
Regulation on Witness Protection in Criminal Cases, B.E.2554 (2011)
of the Department of Special Investigation

Whereas it is reasonable to amend the Regulation on Witness Protection in Criminal Cases of the Department of Special Investigation (DSI) to be more appropriate and efficient, by virtue of Section 32 of the Government Administration Act, B.E.2534 (1991) amended by the Government Administration Act (No.5), B.E. 2546 (2003), and Section 6 Paragraph Two of the Act on Witness Protection in Criminal Cases, B.E.2546 (2003) (the act that covers some provisions restricting an individual's rights and liberties as permitted by Section 29 in conjunction with Section 32, Section 34, and Section 36 of the Constitution of the Kingdom of Thailand). By virtue of the provisions of laws, the DSI's Director-General issued the following regulation.

1. This Regulation is called "The DSI's Regulation on Witness Protection in Criminal Cases, B.E.2554 (2011)."

2. This Regulation shall come into force as from the date of its publication.

3. By this Regulation, the following regulations shall be revoked.

(1) The DSI's Regulation on Witness Protection in Criminal Cases, B.E.2547 (2004)

(2) The DSI's Regulation on Witness Protection in Criminal Cases, B.E.2551 (2008)

Other regulations and orders that are contrary to or inconsistent with this Regulation shall be superseded by this Regulation.

4. In this Regulation,

"Director-General" means the DSI's Director-General.

"Witness Protection Unit" means the DSI's unit responsible for witness protection and shall include other agencies or organizations that the DSI requests witness protection cooperation or assigns witness protection.

"Applicant" means the person who requests witness protection, namely

(1) The official authorized to investigate criminal cases, the official authorized to inquire into special cases, the official authorized to prosecute criminal cases, the Court, the witness Protection Office or the Witness Protection Unit,

(2) The witness or the authorized person,

(3) Any other person who has associated interest,

(4) The government agency or state agency.

"Protected person" means the person who is under protection of the Witness Protection Unit, namely

(1) The witness,

(2) Husband, wife, ascendant, descendant of the witness or other persons having close relationship with the witness, who is the witness's factor for being a witness and who may be endangered, protection for such persons is requested by the witness.

“Witness protection officer” means the officer who is assigned to protect the witness.

5. The DSI's Director-General shall take charge of the execution of this Regulation.

Chapter 1

General Provisions

6. Whereas the law on witness protection in criminal cases is enacted to increase the witness protection in accord with the provisions in the Constitution of the Kingdom of Thailand which preserve the rights of the witness in the criminal case to be properly treated and necessarily and reasonably compensated by the State. Hence, in performing the duty relating to witness protection, the special case inquiry official shall not only act with great caution and respect for rights and liberties of the people but also realize that the witness in the criminal case is the key person in upholding justice who should be esteemed as a good citizen. In addition, the special case inquiry official shall take other measures prescribed in the law on evidence into consideration, such as taking of testimony before the entry of the charge in the Court pursuant to Section 237 bis of the Criminal Procedure Code, for efficiency in and effectiveness of the investigations and the Court's proceedings.

7. Requesting witness protection, the consent must be obtained from the protected person. Except the person who is not able to give consent, the following person shall be the consent giver.

(1) Father or mother if the protected person is a minor. In cases of no father or mother, and neither father nor mother is able to give consent, the legal representative shall be the consent giver.

(2) The guardian if the protected person is incapable.

(3) The curator if the protected person is quasi-incompetent.

8. For inquiring the witness during the witness protection, the special case inquiry official shall also videotape such inquiry which can be continually viewed as evidence. Except in the event of necessity for not being able to videotape, such event shall be noted in the case file.

Chapter 2

Witness Protection Committee

9. The committee shall be formed as the “Witness Protection Committee” consisting of

(1) The DSI's Deputy Director-General designated by the Director-General as the chairman,

(2) The Special Case Expert (Special Case Inquiry Official- Expert Level) designated by the Director-General as the vice chairman,

(3) The Head of the Legal Division as the member,

(4) Two government officials appointed by the Director-General as the member whereby the Director of the Bureau of Special Operation is the member and secretary.

