
Appendix to Thailand Update

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Rules of the Court of Justice Administrative Committee Concerning Dispute Mediation B.E. 2544 (2001)*

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(Translation)

(ROYAL EMBLEM)

**Rules of the Court of Justice Administrative Committee
Concerning Dispute Mediation B.E. 2544 (2001)**

Whereas mediation permits the resolution of disputes in the interest of the disputing parties and also of the court proceedings, for mediation expedites the trial of the case in an economical way, and settles the dispute to the satisfaction of the parties, while their friendly relationship remains intact. Whereas there has been a continuous rise in the number of court cases which results in a large number of pending cases at present. So, mediation becomes the essential alternative available for the courts of justice to take in the settlement of disputes in court. To promote the use of proper, efficient method for mediation requires standard rules and procedures. For clarity's sake and to provide uniform rules, it is suitable to lay down certain rules and procedures for mediating the disputes by the judges in quorum and mediators. So, these rules are necessitated.

By virtue of Section 17(1) of the Court of Justice Administration Act B.E.2543 (2000), the Court of Justice Administrative Committee ("CAC") hereby lays down proper rules as follows:

1. These Rules are called the "Rules of the Court of Justice Administrative Committee concerning Dispute Mediation B.E. 2544."
2. These Rules shall become effective the date hereof.
3. Unless the context otherwise requires, in these Rules:

"Case" means a civil case or any other case in which a dispute can be settled by mutual agreement.

"Person in charge of court service" means the President, Supreme Court, the Chief Justice, Appeal Court, the Chief Judge, Regional Appeal Court, the Chief Judge, Court of First Instance, the Chief Judges, Provincial Court of First Instance and shall include those designated by such persons in the execution of these Rules.

"Mediator" means a judge, court official, person or group of persons duly appointed as mediator to help the Court mediate between the disputing parties.

"Secretary General" means the Secretary General to the Office of Court of Justice.

4. The Secretary General shall be in charge of these Rules and empowered to construe and decide problems arising from the application of these Rules.

**Chapter 1
Mediation by Judges in Quorum**

5. The judges in quorum shall be empowered to mediate under the provisions of the Civil Procedure Code.

To act upon these Rules shall in no way affect the power of the judges in quorum to mediate in the case of which they are in charge.

6. After a case has entered the Court, the Person in charge of court service or the judges in quorum may appoint one or more judges, court officials or third persons to help the Court mediate in that case. In this event, the mediator so appointed shall mediate under these Rules.

7. As he thinks fit, or when he is notified of by the judges in quorum, the person in charge of court service may appoint one or more judges as mediator(s) within the Court.

If the Person in charge of court service has arranged one or more judges for mediation particularly within that court, the judges in quorum may appoint mediator(s) in the manner prescribed by the person in charge of court service.

The person in charge of court service or the judges in quorum may appoint one or more court of justice officials as mediator(s) within the Court.

Judges or court of justice officials so appointed are not entitled to fees and expenses provided by these Rules.

8. If the mediation process comes to an end under 24(1) above, the judge, appointed mediator in a particular case, may be commissioned as judge in quorum empowered to decide that case.
9. To appoint one or more third persons as mediator(s) the person in charge of court service or the judges in quorum shall have regard to the suitability of such mediator(s) and to the satisfaction of all the parties concerned as far as possible. If they wish to appoint an unregistered mediator, the person in charge of court service or the judges in quorum shall make the intended appointment only if the parties required to take part in the mediation process have granted their consent thereto and have agreed to bear the cost of such mediator.
10. If the appointment of mediator(s) unreasonably interrupts or delays the trial of the case, in the interest of all the parties concerned, the Court may order that the court proceedings be taken concurrently with the mediation activity.
11. Having been appointed as such, the mediator(s) shall forthwith disclose their personal interest in or relationship with any party to all the parties concerned.
12. A mediator shall vacate office if any one of the following events occurs:
- (1) His name has been taken off from the register of mediators;
 - (2) The Court has issued an order of removal when it appears that such mediator:
 - (a) acts in any manner as representative or agent for either party;
 - (b) has an interest in or relationship with any party which may adversely affect the mediative neutrality;
 - (3) The Court has issued an order of removal, because of dereliction or negligence of duty.
13. After a mediator has vacated office, the Court may order the ending of the mediation process or order the appointment of a new mediator.

If the mediator has vacated offices under 12(1) and (2), and if the parties wish to have the same mediator further the mediations, the Court may permit that mediator to further the mediation.

Chapter 2 Mediation Process

14. After the Court has ordered the appointment of mediator(s), the sending and obtaining of documents, case-file or any communications between the Court and the mediator(s) shall be in the manner prescribed by that court.

15. The parties, if being individuals, ought to attend themselves mediatory meeting(s) or may appoint a representative for the purpose.

The parties, if being legal entities, may appoint any representative(s) empowered to make decisions to attend those meetings, provided that such appointment shall be in writing submitted to the mediator.

16. Before the mediation takes place, the mediator (in charge) shall have the parties agree in writing to mediate and be bound by these Rules.

17. The mediator (in charge) may discuss with the parties about and agree on mediation procedures and guidelines before the mediation process takes place.

18. In the interest of the mediation, the mediator may ask the parties to furnish him with facts or preliminary information about the dispute, including proposal for dispute resolution or may suggest that the exchange of such information be made between the parties.

The parties may ask the mediator to do the act set forth in the preceding paragraph. In this event, the mediator may or may not cause the requested act to be done.

19. The manner in which the mediation will be made and its date, time and place shall be fixed by the mediator. However, the mediator shall notify all the parties concerned, including the absent party, of the mediation activity carried out in their absence.

