

Rules for Bankruptcy Cases, B.E. 2542 (1999)

Translation

By virtue of Section 19 of the Act for the Establishment of and Procedure for Bankruptcy Court, B.E. 2542 (1999) the Chief Justice of the Central Bankruptcy Court with the approval of the President of the Supreme Court, issues rules for the proceedings and hearings of evidence applicable in the Bankruptcy Courts and other Courts which are empowered to conduct proceedings on behalf of the Bankruptcy Courts, as follows:

Rule 1

These Rules shall be called "Rules for Bankruptcy Cases, B.E. 2542 (1999)".

Rule 2

These Rules shall come into force from the date following their publication in the Government Gazette.

**Chapter 1
General Provisions****Communication between Courts****Rule 3**

In order to ensure convenience, swiftness and fairness of the proceedings, communication between the Bankruptcy Court and another Court may, in accordance with the rules and methods set forth by the Court, be conveyed via facsimile, electronic mediums or other means of information technology medium, in substitute for, or in conjunction with, delivery by express mail, taking into account the necessity, urgency and suitability to the nature of the matter to be communicated, as well as the amount and type of documents or materials involved.

**Chapter 2
Proceedings****Filing of Pleading with Provincial Court****Rule 4**

During the period when a Regional Bankruptcy Court has not been opened in any locality, when a plaint or petition is filed with the Provincial Court under Section 30 of the Act for the Establishment of and Procedure for Bankruptcy Court, B.E. 2542 (1999), the plaintiff or petitioner shall also provide the Provincial Court with a copy of the plaint or petition. The Provincial Court shall thereafter forward the original plaint or petition to the Central Bankruptcy Court without delay for the latter's order. The Court shall then notify the Provincial Court of such order and send a writ of summons for the persons concerned, if any, to the Provincial Court without delay.

Rule 5

The Provincial Court shall notify the plaintiff or petitioner of the order received from the Central Bankruptcy Court without delay. In case where the Central Bankruptcy Court issues an order accepting the plaint or petition, the plaintiff or petitioner shall request, within seven days from the receipt of such order, an officer of the Provincial Court to serve the writ of summons and a copy of the plaint or petition on the persons concerned, except for a reorganization case on which the Central Bankruptcy Court shall act in accordance with Section 90/9 of the Bankruptcy Act, B.E.2483 (1940).

When the Central Bankruptcy Court issues an order accepting the plaint or petition, the matter shall be quickly referred to the Chief Justice of the Central Bankruptcy Court for his decision as to the appropriate time, date and Court for trial and adjudication of the case. The Central Bankruptcy Court shall then notify the Provincial Court to inform the parties of the said time, date and Court without delay.

Application for Taking of Evidence in Advance

Rule 6

A petition or motion for a court order directing the evidence to be taken at once under Section 16 of the Act for the Establishment of and Procedure for the Bankruptcy Court, B.E. 2542 (1999) shall state the facts showing the necessity for taking of evidence at once. If a bankruptcy case has not yet been instituted, the facts showing grounds of the occurrence of a bankruptcy case must be stated.

In case of emergency under Section 17 of the Act, the motion shall state the facts showing the emergency situation which, if the other party or the third party involved is to be notified beforehand, such evidence will be damaged, lost or due to some other reasons, difficult to be adduced at a later stage.

Rule 7

In case where the Court grants an order for attachment or seizure of documents or materials to be adduced as evidence in emergency situation under Rule 6 Paragraph two, the Court may order the petitioner to provide security for any damage that might be incurred, in the amount, within the period and under any condition the Court deems appropriate.

Rule 8

The provisions on hearing by means of video conference under Rule 17 shall apply to proceedings under Rules 6 and 7 *mutatis mutandis*.

Documents Done in Foreign Language

Rule 9

If the whole document submitted to the Court is done in English and the parties agree that all or any part of such document needs not be translated into Thai, the Court may permit the parties to submit such document as evidence in the case without translation if it is of the opinion that such document is not an evidence on the main issues of the case.

Recording of Testimony

Rule 10

In the process of recording the testimony of a witness, the Court may cause one or a combination of several of the following means:

- (1) A testimony is recorded and read out to the witness by a court official.
- (2) A testimony is recorded by a court official by means of shorthand or any means from which the testimony may be transcribed in Thai.
- (3) A testimony is recorded by an audio recording device.
- (4) A testimony is recorded by video and audio recording devices.

If the Court causes the testimony of a witness be recorded by a means under (2), it must cause such testimony be recorded by other means as well.

