

ADMINISTRATIVE PROCEDURE ACT (NO. 3),
B.E. 2562 (2019)

HIS MAJESTY KING MAHA VAJIRALONGKORN PHRA VAJIRAKLAOCHAOUHUA;

Given on the 24th Day of May B.E. 2562;

Being the 4th Year of the Present Reign.

His Majesty King Maha Vajiralongkorn Phra Vajiraklaochaoyuhua is graciously pleased to proclaim that:

Whereas it is expedient to amend the law on administrative procedure;

Be it, therefore, enacted by the King, by and with the advice and consent of the National Legislative Assembly serving as the National Assembly, as follows.

Section 1. This Act is called the “Administrative Procedure Act (No. 3), B.E. 2562 (2019)”.

Section 2.¹ This Act shall come into force as from the day following the date of its publication in the Government Gazette except that the provisions of section 63/15, section 63/16, section 63/17, section 63/18 and section 63/19 shall come into force after one hundred eighty days as from the date of its publication in the Government Gazette.

Section 3. The provisions of paragraph three of section 44 of the Administrative Procedure Act, B.E. 2539 (1996) shall be repealed and replaced by the following:

* Translated by Associate Professor Dr. Pinai Nanakorn under contract for the Office of the Council of State of Thailand. – Tentative Version – subject to final authorisation by the Office of the Council of State.

¹ Published in Government Gazette, Vol. 136, Part 69a, dated 27th May 2019.

“An appeal shall not have the effect of staying the execution of an administrative order unless a stay of the execution is ordered under section 63/2 paragraph one.”

Section 4. Part VIII, Administrative Execution, section 55 to section 63 in Chapter II, Administrative Orders, of the Administrative Procedure Act, B.E. 2539 (1996) shall be repealed.

Section 5. The following provisions shall be added as Chapter II/I, Administrative Execution, section 63/3 to section 63/25, of the Administrative Procedure Act, B.E. 2539 (1996):

“CHAPTER II/I
ADMINISTRATIVE EXECUTION

PART I

GENERAL PROVISIONS

Section 63/1. Administrative execution shall not apply to State agencies alike unless otherwise provided by law.

Section 63/2. An official who makes an administrative order has the power to consider the application of an administrative execution measure in pursuance of his order in accordance with the provisions of this Chapter unless a stay of the execution is ordered by the official who makes the order, the person having the power to consider an appeal or the person having the power to consider and decide correctness of such administrative order.

The official under paragraph one may delegate his power to an official under his supervision or any other official for taking action in accordance with the rules and procedures prescribed in the Ministerial Regulation.

The official under paragraph one or paragraph two shall apply an administrative execution measure to the extent necessary for the achievement of the purposes of the administrative order and in a manner causing the least prejudice to persons who are subjected to the administrative order.

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Section 63/3. If any provision of law provides for specific administrative execution measures, the official may, where the official considers that the application of such execution measures may be less effective than execution measures under this Chapter, apply administrative execution measures under this Chapter instead.

Section 63/4. In the application of an administrative execution measure to any person, in the case of such person's death, administrative execution may be proceeded with. If such person has an heir or an administrator of the estate, it shall be deemed that the heir or the administrator of the estate is the person subjected to such administrative execution measure.

In the case of death of the person subjected to an administrative execution measure, notification of the administrative execution measure shall be given to heirs or the administrator of the estate, as the case may be. In this regard, the period of time for an appeal against the application of the administrative execution measure shall run afresh as from the date of receipt of the notification by the heirs or the administrator of the estate, where it appears that:

(1) the person subjected to the administrative execution measure dies before the expiration of the period of time for an appeal against the application of the administrative execution measure without submitting an appeal against the application of the administrative execution measure;

(2) the person subjected to the administrative execution measure dies after the expiration of the period of time for an appeal against the application of the administrative execution measure without submitting an appeal against the application of the administrative execution measure on account of necessary circumstances not attributable to such person.

