

Abstract

Legal Execution Department is the main organisation in charge of proceeding and controlling the execution of civil cases or the execution of debtor's property. All the regulations and the measures of the execution; the issue of a writ execution, the seizure, the attachment, and the auction of the property of the judgment debtor to fulfill performance to the judgment creditor, are governed by the Civil Procedure Code. Since established until B.E. 2540, Legal Execution Department was capable of conducting the execution effectively. However, economic crisis in Thailand in B.E. 2540 until present has resulted in largely increasing of the cases which are in the process of execution or pending to the execution. Moreover, there is a tendency that the number of tasks regarding to the execution will rapidly raise due to the current economics; meanwhile, the number of the officials of Legal Execution Department remains the same and limited in the public sector. Therefore, the execution is relatively delayed and causes damages to the interested parties.

Legal Execution Department had proposed the 5-year-Action Plan B.E. 2547-2551 encouraging the private sectors to take part in the execution; consequently, there is an amendment in Section 278 paragraph 4 of the Civil Procedure Code which provides that "In performing duties of the executing officers, the executing officers will assign the other persons act on behalf as the quality principles, the methods and the conditions provided by the Ministerial Regulation." Moreover, the definition of "the executing officer" in Section 1(14) is altered in order to include the person act for executing officer. Due to the modification of Section 278, the Ministerial Regulation regarding to the quality principles, the methods and the conditions of the person act for executing officer B. E. 2551 has been enacted. In the 4-year-Action Plan B.E. 2552-2554, Legal Execution Department aims at promoting knowledge, collaboration, and participation in the execution in order that people will be informed of the process of execution and related laws.

Thus, it is utmost important to study the possibility of transferring the task in respect of the execution to the private sectors, to scrutinize which process of the

execution is proper to be assigned to the private bodies, and to examine the approach of transferring which complies with Thai laws. It should also be taken into account that the regulation regarding to the quality principles of the person act for executing officer should concern about the interest of justice, the satisfaction of the party and the interested person in the case.

From the research in the current execution system of Thailand based on various sources; textbooks, the civil procedure code, the Ministerial Regulation regarding to the execution of the executing officer B.E. 2522, regulations and orders of Legal Execution Department, including the execution system of other countries, the author is of opinion that the assignment of executing tasks to the private bodies is feasible. Nevertheless, since the reliance and trust of people in government services have been deeply rooted in Thai society, the approach at the first stage must be suitable enough to make the execution carried out by the private sectors possible. Thus, it is recommended that the tasks to be assigned should be the execution which is within the authority of the executing officer attached to Legal Execution Department, excluding the execution by the other official competent under the provisions of law in force at the time to carry out any measures provided by Division IV of the Civil Procedure Code, which is the case provided by special laws in order to grant the authority to execute. Besides, it is more appropriate to assign only cases acquired the payment of fees, but cases which fees are exempted should not be transferred to the private's hands as it will be too much burden for their administration. Another task to which is not proper to be consigned is the execution which Legal Execution Department carries out for the other public sectors. It should be noted that only the execution of judgment or orders should be assigned, but the execution of provisional measures before judgment should remain proceeded by the executing officer of Legal Execution Department since legal disputes in this issue are unsolved. With regards the execution of judgment or orders, the author's view is that at the first stage the tasks to be handed over should be the seizure of immovable property, the auction of immovable property, and the produce of the income-expense account in connection with the seizure and the auction of immovable property.

Furthermore, the private executing officer and the public executing officer should concurrently perform the duties; it should not abruptly substitute the public executing officer. Where the court appoints the executing officer, the creditor shall have an opportunity to choose who to carry out the execution for him. The pilot scheme of the assignment of the execution is recommended to be operated in Bangkok and provincial areas in order to study problems that may occur and find resolutions to such problems. In addition to the scheme, since the private executing officer is assigned the authority of the state, he should be put in a position of a special state officer who is not a government official, not a genuine private body, on the grounds that the private executing officer is not governed by the government and not received salary by the annual government statement of expenditure.

With regard to the quality principles of the private executing officer, the qualifications should not be inferior to the public executing officer and required to complete the theory and the practical section of the training scheme of Legal Execution Department. Nevertheless, the attorney is suggested to be excluded from the private executing officer since the etiquette of the attorneys is to concern about the interest of their client. That is to say even though the law grants the authority to the executing officer to act for the judgment creditor, at the same time, it also protects the judgment creditor from suffering excessively damages from the executing officer. Consequently, the attorney should not be allowed to be the executing officer. The suggestion is that the executing officer should be attached to the office of execution which is in the form of a private limited company in order to guarantee the continuance of the execution in the case where any private executing officer is unable to perform the duty. Another point to be added is that the financial institution must be prohibited to be a shareholder or take part in the company on the basis of the interest of justice and preventing the financial institution from establishing the company to execute its debtor.

In respect of monitoring the private executing officer, as the execution is partly assigned at the first stage, the author is of opinion that the private executing officer should be monitored by committee, including the court and Legal Execution

Department. If the executing tasks are increasingly transferred to the private's institute, the private executing officer should be monitored by Private Executing Officer Council which is a professional council of the executing officer. The liability of the private executing officer is also recommended to be at least equal to the public executing officer.

The private executing officer is required to provide insurance in order to insure for damages that possibly occur from its operation and to guarantee the party of its performance. General security is expected to be given in the process of establishment of the office of execution of private the executing officer. Then special security is requisite in each case that the office of execution agrees to carry out. Moreover, where the amount of the assigned case is relatively high, the sum of money that is given as security or for insurance of the private executing officer has to be carefully considered.

It is recommended that the payment of the private executing officer's fees is according to schedule V: executing officer's fees annexed to the Civil Procedure Code, including the witnesses' fees.