

# Considerations Relating to Administrative Execution under Law on Road Accident Victims Protection

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## Abstract

Road Accident Victims Protection Act, 1992, and amendment thereto, have provided with administrative execution measures, in cases where initial damages are recovered from the motor vehicle owners, as well as the surcharges under the law, according to Rules of Office of Insurance Commission (OIC.) Regarding Application of Administrative Execution Measures by Seizing or Attaching and Selling Properties by Auctions under Road Accident Victims Protection Act, 1992, 2008. An objective of this report is to point out inconsistency between the said rules and Administrative Procedure Act (No.3), 2019, which prescribes new criteria for administrative execution measures, as to be more efficient, particularly the measures for recovering or uncovering properties. In order to achieve efficiency in recourse of initial damages, and enable more recovery of the debtors' properties, leading to seizure, attachment and sale by auction, for reimbursing the Victim Compensation Fund.

**Keywords:** Administrative Execution Measures, Road Accident Victims, Initial Damages

## Introduction

This article amplifies issues of the research and study under the Project on Research and Study of Problems with Procurement of Compulsory Insurance for Motor Vehicle Owners (2021). The copyright of the research belongs to Office of Insurance Commission (OIC.), and the author is the main researcher into laws, and analyzes these issues. Objectives of the said research are to study, collect, analyze and compare data, and research into reasons why motor vehicle owners fail to procure compulsory insurance, and propose recommendations and approaches, which can be practically mobilized and beneficial to solving the problems and reduce failure to procure the compulsory motor vehicle insurance. The research employs a methodology of documentary research, in-depth interview and focus group, in order to obtain data for analysis and synthesis, in order to bring forth the recommendations from the research.

## Administrative Execution Measures

Administrative Procedure Act, 1996, is a law prescribing general criteria in relation to exercise of authority of the official in issuing any administrative orders, whereas the effect of this statute requires exercise of legal authority of the administrative official in issuing the administrative orders to be in accordance with the criteria prescribed by the Act, as it is the law providing minimum standards of exercise of administrative duties. As such, the Act, in its Section 3, the first paragraph, provides that "Administrative procedure under any other laws shall be in accordance with the procedure provided in this Act, unless such laws have specifically prescribed the administrative procedure for any cases with the guarantee of

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justice or standard of administrative procedure not lower than what is provided in this Act.” Thus, this Act is the law setting the norm for executing administrative duties by the competent official, as to ensure that the official exercise its legal authority in due and fair manners, which will truly protect the public interest and lead to benefits to the private sector, provided that efficiency in administration of state affairs can be achieved and protection of the people's liberties can be attained according to the principles of good governance. (Office of the Council of State, 1996)

In the part of administrative execution measures, the statute prescribes the principles that, when the law provides for the administrative branch with the power to issue an administrative order, if any person fails to comply with the order, the administrative branch shall have the power to execute the administrative order on its own without referring the case to the court, whereas Administrative Procedure Act, 1996, prescribes the criteria for use of administrative measures as, when any statute specifically provides with administrative execution measures, if the official finds that enforcement measures are to yield results smaller than the enforcement measures under Administrative Procedure Act, 1996, the official is empowered to choose administrative execution measures under the said Act, which is a general statute, provided that the administrative execution measures have been amended by Administrative Procedure Act (No.3) 2019, whose contents comprise of 3 parts, being:

Part 1 General Provisions (Section 63/1 to Section 63/6) prescribe general principles for execution administrative orders of all categories;

Part 2 Execution of Administrative Orders Demanding Payment of Money (Section 63/7 to Section 63/19) prescribes criteria for executing administrative orders, which requires financial payment, comprising of 2 methods, being: Execution by Officials of State Agencies; and Execution by Legal Execution Officials;

Part 3 Execution of Administrative Orders Demanding Acts or Omission (Section 63/20 to Section 63/25) prescribes administrative execution measures, which may be applied to execution of administrative execution measures, change in administrative execution measures, special power supporting execution of administrative execution measures, and jurisdiction of the court in challenging administrative execution (Tanrangsang, 2021)