Rule 11

In case where the Court causes the recording of the testimony of a witness by means under Rule 10 (2), (3) or (4), the Court may cause the signature be put by the witness to certify that the testimony in the record was given by himself. In such case, the Court is not required to cause the transcription of the record in Thai or in writing unless any party files an appeal against the judgment or order in the issue relating to such witness.

Chapter 3

Evidence

Pre-Trial Conference

Rule 12

Before taking of evidence, the Court may call all parties to appear in the Court in order to set up measures for the proceedings, such as:

- (1) Fixing the period of time for the whole proceedings;
- (2) Fixing date, time, methods and steps for necessary proceedings, such as number and detail of witnesses who will testify in the Court, depositions to be submitted in lieu of examination-in-chief, or expert witnesses, documentary evidence and any other evidence that a party intends to request the Court for an order directing the other party or a third party to produce, and taking of evidence out of the Court or the commission of another Court to take evidence etc;
- (3) Determining a knowledgeable person or an expert under Section 20 of the Act for the Establishment of and Procedure for the Bankruptcy Court B.E. 2542 (1999);
- (4) Mediating for finalizing the case or arbitrating.

Refreshing Memory of Witness

Rule 13

Subject to the provisions of Section 113 of the Civil Procedure Code, when a witness has to testify as to any detail of a fact in a case which he cannot recall, the witness may, with the permission of the Court, refer to his memorandum in giving such testimony.

After the witness has testified, the other party may request the Court to inspect the memorandum of the witness. If the Court deems appropriate, it may keep that memorandum in the dossier of the case.

Submission of Deposition in Hearing of Witness

Rule 14

In case where one party or both parties make a request and the Court deems appropriate in the interest of justice, the Court may permit a party to submit a deposition of a witness, confirming facts or opinions of the witness, in lieu of examination-in-chief, in whole or in part, of the witness in the Court.

The party intending to submit a deposition in lieu of examination-in-chief under Paragraph one shall file, with the Court, a request specifying the intention and the reason therefore prior to the hearing date of such witness. The Court shall then determine the period of time for the party to submit the deposition to the Court and send a copy thereof to the other party. Once a deposition has been submitted to the Court, the party may not withdraw the deposition and such deposition shall be deemed evidence in the case.

The deponent shall appear in the Court to be cross-examined and re-examined by the parties. If the deponent fails to appear in the Court, the Court shall refuse to admit his deposition as evidence in the case, provided, however, that, if the Court deems appropriate in the interest of justice, the Court may admit the deposition as evidence corroborating other evidence.

In case where the parties agree that the deponent needs not appear in the Court or the other party waives his right to cross-examine the deponent, the Court shall admit the deposition as evidence in the case.

Rule 15

A deposition under Rule 14 shall contain the following particulars:

- (1) Name of the Court and the case number;
- (2) Date, month, year in which, and place where, the deposition was made;
- (3) Name and family name of the parties;
- (4) The deponent's name, family name, age, address, occupation and relationship with the parties;
- (5) Description of facts and/or opinions of the deponent;
- (6) Signature of the deponent.

A deposition submitted to the Court may not be amended unless the amendment is made to the particulars in (1) to (3) or to rectify insignificant error or irregularity.

Deposition in Lieu of Hearing of Witness Residing in Foreign Country

Rule 16

In case where one party or both parties request and the Court deems appropriate in the interest of justice, the Court may permit the submission of a deposition of a deponent residing in a foreign country to confirm certain facts or opinions in lieu of bringing the deponent to testify, in whole or in part, in the Court. The deposition shall be in compliance with Rule 15 or the law of the country where it is made.

Hearing by Means of Video Conference

Rule 17

In case where one party or both parties make a request and the Court deems appropriate in the interest of justice, the Court may permit the hearing of a witness being outside the Court be conducted by means of video conference. In such case, the party adducing the witness shall bear the costs thereof. Such costs shall not be deemed a cost under Section 161 of the Civil Procedure Code for which the Court may order the other party to reimburse.

The hearing conducted under Paragraph one shall be deemed proceeding conducted in the courtroom.

Admission of Computer Record

Rule 18

The Court may admit data recorded in, or processed by, a computer as evidence in a case, if

- (1) the data recording or processing is done in the ordinary course of business of the user of the computer, and
- (2) the data recording or processing is resulted from proper operation of the computer according to its due procedure and, even though the computer is out of order, the accuracy of the data contained therein will not be affected.

The use of computer in ordinary course of business as stated in (1) and the accuracy of the data recording or processing as stated in (2) shall be affirmed by the person involving in the recording or processing, or the person recording or processing the data.

