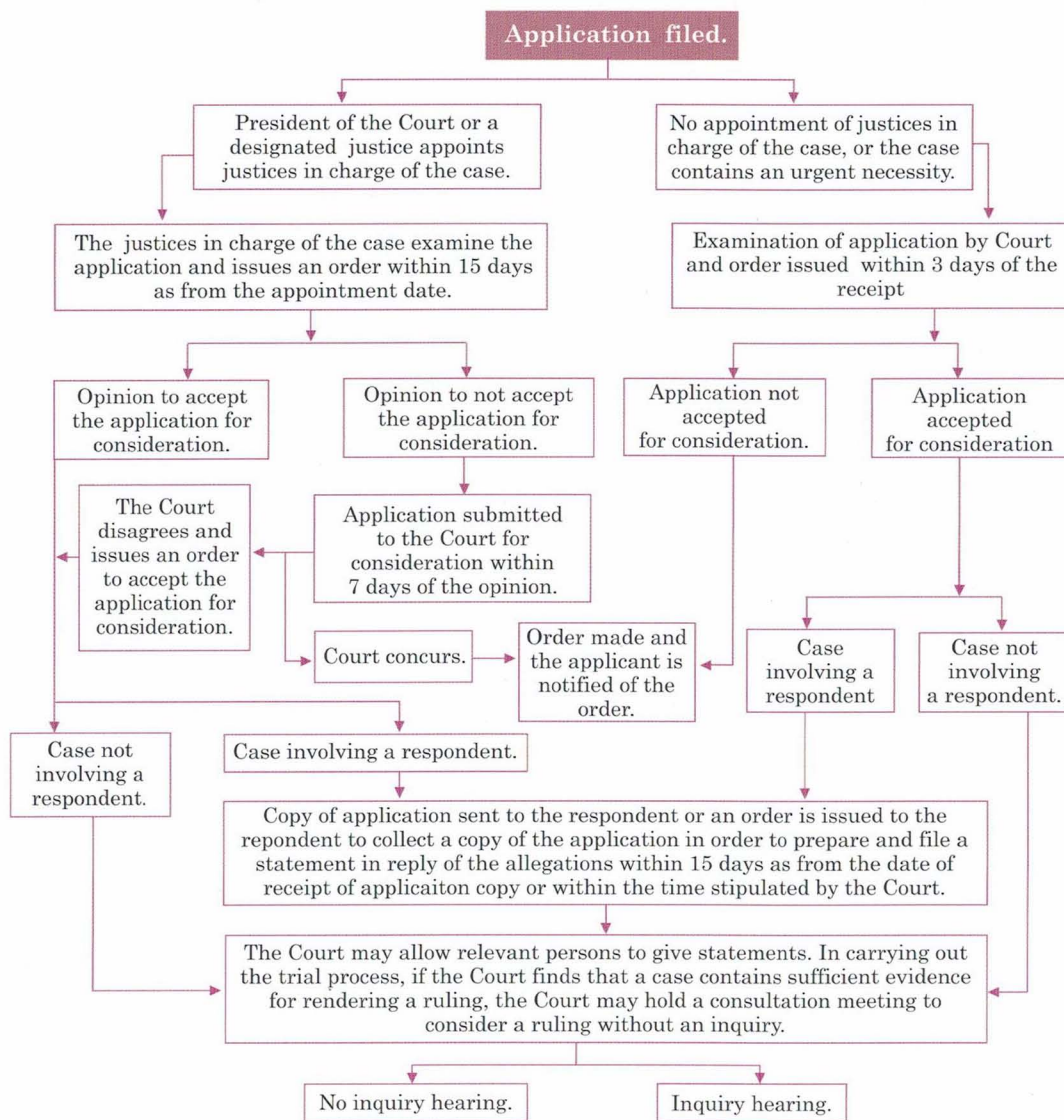
5.2 Every Justice constituting the quorum must prepare a written opinion with respect to his/her individual ruling and make an oral statement to the meeting prior to voting on a resolution. Upon the passing of a resolution, the Justices in the quorum shall prepare a ruling of the Constitutional Court (clause 54 paragraph one of the Rules). A ruling of the Constitutional Court must at least contain the background or allegations, a summary of facts obtained from the proceedings, reasons for ruling on a point of fact or law, and the provisions of the Constitution

and laws invoked (clause 53 paragraph one of the Rules). The ruling of the Constitutional Court and the opinions in the ruling of every Justice in the quorum shall be published in the Government Gazette (clause 54 paragraph three of the Rules).