In the case of the application of an administrative execution measure against any juristic person, if such juristic person ceases its personality or undergoes a business transfer or a merger, the administrative execution shall be proceeded with. In this regard, notification of the administrative execution measure shall be given to the liquidator or the juristic person that takes the business transfer or that is formed in consequence of the merger, as the case may be, without any need for issuing a fresh administrative order against such person or juristic person, and the rules on the period of time for an appeal under paragraph two shall also apply *mutatis mutandis*.

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Section 63/5. In the case where the provisions of this Chapter or other law do not provide otherwise, the person subjected to an administrative execution measure may appeal against the application of such administrative execution measure.

An appeal against the application of an administrative execution measure shall be governed by the same rules and procedures as those governing an appeal against an administrative order under Part V, Appeals against Administrative Orders, in Chapter II, Administrative Orders.

Section 63/6. The provisions of this Chapter shall not apply to the execution of an administrative order demanding payment of money or an act or omission in the case where a State agency has instituted an action before the Court and the Court has already rendered judgment demanding payment of money or an act or omission.

When the Court has admitted an action under paragraph one, the official shall not take proceedings in accordance with Part II, Execution of Administrative Orders Demanding Payment of Money, and Part III, Execution of Administrative Orders Demanding an Act or Omission, unless the action is withdrawn or the Court issues an order for striking the action out of the case-list on account of any other cause, provided that this shall have no prejudice to acts in pursuance of the administrative execution measure previously carried out by the official before admission of the action by the Court and the official shall proceed with the administrative execution measure in that part up to its completion.

PART II

EXECUTION OF ADMINISTRATIVE ORDERS DEMANDING PAYMENT OF MONEY

1. EXECUTION BY OFFICIALS OF STATE AGENCIES

Section 63/7. In the case where an official issues an administrative order demanding payment of money, if payment becomes due without correct and full payment having been made, the official who issues the administrative order shall give such person warning in writing requiring payment within a specified period of time which shall not be less than seven days. In the absence of performance as required by the warning, the official has the power to

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apply an administrative execution measure by way of seizing or attaching such person's property and selling the same by auction for enforcing full payment.

In the application of the administrative execution measure under paragraph one, an administrative execution official shall be appointed for carrying out seizure or attachment and auction sale of property.

Officials issuing orders for the application of administrative execution measures and the appointment of administrative execution officials shall be as prescribed in the Ministerial Regulation.

Section 63/8. A State agency issuing an order demanding payment of money shall carry out seizure or attachment of property within ten years as from the date on which the administrative order demanding payment of money becomes final.

An administrative order demanding payment of money becomes final in the following cases:

(1) no appeal against the order is made to the administrative official within the period for an appeal;

(2) the official competent to consider an appeal gives a decision dismissing the appeal and no action is instituted before the Court within the period of time for institution of an action;

(3) the Court renders an order or a decision dismissing the action or quashing the order partially and the action has become final.

If the State agency issuing an order demanding payment of money has seized or attached property but has not yet received full payment and the time under paragraph one has elapsed, no seizure or attachment of additional property shall be carried out.

Sale by auction or distribution by any other means of property of the person subjected to administrative execution measures as seized or attached within the time limit under paragraph one for enforcing payment of money as well as fees, remuneration or other expenses incurred in the administrative execution is permissible even if such period of time has elapsed.

Section 63/9. In the case of an appeal against the application of an administrative execution measure and a request is made for a stay of the execution of such measure, the official

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issuing the order for the application of the administrative execution measure or the person competent to consider the appeal may order a stay of the administrative execution for the time being and, in this regard, also has the power to fix conditions to be observed by the person subjected to the administrative execution measure.

Section 63/10. For the purpose of administrative execution, the official issuing an order for the application of administrative execution measures shall have the powers:

(1) to address, in writing, 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 address, in writing, 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.

