

Systematic Corruption: A Case Study of Big Deal in Thai Stock Exchange

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Abstract

This research was qualitative work that aims to study on a discourse on the sale of Shin Corp's shares to Temasek group, and secondly, how this corruption becomes systematic corruption. The research methodology included documentary research and in-depth interviews with key informants. The results revealed that the discourse on the sale of Shin Corp group's share to Temasek group could be detailed as 5 cases 1) The transform of concession payment into excise. 2) The modification of the Cellular Mobile Telephone Services Business Permit Contract. 3) The modification of the Cellular Mobile Telephone Business Permit Contract, dated 27 March BE2533 (No.7), dated 20 September BE 2545, permitted the use of roaming network, deducted expenses from income, and deducted use of roaming networks cost to benefit Shin Corp and AIS 4) Unlawful missions and approvals to promote satellite businesses according to communication satellite contracts. 5) Approval to grant the loan from the Export-Import Bank of Thailand to the government of the Republic of the Union of Myanmar, for purchasing products and services from Thaicom. Result of legal issues form the Judgment of the Supreme Court's Criminal Division for Person Holding Political Positions shown that political leader's behavior created conflicts of interests which caused Thailand suffering from political and economic damages greatly of, at least in 11 points.. These acts mentioned were done in the western countries, it will be called a Systemic Corruption because they responded to unlawfully needs of political leader's concession businesses.

Keywords: Systematic Corruption, Shin Corp, Temasek, Thai Stock Exchange

บทคัดย่อ

งานวิจัยนี้เป็นการวิจัยเชิงคุณภาพ มีวัตถุประสงค์เพื่อศึกษาวาทกรรมการขายหุ้นชินคอร์ปฯให้แก่กลุ่มเทมาเสก และการคอร์รัปชันในกรณีนี้เป็นการคอร์รัปชันเชิงระบบอย่างไร โดยศึกษาจากเอกสาร และการเก็บข้อมูลภาคสนามด้วยการสัมภาษณ์แบบเจาะลึก ผลการวิจัยพบว่า การสร้างวาทกรรมในการขายหุ้นบริษัทชินคอร์ปและบริษัทในเครือให้กลุ่มเทมาเสกมีด้วยกัน 5 กรณี ดังต่อไปนี้ 1) กรณีแปลงค่าสัมปทานเป็นภาษีสรรพสามิต 2) กรณีการแก้ไขสัญญาอนุญาตให้ดำเนินกิจการบริการโทรศัพท์เคลื่อนที่ 3) กรณีการแก้ไขสัญญาอนุญาตให้ดำเนินกิจการโทรศัพท์เคลื่อนที่ 4) กรณีละเว้น อนุมัติ ส่งเสริมธุรกิจดาวเทียม ตามสัญญาดำเนินการดาวเทียมสื่อสารภายในประเทศโดยมิชอบหลายกรณี เพื่อเอื้อประโยชน์แก่บริษัทชินคอร์ป และบริษัทไทยคม 5) กรณีอนุมัติให้รัฐบาลสหภาพพม่ากู้เงินจากธนาคารเพื่อการส่งออกและนำเข้าแห่งประเทศไทย (EXIM Bank) เพื่อซื้อสินค้าและบริการจากบริษัทไทยคมโดยเฉพาะ พฤติกรรมที่เกิดการทับซ้อนทางด้านผลประโยชน์ระหว่างผลประโยชน์ส่วนตัวของผู้นำทางการเมืองกับผลประโยชน์ของชาติ ได้สร้างความเสียหายทั้งทางด้านการเมืองและทางเศรษฐกิจแก่ประเทศไทยอย่างใหญ่หลวงอย่างน้อยที่สุด 11 ประการ พฤติกรรมแบบนี้หากเกิดขึ้นในสังคมตะวันตกจะถูกเรียกว่าเป็นการคอร์รัปชันตามระบบ (Systemic corruption) เนื่องจากเป็นการตอบสนองความต้องการที่ไม่ถูกต้องตามกฎหมายของบรรดาธุรกิจสัมปทานของผู้นำทางการเมือง

