

# Compliance to Supreme Administrative Court Verdicts

On August 31, 2006, the Foundation for Consumers and parties, totaling five (plaintiffs), filed a law suit against the Cabinet, the Prime Minister, and the Minister of Energy (defendants) to the Supreme Administrative Court. The filing aimed to revoke the two royal decrees issued under the State Enterprise Act B.E. 2542 regarding the process of the corporatization of the Petroleum Authority of Thailand into PTT Public Company Limited (PTT) consisted of the royal decree defining the authority, rights, and benefits of PTT Public Company Limited B.E. 2544 and the royal decree defining the timing for repealing the laws governing the Petroleum Authority of Thailand B.E. 2544. The plaintiffs cited assorted issues:

- The process of issuing these decrees was improperly conducted, particularly the format, procedure, and content, which went against the provisions of the State Enterprise Act B.E. 2542 and the Constitution B.E. 2540
- Issuance of the two decrees caused the ownership transfer of land and real estate, which are public domain properties, to PTT Plc, which is a private entity, thus entitling PTT Plc to gain unfair privileges over other private entities
- The fact that PTT Plc took transfer of the public authority, belonging to the state, particularly the right over land expropriation, and the zoning and above-land right prejudice announcement authority over the private sector which went against the principle intention of the Constitution
- It was an improper exercise of discretion to issue the two decrees, which both harmed the public's interests and went against the true intention of the state enterprise privatization

On September 4, 2006, the Supreme Administrative Court acknowledged the litigation and, on September 6, 2006, called for the respondents to submit their testimony against the litigation within 30 days. This was done on October 30, 2006, which was later objected to by the plaintiffs under the Administrative Court procedure; the respondents came up with an additional testimony for the tribunal on January 22, 2007.

PTT Plc submitted its petition to become a fourth defendant, which was granted on November 28, 2006, and the Company was required to submit its testimony by December 29, 2006, which it duly did. Then on August 31, 2007, the Supreme Administrative Court scheduled September 28, 2007, as the closing date for fact-finding for the case and scheduled the first sitting on November 30, 2007. On December 14, 2007, the tribunal read out the verdict, summarized as follows:

1. That the four defendants, consisting of the Cabinet, the Prime Minister, the Minister of Energy, and PTT, jointly carry out the following action:
  - a. Surrender public domain properties and the rights to use land for petroleum transmission pipelines
  - b. Segregate the authority and rights belonging to public authority from those of PTT Plc, to be completed before the appointment of the Energy Regulator Commission under the Energy Business Act
2. That the petition of the five plaintiffs be rejected for revocation of the royal decree stipulating the authority, rights, and benefits of PTT Plc B.E. 2544, amended by another decree of the same name (No. 2) B.E. 2550, and another decree defining the timing for repealing the laws governing the Petroleum Authority of Thailand B.E. 2544.

On December 18, 2007, the Cabinet acknowledged the verdict of the Supreme Administrative Court and concurred with the principle of transferring assets, authority, and rights of the Petroleum Authority of Thailand to the Ministry of Finance as required by the verdict. This was to be done by segregating the assets received by PTT Plc on its registration date as a result of corporatization. The Ministry of Energy and the Ministry of Finance were assigned to conduct the segregation under due principles, to be audited and verified by the Office of the Auditor General. Should legal disputes arise on the interpretation of the verdict

concerning the segregation of properties, they were to be ruled by the Council of State. The Department of Treasury, on behalf of the Ministry of Finance, was to define rent criteria for transmission pipelines to form the basis of PTT Plc's rental, which must be based on fair commercial principles to all - namely the Ministry of Finance, PTT Plc and its shareholders, and natural gas users - while taking into account PTT Plc's commitment, including loans and loan interest burden, together with the public-utility nature of transmission pipelines.

On December 25, 2007, the Administrative Court sent a letter to the defendants, requesting a summary of action taken in line with the verdict, for its reporting to the Supreme Administrative Court. Addressing this request, the Ministry of Energy and PTT Plc summarized the following action:

- January 9, 2008: The Energy Ministry filed the first progress report under the verdict
- January 11, 2008: PTT Plc filed its first progress report under the verdict and clarified to the Administrative Court the segregation of public authority from that of PTT Plc, saying that the promulgation of the Energy Business Act had already deprived PTT Plc of any public authority
- January 31, 2008: PTT Plc filed its second progress report along with a summary of the value of the assets of the Petroleum Authority of Thailand as of September 30, 2001, that were surrendered to the Ministry of Finance
- February 14, 2008: PTT Plc filed its third progress report along with additional clarification to the Administrative Court about its letter to the Department of Treasury, delivering the segregated assets of the Petroleum Authority of Thailand and the signing of a memorandum of understanding between the Department and the Company on the defining of rent criteria for such assets, as well as informing the court about a reply from the Department of Land about the issuing of title deeds for the land obtained through expropriation.