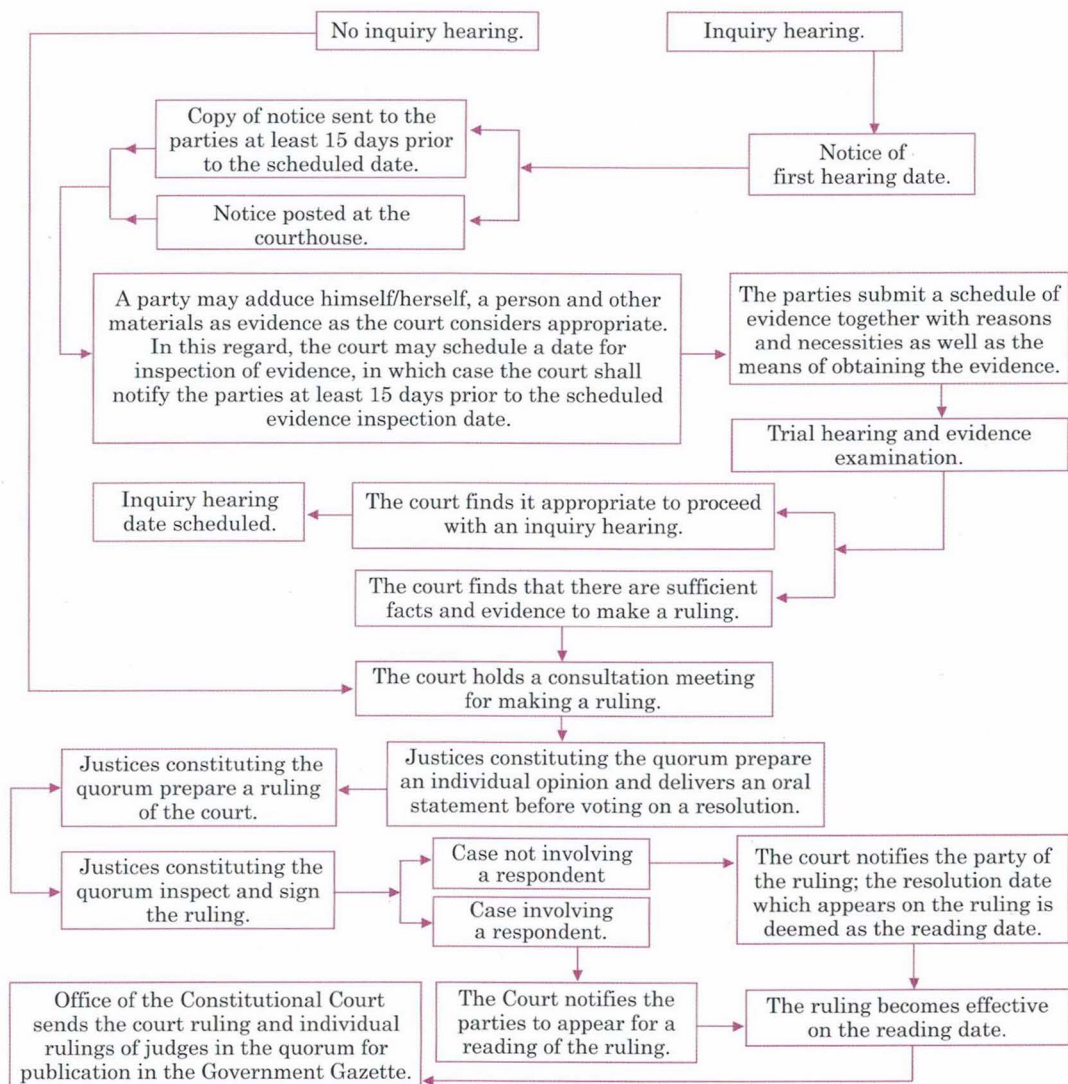
5.3 A ruling of the Constitutional Court shall become effective on the reading date (clause 55 paragraph two of the Rules). In the case where the Constitutional Court passes a ruling on an application involving parties, if either party or both parties, as the case may be, have been duly notified but are absent, the court shall make a record and the ruling shall be deemed as having been duly read (clause 55 paragraph three of the Rules). In the case where the Constitutional Court passes a ruling on an application which does not involve a respondent, the Constitutional Court shall notify the applicant of the Constitutional Court ruling and the date of Constitutional Court resolution, being the date on the ruling, shall be deemed as the reading date (clause 55 paragraph four of the Rules).