10. The Committee has the following authority and duty.

(1) Approve the exercise of general measures to protect witness.

(2) Determine or approve the protection procedure.

(3) Set the conditions for the protected person to fulfill in the course of protection. If the conditions are breached, such witness protection will be terminated.

(4) Name the agency or the individual responsible for witness protection and the place for witness protection.

(5) Deploy armaments, vehicles, equipment and other facilities.

(6) Determine monetary limit, budget, and expenses for witness protection.

(7) Set the rules for disbursement for witness protection expenses.

(8) Monitor and pursue the execution of witness protection and the disbursement for the expenses of such witness protection.

(9) Summon the applicant, the witness, the person to be protected, or any other person to give a statement or to submit any documents or evidence for the consideration.

(10) Appoint a Sub-Committee to make consideration or perform any work as assigned by the Committee.

(11) Consider and make an order to terminate the witness protection under the general measures.

(12) Consider and make an order to amend the procedure or conditions in Clause 10 (2) - (6).

(13) Consider and make an approval order for continual witness protection or a non-approval order subject to Clause 27 Paragraph Two.

(14) Consider and make an approval order or a non-approval order for the witness protection existing before the effective date of this Regulation subject to Clause 34.

11. The provision on the committee authorized to make administrative consideration according to the administrative procedure law shall be applied *mutatis mutandis* to the Committee meeting.

12. For the approval for the use of general measures to protect the witness, the Committee shall consider the importance of and the necessity for the witness in the case which the protection is requested and determine a proper and efficient protection procedure as well as worthiness of the government budget.

Chapter 3

Witness Protection Center

13. The Bureau of Special Operation shall be the Witness Protection Center having the following authority and duty.

- (1) Be the administrative entity of the Witness Protection Committee.
- (2) Receive and examine the request for witness protection.
- (3) Consider the request and propose the opinion to the Committee according to Clause 10 (1) – (6).
- (4) Record the witness protection information.
- (5) Coordinate and monitor the witness protection.
- (6) Collect and follow up the information in Clause 25 and Clause 34 for proposing the Committee for consideration.
- (7) Inspect and comment on witness protection expenses for appropriate and efficient disbursement.

Chapter 4

Request for Witness Protection

14. The applicant shall notify the Witness Protection Center of the request for witness protection. The request for witness protection can be made either in written or verbal form, or in any other forms.

15. In case the Head of the Special Case Inquiry Team is the applicant for the witness protection, he/she shall make a request in the form of a memorandum with the opinion and details submitted to the Witness Protection Center for the Committee's consideration subject to Clause 10 (2) – (6).

16. In case of urgency of witness protection, the special case inquiry official may make an oral request to the Director-General or his designee for approving the use of general measures for witness protection in the interim. After providing witness protection, the special case inquiry official shall submit a report to the Head of the Special Case Inquiry Team for informing the Witness Protection Center according to Clause 15 as soon as possible.

17. When the Witness Protection Center receives the request or the memorandum for witness protection as in Clause 14, Clause 15, or Clause 16, the Witness Protection Center shall urgently examine, consider and propose its opinion to the Committee for witness protection approval.

18. In case the Committee has a non-approval order prohibiting the use of general measures for witness protection, the Witness Protection Center shall notify the applicant or the Head of the Special Case Inquiry Team of the order in writing by specifying the reasons of the

Committee and the right to appeal the order subject to Section 20 of the Act on Witness Protection in Criminal Cases, B.E.2546 (2003).

19. In case the Committee has an approval order permitting the use of general measures for witness protection, the Witness Protection Center shall urgently inform the applicant or the Head of the Special Case Inquiry Team.