คำสำคัญ: คอร์รัปชันตามระบบ ชินคอร์ปเออร์ชั่น เทมาเสก ตลาดหลักทรัพย์แห่งประเทศไทย

1. Introduction

1. A discourse on sale of shares, from Shin Corp group to Temasek group of Singapore political leader's service as Thailand's Prime Minister, from BE 2544-2548, was conflicted with his testimony. He stated that he had sold the stocks to his son, since BE2543. Mr. Nam Yimyaem, president of the Assets Scrutiny Committee and the whole 12 committees unanimously pointed that political leader was unusual prosperous while serving as Prime Minister, because he was holding Shin Corp's shares. The Shin Corp was granted concession from the state, therefore, such an act was deemed a confliction between personal and public interest, accorded to the Organic Act on Counter Corruption BE2542, section 100. The case was forwarded

to the Office of the Attorney General, to submit it to the Supreme Court's Criminal Division for Person holding political position, for making confiscation order to his 76,621.60 million Baht assets (Report of the Fact-finding Committee of the Assets Scrutiny Committee, BE2550.)

The attorney general accused that there were a total of 22 persons and juristic persons who were involved in this case. The attorney general also accused that, while in charge as Prime Minister, political leader used his power making benefit to his own business, the Shin Corp and group companies, for 5 cases. That is, therefore, such an assets of political leader and his wife was transferred to be Treasury Reserves, which means it was completely belong to the Country (Judgment on the black number case Aor.Mor.14/2551 and the red number case Aor.Mor.1/2553, Office of the Court of Justice, the Court of Justice day, BE2553; Bangkokbiznews, 12 August BE 2553:1), making such confiscation irrevocable.

2. Legal issues form the Judgment of the Supreme Court's Criminal Division for Person Holding Political Positions.

The Supreme Court's Criminal Division for Person Holding Political Positions made a judgment on the 1,419.49 million shares sold from Shin Corp to Temasek of Singapore through foreign juristic persons, Cedar Holdings Co., Ltd. And Aspen Holdings Co., Ltd., worth 76,622 million Baht, requested by the general attorney to confiscate such assets to be property of the state. The Court used the legal definition of "corruption" analyzing political leader's behaviors to find whether he unlawfully used government agencies for his own, his family and his business's interest or not, to find whether he unlawfully used his Prime Minister's power and authority to benefit himself and family or not, to find whether the modifications of contracts were complied with the rules of law principle or not, to find whether the omission or approval to modify the public-private contracts were complied with principles, procedures, formalities and traditions government or not. The analysis was accorded to the Constitution BE2540, The Minister's Partnership and Share Management Act BE2543 and the Counter Corruption Act BE2542, section 119 and 122. In the end, the Court found that all those mentioned behaviors violated the laws. (The Supreme Court's Criminal Division for Person Holding Political Position, the adjudication of the Confiscation case, 26 February :BE 2553)

The most interesting point was, the Court found that political leader used his authority to give benefit to his own business and his wife got involved with him by avoidance to be a legal shareholder of the company, which proved that the couple intentionally acquired unlawful interests. Therefore, the Court had power to order confiscation to their assets. However, the Court held principle that the assets acquired prior to political leader's first service as Prime Minister on 7 February BE2544 were lawful, and it would be unfair to confiscate these assets. For these reasons, the Court found that only dividend and money received from the deal were unlawfully acquired (Khan and Jomo:2000).