## **Administrative Execution Measures under Law on Road Accident Victims Protection**

Road Accident Victims Protection Act, 1992, is legislated for a reason that, as road accidents are increasing on an annual basis, resulting in the multitudes of injuries and deaths, whereas the said victims do not receive compensation, or receive compensation in amounts smaller than the actual damage, and if the victims want to resort to the civil rights to claim for damages, the legal proceedings will take prolonged periods of time, thus, in order that the victims will expeditiously receive full compensation and definite amount of initial damages, it is suitable for enacting a law on road accident victims protection, whereas the law requires owners of motor vehicles to procure motor vehicle insurance under this Act. That is to say-the owner of motor vehicle, who uses or possesses for use of the motor vehicle, must provide with insurance against loss for victims by insuring with an insurance company. It means, even though the person is not the legal owner of the motor vehicle, but uses the motor vehicle, the person must similarly procure insurance. As for a motor vehicle, which is registered in a foreign country and brought for use in the Kingdom for a temporary period, whereas the owner does not have its domicile or permanent residence in this Kingdom, the owner of the motor vehicle must provide insurance against loss for victims. In a case of failure to provide with the compulsory insurance, a fine not exceeding 10,000 Thai baht can be imposed.

In the spirit of Road Accident Victims Protection Act, 1992, “the Victim Compensation Fund” is established for mitigating afflictions of people, who fall victims of road accidents, as funds for paying initial damages, which arise to lives, bodies and health, in accordance to the actual damage, as medical expenses in cases of injuries, and/or funeral costs and expenses on arrangement of funerals, in cases of deaths, to the victims or their statutory heirs, and as other expenses on operations under this Act. The sources of the Fund comprise of: primary capital allotted by the Government; contributions of insurance company; subsidies; money or property acquired under the legal provisions; money or property donated to the Fund; fruits of the Fund; money earned from selling property acquired under the legal provisions; and other income. Apart from responsibility for disbursing initial damages to the road accident victims under Section 23, the Fund is responsible for recourse of reimbursement to the Fund in the disbursed amounts, whereas the Fund can either recoup the initial damages from the motor vehicle owners, plus the surcharges at the rate of 20 percent, or exercise the right of recourse against the persons, who inflict the damage, under Section 31, or exercise the power to seize the motor vehicles, which inflict the damage, under Section 28-30, or exercise the right of recourse against the agencies, who own the motor vehicles, under Section 32, as the case maybe. (Office of Insurance Commission, 2019) The initial damages are available for remedying the road accident victims as follows:

- 1) A case of injury, the victim will receive compensation as medical expenses and necessary costs of medical attention, in the actually paid amounts, but not exceeding 30,000 Thai baht per person;
- 2) In a case where the victim suffers any one of the following bodily harms (disabilities), the insurance company will pay the initial damages in the amount of 35,000 Thai baht per person: (A) Loss of the sight; (B) Loss of the hearing; (C) Loss of the speech or cutting of the tongue; (D) Loss of genital organs or reproductive ability; (E) Loss of limbs or fingers or toes; (F) Loss of any other organs; (G) Permanent insanity; (H) Permanent disability;
- 3) In a case where the injury has received the medical expenses under Item 1. and subsequently leads to a disability under Item 2., the total initial damages shall be paid in the amount not exceeding 65,000 Thai baht per person;
- 4) A case of death will receive compensation as the funeral costs and expenses on arrangement of funerals in the amount of 35,000 Thai baht per person;
- 5) A case of death after medical attention and necessary costs of medical attention, in the actually paid amounts, under Item 1., shall cover the amount not exceeding 65,000 Thai baht per person.

In a case where 2 motor vehicles or more inflict damage on a driver or passenger, if the person is injured or killed, the insurance company of each motor vehicle shall pay the initial damages to the victim in the motor vehicle, which is insured by the company. But if a victim is not inside any motor vehicle, all concerned insurance companies shall pay the initial damages to the victim in same proportions.

