

# Debt Recovery in Commercial Lease Agreement: A Study of Commercial Rent Arrears Recovery (CRAR) in United Kingdom

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## ABSTRACT

The study aims to examine Principle of Commercial Rent Arrears Recovery (CRAR) under the Lease of Immovable Property for Commercial or Industrial Purposes Act of 1999 and under the English law. The study follows qualitative method.

The study indicates that The Act of 1999 does not adopts CRAR and causes the problems of debt recovery for landlords. The study also indicates that English law implements the CRAR effectively. In addition the English law provides a variety of measures for taking control of tenant's goods in order to make it easier, quicker and more efficient to induce the tenant to pay an outstanding debt without the need to proceed to the next step of auctioning the goods off or going through further court-related procedures; thus, CRAR implementation is available to reduce debt recovery problems.

The study recommends that Thailand should add the Principle of Commercial Rent Arrears Recovery (CRAR) into the Lease of Immovable Property for Commercial or Industrial Purposes Act of 1999.

## 1. Introduction

Foreign investment in Thailand contributes significantly to the growth of the industry and the national economy by generating income and employment, as well as indirectly producing positive outcomes through the transfer of knowledge and manufacturing technology.

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To boost economic growth by encouraging foreign investment, Thailand has enacted a law, the Lease of Immovable Property for Commercial or Industrial Purposes Act of 1999 (1999 Act), to allow and govern long-term property leases for commercial and industrial purposes.

It is difficult to deny that local property developers play an important role in encouraging participation in commercial leases under the 1999 Act and promoting foreign investment in Thailand. In order for the Thai property market to be able to supply adequate business premises for foreign investors to invest in, a local developers must first decide to invest in real estate with the intention of providing a business premises.

When engaging into a commercial lease agreement, however, there is a possibility of getting into difficulty with a default tenant and having problems recovering debt related to the lease agreement. Unfortunately, the Lease of Immovable Property for Commercial or Industrial Purposes Act of 1999 does not provide a specific debt collection method for leases covered by the Act.

Consequently, in order for the landlord to collect any debt arising from the commercial lease, the landlord need to recover it through court proceeding as prescribed by the Civil and Commercial Code. Furthermore, if a landlord obtains a judgment against a default tenant and the tenant fails to comply with the judgment, the landlord must initiate the execution procedure for enforcing a judgment as specified by the Civil Procedure Code.

Nevertheless, due to the court's workload, debt collection through court procedures is relatively time consuming and costly. According to Court of First Instance statistics<sup>1</sup>, there are presently a large number of civil cases pending before the court, resulting in a lengthy wait for the court to hear them. The entire caseload is 115,528 cases, however only 32,162 of them can be disposed of, yielding a case disposal rate of 27.83 percent.

Based on this information, it is possible to conclude that the court system is overburdened, which is one of the factors contributing to the lengthy time required to recover debt. As a result, recouping debt through the court system is insufficient and

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<sup>1</sup> Office of planning and budget, Statistics of pending cases, new receipts, disposal and pending cases of courts across the kingdom of Thailand for the year 2021 (January - April), at [www.oppb.coj.go.th](http://www.oppb.coj.go.th), (accessed June 20, 2021).

ineffectual in settling debt in timely manner, contributing to the failure to encourage local developers to invest in real estate in order to provide business premises for foreign investors and participate into commercial lease agreements under the Lease of Immovable Property for Commercial or Industrial Purposes Act of 1999.

A lack of local real estate investment to supply business premises for foreign investors would result in a slowing of the property market and a shortage of business premises. Because there are fewer eligible leased premises for foreign investment, there will be a demand-supply imbalance for leased premises, resulting in a rent increase. The rise in the rent of eligible leased premises for foreign investment will undoubtedly have a negative impact on foreign investors' decision to invest in Thailand, perhaps causing a slowdown in the economy.

The Commercial Rent Arrears Recovery (CRAR) in the United Kingdom, on the other hand, allows the commercial landlord to instruct a certificated enforcement agent to use The Taking Control of Goods procedure to seize the tenant's goods and sell them at public auction to recover outstanding debts without requiring the court order; thus, recovering debt takes less time when compared to recovering debt through court proceeding.