The Court's decision was complied with the Conflict of Interest theory (Pasuk and Sungsidh:1994) .The principle of the theory is used in modern government agencies, for politicians, civil servants and government officers, for making decision and for protection of citizens and the Country's interest. (Klitgaard:1988) In the 9th case regarding the approval to grant loan from EXIM Bank to Myanmar for purchasing products and services from Thaicom, the Court set a principle in which complied with the moralistic approach principle as follow; "The Country administrative shall administrate merely for public interest, a Prime Minister shall not act for his own interest". The judgment on 6 issues, from the fourth issue to the tenth issue (please see title 4 of this chapter) were accorded to the moralistic approach, which the Court used to analyze the facts of evidences found by the Assets Scrutiny Committee comparing to political leader's objections. The Court found conflict of interests in all 5 cases which were accorded to the opinion of the committee and the attorney general. (The Supreme Court's Criminal Division for Person Holding Political Position, the adjudication of the Confiscation case, 26 February :BE 2553)

The Court found that political leader used his authority given by the laws to the Prime Minister, to adjusted laws and regulations through the cabinet resolution, by issuance of Emergency Acts and the Ministry of Finance Announcements, by using the legislative to assist his own business, by using his privatization policy announced to the Parliament, by using foreign policy, by using the Minister of Transport, the Minister of Information Technology and Communication, and TOT and CAT boards and executives, to modify the concession contract of Shin Corp and group, by using EXIM Bank to lend money to Myanmar for purchasing products and services from his own company while compensate the Bank's suffers by using money allocated by the Bureau of the Budget, by using inside information, personal

connection, relationship with ministers and government agencies administrative and state to state relation with Myanmar, by using unlawful management causing conflicts of interests between Shin Corp's and the Country's. On the EXIM Bank case, if it were not Shin Corp, it would not be a conflict of interest.

2. Objective

The objective of this research is to study a discourse on the sale of Shin Corp's shares to Temasek group, and how this corruption becomes systematic corruption.

3. Research Methodology

The research methodology included documentary research and in-depth interviews with 3 group of key informants such as Corruption Academician, Group of Inspector, and Anti-Corruption Organization.

4. Result

The discourse on the sale of Shin Corp group's share to Temasek group could be detailed as 5 cases:

1.1 The transform of concession payment into excise political leader used his authority to amend laws, contributed to his own and his partisan's business. The laws amended were 1) the Excise Tariff Act BE2527 Amendment Decree (No. 4) BE2546 and the Excise Act BE2527 Amendment Decree BE2546; 2) the Ministry of Finance's Announcement on Excise Tariff Reduction and Excise Exemption (No. 68) dated 28 January BE2546, to reduce and exempt excise tariff for telecommunication business, from 50% to 10%; 3) the Cabinet's resolution dated 11 February BE 2546, agreed to deduct excise from concession payment; and 4) improvement of ministries and departments, founder of the Ministry of Information Technology and Communication and modification of concession contract to transform income derived from concession into excise. (Report of the Fact-finding Committee of the Assets Scrutiny Committee, BE2550).

The attorney general pointed that there was no genuine intention to levy an excise but to prevent the National Telecommunications Commissions (NTC) and contribute his own and his partisan's business. This is because it made satellite business excise free despite the fact that it was the same concession business as land and mobile telephone business. For this reason, it was deemed an unlawful act and a dishonestly use of Prime Minister's authority. Moreover, the amendment of the Telecommunication Act accommodated foreigner to have right to hold higher ratio of shares, and it made political leader and his partisan being able to sell shares to foreigners. The Attorney General explained that such an amendment was a dishonestly use of the Prime Minister's authority because "it was a distortion of legislative power by using laws as an obstacle to obstructs new telecommunication investor, and it was also a contribution to AIS". The consequences of this case were it made government organizations including TOT and CAT receive lessor concession, while Pol. Lt. Col. and his partisan could sell shares to foreigners legally (Office of the Court of Justice, BE 2553: 347-348; Sungsidh Piriyanarngsan: BE 2554).