As of conditions for paying the initial damages of the Victim Compensation Fund to a victim, the Office of the Victim Compensation Fund must finish paying the initial damages to a victim, in an amount to which that person is entitled, as the case may be, within 7 days after receiving the claim, without waiting for proof of liability, and it shall be deemed that the initial damages are a part of the compensation under the Civil and Commercial Code. And in a case where the Office of the Victim Compensation Fund has paid the initial damages to a victim, the Office has the right to recoup the amount from the motor vehicle owner, plus the surcharge at the rate of 20 percent of the initial damages amount, which is disbursed from the Victim Compensation Fund, in order to separately contribute to the Fund within 7 days after receiving an order from the registrar.

Administrative execution measures under Road Accident Victims Protection Act, 1992, are in accordance with the regulation of the Office of Insurance Commission on use of administrative execution measures by seizing or attaching and selling properties by auctions under Road Accident Victims Protection Act, 1992, of 2008, which is promulgated by virtue of the provisions in Section 26 of Road Accident Victims Protection Act, 1992, amended by Road Accident Victims Protection Act (No.4), 2007, which prescribes for a case where the motor vehicle owner or the insurance company fails to the initial damages to a victim, or pays the initial damages to the victim in a deficit amount. Once the Office of the Victim Compensation Fund pays the initial damages the victim, the registrar shall claim the disbursed amount against the motor vehicle owner or the insurance company, as the case may be, plus the surcharge at the rate of 20 percent of the initial damages amount, which is disbursed from the Victim Compensation Fund, in order to separately contribute to the Fund. And whereas such an order of the registrar is an administrative order requiring financial payment, thus, if the motor vehicle owner or the insurance company fails to duly and completely pay the initial damages plus the surcharge according to the order of the registrar within 7 days after receiving an order from the registrar, the registrar may exercise the power to apply administrative execution measures by attaching or seizing properties of the motor vehicle owner or the insurance company, and bringing the properties to auction, in order to completely reimburse the amount, under the law on administrative procedures. Article 10 of the regulation provides with measures for uncovering properties as follows:

“Uncovering securities or properties of a debtor shall be conducted as follows:

- (1) Coordinate with Department of Land to trace securities in a form of immovable properties, which appear to be in the names of the debtor, the debtor's family and the debtor's relatives, where they hold the ownership or claim of the properties, which may be seized or attached and put to auctions for repaying the debt, tracing through the previous domiciles, addresses which they have been posted for jobs, and current domiciles;
- (2) Trace the debtor's movable properties, such as a motor vehicle, motorcycle, vessel, stocks or guarantees for use of electricity, waterworks and telephone, by coordinating with State agencies or authorities, who manage registration or accounts regulating the said movable properties;
- (3) Trace other properties of the debtor in offices and residences of the debtor, or those of the debtor's family and relatives, in which the debtor's properties may be located;
- (4) Collaborate with banks or financial institutions to trace the debtor's securities or deposit accounts in such banks or financial institutions;
- (5) Conduct any other actions to trace the debtor's securities or properties in the most efficient and effective manners.”

### **Considerations Relating to Administrative Execution Measures under Road Accident Victims Protection Act, 1992**

Problems concerning administrative execution measures under Road Accident Victims Protection Act, 1992, are that Section 26 provides for, in a case where the motor vehicle owner or the company fails to pay the initial damages to the victim, or pays the initial damages to the victim in an amount deficit, or in a case where the victim suffers damage as a result of no person presenting itself as the motor vehicle owner, and no insurance or the motor vehicle running away, or the motor vehicle being unable to be identified, when the Office of the Victim Compensation Fund has paid the initial damages to the victim, the Registrar shall claim for reimbursement from the motor vehicle owner or company, as the case may be, plus the surcharges at the rate of twenty percent of the initial damages paid by the Fund to be reimbursed to the Fund. However, in absence of the reimbursement, the Registrar is authorized to apply administrative execution measures to seize or attach

