

เรื่องเสร็จที่ ๙๒/๒๕๗๘

ที่ ศ.๔๖๘/๒๕๗๘

คณะกรรมการกฤษฎีกา

๒๘ พฤศจิกายน ๒๕๗๘

เรื่อง การแก้ไขพระราชบัญญัติควบคุมกิจการค้าขาย อันกระทบถึงความปลอดภัยหรือผาสุกแห่ง
สาธารณชน

จาก เลขธิการคณะกรรมการกฤษฎีกา

ถึง รัฐมนตรีว่าการกระทรวงเศรษฐการ

ตามหนังสือที่ น.๒๕๘๑/๒๕๗๘ ลงวันที่ ๒๕ กันยายน ศกนี้ ถึงประธาน
คณะกรรมการกฤษฎีกา ขอให้ว่าในอาระประเทศเขามีการควบคุมกิจการค้าขายอันกระทบถึง
ความปลอดภัยหรือผาสุกแห่งสาธารณชนอย่างใดบ้างนอกจากที่ได้ระบุไว้ในพระราชบัญญัติ
ควบคุมกิจการค้าขาย อันกระทบถึงความปลอดภัยหรือผาสุกแห่งสาธารณชน พ.ศ. ๒๕๗๑ นั้น

บัดนี้ นาย อาร์. กียอง ที่ปรึกษาในการร่างกฎหมายได้พิจารณาเรื่องที่กล่าว
ข้างต้นนั้น และได้จัดทำบันทึกความเห็นขึ้นพร้อมกับชี้แจงว่าในต่างประเทศเขามีการควบคุม
กิจการอย่างใดบ้าง ดังได้ส่งมาพร้อมกับหนังสือนี้ ๑ ฉบับ

ขอแสดงความนับถืออย่างยิ่ง

NOTE
RE: THE CONTROL OF COMMERCIAL UNDERTAKINGS.

The ministry of Economics, taking in consideration the increase of the commerce and industry in the country, thinks that the present 'Act for the control of Commercial Undertakings affecting the public safety and welfare B.E. 2471' might be reconsidered and eventually completed.

Consequently, the ministry of Economics requests to know if, in other countries, there is control of commercial undertakings other than those specified in the above mentioned Act.

In order to clear up the matter, it is useful to remind first in which conditions and for which purposes the above mentioned Act has been issued.

As a rule, with the development of commerce and industry and the spreading of new inventions modifying their conditions, it has been deemed necessary in foreign countries to issue specific laws in order to control a number of commercial undertakings in order to protect the public. The Government was struck by the fact that, in Siam, there are very few specific laws of that kind (for instance, are specific laws: the Law on Organisation of Railways and Highways, the Law on Aerial Navigation) Specific laws are a delicate matter, require a minute study and long time to be drafted, and even sometimes are not practical owing to the actual conditions of the country. To remedy the deficiencies, it was then deemed convenient to issue the Act B. E. 2471 for the control of commercial undertakings affecting the public safety or welfare. The Act submits to a certain control some commercial undertakings of public utility.

The policy of the Act is shortly as follows:

a) in a first category are the Railways, Tramways, Canals, Aerial navigation, Water supply, Irrigation, Electric power stations additions to that list may be made by Royal Decree; the control that no undertakings of that first category may be ...without Royal sanction or Concessions:

b) in a second category are the Insurance, ..., Saving banks, credit fancier, or any other undertaking of a similar nature; the control is that the said undertakings must comply with the provisions of special laws governing them, or, as long as there is no special laws, obtain an authorization from the Government.

Special laws governing the above commercial undertakings do not ...yet in ...for all of them, so that may still remain under the regime of the Act B. E. 2471, that is to say ...the Royal Sanction or Concession, or the Government's authorization which is given only subject to some conditions to be agreed with by the undertaking.

For the time being, the Government has consequently to adopt a policy which contains necessarily two Elements:

first, taking all the undertakings enumerated by ...in the Act B. E. 2471, to consider whether it is desirable or feasible to issue a specific law concerning such undertakings, where there is no special law issued yet;

second, to decide whether it is expedient or necessary to legislate in the case of other undertakings than these imitatively ...in the two categories here above mentioned, this being made either by issuing a specific law for those other undertakings, or by adding them to one or the other of the two categories specified in the Act B. E. 2471.

Then the Act B. E. 2471 was drafted, it was said in the ...of the Committee of Legislative Redaction intend 2nd. November 1927: "Other business have been purposely omitted by the Committee. For instance, it has been suggested to the Committee that the above enumeration should include partnerships and companion whose sole object is to sell and buy ...; but the Committee has deemed commendable not to include it, because such ...of business in never submitted to authorization in the other countries; it is taken as practically harmless, since no company has money enough to purchase a part of the country and besides the purpose of such undertakings is to make benefits by reselling the land and not to keep it indefinitely in their hands. As far as Post, Telegraph, Telephone,,they are proclaimed in special laws relating there to be a monopoly of the ...: consequently, they need not to be mentioned in Section ...¹ no private company being likely to be established unless by a special negotiation with the Government. Nothing has been done yet in this country for broad easting which is a quite recent thing, and the Committee are inclined to believe that this is just an inseams of the questions which are not quite ripe for the time being and should be reserved for further consideration and addition, if necessary".

In addition, the Department of Legislative ... did, at that time, consider especially whether 'mining' should be added or not in the commercial undertakings of the second category. This was deemed unnecessary because the mineral wealth of the country belongs to Siam and not to the individual owners of the mines, unless under the special law which provides in which conditions mining rights may be acquired.

The question of ...was examined else. It is admitted that a law concerning quarries, which is practically missing in the Siamese legislation, should be necessary. Then a quarry is in a land of the public domain, a concession or authorization of the Government should be necessary. As to ...in private land, the question is more delicate, and it is ...admitted that the ownership of the land and the ownership of the quarry are different of things, the exploitation of the ...concerning the public interest.

In other countries, the following commercial ...are also submitted to control of the Government:

..., either for shares and debentures or for goods and products; the present conditions of the ...in Bangkok ...to make Stock-Exchange unnecessary, and, in any case, the creation and regulation of the name should be possible only after a complete and technical enquiry;

... (Magasins Generaux, docks) It is reminded that the ...and Commercial Code (Book-III, Title ...) contains already provisions concerning warehousing. ...has been created in Nurope in the ...of the last century, and is now regulated by specific laws. Any person or corporate body, as a rule, may open a warehousing upon authorisation and deposit of money. The purpose is that the said ...receive and ...in deposit goods brought in by, in order to 0000sales and loans with ..as..... The legal system of the contract of warehousing in the civil and Commercial Code has been made as clear and complete as possible. But up to now there is no administrative ...for the warehousing and its control by the Government.

In addition to the Banks and Credits Fanciers, there are in the ...world some other concerns for For instances: Credit for farmers and agriculturists,

¹ Section 1014 C.C.C. was the text existing at that time, which has been resoled and rescaled by the Act B. E. 2471.

which is specially provide in some agricultural countries in order to supply them with money for purchasing cattle, agricultural implements, etc.: this is usually made by instituting Co-operative Societies of Credit (Germany, Italy), but it seems that in Siam the Cooperative Society legislation and the Cooperative movement are a sufficient and satisfactory organization in that matter; -Cooperative Societies for contractors of traders of small means ...also in 000countries; -the so-called “People’s Banks which are ... as cooperative Societies” –Credit for sailors and fisherman ...also in some countries in theas Agricultural Cooperative Societies.

29th .October 1935.