1.2 The modification of the Cellular Mobile Telephone Services Business Permit Contract

This is how political leader and his partisan helped AIS. Firstly The AIS corresponded to TOT on 15 May BE2554, asking to reduce duty to share income received from prepaid mobile telephone services. The concession contract stated that AIS had duty to share TOT 25% of income received in period from BE2542 to September BE2548, increased to 30% from October BE2548 to September BE2549. On 12 April BE2544, the TOT board allowed AIS to share its income received at a flat rate of 20%, for the whole contractual period starting from 1 June BE2544. Secondly, such a modification was not reported to the Cooperation Commission according to section 22 of the Public-Private Partnership Act. It was also not reported to the cabinet for approval, despite the fact that it was an important modification. (Report of the Fact-finding Committee of the Assets Scrutiny Committee: BE2550).

The attorney general stated that such a modification "give advantage to the AIS" at least 4 points. Firstly, it caused TOT loss of income and gain: comparing to the original contract. The loss of income was 14,213.75 million Baht from BE2544 to BE2549, and 56,658.28 million Baht from October BE2549 to September BE2559, making it a total loss income of 70,872.03 million Baht from BE2549 to BE2559. Secondly, it helped AIS making more profits as the concession payment was reduced. AIS also be able to reach break-even quicker than its competitors. Thirdly, it caused AIS paid more dividend than its competitors, making its shares getting more expensive and more interesting, directly given benefit to AIS.

And lastly, by holding AIS shares, it made political leader “being involved and getting benefit from such modification” (Office of the Court of Justice, BE2553:348-350; Sungsidh Piriyaarangsana: BE2554)

1.3 The modification of the Cellular Mobile Telephone Business Permit Contract, dated 27

March BE2533 (No.7), dated 20 September BE 2545, permitted the use of roaming network, deducted expenses from income, deducted use of roaming networks cost to benefit Shin Corp and AIS, which could be explained as 2 cases

Case 1: Modification of the Cellular Mobile Telephone Business Permission Contract No. 7, permitted use of roaming network, deducted expenses from income. In BE2533, AIS was granted concession to operate mobile telephone business, for a period of 20 years. In return, AIS had duty to pay TOT yearly, calculated from either minimum payment rate or percentage, depended on which the higher one. In BE2539, the concession period was extended to 25 years. On 30 January BE2544, AIS made a correspondence to TOT asking to share mobile telephone service to Digital Phone or DPC, started from 1 February BE2544, income shared to TOT by percentage. In the same year, AIS also requested to open domestic roaming with Asia Pre-Chanel Service Co., Ltd. starting from November BE2544 and charge the use of roaming network at rate of 6 Baht per minute, for the same area, and 12 Baht per minute for different area, profit shared to TOT according to the contract.

On 21 August, AIS proposed a concept of sharing network, for the case other providers use AIS's network and for the case AIS uses other provider's network. AIS proposed that expenses occurred will be deducted before sharing income to TOT. The TOT board had a meeting in the same day and resolved that, according to the contract, AIS had duty to share income derived from sharing network to other providers, while expenses occurred from sharing other provider's network is AIS's expenses on network expansion. On 26 August BE2545, AIS again proposed its modulated proposal. On 5 September BE2545, the TOT board allowed AIS to operate as proposed, at a rate not exceeding 3 Baht for all Thailand area, for sharing network to other providers.

For sharing other provider's network, expenses occurred will be deducted from income before profit sharing calculation. TOT and AIS signed the Supplement Contract to the Cellular Mobile Telephone Business Permit Contract No. 7 on 20 September BE2545, enforced from 1 October BE 2545 (Report of the Fact-finding Committee of the Assets Scrutiny Committee:BE2550).

Case 2: Reduction of network sharing between CAT and DPC according to Cellular Digital PCN (personal communication network) concession contract, dated 19 November BE2539, for a period of 17 years, in which DCP has duty to pay CAT yearly, equaled to either minimum payment or percentage depending on the greater one. On 27 November BE2545, CAT allowed DPC to share network with AIS starting from 1 November BE2545, conditioned that AIS has duty to share CAT of its income derived from the use of network sharing at rate of 2.10 Baht per minute, from 1 November BE2554. However, on 26 October BE2548, DPC corresponded to CAT requesting a reduction, from 2.10 Baht to 1.10 Baht. DCP also submitted a correspondence of the same content to the managing director of CAT on 2 February BE2549. The managing director approved DPC's request on 28 June BE2549, making CAT wasted income of approximate 796.22 million Baht. However, CAT informed DPC to pay the use of network sharing at rate 2.10 Baht backdated to 1 April BE2550, on 24 March BE2551, when political leader was not in power. (Report of the Fact-finding Committee of the Assets Scrutiny Committee:BE2550).

