

Abstract

In the past, the court had the discretion of admissibility of electronic records as evidence in civil cases as there was no law designated the judge to admit electronic records as evidence. However, when the Electronic Transaction Act was launched in B.E. 2544, this Act certified that the judge had to admit the electronic records as evidence, but it did not regulate the proceeding to produce and admit electronic records as evidence and in the Civil Procedure Code regulated that proceeding only for oral evidence, documentary evidence, real evidence and expert evidence. The point we concern is which kind of evidence are electronic records. The Regulation of specialized courts such as the Regulations of Intellection Property and International Trade case B.E. 2539, the Regulations of Tax case B.E. 2544, the Regulations of Bankruptcy case B.E. 2549 regulated the proceeding of production and admissibility of electronic records as evidence. Nevertheless, These Regulations are used only in specialized courts and cannot be used in general civil cases. From that point, many official unit attempt to launch the regulations which support the admissibility of electronic records as evidence; for example, the Draft Regulations of the President of the Supreme Court which has the same content of the Regulations of Intellection Property and International Trade case B.E.2539 and the Regulations of Tax case B.E. 2544. However, this Draft does not distinct pronounce about exclusion rule and lacks of authentication of electronic records. It also lacks of convenient and cannot solve the problem about the ability of proving the reality of fact of party in a case. When this Draft is compared with the foreign laws which are various, convenient and have some proceedings of proving the reality of fact of party in a case, I would like to propose these proceedings of admissibility of electronic records as evidence as below.

The definition of electronic records pursuant to the Electronic Transaction Act B.E. 2544 includes all present and *futuro* kind of electronic records and their content comes along with the foreign laws, thus the definition of electronic records is the same definition according to the Electronic Transaction Act B.E. 2544.

In a part of the evidence classifying, electronic records are adjusted in document evidence and real evidence but electronic records have different character from them. Therefore, the adduction of electronic records as evidence shall have their own proceedings and the acceptance to classify electronic records apart from document evidence and real evidence is suitable.

When classifying electronic records apart from document evidence and real evidence, how to adduce and admit electronic records and whether we shall apply exclusion rule such as the admissibility of best evidence and hearsay evidence.

The proceedings of electronic records shall apply the proceedings of evidence such as the submission of evidence list and the forwarding of evidence copy to the counterpart party.

From the best evidence rule, electronic records have their own character as they can be copied easily and their copies are not different from the original ones. Outputs and printouts are copied. If there is the proceeding to authenticate electronic records, they will be the best evidence like the genuine ones, so we are not necessary to apply the best evidence rule but let the court has his own discretion.

From the hearsay evidence rule, electronic records are sometimes likely strong, if they can show the authentication. The communications, reception, transfer of electronic records are easily done and they have the same authentication which differs from other hearsay evidences, so we are not necessary to apply the hearsay evidence rule but let the court has his own discretion.

The authentication of electronic records shall be various in order to let the parties to prove the truth. We need to find the convenient way to let them be able to adduce the evidences. From the Draft Regulations of the President of the Supreme Court, they are scarce, when compared with the foreign law, so we need to apply the proceedings of authentication of electronic records in foreign law.

Consequently, the admissibility of electronic records as evidence shall have specific laws that regulate the proceedings of production and admissibility of electronic records as evidence by prescribing the principle in the Civil Procedure Code and for the detail in the Regulations of the President of the Supreme Court.