Section 63/11. In investigating property of persons subjected to administrative execution measures, the agency issuing an order demanding payment of money may request the Office of the Attorney-General or any other agency to carry out property investigation on its behalf. In this regard, such agency shall also have the powers under section 63/10.

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In the case where the State agency issuing an order demanding payment of money 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 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.

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 Baht per the amount of money required to be paid in accordance with the administrative order in question or per the amount additionally prescribed by the Ministerial Regulation.

Rules and procedures for selecting private agents for carrying out property investigation, the fixing of remuneration and procedures for payment of remuneration under paragraph three shall be as prescribed in the Ministerial Regulation.

Section 63/12. Processes and practices in connection with seizure, attachment and auction sale of property shall be as prescribed in the Ministerial Regulation. In the case where the Ministerial Regulation does not make provision for any particular matter, the provisions of the Civil Procedure Code shall apply *mutatis mutandis* and, in this regard, it shall be deemed that:

- (1) a judgment creditor means the State agency issuing the order demanding payment of money;
- (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.

Section 63/13. A challenge or the exercise of a right to resort to the Court, in connection with seizure, attachment and auction sale of property, by persons subjected to administrative execution measures and third persons interested in the property seized or attached shall be brought before the Court as follows:

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(1) the Labour Court, the Tax Court, the Intellectual Property and International Trade Court, the Juvenile and Family Court or any other Specialised Court, as the case may be, which is the court having the jurisdiction for trying and adjudicating the case concerning the order in pursuance of which the administrative execution in question is conducted;

(2) the Administrative Court, for other cases not falling under (1).

Section 63/14. In the case where a judgment creditor in any other case has proceeded with seizure of any other property or attachment of any other claims of the person subjected to an administrative execution measure for the purpose of applying the proceeds in satisfaction of payment judgment, the State agency issuing an order demanding payment of money shall have the right to a share therein in as much the same way as a judgment creditor.

2. EXECUTION BY EXECUTION OFFICIALS

Section 63/15. In the case where payment of money is to be executed and the administrative order demanding payment of money has become final, if the State agency issuing the order demanding payment of money intends to have execution officials who are attached to the Legal Execution Department conduct the execution in pursuance of such administrative order, it shall, within ten years as from the date on which the administrative order demanding payment of money becomes final, submit to the Court an *ex parte* application for the Court's issuance of a writ of execution for the purpose of the execution of such administrative order, provided that the amount of money which is required by the administrative order to be paid and remains unpaid by the person subjected to the administrative execution measure shall be indicated, whether the State agency has not yet conducted the administrative execution or has already conducted the administrative execution but has not yet received payment or has received deficient payment.

When the State agency submits an application under paragraph one, if the Court considers that the administrative order demanding payment of money has become final, the Court shall issue a writ of execution, appoint an execution official and notify it to the execution official for further proceedings. In this regard, it shall be deemed that the State agency issuing the order demanding payment of money is a judgment creditor and it shall be deemed that the person subjected to the administrative execution measure is a judgment debtor.

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When the Court has issued a writ of execution, the State agency shall contact the Legal Execution Department and notify, in writing, the person subjected to the administrative execution measure of the fact that the Court has appointed an execution official for conducting the execution.

For the purpose of the execution under paragraph one, it shall be deemed that the *Changwat* Court, the Civil Court, the Civil Court of Southern Bangkok, the Thon Buri Civil Court or any other Civil Court in Bangkok, as the case may be, in whose jurisdiction the person subjected to the administrative execution measure is domiciled or the property falling within such administrative execution is located has the competence to give decisions or issue orders on any matter pertinent to the execution and is the Court of competence in the execution.

In the case of an application which may be submitted to more than one Court, whether by reason of domiciles of the person subjected to the administrative execution measure or by reason of locations of the property falling within the administrative execution or by reason of plurality of persons subjected to the administrative execution measure in correlated debts, the application may be submitted to any of such Courts.