Because The Lease of Immovable Property for Commercial or Industrial Purpose Act of 1999 does not provide a particular debt collection mechanism for commercial leases. It causes the problems of debt recovery in commercial leases under the Act. To resolve the problems, Thailand should revise the Act to include a particular debt collection mechanism modeled after the United Kingdom's Commercial Rent Arrears Recovery (CRAR).

## **2. Objective of Study**

2.1.1 To study the principles of the Commercial Rent Arrears Recovery (CRAR), as well as the debt recovery procedure under the Lease of Immovable Property for Commercial or Industrial Purposes Act of 1999.

2.1.2 To evaluate the effectiveness of the Commercial Rent Arrears Recovery (CRAR).

2.1.3 To analyze the possibility of adopting the Commercial Rent Arrears Recovery (CRAR) into the Lease of Immovable Property for Commercial or Industrial Purposes Act of 1999.

### 3. Methodology

This study utilizes documentary methodologies, such as a review of Thai and English legislation pertaining to Commercial Rent Arrears Recovery (CRAR), as well as a reference to the Tribunal, Court, and Enforcement Act 2007 and associated regulations. Furthermore, this study drew on information from books, papers, published theses, and online sources related to the aforementioned document, both in Thai and English. Lastly, the researcher evaluates the problem in order to reach a conclusion and make recommendations for how to implement the CRAR procedure in Thai law.

### 4. Research Result

According to the study, the legislation in the United Kingdom<sup>2</sup> allows a commercial landlord to utilize Commercial Rent Arrears Recovery (CRAR) to instruct a certificated enforcement agent to use the Taking Control of Goods procedure to seize the tenant's goods and sell them at public auction to recover outstanding debts without requiring the court order.

In Thailand, on the other hand, because the Lease of Immovable Property for Commercial or Industrial Purposes Act of 1999 lacks a particular debt collection mechanism, the landlord must initiate a civil lawsuit and obtain a court judgment against the default tenant in order to recover debt owed to the landlord under a commercial lease agreement<sup>3</sup>. And, in accordance with the Civil Procedure Code, begin the execution process to enforce the judgment.<sup>4</sup>

The result reveal that the court plays a significant role in recovering debts for commercial lease agreement in Thailand. While in the United Kingdom, rent arrears for commercial lease agreements can be recovered using the CRAR, which does not require

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<sup>2</sup> The Tribunal Courts and Enforcement Act 2007, Chapter2, Section72.

<sup>3</sup> The Civil and Commercial Code, Section 213.

<sup>4</sup> The Civil Procedure Code, Section 296.

judicial intervention; hence, it is a relatively quick and convenient method of recovering debt for the landlord.

Regarding the problem of Commercial Rent Arrears Recovery (CRAR) implementation, the study concludes that CRAR is possible to implement in Thai legal system. The fundamental requirements, such as the definition of landlord, lease, recoverable rent, and demised premises, as well as the procedure, such as notice issuance, the taking control of goods methods and the proper person to use it, can all be implemented in the 1999 Act.

Furthermore, according to the case study and findings, it is possible to conclude that if the business landlord is certain that the business tenant has sufficient valuable goods to cover an arrears, CRAR is an efficient recovery approach. Because a court order is not required to initiate the CRAR, it is relatively quick and convenient. Moreover, because the tenant covers the cost of enforcement and is reimbursed as part of the enforcement recovery, it might also be considered a low-cost option to recover arrears for the landlord.

Additionally, as reported by the Sheriff's Office<sup>5</sup> and a UK-based legal firm<sup>6</sup> that provides legal services, many business tenants is concerned about the negative impact of an enforcement agent showing up on their business premise, and want to keep their employees and consumers from realizing that they are behind on their rent. Therefore, the simple presence of the enforcement agent, as in the great majority of enforcement cases, is enough to induce the tenant to settle all arrears. Goods are only seized on very rare occasions.

To conclude, the English law provides a variety of measures for taking control of tenant's goods<sup>7</sup> in order to make it easier, quicker and more efficient to induce the tenant to pay an outstanding debt without the need to proceed to the next step of auctioning the goods off or going through further court-related procedures; thus, CRAR implementation is available to reduce debt recovery problems. While the problems still

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<sup>5</sup> Gail Morris, [How the Commercial Rent Arrears Recovery scheme \(CRAR\) can help you recover rent arrears](http://www.pdt.co.uk), at [www.pdt.co.uk](http://www.pdt.co.uk), (last visited 24 June 2021).