The attorney general made 2 comments on the modification of the Cellular Mobile Telephone Business Permit Contract No. 7, permitted the use of roaming network and deducted expenses from income. Firstly, the contract between DPC and CAT was not complied with the Public-Private Act BE2535. Secondly, such a modified contract was conflicted with the Mobile Telephone Business Contract, dated 27 March BE2533. By facts investigating, the attorney general found that the act of AIS and senior executives of government agencies causing damages in least at 5 points. Firstly, it caused CAT wasting of 6,960.36 million Baht of its income and will be losing more benefits worth at least 18,175.36 million Baht, through the whole concession period. Secondly, 13,283 million minutes in which AIS shared DPC's network was deductible as expenses, meanwhile DPC shared AIS network for only 383,323 million minutes was not deductible, despite the fact that they are the same. In BE2544, AIS held more than 90% of DPC's shares, which was increased to 98.55% afterward, and 90% of DPC's executives were from AIS. For these reasons, the two were the same enterprise. AIS intended to use its own company's network at no cost to avoid entering into concession contract with government agency in which demands massive investment and transferring of ownership of property built to CAT. Thirdly, senior executive of CAT modified the

Screening Committee's Resolution in which resolved that AIS's expenses occurring from using DPC's network is not deductible. It was modified to make such expenses deductible from income before sharing to CAT, as AIS proposed. The modified draft was proposed to the CAT board for approval in which was a contribution to AIS. Fourthly, the said acts costed TOT and CAT more than 18,970.58 million Baht loss while giving directly benefit to AIS and Shin Corp. Fifthly, such a contribution helped AIS having advantage over its competitors and raised value of Shin Corp's shares. The benefits also derived to political leader and his wife, therefore, they were unlawful assets deriving from using Prime Minister's power (Office of the Court of Justice, BE2553 : 350-354, Sungsidh Piriyarangsana: BE2554).

1.4 Unlawful missions and approvals to promote satellite businesses according to communication satellite contracts, divided into 3 cases, which are:

1. Unlawful approval of IPSTAR project Shin Corp was granted concession from the Ministry of Communication, to be engaged in communication satellite project in Thailand in BE2534, for a period of 20 years. The plan was to build and send 2 sets of main and backup satellite to the space. Therefore, the total number of satellites to be built were 4. The backup satellite will be sent within 12 months since the sending of main satellite. Shin Corp established Thaicom according to the contract to manage the project. Thaicom1 satellite was sent to space in BE 2536, Thaicom 2 in BE 2537, and Thaicom 3 in BE2540. Thaicom 4 was planned to be sent in BE 2541, to be used as backup satellite. However, the plan had been postponed twice and the specification of Thaicom 4 satellite was changed and become IPSTAR satellite, which has completely different specification from Thaicom 3. (Report of the Fact-finding Committee of the Assets Scrutiny Committee:BE2550)

The Ministry of Communication assigned its Post and Telegraph Department to study IPSTAR's technical information and found that it was a new main satellite and not a backup satellite. The study was brought to the coordinating committee of domestic communication satellite projects (coordination committee); and the committee had the same opinion as the Post and Telegraph Department did, that the IPSTAR was new main satellite. However, in the next meeting of the coordinating committee, its first opinion was changed to approve that the IPSTAR was backup satellite, as requested by the company. The committee then proposed the project to the Minister of Transport, Mr. Wan Muhammad Noor Matha straightway without minutes of meeting certification (Pasuk and Sungsidh:1994).

