

THAILAND UPDATE**Facts about the Assets Seizure Case
Against Former Prime Minister Thaksin Shinawatra**

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• On 26 February 2010, Thailand's Supreme Court, particularly Criminal Division for Political Office Holders, has delivered a ruling that the assets worth some 46.3 billion Baht (1.4 billion USD) of the over 76 billion Baht (2.3 billion USD) under the names of former Prime Minister Thaksin Shinawatra and his family members - be confiscated, on the case which the latter allegedly acquired inappropriately through acts constituting a conflict between personal and public interests. The assets will become property of the state in accordance with the 1999 Organic Act on the Prevention and Suppression of Corruption, Section 81 and 1999 Organic Act on the Criminal Procedure of Political Office Holders, Section 33 and 35.

Rulings of the Court

• The accusations against the former Prime Minister in this case involve: (1) the concealment of the holding of shares by himself and his spouse in a company holding state concessions contracts (i.e. Shin Corp. Public Co., Ltd.) in contravention to the relevant provisions of the 1997 Constitution of Thailand, the 2000 Cabinet Minister Shareholding Management Act, and the 1999 Organic Act on the Prevention and Suppression of Corruption; and (2) the undertaking of policies and actions which extended benefits to Shin Corp. Public Co., Ltd (Shin Corp) and its affiliated companies, while being a political office holder.

• Pol. Lt. Col. Thaksin, while in the position for two terms from February 2001-March 2005, had concealed the holding of over 1.4 million shares in Shin Corp. worth 76,621,603,061.05 Baht, of which he and his subsequently divorced spouse, Khunying Potjaman Damapong, were still the true owners. The holding of shares was concealed and disguised under the names of Mr. Panthongtae Shinawatra, Miss Pinthongta Shinawatra, Miss Yingrak Shinawatra and Mr. Banapot Damapong as their nominees.

• The above finding was also consistent with the outcome of the investigations by the Department of Special Investigation (DSI) and the Securities and Exchange Commission (SEC), which had established that Win Mark Co., Ltd., which held shares in Shin Corp, was the nominee company of Pol. Lt. Col. Thaksin and Khunying Potjaman.

• Combining the shares in Shin Corp. which were held by Ample Rich Co., Ltd., which Pol. Lt. Col. Thaksin also owned, and by Win Mark, Pol. Lt. Col. Thaksin – by August 2001 and after becoming Prime Minister – still owned more than 5% of Shin Corp. shares, which was prohibited by law.

• In all, it was found that while being in the position of Prime Minister, Pol. Lt. Col. Thaksin still held 48% of the shares in Shin Corp., which on 23 January 2006; he sold to the Temasek Group of Singapore for a total of 76,621,603,061.05 Baht.

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Actions which Extended Benefits to Shin Corp. and its Affiliated Companies

- Furthermore, during the time when Pol. Lt. Col. Thaksin was Prime Minister, he took actions which extended benefits to Shin Corp. and its affiliated companies through, among others:
 - (1) Conversion of a concession fee for mobile phone operators into excise tax by issuing the Emergency Decree amending the Excise Tax Act, which allowed Advanced Info Service Co., Ltd. (AIS), of which Shin Corp. is a major shareholder, to use the concession fee for excise tax deduction while requiring new companies to pay higher taxes;
 - (2) Amendment of the mobile phone concession contract between the Telephone Organization of Thailand (TOT) and AIS allowing AIS to pay 20% of its revenue to TOT instead of the previous 25-30%;
 - (3) Implementing policies related to the use of satellites which benefitted Shin Satellite Public Co., Ltd., the shareholders of which included Shin Corp.;
 - (4) Approval of the low-interest loan worth four billion Baht from the Export- Import Bank of Thailand (EXIM Bank) to the Government of Myanmar to purchase goods and services from Shin Satellite Public Co. Ltd.;
 - (5) Amendment of the telecommunication business law which allowed an increase in foreign shareholdings of a Thai company, paving the way for the sale of Shin Corp. shares to the Temasek Group of Singapore.
- The extension of business benefits to Shin Corp. was deemed unreasonable, bypassing the procedures of legal examination, and causing serious detriments to the public. It can be concluded that such acts undertaken by the administration of Pol. Lt. Col. Thaksin were unlawful benefits specifically extended to his business.

Appeal Process

- According to the present 2007 Constitution, the former Prime Minister may appeal to the Court within 30 days if he has obtained new evidence which could lead to the significant altering of the facts of the case. Then, the general meeting of the Supreme Court will elect five judges, other than those served in the original case, to serve on the panel to consider such an appeal.

Further Actions based on the Court's Rulings

- All government agencies concerned have been instructed to determine further actions to be taken regarding the issues established by the Court as leading to losses to the state. The Attorney-General Office is summarizing key points of the ruling.
- For example, the Ministry of Finance will take actions with regard to the confiscation of the assets as ruled by the Court, assessment of civil losses caused to the state and of the damages done to the state enterprise including TOT Public Co., Ltd., CAT Telecom Public Co., Ltd., and the EXIM Bank, as well as the collection of taxes amounting to 12 billion baht from the 2006 sale of Shin Corp. shares to the Temasek Group.

Origin and Composition of the Court

- The Supreme Court's Criminal Division for Political Office Holders was established pursuant to the 1997 Constitution, which has been transposed into the current 2007 Constitution. It is also part of the Court of Justice of Thailand.
- To serve on this assets seizure case as well as each similar case submitted to the Court, a panel of nine judges, comprising judges of the rank of not more junior than a Supreme Court Judge or of a Senior Judge who has served as a Supreme Court judge – are elected by secret ballots by the general meeting of the Supreme Court.

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