20. When the mediation takes place before the parties, and if he thinks fit, in the interest of the mediation, the mediator may permit only the parties themselves or any of them to be present at the mediatory meeting.

The provisions of paragraph one shall apply to the representatives, attorneys-in-fact, advisers or any person permitted by the mediator to enter the mediation process.

21. The mediation process shall be in camera, with no record, whether written or made in any electronic form or otherwise, of the details of the mediation, unless the parties have agreed to keep the mediative activity on record wholly or in part, at their own expense.

22. As he thinks fit, the mediator may have a draft compromise prepared for the parties. If there are some costs of drafting such agreement required to be borne by the parties, the mediator can so do only with the consent of all the parties concerned, and only if the parties have agreed to bear those costs.

23. The mediator shall carry out the mediation activity within such time limit as fixed by the person who has appointed him as such. If he thinks fit or when the mediator makes request, the appointing person may grant a time extension for the purpose, if such person sees that the parties are close to a dispute settlement.

If he sees that either party carries on the mediation in the way that delays the trial of the case, the mediator shall report the fact to the appointing person without delay.

Chapter 3 Ending of Mediation Process

24. The mediation process shall be deemed as ended if any one of the following events occurs:
- (1) The parties could settle the dispute either by withdrawing the case or by asking the Court for consent judgment to be passed by compromise.
 - (2) Either party withdraws themselves from the mediation activity.
 - (3) The mediator could not carry out the mediation within the stipulated time limit.
 - (4) The mediator sees that the dispute could not be settled by mediation.
 - (5) The Court sees that the dispute could not be settled by mediation or that the mediation is no longer of use to the case.
25. After the mediation process comes to end, the mediator shall report the results of the mediation to the Court, without delay, for further actions.

If the parties have agreed to settle the dispute in part or admit certain facts and have agreed that such agreement be used in the court proceedings, the mediator shall make proper note of agreement and notify the Court of the fact.

Chapter 4 Confidentiality

26. Unless otherwise agreed upon by them, the parties and the person(s) concerned shall keep confidential the facts occurring in the course of the mediation and shall in no way make use of the facts and past mediative actions as evidence in the court proceedings, whether or not such facts are of the case-file in mediation or in any other case, or in the course of any arbitration proceedings.

Those facts described in paragraph one shall include communications made between the parties or any other fact involved in the past mediative actions, or the facts being the subject or details of the negotiations made in the mediation process, including the facts admitted or denied by either party in the mediation process, as well as any comment or proposal made by either party in the mediation process or any comment or proposal made by the mediator.

Chapter 5 Register of Mediators

27. The Secretary General shall cause to be kept a Register of Mediators, with due regard to the necessity and need of the Court and shall notify various courts of the fact.
28. To be a registered mediator, the applicant shall be familiar with or experienced in dispute mediation and shall be suitably qualified, not having any one of the restricted characteristics described below:
- (1) being knowledgeable in natural sciences, economics, law, social sciences, etc.
 - (2) being not less than 25 years of age.
 - (3) not being court of justice official defined by the Court of Justice Official laws.
 - (4) not having a blemished records.
 - (5) not being declared incompetent or quasi-incompetent
 - (6) not being sentenced to imprisonment by a final judgment, except for negligence or a petty offense.
29. The register of mediators shall be not valid at the end of every two years after such register has been prepared, regardless of when those named on the register have been entered thereon.

In making the first register (of mediators), if the invalidity date under paragraph one does not fall on the ending date of that year, the ending date of which shall be deemed as the invalidity date.

The invalidity of the register (of mediators) shall in no way affect the appointment of any mediator made before the invalidity. And, that mediator shall be entitled to fees and expenses provided for by these Rules.

30. After the register of mediators becomes not valid, the Secretary General shall forthwith prepare the new register, provided that the provisions of 27 above shall apply mutatis mutandis.
31. Secretary General shall strike off the name of a mediator if the following is known:
 - (1) death;
 - (2) resignation;
 - (3) being disqualified or having any one of the restricted characteristics under 28 above;
 - (4) being dismissed by order of the Court under 12(3) above, or when it appears that the mediator behaves improperly or does act or omission willfully or by negligence to the detriment of the parties.
32. A mediator shall do the following:
 - (1) To prepare for the mediation work;
 - (2) To assist and encourage the parties to hold talks and advise them on dispute solutions.
 - (3) Not to give opinion in such a way as to decide the dispute, unless such opinion may be given with the consent of the parties.
 - (4) Not to threaten, compel or influence the parties in the manner that may adversely affect their own free will to settle the dispute.
33. To ensure smooth mediation, and in the best interest of the parties, a mediator shall perform his duties in accordance with the rules, notifications, ethics or other guidelines issued hereunder.
34. No mediator shall be liable to the parties for the performance of any act done in the course of the dispute mediation and resolution, unless such act or omission is done willfully or by gross negligence to the detriment of the parties.

Chapter 6 Fees and Expenses

35. A registered mediator, when appointed as such, shall be entitled to fees and expenses paid in the manner and procedure prescribed by the Secretary General, with the approval of the Court of Justice Administrative Committee.
36. If a registered mediator is appointed as such, the parties shall equally bear the fees and expenses due to the mediator, unless otherwise agreed upon by the parties.
37. If the mediator (in charge) sees that a third person must be hired to do any act in the interest of the mediation, such mediator shall so do only if the parties have agreed to bear the cost incurred in respect thereof.

Notified on the ___ August 2001

Signature:

Mr. Thawatchai Pitakphol
Secretary General to the Court of Justice Administrative Committee