<sup>6</sup>[Recovering commercial rent arrears](http://www.thesheriffsoffice.com/articles/recovering-commercial-rent-arrears), at [www.thesheriffsoffice.com/articles/recovering-commercial-rent-arrears](http://www.thesheriffsoffice.com/articles/recovering-commercial-rent-arrears), (accessed June 24, 2021).

<sup>7</sup> The Tribunal Courts and Enforcement Act 2007, Schedule 12, paragraph 13.

exist in Thailand since the 1999 Act does not provide the mechanism that is comparable to English law.

## 5. Conclusion

Due to the lack of particular debt collection mechanism for commercial leases under the Lease of Immovable Property for Commercial or Industrial Purpose Act of 1999, the only mechanism for a commercial landlord to recover debt owed under a commercial lease agreement is to take legal action. However, the landlord's satisfaction to recover debt in a timely manner may not be satisfied owing to the slowness of the judicial process, which is caused by an overburdened court system.

As a result, recouping debt through the court system is insufficient and ineffectual in settling debt in timely manner, giving rise in a problem with debt recovery in commercial lease agreements under the 1999 Act, contributing to the failure to encourage local developers to invest in real estate in order to provide business premises for foreign investors and participate in commercial lease agreements under the Act of 1999.

A lack of local real estate investment to supply business premises for foreign investors would result in a slowing of the property market and a shortage of business premises. If there are fewer eligible leased premises for foreign investment, there will be a demand-supply imbalance for leased premises, resulting in a rent increase. The rise in the rent of eligible leased premises for foreign investment will undoubtedly have a negative impact on foreign investors' decision to invest in Thailand, perhaps causing a slowdown in the economy with severe economic and employment consequences.

Consequently, in order to tackle the problems of the lack of a particular debt collection mechanism for commercial leases under the Act of 1999, reduce the court's workload by offering alternative measures that can be used to persuade a tenant to settle an outstanding debt without having to go through further court-related procedures, as well as to encourage more local developers to invest in real estate and participate in commercial lease agreements under the Act of 1999, thereby encouraging foreign investment and strengthening the Thai economy, the Act of 1999 should be revised by including the concept of Commercial Rent Arrears Recovery (CRAR) as a debt

collection mechanism for registered commercial lease agreements registered under the 1999 Act.

## **6. Recommendations**

First of all, the recommendations for this study is to revise the Lease of Immovable Property for Commercial or Industrial Purposes Act of 1999 by adding the particular debt collection mechanism for registered lease under the 1999 Act. The fundamental requirements for using the debt recovery procedure under the 1999 Act should be modeled after the CRAR fundamental requirements specified in the Tribunal, Court, and Enforcement Act.

Second, the researcher suggests developing a distinct procedure, called as a taking control of goods procedure, to be utilized to recover debt owing under a registered lease under the 1999 Act. The taking control of goods should be modeled after the taking control of goods procedure under English law, which is provided in Schedule 12 of the Tribunal, Court, and Enforcement Act 2007 (TCEA 2007).

The main procedure for enforcing the procedure should be divided into three stages including the compliance stage, the enforcement stage, and the disposal stage. Additionally, the following four methods for taking control of goods should be included in the taking control of goods procedure under the 1999 Act: by a controlled goods agreement, in which the debtor keeps possession of the goods while admitting that the enforcement agent has control and undertakes not to remove or dispose of them, or allow anyone else to do so, until the debt is paid, by securing goods on the premises, by securing goods, such as vehicle, on a public highway and by removal goods from the premises

Finally, apart from the executing officer assigned by the public sector, a private sector should be able to perform the public sector's executing officer tasks to relieve the legal execution department of their load and to provide prompt response to the commercial landlord.

There is a mechanism through which the private sector may be able to carry out the executing officer's duties as specified in Section 278 paragraph 4 of the Civil Procedure Code. According to Section 278 paragraph4, the executing officer may appoint other persons to act on their behalf in carrying out the executing officer's duties, as long

as the quality principles, method, and condition set out in the Ministerial Regulations are followed<sup>8</sup>.

To enable an appointed person acting for an executing officer to use the adopted procedure of the taking control of goods to recover debt in relation with a registered lease under the 1999 Act, such Ministerial Regulations should be amended to include the use of the taking control of goods procedure as one of the operations that the appointed person is authorized to perform.

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<sup>8</sup> The Civil Procedure Code, Section 278 para4.



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