Rule 19

The party intending to adduce any computer record as evidence shall specify such record in the list of witnesses and evidence in accordance with Section 88 of the Civil Procedure Code, and shall file with the Court a statement specifying the intention together with the affirmation required by Rule 18 Paragraph two and sufficient copies of materials containing the record for other parties to obtain from court officers, unless:

- (1) the medium keeping the record is in possession of the other party or of a third party; the party intending to adduce such evidence shall file a request for the court permission not to submit the affirmation required by Rule 18 Paragraph two and copies of materials containing the record, and for the court order directing the possessor of the medium to produce the record; the requesting party is, however, under the duty to bring such medium to the Court on a hearing date or on any other date as the Court deems appropriate;
- (2) the production of copies of the medium keeping the record will delay court proceedings or will cause damage to the party intending to adduce such record, or there is sufficient reason showing that the party is unable to submit the copies to the Court within the prescribed period; in these cases, the party may file a request for the court permission not to submit the copies and to submit such medium to the Court on the hearing date or on any other day as the Court deems appropriate.

If the party intending to adduce such computer record cannot submit the medium to the Court within the period of time prescribed in Paragraph one, the Court, taking into consideration the nature of the record to be examined, may order an examination of the record be conducted at the time and place, and under any condition, the Court deems appropriate.

If the party intending to adduce such computer record fails to comply with the provisions of Paragraph one or two, the record is inadmissible as evidence in the case. However, if the Court deems appropriate in the interest of justice, it may admit the record as evidence corroborating other evidence.

Rule 20

The party against whom the computer record is adduced may file a statement with the Court opposing the admission of such record on the ground that it does not satisfy the requirements under Rule 18, or the medium containing the record is falsified, or the copies of the record is entirely or partially inaccurate. The party must file the statement before the other party completes the adducing of such computer record, unless such party can show to the satisfaction of the Court that he does not know the cause for opposing the record before the time. In the latter case, the party may file a request for the court permission to oppose the admission of the record, the medium or the copies at any time before the judgment is rendered. If the Court finds that the party is unable to oppose before the completion of adducing of the record and the ground raised in the request is reasonable, the Court shall grant such request. In this case, Section 126 of the Civil Procedure Code shall apply *mutatis mutandis*.

If the party intending to oppose the adducing of a computer record fails to do so prior to the completion of the adducing or the Court does not permit the opposition be done at a later stage, the party may no longer oppose the admission of such computer record as evidence in the case. However, if the Court deems appropriate in the interest of justice, the Court may make an inquiry into, and decide upon, the conditions for admission of the computer record set forth in Rule 18, the authentication or accuracy of the medium containing the record or the copies thereof.

Rule 21

The provisions under Rules 18 to 20 shall apply *mutatis mutandis* to the admissibility of any data recorded in or taken from microfilms, electronic medium or any other means of information technology medium.

Admission of Hearsay Evidence

Rule 22

The Court may admit hearsay evidence as evidence corroborating other evidence in a case, if the Court is of the opinion that:

- (1) Given the nature, characteristic, source of the evidence and other circumstantial facts surrounding it, the evidence has probative value in proving some facts in the case; or
- (2) There is a cause preventing the person directly seeing or hearing the matters to be adduced or having first-hand knowledge of such matter from testifying in the Court and it is appropriate in the interest of justice to admit such hearsay evidence.

An informed statement which a witness testifies to in the Court or is recorded in a document or material adduced as evidence in the Court shall be deemed hearsay evidence if it is proffered to prove the truth of the matter asserted.

Considering and Weighing of Evidence

Rule 23

In considering whether the deposition of a person who does not appear in the Court under Rule 14 Paragraph three or four, the deposition submitted under Rule 16 or the hearsay evidence proffered under Rule 22 has a probative value and, if so, to what extent, the Court shall do so with due care, taking into account the nature, characteristic and source of the deposition or hearsay evidence.

Chapter 4

Judgment and Order

Contents in Judgment and Order of the Bankruptcy Court

Rule 24

Contents in judgment and order of the Bankruptcy Court required to be in writing may not state or clarify the particulars of the complaint, petition, motion, answer, protest and adducing of the party as appropriate, but must state or clearly set forth the grounds for the decision in both the question of fact and question of law in the issue of the case as well as costs.

Chapter 5

Forms

Forms

Rule 25

The Chief Justice of the Central Bankruptcy Court may designate any form used in bankruptcy proceedings.

Where it is required to use a form under Paragraph one, the party may produce a document in such form by any means without having to use a form provided by the Court.

Given on the 26th day of May B.E. 2542 (1999)

Mr. Soonthorn Sittivechvichit

Supreme Court Senior Judge

Acting Chief Justice of the Central Bankruptcy Court

Disclaimer

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