properties of the motor vehicle owner or company for auctioning. Presently, the statistics of exercising the right to recourse or claim on reimbursement of the initial damages show that, on the 31<sup>st</sup> of December 2020 the Victim Compensation Fund had 39,136 debtors of the initial damages, in the total sum of 704,023,551.39 Thai baht, whereas in 2020, the Fund successfully recouped the reimbursement from only 1,156 motor vehicle owners, who failed to procure proper insurance, constituting the amount of 24,850,180.67 Thai baht, equivalent to the successful recovery rate of just 3.53 percent. As such, considered must be the processes of recourse claiming on reimbursement of the initial damages, which were administrative execution measures applied by Office of Insurance Commission (OIC.) The study finds that, at the present, exercising the right of recourse claiming on reimbursement of the initial damages to the Fund is operated under Rules of Office of Insurance Commission (OIC.) Regarding Application of Administrative Execution Measures by Seizing or Attaching and Selling Properties by Auctions under Road Accident Victims Protection Act, 1992, 2008, whereas the said Rules have been in force for long time and are not consistent with the present legal principles. That is to say they are not consistent with Administrative Procedure Act (No.3), 2019, which provides with more efficient administrative execution measures for the agency.

Administrative Procedure Act (No.3), 2019, contains provisions that amend the provisions concerning administrative execution under the law on administrative procedures, as to be more efficient, especially execution of an administrative order requiring financial payment, by rescinding the original Sections 55 to 63, and stipulating Chapter 2/1, newly adding Section 63/1 to Section 63/25-administrative execution. Section 63/3 prescribes that, if any law provides for specific administrative execution measures, where the official considers that the application of such execution measures may be less effective than execution measures under this Chapter, the official may apply administrative execution measures under this Chapter instead.

Essence of Administrative Procedure Act (No.3), 2019, in a part relating to execution of an administrative order requiring financial payment, enforcement by an official of a State agency, seizing or attaching and actioning properties, which is significant measures stipulating methods beneficial to uncovering and suspending registration or alteration of registration concerning properties, is Section 63/10, which provides that "For the purpose of administrative execution, the official issuing an order for the application of administrative execution measures shall have the powers:

(1) To give written enquiries to financial institutions, savings co-operatives, credit union co-operatives, the Stock Exchange of Thailand, the Department of Lands, the Department of Land Transport, the Department of Intellectual Property or other State agencies, which are in charge of controlling registered property enquiries on property of persons subjected to administrative execution measures;

(2) To give written request to registrars, competent officials or other persons who have powers and duties under the law a request for suspending registration or amending registers relating to property of persons subjected to administrative execution measures for the time being to the extent necessary on account of impediment preventing immediate seizure or attachment of property and notify cancellation of such written request when the impediment ceases to exist, provided that the rules governing suspension of registration or amendment of registers under the laws of particular matters shall be complied with.

Disclosure of information by agencies under (1) to the official issuing an order for the application of administrative execution measures in pursuance of proceedings under (1) shall not be deemed as offences under the law on financial institution businesses, the law on securities and securities exchange and other laws.

Any person who fails to comply with the written document of the official issuing an order for the application of administrative execution measures under paragraph one without any justifiable reason shall be said to commit an offence of obstructing an order of an official under the Penal Code."

It can be found that stipulation of the said principles is an efficient tool for uncovering properties of persons subjected to administrative execution measures and the law also prescribes criminal penalties as an offence of obstructing an order of an official under the Penal Code against persons, who fail to comply with the writing of the officials applying administrative execution measures.

Apart from that, the law also provides the principles of investigation into properties of persons subjected to administrative execution measures in Section 63/11, stipulating that, in investigating property of persons subjected to administrative execution measures, the agency issuing an order requiring financial payment may request the Office of the Attorney-General or any other agency to carry out property investigation on its behalf. In a case where the State agency issuing an order requiring financial payment has no official for carrying out property investigation and if the amount of money required to be paid in accordance with such administrative execution measure is two million Thai baht upwards, the State agency may entrust a private agent to carry out property investigation on its behalf, whereas a private agent, which discovers property from the investigation shall receive remuneration of not more than two and a half percent of the money or property acquired from the seizure, attachment or auction sale of the discovered property, provided that the maximum amount of remuneration shall not exceed one million Thai baht per the amount of money required to be paid in accordance with the administrative order in question.