The process of segregating properties under the verdict was to be the discretion of the court, based on PTT Plc's periodical progress reports of action taken as mentioned above.

- March 7, 2008: PTT Plc filed its fourth progress report about the deliberation of the Department of Local Administration, Ministry of Interior, and Treasury Bureau of Bangkok Metropolitan Administration concerning property taxes for the transmission pipelines. In essence, the property and land taxes under the Property and Land Tax Act B.E. 2475 did not apply to the pipelines

- April 25, 2008: PTT Plc filed its fifth progress report about the signing of the official segregation and delivery of assets to the Ministry of Finance; this memorandum of understanding was agreed between the Department of Treasury (with the concurrence of the Ministry of Finance) and PTT Plc on April 24, 2008. Below is the essence of the submission:

1. The assets surrendered by PTT Plc to the Ministry of Finance under the verdict of the Supreme Administrative Court - land, land rights, pipelines, and associated equipment forming petroleum transmission pipelines - consisted of the following:

(1.1) Land obtained through the expropriation of real estate, reimbursed by state money and expropriated by public authority by the Petroleum Authority of Thailand, totaling 32 rai, 74.1 square wa, in 106 plots, in the provinces of Samut Prakan, Chachoengsao, Chon Buri, and Rayong; as of September 30, 2001, these plots were about Baht 1 million in net book value

(1.2) Over-land rights for private land needed as part of transmission pipelines, considered public authority exercised by the Petroleum Authority of Thailand as a state entity on private properties and reimbursed with state money, the net accounting value of which as of September 30, 2001, amounted to some Baht 1,137 million

(1.3) Transmission pipelines, including associated equipment found installed in the land under (1.1) and (1.2), the net accounting value of which as of September 30, 2001, amounted to some Baht 14,808 million

(1.4) Distribution pipelines found in the land under (1.2), the net accounting value of which as of September 30, 2001, amounted to some Baht 229 million

2. PTT Plc was entitled to continue using state properties and public land previously under its custodianship if it paid fees to Treasury as defined by the Ministry of Finance. To this end, the Department of



Memorandum Signing Over the Separating and Transferring Assets To the Ministry of Finance



Signing Agreement Over The Renting of State Property

Treasury and PTT Plc would agree the rent of such land by PTT Plc.

3. If a change should occur in the assets to be segregated and surrendered to the Ministry of Finance as decided by the Supreme Administrative Court, the Department of Treasury and PTT Plc were to ensure that such division of assets complied with the decision of the tribunal.

- June 3, 2008: The Department of Treasury represented the Ministry of Finance in signing an agreement with PTT Plc on the use of state properties surrendered to the Ministry of Finance under the verdict of the Supreme Administrative Court in line with a memorandum on the segregation and surrendering of such assets. The permission to use state properties was to be in effect from January 1, 2008, to December 31, 2037, upon which date the Ministry pledged to allow PTT Plc to continue using such assets for another 30 years.

In so doing, PTT Plc must pay an annual state property rent for the land, land rights, pipelines, and associated equipment making up the petroleum transmission systems at a revenue-sharing rate of the pipeline throughput fees for each calendar year. These throughput fees mean the transmission service fees for onshore gas transmission systems (for Area 3), which included the demand charge and commodity charge under the criteria for fixing natural gas prices and transmission service fees, announced by the National Energy Policy Council, No. 1, of 2001, or their future changes. The calculation was to be based on a sliding-scale system, detailed as follows:

Unit: Million Baht

Revenue	Rate of fee as Percentage of Revenue		Annual
	Minimum	Increment	
0 - 3,600	5%		= 180 (minimum rent)
> 3,600 - 3,700		10%	> 180 - 190
> 3,700 - 3,900		15%	> 190 - 220
> 3,900 - 4,100		20%	> 220 - 260
> 4,100 - 4,300		25%	> 260 - 310
> 4,300 - 4,500		30%	> 310 - 370
> 4,500 - 5,000		36%	> 370 - 550
> 5,000			= 550 (maximum rent)

In short, the annual rent to be paid to the Ministry of Finance would range from Baht 180 to 550 million, retroactive to between October 1, 2001, and December 31, 2007, at a simple interest rate of 7.5% per year to be paid to the Department of Treasury, amounting to some Baht 1,597 million.