5.4 An order expunging an application and an order to not accept an application for consideration shall consist of a brief background of the application, supporting reasons and provisions of the Constitution and laws referred to (clause 56 paragraph one of the Rules).

# Diagram of the Constitutional Court Trial Process



**Diagram of the Constitutional Court Trial Process under the Rules of  
Constitutional Court on Procedures and Ruling B.E. 2550 (2007)  
(continued)**



# OFFICE OF THE CONSTITUTIONAL COURT

Section 217 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) provided that the Constitutional Court shall have an independent secretariat with the Secretary-General of Office of the Constitutional Court as the superior official who reports directly to the President of the Constitutional Court.



1

1 Mr. Paiboon Varahapaitoon  
*Secretary-General of  
Office of the Constitutional Court*



2 3

- 2 Mr. Chaowana Traimas  
*Deputy Secretary-General of  
Office of the Constitutional Court*
- 3 Mr. Punya Udchachon  
*Deputy Secretary-General of  
Office of the Constitutional Court*

Appointment of the Secretary-General of Office of the Constitutional Court shall be made by nomination of the President of the Constitutional Court and the approval of the Assembly of Constitutional Court Justices as provided by law.

The Office of the Constitutional Court is independent in the administration of personnel, budgetary matters and other proceedings as provided by law.

The Office of the Constitutional Court Act B.E. 2542 (1999) provided for the Office of the Constitutional Court to be an independent government agency having the status of a department under the law on national administration. The Office of the Constitutional Court has powers and duties under section 4, as follows:

- (1) to be responsible for the secretarial work of the Constitutional Court;
- (2) to study and compile data, orders and various rulings related to the works of the Assembly of Constitutional Court Justices and Constitutional Court Justices;
- (3) to support studies, research and publication of Constitutional Court activities;
- (4) to carry out other acts as entrusted by the Assembly of Constitutional Court Justices.

# THE CONSTITUTIONAL COURT AND INTERNATIONAL COOPERATION

Since the inauguration of the Constitutional Court in B.E. 2541 (1998) under the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) until the present, the Office of the Constitutional Court has continually undertaken to create and expand technical cooperation networks on Constitutions and Constitutional Courts at an international level. Such undertakings may be divided into two essential parts, namely:



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- 1 *A Courtesy Call of the Finland Delegate to H.E. Chat Chonlaworn, President of the Constitutional Court and the Justices of the Constitutional Court*

## Study Visits of Constitutional Courts

The Constitutional Court is of the opinion that study visits and exchange of experiences between the Thai Constitutional Court and Constitutional Court of other countries are an important means of developing the jurisdictional system of the courts in deliberating cases as well as for the development of case procedures, guidelines for making rulings of the Constitutional Court and internal administrative units of the court. Such visits also provide a guideline for developing further cooperation with international organizations. Study visits of the Constitutional Court takes two forms, being:

- (1) study visits of the Thai Constitutional Court by foreign delegates;
- (2) study visits of Constitutional Courts or legal agencies in other countries by delegates from the Thai Constitutional Court.

## Technical Cooperation with International Organisations

The Constitutional Court has built a network of international cooperation in the form of interorganisational cooperation. In this regard, the court has at all times undertaken the creation and development of cooperation with international organisations and foreign embassies in Thailand under the following two approaches within a framework, as follows:

- (1) the publication of academic literature for dissemination of knowledge and studies on the Constitution and Constitutional Court and the acceptance and exchange of information on public law and constitutional law;
- (2) the organisation of academic seminars, training, workshops in conjunction with foreign experts with the purpose of enhancing the rule of law upon the foundation of constitutionality of laws and inspection with judicial organs as well as to promote the protection of rights and liberties of the people in accordance with the spirits of the Constitution.

2 3

2 *A Courtesy Call of the Korea Delegate to H.E. Chat Chonlaworn, President of the Constitutional Court*

3 *Study Visit of the Constitutional Court by Foreign Delegates*



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