Chapter 5

Witness Protection Procedures Subject to General Measures

20. Either of the following procedures for witness protection subject to general measures shall be taken.

- (1) Deploy the officer to protect the witness at his/her residence or the place requested by the witness.
- (2) Keep the witness in a witness protection shelter arranged by the Witness Protection Unit.
- (3) Conceal the name, surname, address, photo, or other information which can identify the witness.
- (4) Coordinate with other agencies or organizations for cooperation or assignment to witness protection.
- (5) Regularly contact and inquire about living condition or inspect the place of living, and facilitate the witness's contact with relatives and other persons as wanted subject to the procedure determined by the witness protection officer.
- (6) Monitor the compliance with conditions for protection as appropriate.
- (7) Other procedures appropriate to the protected person's status and condition opined by the Director-General, or the designee of the Director-General, or the Committee.

21. After the Head of the Special Case Inquiry Team or the Witness Protection Unit obtains the approval for the witness protection under the general measures, a written agreement shall be executed and signed by the witness requesting such protection before the commencement of the protection.

The agreement shall be executed in writing at least with the following details:

- (1) The witness's consent to protection,
- (2) Procedures for witness protection,
- (3) Detailed guidelines for the witness to follow by taking into account the procedures for witness protection, circumstances, safety, and severity of the case,
- (4) The lawful rights of the witness,
- (5) Conditions requiring the witness to observe and the consequence of not adhering to the written agreement which results in the termination of witness protection,
- (6) Date/month/year of the written agreement.

22. In case that the witness is litigated or indicted both in civil and criminal cases as a result of being the witness, the witness shall be reasonably provided with a lawyer or legal assistance, except where there is reasonable ground that such witness commits a wrongful act causing damage to the case.

23. In the course of witness protection, if there is a reasonable ground that one will tamper with the evidence, whether directly or indirectly, the witness protection officer shall report the incident to the Head of the Special Case Inquiry Team for solutions.

If there is a crime against any person because such person, or the husband, wife, ascendant or descendant of such person who has agreed to be or has become the witness, the Head of the Special Case Inquiry Team shall inform the inquiry official in that jurisdiction, the public prosecutor, or the judge advocate for requesting an increase of penalty to such offender pursuant to Section 23 of the Act on Witness Protection in Criminal Cases, B.E.2546 (2003).

After taking the aforesaid action, it shall be reported to the Witness Protection Center.

24. In case the protected witness escapes in the course of protection, the witness protection officer shall investigate the cause of escape and the living condition of the witness, and report to the Head of the Special Case Inquiry Team.

After the Head of the Special Case Inquiry Team receives the report in Paragraph One, he/she shall urgently report to the Witness Protection Center for the Committee's order, and include that report in the case file.

25. On the 15th day of each month, the Head of the Special Case Inquiry Team shall report the protection to the Witness Protection Center by using the required form attached to this Regulation.

According to the witness protection in Clause 20 (1), the witness protection officer shall make a daily record of action by the form attached to this Regulation and submit such record to the Head of the Special Case Inquiry Team on the 10th day of each month to supplement the report in Paragraph One.

Chapter 6

Termination of Witness Protection

26. The witness protection may terminate upon any of the following cause.

- (1) The protected person passed away.
- (2) The protected person makes a written request for the termination.
- (3) The protected person breaches or fails to comply with the conditions according to the order of the Committee or the Director-General without a reasonable ground.
- (4) The person who gives consent on behalf of the protected person revokes the consent.

(5) Circumstances or status of the protected person change and there is no need for protection or the protection can no longer be provided. For instance, the death of the accuser, the alleged offender, or the accused in the criminal case in which the witness has to give testimony or the protected person's testimony was already taken in the Court.

(6) The witness refuses to give the statement or refuses to give testimony as a witness without a reasonable ground.

(7) The Court has a final judgment to punish the witness on charges of giving false statement, committing perjury, or fabricating false evidence in the case where such person is the witness.

(8) When the special case inquiry official is informed by the applicant that he/she desires the termination of witness protection with consent from the witness, except when the witness is not able to give consent.