In BE 2546, Thaicom applied to get promoted from the Board of Investment (BOI), in a 6,000 million Baht IPSTAR project. Thaicom claimed that they had built equipment for making land connection and using internet service, for 18 places in more than 14 countries. They planned to obtain 6% for domestic market and 94% for international market. The IPSTAR was sent to space in BE2548 (same title, BE2533: 254-255).

2.The approval to modify the Thaicom's contract, by reduction the minimum ratio of Thaicom's shares held by Shin Corp, from 51% to 40%.

Thaicom, a company operating domestic communication satellite business, requested on 24 December BE 2546 to the Ministry of Information Technology, asking to reduce the minimum ratio of Thaicom's shares in which Shin Corp has duty to hold, from 51% to 40%. They claimed that they required a lot of money to invest in the IPSTAR project; and therefore, they needed business alliance to invest in the project with them. The Office of the Attorney General had opinion that it was substantial modification of the contract which should be approved by the Cabinet prior to signing. Nevertheless, former Minister of Information Technology, approved such a modification on 27 October BE2547. (same topic, BE2553 : 355-256, Sungsidh Piriyarangsana: BE2554).

3. The approval to use Thaicom3's compensation of 6.7 million US Dollar to rent satellite channel to use as Thaicom3 replacement and back up channel

Former Minister of Information Technology approved as Thaicom requested. He also approved to use another compensation of 26 million US Dollar to build a replacement satellite, which was named Thaicom 5 or 3R on condition that Thaicom will be responsible for the net difference if the cost exceed 26 million US Dollar.

The attorney general divided the Thaicom case into 3 issues

1. The approval of IPSTAR project was unlawful. The IPSTAR was not suitable to use as Thaicom 3 back up according to the condition of the concession contract as they used different technology. Moreover, there was a modification of the coordination committee's study and proposed the case to the Minister without minutes of meeting's certification, causing the country having security problem as the Thaicom 4 has never been existed until present.

For these reasons, such an approval gave benefit to Thaicom, released them from duties according the concession contract. They also were released from burden to borrow 4,000 million Baht for investing on Thaicom 4. The approval of IPSTAR was a new project which was outside concession contract's scope, as it was not built for domestic communication, therefore, such a project should have been put in a fair auction procedure.

2. Thaicom's request to modify domestic communication satellite concession contract No.5, to decrease minimum ratio of Thaicom's shares held by Shin Corp, from 51% to 40%, dated 27 October BE2547. They claimed that Thaicom needed a very large amount of money to invest on the IPSTAR project. The fact was this modification was not forwarded to the Cabinet for approval. Therefore, this concession contract approval was unlawful. Shin Corp got direct benefit from every Thaicom's investment as they were majority shareholder, especially on the IPSTAR project. Shin Corp was released from burden to gather fund for purchasing Thaicom's shares to maintain its shareholding ratio at 51%.

3. The request to use Thaicom 3 compensation of 6.77 million US Dollar in which equaled to 268 million Baht, for renting other countries satellite to be used as replacement and back up was defaulted on the concession contract as there was no Thaicom3 back up. Therefore, the company should have used the 22 million US Dollar compensation building a new satellite instead, according to the contract.

The attorney general concluded that the 3 cases benefitted Shin Corp and Thaicom, and derived to political leader (same title, BE2553 : 356-359, Sungsidh Piriyarangsana: BE2554)

1.5 Approval to grant the loan from the Export-Import Bank of Thailand to the government of the Republic of the Union of Myanmar, for purchasing products and services from Thaicom.