- June 5, 2008: PTT Plc filed its sixth progress report about the agreement signing mentioned above
- July 25, 2008: PTT Plc filed its seventh progress report about the registration, modification, and

transfer of property items divided by PTT Plc to the Ministry of Finance.

PTT Plc petitioned the Supreme Administrative Court on February 1, 2008, for a 30-day extension of the action required by the verdict from the date of His Majesty the King's appointment of the Energy Regulator Commission, to which the Supreme Administrative Court, on February 4, 2008, gave its concurrence. PTT Plc later petitioned for another 150-day extension from the last extension, which was again granted, thus making this latter extension last until December 29, 2008.

- October 13, 2008: PTT Plc filed its eighth progress report, together with an additional update on the registration, modification, and transfer of assets segregated for the Ministry of Finance
- December 4, 2008: PTT Plc filed its ninth progress report, saying that it had completed the registration, modification, and transfer of items (that is, transfer of ownership) in the expropriated land for segregation to the Ministry of Finance, and simultaneously filed a summary report of action in line with the verdict of the Supreme Administrative Court, litigation number Red, Phaw 35/2550 (Black, Phaw 47/2549).

Note that PTT Plc filed the same summary report to the Supreme Administrative Court on December 25, 2008, beginning from the time the tribunal's verdict was given, the Cabinet's deliberation of the approach to be taken, the Department of Treasury and PTT Plc jointly signing a memorandum governing the segregation and surrender of assets to the Ministry of Finance, to both mentioned parties' registration of amendments and modifications (transfer of ownership) in all expropriated land for segregation and transfer to the Ministry of Finance, thus completing the process. Therefore, PTT and the defendants (1 to 3) had jointly and thoroughly segregated public domain properties as required by the verdict, the right to use the land for its petroleum transmission pipelines, and the authority and rights belonging to public authority from those of PTT Plc, as decided by the Supreme Administrative Court. On December 26, 2008, the tribunal recorded this concerning PTT Plc's petition: "...considered and ruled that litigated parties 1 through 4 and relevant agencies had completely complied with the verdict..."

## Legal Disputes

As of December 31, 2008, the ongoing dispute involving PTT as a party to litigation that may significantly impact PTT's business and did not result from PTT Plc's ordinary business undertaking is detailed below:

### **PTT Plc and Thai Petroleum Pipeline Co., Ltd., litigated for compensation for laying a pipeline through private land.**

This refers to the pipeline-laying project of PTT Plc and Thai Petroleum Pipeline Co., Ltd., from Si Racha to Sara Buri, which needed to enter private land, for which the respondents compensated the landlords under the Petroleum Authority of Thailand Act B.E. 2521. A Susawas Limited Partnership and company, dissatisfied with the Baht 2 million in compensation, forwarded the dispute to the Thai Arbitration Institute, calling for payment of damages amounting to Baht 1,000 million (later amended to Baht 4,900 million), which PTT Plc and Thai Petroleum Pipeline Co., Ltd., decided to contest. The plaintiffs withdrew their petition to the institute on January 10, 2003, and instead filed a complaint to the Administrative Court, accusing PTT Plc and its officers for illegally laying the Chon Buri - Sara Buri oil pipeline through their land. Citing abuse of administrative authority, the plaintiffs said their damages amounted to Baht 7,122.5 million. PTT Plc asked the Office of the Attorney General to submit its testimony in contesting the case, which the public prosecutor duly did in March 2003. The Central Administrative Court forwarded the case to the Constitutional Court in November 2004 for a decision whether the Petroleum Authority of Thailand Act B.E. 2551 (Section 29 and 30) had violated the Constitution (Section 48 and 49). Since the Constitutional Court ruled that the above mentioned act had not violated the constitution, the Administrative Court gave its verdict on November 2, 2007, rejecting this case. At any rate, the plaintiffs appealed to the Supreme Administrative Court, which is currently deliberating the case.