A State agency under this section means a Ministry, a sub-Ministry, a Department or a Government agency called by any other name and ascribed a status as a Department, a provincial administration, a local administration and any other agency of the State as prescribed in the Ministerial Regulation.

Section 63/16. In the case where an administrative order demanding payment of money has become final and thereafter the person subjected to the administrative order requests for reconsideration of such final administrative order or institutes an action before the Court for reconsideration of such final administrative order or requests for the Court's retrial of the case and the State agency issuing the order demanding payment of money or the Court issues an order accepting the request or admits the action for trial, the person subjected to the administrative order may submit to the Court which has the competence to issue a writ of execution under section 63/15 a motion for a stay of the execution for the time being. If the Court, after its consideration of the motion, issues an order for a stay of the execution, the Court shall furnish such order to the execution official and the execution official shall stay the execution within a period of time or on the conditions fixed by the Court, and notice of a stay of the execution shall

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also be furnished to the State agency issuing the order demanding payment of money as well as interested third persons without delay.

If the State agency issuing the order demanding payment of money submits a motion indicating that it may be injured by the submission of the motion under paragraph one and has *prima facie* evidence that such motion is groundless and has been submitted with a view to delaying the execution, the Court has the power to order the person subjected to the administrative order to place money or provide security as the Court deems appropriate within a period of time fixed by the Court for the purpose of securing payment of compensation to the State agency for damage possibly suffered in consequence of such delay in the execution as caused by the submission of such motion or may fix any provisional protection measure as may be deemed appropriate. If the person subjected to the administrative order fails to comply with the Court's order, the Court shall order that the execution be further proceeded with.

In the case under paragraph one, if the State agency issuing the order demanding payment of money or the Court which has the jurisdiction to try and adjudicate cases concerning administrative orders demanding payment of money has issued an order for a review of the administrative order which becomes final, the State agency issuing the order demanding payment of money shall submit to the Court which has the competence to issue a writ of execution under section 63/15 a motion for revocation of the execution previously conducted. In the case where the Court considers that it is impossible to restore parties to original positions or when the Court considers that it is no longer necessary to conduct the execution in pursuance of the writ of execution in the interest of a party or a third person, the Court shall have the power to issue any order as the Court deems appropriate and notify it to the execution official.

Section 63/17. For the purpose of the execution, the provisions of section 63/10 and section 63/11 shall also apply to the investigation of property of persons subjected to administrative execution measures.

Section 63/18. The State agency issuing the order demanding payment of money shall carry out property investigation and notify it to the execution official together with documents and evidence concerned in order that the execution official shall proceed with seizure or attachment of property within ten years as from the date on which the administrative order demanding payment of money becomes final, and the provisions of section 63/8 paragraph three and paragraph four shall apply *mutatis mutandis*.

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The period of time during a stay of the execution in accordance with the order of the Court under section 63/16 paragraph one shall not be counted in the computation of the ten-year period under paragraph one.

Section 63/19. When the Court has issued a writ of execution and appointed an execution official, the proceedings in the execution of an administrative order demanding payment of money shall be in accordance with the Civil Procedure Code.

PART III

EXECUTION OF ADMINISTRATIVE ORDERS DEMANDING ACTS OR OMISSION

Section 63/20. In this Part:

“execution fine” means a fine ordered by the official to be paid daily by the person violating or failing to comply with an administrative order demanding an act or omission until such person ceases the violation of the order or has complied with the order, whether it is a fine prescribed by this Act or by any other law.

Section 63/21. In the case of an administrative order demanding an act or omission, if the person subjected to the administrative order violates it or fails to comply with it, the official may apply any of the administrative execution measures as follows:

(1) the official may personally take action or entrust other persons to take action on the official’s behalf and, in this regard, the person subjected to the administrative order shall indemnify expenses and pay a daily additional sum at the rate of twenty-five percent per year of such expenses to the State agency to which such official is attached;

(2) an execution fine shall be paid in a circumstantially reasonable amount which shall not exceed fifty thousand Baht a day.

