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Civil Enforcement Remedies: The Way Ahead

7 June 2021

LEGAL UPDATE

In this Update

Last year, the Singapore Academy of Law's Law Reform Committee undertook a review of the existing available civil enforcement remedies and considered whether remedies presently available under Singapore law adequately ensure that judgment creditors are able to recover monies adjudicated by the Courts as due and owing to them, taking into account also the interests and rights of judgment debtors and affected third parties.

This article discusses SAL's recommendations arising from the review and considers what change may lay ahead.

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SAL'S REVIEW OF CURRENT CIVIL ENFORCEMENT REMEDIES

Last year, the Singapore Academy of Law's Law Reform Committee ("LRC") undertook a review of the existing available civil enforcement remedies and considered whether remedies presently available under Singapore law adequately ensure that judgment creditors are able to recover monies adjudicated by the Courts as due and owing to them, taking into account also the interests and rights of judgment debtors and affected third parties.

The LRC reviewed and considered the laws and equivalent remedies in various jurisdictions including Australia, Canada, England and Hong Kong, and identified certain gaps or limitations that can impede judgment creditors' recovery of their due debts from judgment debtors. For example, judgment creditors often find it difficult to identify what assets the judgment debtor has. Even when they are able to ascertain what assets the judgment debtor has, judgment creditors may not know where these assets are located, and therefore, what enforcement action they can best take. There are also instances where assets may be held by the judgment debtor jointly with a spouse, family member or other third party, for example, in the form of a joint bank account or jointly-owned property.

PROPOSED REFORMS PUT FORTH BY SAL

KEYPOINT

In December 2020, the LRC issued a report, setting out a number of proposed legislative reforms with the purpose of aiding recovery, while still ensuring appropriate protection of the rights of judgment debtors and affected third parties.

It is important to note that while the LRC's proposed reforms were conceived before and generally do not take into account the report of the Civil Justice Commission on amendments to the Rules of Court, these proposed reforms are consistent with or can, with appropriate adjustments be made applicable to Chapter 17 of the draft new Rules of Court (which is expected to simplify and consolidate the existing Orders 45 to 50 of the Rules of Court).

First, the LRC recommended the reform of the current writ of seizure and sale regime through amendments to the Land Titles Act and the Rules of Court. The LRC was of the opinion that it is important to clarify that a judgment debtor's interest as a joint tenant in immovable property is exigible to execution.

Second, the LRC proposed that Courts should be granted a discretion to order a sale of the judgment debtor's interest in a mortgaged immovable property (whether subject to or free from the mortgage), notwithstanding the objections of a prior mortgagee.

Third, the LRC recommended amending the Rules of Court (as well as related legislation) to allow a judgment creditor to garnish a bank account jointly held by a judgment debtor and other persons to satisfy a judgment debt.

Lastly, the LRC proposed extending existing procedures for the examination of judgment debtors to allow for the examination of individuals other than the judgment debtor:

- (a) whom the judgment creditor has reasonable grounds to believe have information concerning the judgment debtor's property; or
- (b) who are, or recently were, in possession of such property or records related thereto.

The LRC was of the opinion that further policy consideration should be given to whether reform of the law is necessary to facilitate interim measures being granted by the Courts, in particular to ensure effective protection against cross-border dissipation of assets.

COMMENTARY

The LRC's recommendations are timely and seek to address practical problems faced by judgment creditors in enforcing judgments against judgment debtors. It remains to be seen whether and to what extent its recommendations are accepted. If they are accepted, they may impact, among others, the operations of financial institutions, particularly when dealing with mortgaged property or bank accounts belonging to judgment debtors.

The LRC recommendations are made against the backdrop of significant changes to our procedural rules, which are intended to simplify and improve the litigation process. We can all expect further changes to the procedural landscape in the months ahead, as practitioners and the Courts alike will be expected to sensibly construe these changes in the never ceasing work of upholding justice and ensuring fairness in our legal system.

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