

Constitutional Court Ruling No. 5/2561 (2018)

Election Commission	Applicant
Mr. Don Pramudwinai	Respondent
Minister of Foreign Affairs	

Constitution, section 170 paragraph one (5), section 184 paragraph one (1) in conjunction with section 187 and section 264 paragraph two;
Management of Partnerships and Shares of Ministers Act, B.E. 2543 (2000), section 4.

Section 264 paragraph two of the Constitution provided an exception for termination of individual ministerial office under section 170 paragraph one (5) of the Constitution only with respect to the stipulation of not holding office or any duty in a government agency, state agency or state enterprise, or membership of a local assembly or local government administrator under section 184 paragraph one (1). There was no exception for the case under section 187, which was a restriction of right to hold shares. The restriction, however, was not absolute. The Minister, including spouse, still had the right to hold shares. There was only a restriction on the number of shares that could be held under the law, i.e. Management of Partnerships and Shares of Ministers Act, B.E. 2543 (2000). In the case of shareholding in excess of the limit prescribed by law, if the Minister still wished to receive benefits from such shareholding, notice shall be submitted to the President of the National Anti-Corruption Commission for acknowledgement within thirty days as from the date of appointment and the shares shall be transferred to the juristic person as provided by law. If the Minister did not wish to receive benefits from such shareholding, the excess shares could be transferred in order to retain the number of shares within the limit prescribed by law within thirty days of appointment. Constitutional Court Ruling No. 20/2544 had already decided that the date of promulgation of the Constitution was the first day of taking office. The respondent was a Minister serving in the Council of Ministers that was administering the state on the day prior to the day of constitutional promulgation. The day deemed to be the respondent's date of appointment to become Minister pursuant to section 264 in conjunction with section 187 of the Constitution was 6th April B.E. 2560 (2017). Upon a finding of facts that the respondent's spouse executed a contract to transfer shares in both companies and convened an ordinary meeting of shareholders on 27th April B.E. 2560 (2017), and considered the transfer of shares in both companies on 30th April B.E. 2560 (2017), such share transfer being in accordance with section 1129 of the Civil and Commercial Code, the transfers of shares to other persons were therefore lawfully executed. The respondent's spouse retained shares in each

company in an amount not exceeding five percent of the total amount of distributed shares as prescribed under section 4 of the Management of Partnerships and Shares of Ministers Act, B.E. 2543 (2000). Therefore, the respondent's individual ministerial office did not terminate under section 170 paragraph one (5) in conjunction with section 187 of the Constitution.