27. When any cause in Clause 26 appears, the Head of the Special Case Inquiry Team or the Head of the Witness Protection Unit shall urgently submit a report including an opinion to the Witness Protection Center, and the Witness Protection Center shall submit it to the Committee for issuing an order to terminate witness protection under general measures.

Only in the event of Clause 26 (3) or (6), if the witness adjusted himself/herself to, or agrees to comply with the conditions or agrees to give a statement or to testify, or there are other necessary reasons, the Head of the Special Case Inquiry Team or the Head of the Witness Protection Unit may propose the Committee that the use of general measures to protect the witness should continue. The Committee shall have authority to make consideration and an approval order according to Clause 10 (1) – (6) or Clause 10 (11) as appropriate.

28. The order to terminate the protection in Clause 26 at least shall have the following details:

- (1) Name and surname of the applicant and the protected person,
- (2) Date/month/year of the order and date/month/year when it comes into force,
- (3) Reasons for the order,
- (4) Conditions for compliance with the order,
- (5) Rights and conditions for an appeal against the order.

29. When the Committee or the Director-General, as the case may be, orders the termination of witness protection, the Witness Protection Center shall notify the applicant, the protected person, the Head of the Special Case Inquiry Team, and the Head of the Witness Protection Unit, in writing, of the order for prompt termination of the protection.

The Clause 19 Paragraph Two shall apply *mutatis mutandis* to the notification of the said order in Paragraph One.

Chapter 7

Reporting for the Request for Use of Special Measures

30. The proposal for employing special measures in witness protection shall be submitted by the Head of the Special Case Inquiry Team or the applicant to the Witness Protection Center for consideration and submission to the Committee. The Committee shall propose its opinion to the Director-General for supplementing further submission to the Justice Minister through the Witness Protection Office, Ministry of Justice pursuant to the Ministry's Rule on Criteria, Procedure, and Conditions for Submission and Consideration of the Request for Use of Special Measures in Witness Protection, B.E.2548 (2005).

Chapter 8

Compensations and Expenses for Witness Protection

31. Compensations and expenses in connection to the protection for the protected person shall be subject to the Ministry of Justice's Regulation with approval from the Ministry of Finance.

The witness protection officer or the Head of the Special Case Inquiry Team or the Head of the Witness Protection Unit shall make a written request for disbursement of compensations and expenses in Paragraph One as well as disbursement of such advance through the Witness Protection Center for consideration before each disbursement.

32. If it appears later that the witness refuses to come, to give a statement, or to testify as a witness without a reasonable ground or there is a final judgment punishing the witness on charges of giving false statement, committing perjury, or fabricating false evidence in the case that such person is the witness, the Witness Protection Center shall coordinate with the Witness Protection Office, Ministry of Justice for repayment or payment of compensation by such person subject to Section 15 or Section 17 or repayment or payment of expenses for protection of the witness and other persons subject to Section 18 of the Act on Witness Protection in Criminal Cases, B.E.2546 (2003), as the case may be.

33. The Witness Protection Center shall have responsibility for preparing a request for a budget relating to compensations and expenses, for considering and procuring materials, vehicles, tools, and modern technologies for the use in witness protection, training, developing and enhancing ways of witness protection, and for preparing a request for the budget for such action plan.

Transitory Provision

34. The Head of the Special Case Inquiry Team, or the Witness Protection Unit, or the special case inquiry official responsible for witness protection before the effective date of this Regulation, as the case may be, shall report the performance of witness protection to the Witness Protection Center within 30 days from the effective date of this Regulation.

The Witness Protection Center has duty to propose the subject matter in Paragraph One to the Committee for consideration of appropriateness and necessity of witness protection. The Committee shall have authority to consider the approval for the continual use of general measures for witness protection or to order the termination of witness protection on a case-by-case basis.

Proclaimed on the 3rd day of February B.E.2554 (2011)

Tarit Pengdith

Director-General of the Department of Special Investigation