The question as to officials of what levels have the power to fix what amount of an execution fine for which cases shall be as prescribed in the Ministerial Regulation.

In the case where it is necessary for conducting urgent execution for preventing an act which is contrary to the law carrying criminal punishment or for preventing injurious effects on public interests, the official may apply administrative execution measures without prior

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issuance of an administrative order demanding an act or omission, provided that this shall be carried out in a manner reasonable in the circumstances and within the scope of the official's powers and duties.

Section 63/22. Prior to the application of an administrative execution measure under section 63/21, the official shall give written warning requiring an act or omission **in pursuance of** an administrative order within a specified period of time that is reasonable in a particular case. Such warning may be given together with the administrative order.

Such warning shall indicate:

(1) clear administrative execution measures to be applied, provided that the application of more than one measure on the same occasion is not permissible;

(2) expenses, and a daily additional sum therefor, to be incurred by the official in taking action personally or entrusting other persons to take action on the official's behalf or the amount of an execution fine, as the case may be.

The fixing of expenses in the warning does not preclude the right to demand additional expenses if expenses actually incurred are greater than those so fixed.

Section 63/23. The official shall apply the administrative execution measure as fixed in the warning under section 63/22. A change of measures may be made only when it appears that the measure so fixed fails to achieve its purpose.

If the person subjected to an administrative order resists or obstructs the administrative execution, the official may, by using force, take action in pursuance of the administrative execution measure, provided that it shall be carried out in a manner reasonable in the circumstances.

In the application of the administrative execution measure under paragraph one or paragraph two, the official may, by notice, request for assistance from police officials.

Section 63/24. In the case of failure to make correct and full payment of the execution fine, expenses or daily additional sum, the official shall proceed with the administrative execution in accordance with Part II.

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Section 63/25. An action to be instituted for challenging the administrative execution in accordance with this Part shall be submitted before the Court which has the jurisdiction to try and adjudicate cases concerning the order in pursuance of which the administrative execution in question is conducted.”

Section 6. In the case where any administrative order demanding payment of money has become final for more than one year on the date on which this Act comes into force, the State agency issuing such order shall further proceed with the administrative execution in accordance with the Administrative Procedure Act, B.E. 2539 (1996) as amended by this Act, provided that proceedings under section 63/15 may be conducted only when it is the administrative order demanding payment of money of such descriptions as prescribed in the Ministerial Regulation.

Section 7. With respect to cases concerning a challenge against the application of administrative execution measures pending trial in any Court on the date on which this Act comes into force, such Court shall proceed with their proceedings and the rendering of judgment until such cases become final.

Section 8. The Legal Execution Department, the OPDC, the OCSC, the Budget Bureau and other agencies concerned shall jointly prepare the structure of the Legal Execution Department and its manpower framework for Government officials and Government employees and fix the budget as well as other necessary operations for accommodating the pursuit of activities in accordance with the powers and duties of the Legal Execution Department under this Act within sixty days as from the date on which this Act comes into force.

Section 9. All bye-laws or orders issued by virtue of the provisions of the Administrative Procedure Act, B.E. 2539 (1996) as in force on the day prior to the date on which this Act comes into force shall continue to be in force insofar as they are not contrary to or inconsistent with the Administrative Procedure Act, B.E. 2539 (1996) as amended by this Act until bye-laws or orders issued under the Administrative Procedure Act, B.E. 2539 (1996) as amended by this Act come into force.

The issuance of bye-laws under paragraph one shall be completed within one hundred eighty days as from the date on which this Act comes into force. If their completion

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cannot be achieved, the Prime Minister shall report the reasons therefor to the Council of Ministers for information.

Section 10. The Prime Minister shall have charge and control of the execution of this Act.

Countersigned by:

General Prayut Chan-o-cha
Prime Minister

Office of the Council of State

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