There was an ASEAN nations supreme leaders conference held from 6 to 8 October BE-2546 at Bali, Indonesia, which political leader met Myanmar Prime Minister. After the conference, Ministry of Foreign Affairs of Myanmar had a correspondence to Thailand's Ministry of Foreign Affairs claiming that political leader had informally discussed with the Myanmar Prime Minister and pledged to give financial assist in form of at least 3,000 Baht loan to Myanmar, to be used on infrastructure projects. Next month on 10-12 November BE2546, political leader allowed his son to travel with the group to attend a leaders meeting on economical corporation strategy between Cambodia, Myanmar and Thailand, held in Myanmar. There were also 8 Thaicom staffs and 2 AIS staffs attending the meeting to demonstrate GSM mobile satellite telephone system prior to the meeting. In the meeting the Foreign Minister of Myanmar requested from Thailand a telecommunication assistance, in which Thailand's former Foreign Affairs Minister, did not agree. This was because of, at that time, Thailand Prime Minister, political leader, owned the biggest telecommunication businesses in Thailand. However, after having a discussion with political leader, he expressed his assent to the Myanmar government to grant 3,000 million Baht loan to Myanmar. (Report of the Fact-finding Committee of the Assets Scrutiny Committee: BE2550).

After the meeting in Myanmar, the Myanmar government corresponded to Thailand Ambassador in Myanmar, proposed telecommunication development project for countryside and isolated areas. The content of the correspondence requested a help of 24.05 million US Dollar, and mentioned that it had been already agreed by political leader. Meanwhile, Thaicom staff had a meeting with Thailand Ambassador and director of the South East Asia Department of Ministry of Foreign Affairs. On 15 February BE2547, the Myanmar government asked to increase the loan from 3,000 million Baht to 5,000 million Baht, with a lower interest. Political leader instructed former Foreign Affairs Minister to approve 4,000 million Baht loan with lower interest, which former Foreign Affairs Minister accepted. The Ministry of Foreign Affairs informed EXIM Bank that political leader approved 4,000 million Baht loan to Myanmar in form of credit-line. The EXIM Bank board granted such a loan on 24 March BE2547. Later on, the Myanmar government asked to extend the grace period to 5 years, which political leader agreed. Therefore, the EXIM Bank changed the loan period to 12 years. The conditions of the loan was also changed in which Myanmar was obliged to repay only interest in the first 5 years and repay principal and interest in the next 7 years, which

was accorded to political leader's command. These facts proved that political leader commanded EXIM Bank to charge below cost interest rate, which was conflicted with the purpose of establishment of the bank, according to the EXIM Bank Act. The Cabinet which included political leader, had a resolution to assign the Ministry of Finance to compensate the EXIM Bank by allocation of budget equaling to the wasted amount, and to compensate the loss from net interest received from Myanmar, at rate 3% per year, together with the bank's interest cost (The Supreme Court's Criminal Division for Person Holding Political Position, the adjudication of the Confiscation case, 26 February: BE 2553).

EXIM Bank calculated its loss from net interest which will be compensated from the country's budget from BE2548 to BE2559 for 12 years, costed 607.436 million Baht, and from fiscal year 2549-2550 which worth 140.35 million Baht. Therefore, the total compensation is 747.786 million Baht. After the contract was signed, the Commercial Bank of Myanmar approved a procurement contract between Thaicom and the Ministry of Communication of Myanmar, to transfer IPSTAR equipment etc. worth 15 million US Dollar. EXIM Bank agreed with such a contract and made a payment of 593.493 million Baht, to Thaicom and Hatari, in which Hatari was partially benefitted.

The attorney general concluded the case by pointing that, despite having duty to supervise EXIM Bank, political leader conducted foreign policy to give benefit to him and his family. The approval of Myanmar's loan for telecommunication project created a conflict of interest. It caused the EXIM Bank and the Ministry of Finance suffering from damages (same topic, BE2553: 259-562). From the 5 cases mentioned, the attorney general found that political leader and his wife were the actual shareholders of more than 1,419 million shares of Shin Corp which is equaled to more than 48% of all Shin Corp's shares, despite using family member as nominees. They used their superior authority and position giving policy to government organizations and staff under their command. For these reasons, the 5 cases were clearly beneficial to Shin Corp and its groups.