As such, procedures and methods of seizing or attaching and selling properties by actions shall be prescribed by the Ministerial Regulation. In a case where the Ministerial Regulation fails to prescribe any manner, the provisions of the Civil Procedure Code shall apply *mutatis mutandis*, deeming that:

- (1) a judgment creditor means the State agency issuing the order requiring financial payment;
- (2) a judgment debtor means the person subjected to the administrative execution measure;
- (3) the power of the Court in respect of the execution is the power to the Head of the State agency, as provided in the Ministerial Regulation;
- (4) the execution official means the administrative execution official.

Apart from that, entrusting a private agent to carry out property investigation on behalf of the Fund cannot be conducted, because Administrative Procedure Act (No.3), 2019, Section 63/11, the second paragraph, provides in principle that, in a case where the State agency issuing an order requiring financial payment has no official for carrying out property investigation, and if the amount of money required to be paid in accordance with such administrative execution measure is two million Thai baht upwards or is such value as additionally prescribed by the Ministerial Regulation, the State agency may entrust a private agent to carry out property investigation on its behalf, but a debtor, who owes the initial damages to the Fund, is a petty debtor, whose debt amount is smaller than the value prescribed by the law, thus, a private agent cannot be entrusted with carrying out the action on behalf of the Fund.

## **Recommendations**

### **Short-Run Measure**

Office of Insurance Commission (OIC.) should add reference to the power under Administrative Procedure Act (No.3), 2019, Section 63/10, in the template of written enquiries to financial institutions, savings co-operatives, credit union co-operatives, the Stock Exchange of Thailand, the Department of Lands, the Department of Land Transport, the

Department of Intellectual Property or other State agencies, which are in charge of controlling registered property enquiries on property of persons subjected to administrative execution measures, and in the template of written request to registrars, competent officials or other persons who have powers and duties under the law a request for suspending registration or amending registers relating to property of persons subjected to administrative execution measures, for the time being to the extent necessary on account of impediment preventing immediate seizure or attachment of property, in order that the related agency (Regional OIC.) can use in investigating into properties of the debtors, because the law prescribes for compliance by the said competent agencies, otherwise, they can be held accountable for an offence of obstructing an order of an official under the Penal Code. Exercising the said power under the law on administrative procedures will enable more of the debtors' properties to be uncovered, leading to seizure or attachment, and sale by auction, in order to reimburse the Victim Compensation Fund, result in the motor vehicle owners being discouraged and realizing importance of procurement of compulsory insurance.

### **Long-Run Measure**

For solving the problems with recourse of the initial damages from the motor vehicle owners, who fail to provide with the insurance, to reimburse the Victim Compensation Fund, in application of administrative execution measures, it is found that Rules of Office of Insurance Commission (OIC.) Regarding Application of Administrative Execution Measures by Seizing or Attaching and Selling Properties by Auctions under Road Accident Victims Protection Act, 1992, 2008, has been in force for an extended period of time, but is still not consistent with Administrative Procedure Act (No.3), 2019, which newly amends administrative execution measures for more efficiency, especially under Section 63/10 on recovery of properties and suspension of registration or change in the registration relating to properties of persons subject to administrative execution measures for temporary periods, and the legal provisions require the said agencies to comply, otherwise, they will be deemed to commit an offense of refusal to comply with an order of an official under the Penal Code. Exercise of the said authority under the law on administrative procedure will result in enabling more recovery of the debtors' properties, leading to seizure, attachment and sale by auction, in order to reimburse the Victim Compensation Fund. Therefore, it is recommended to amend Rules of Office of Insurance Commission (OIC.) Regarding Application of Administrative Execution Measures by Seizing or Attaching and Selling Properties by Auctions, 2008, under Road Accident Victims Protection Act (No.5), 2008, as to be consistent with Administrative Procedure Act (No.3), 2019, which prescribes new criteria for administrative execution measures.

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