political leader amended the Telecommunication Business Act BE 2544, which originally restricted foreigner from being engaged in the business. It provided that a company's shares must be held at least 75% by Thai national(s), and at least $\frac{3}{4}$ of a company's directors must be Thai national. He proposed the amendment and then the Parliament approved to loosen the foreigner's shareholding restriction to 50%. The Telecommunication Business Act No. 2 BE 2549 was published in the Royal Gazette on 20 January BE2549, fully enforced on 21 January BE2549. On 23 January BE2549, political leader and his wife sold their 1,419.49 million Shin Corp shares, through his son, his daughter. Political leader's sister and his brother in law, to Temasek group of Singapore, through foreign juristic persons, which are Cedar Holdings Co., Ltd. And Aspen Holdings Co., Ltd., and buyers. The total value of the deal after expenses deduction was 69,722 million Baht. Between BE 2546 to 2548, Shin Corp paid dividend for more than 6,898 million Baht, making total receipt from this deal worth more than 76,621 million Baht. (The Supreme Court's Criminal Division for Person Holding Political Position, the adjudication of the Confiscation case, 26 February :BE 2553).

The Assets Scrutiny Committee found that such amount of money that political leader and his wife received was considered an asset received from a confliction of personal and public interest. It was an unlawful acquisition of asset by performing duty and using position and authority, which was considered an unusual wealth. The committee issued freezing order to freeze their 66,762 million Baht money and assets. However, there was still 9,923 million Baht money and assets which was unable to search and enforce. (same topic, BE2553: 362-364). The committee reported their papers, evidences and opinions to the attorney general but the attorney general commented that the case was incomplete. Both organizations set a collaborative panel which was examined by the National Anti-Corruption Commission (NACC) which received the case from the committee. The examination was concluded by a submission of the case to the Supreme Court's Criminal Division for Person Holding Political Positions, requesting a confiscation order to the money received from the Temasek deal of 1,419.49 million shares, which worth 76,622 million Baht, based on unusual wealth and unusual assets increment allegation. Moreover, the attorney general requested the Court to freeze money and assets of Pol. Lt. Col. and his wife until the final adjudication read, accorded to the Assets Scrutiny Committee's opinion. (same title, BE2553: 362-364, Sungsidh Piriyaangsan:BE 2554). This is consistent with the concept of Conflict of Interest by Miller et al. (2005) with explained Conflict of Interest is relationship, judgment, interest and Proper Exercise. Wallis (2004) and Piriyaangsan (2012) described the Systematic of Corruption as planning authority, political preparation. A plan Induced

or corrupt the system are already planning ahead. Politicians come along with this aim from the start was to seek benefits for themselves, their families and cronyism.

5. Conclusion

Political leader's behavior created conflicts of interests which caused Thailand suffering from political and economic damages greatly, at least in 11 points (Sungsidh Piriyarangsan :BE2549) which are: 1) distortion of legislative power to benefit AIS by using law as tool to prevent new telecommunication business, 2) helping Shin Corp and AIS to get business advantages, 3) helping Shin Corp and its holding companies to make more profit by reducing concession payment, making the companies reaching break-even faster than their competitors, 4) raising share values of Shin Corp and its holding companies which made them more interesting among investors, 5) modification of concession contract without considering the rule of laws principle and the transparency principle, 6) approving new concession project which was not in scope causing The Country to lose interests, 7) causing the Country to have security problem from a lack of domestic communication satellite, which should have been Thaicom 4, 8) causing government and government agencies to receive lower concession payment, 9) wasting TOT and CAT income, 10) causing the Ministry of Finance suffering from EXIM Bank compensation, 11) encouraging ministers, boards and public enterprise executives to not perform their duty honestly and lawfully; forcing or inducing them to be involved in an unlawful acts, causing such organizations to lose ability to check, and supervise concession businesses (Johnston :1986; Khan and Jomo :2000). If all these acts mentioned were done in the Western countries, it will be called a Systemic Corruption (Johnston:1986) because they responded to unlawfully needs of political leader's concession businesses.

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