

PART 46 Charging Orders, Stop Orders And Stop Notices

PART 46

Scope of this Part and interpretation

46.1

This Section of this Part applies to an application by a judgment creditor for a charging order under Article 43 of the Law of Damages and Remedies 2005.

Application for charging order

46.2

An application for a charging order may be made without notice.

46.3

A judgment creditor may apply for a single charging order in respect of more than one judgment or order against the same debtor.

46.4

A judgment creditor may apply in a single application notice for charging orders over more than one asset, but if the Court makes interim charging orders over more than one asset, it will draw up a separate order relating to each asset.

46.5

An application for a charging order must be made by filing an application notice in Form P46/01.

46.6

The application notice must contain the following information:

(1) the name and address of the judgment debtor ;

- (2) details of the judgment or order sought to be enforced;
- (3) the amount of money remaining due under the judgment or order ;
- (4) if the judgment debt is payable by instalments, the amount of any instalments which have fallen due and remain unpaid;
- (5) if the judgment creditor knows of the existence of any other creditors of the judgment debtor , their names and (if known) their addresses;
- (6) identification of the asset or assets which it is intended to charge;
- (7) details of the judgment debtor's interest in the asset; and
- (8) the names and addresses of the persons on whom an interim charging order must be served under Rule 46.10.

46.7

The application notice must be verified by a statement of truth.

Interim charging order

46.8

An application for a charging order will initially be dealt with by the Registrar without a hearing.

46.9

The Registrar may make an order (an 'interim charging order'):

- (1) imposing a charge over the judgment debtor's interest in the asset to which the application relates; and
- (2) fixing a hearing to consider whether to make a final charging order as provided by 46.17(1).

Service of interim order

46.10

Copies of the interim charging order, the application notice and any documents filed in support of it must, not less than 28 days before the hearing, be served by the judgment creditor on the following persons:

- (1) the judgment debtor ;
- (2) such other creditors as the Court directs;
- (3) if the order relates to an interest under a trust, on such of the trustees as the Court directs;
- (4) if the interest charged is in securities other than securities held in Court , then:
 - (a) in the case of government stock, the keeper of the register;
 - (b) in the case of stock of any body incorporated within the DIFC, that body;
 - (c) in the case of stock of any body incorporated outside DIFC or of any state or territory outside the DIFC , which is registered in a register kept in DIFC , the keeper of that register;
 - (d) in the case of units of any unit trust in respect of which a register of the unit holders is kept in DIFC , the keeper of that register;
- (5) if the interest charged is in funds in Court , the Registrar ; and
- (6) if the interest charged is subject to a security interest filed in the Security Registry under the Law of Security 2005, the Security Registrar.

46.11

The judgment creditor must either:

- (1) file a certificate of service not less than 2 days before the hearing; or
- (2) produce a certificate of service at the hearing.

Effect of interim order in relation to securities

46.12

If a judgment debtor disposes of his interest in any securities, while they are subject to an interim charging order which has been served on him, that disposition shall not, so long as that order remains in force, be valid as against the judgment creditor .

46.13

A person served under Rule 46.10(4) with an interim charging order relating to securities must not, unless the Court gives permission:

- (1) permit any transfer of any of the securities; or
- (2) pay any dividend, interest or redemption payment relating to them.

46.14

If a person acts in breach of Rule 46.13, he will be liable to pay to the judgment creditor :

- (1) the value of the securities transferred or the amount of the payment made (as the case may be); or
- (2) if less, the amount necessary to satisfy the debt in relation to which the interim charging order was made.

Effect of interim order in relation to funds in Court

46.15

If a judgment debtor disposes of his interest in funds in Court while they are subject to an interim charging order which has been served on him and on the Registrar in accordance with Rule 46.10, that disposition shall not, so long as that order remains in force, be valid as against the judgment creditor .

Further consideration of the application

46.16

If any person objects to the Court making a final charging order, he must:

- (1) file; and
- (2) serve on the applicant;

written evidence stating the grounds of his objections, not less than 7 days before the hearing.

46.17

At the hearing the Court may:

- (1) make a final charging order confirming that the charge imposed by the interim charging order shall continue, with or without modification;

(2) discharge the interim charging order and dismiss the application;

(3) decide any issues in dispute between the parties, or between any of the parties and any other person who objects to the Court making a final charging order; or

(4) direct a trial of any such issues, and if necessary give directions.

46.18

If the Court makes a final charging order which charges securities other than securities held in Court , the order will include a stop notice unless the Court otherwise orders.

46.19

Any order made at the hearing must be served on all the persons on whom the interim charging order was required to be served.

Discharge or variation of order

46.20

A charging order shall be discharged upon satisfaction of the judgment or upon further order of the Court .

46.21

Any application to discharge or vary a charging order must be made in accordance with Part 23.

46.22

The Court may direct that:

(1) any interested person should be joined as a party to such an application; or

(2) the application should be served on any such person.

46.23

An order discharging or varying a charging order must be served on all the persons on whom the charging order was required to be served.

Enforcement of charging order by sale

46.24

Subject to the provisions of any enactment, the Court may, upon a claim by a person who has obtained a charging order over an interest in property, order the sale of the property to enforce the charging order.

46.25

The claimant must use the Part 8 procedure.

46.26

A copy of the charging order must be filed with the claim form.

46.27

The written evidence in support of a claim under 46.24 must:

- (1) identify the charging order and the property sought to be sold;
- (2) state the amount in respect of which the charge was imposed and the amount due at the date of issue of the claim;
- (3) verify, so far as known, the debtor's title to the property charged;
- (4) state, so far as the claimant is able to identify:
 - (a) the names and addresses of any other creditors who have a prior charge or other security over the property; and
 - (b) the amount owed to each such creditor;
- (5) give an estimate of the price which would be obtained on sale of the property; and
- (6) if the claim relates to land, give details of every person who to the best of the claimant's knowledge is in possession of the property.

46.28

The claimant must take all reasonable steps to obtain the information required by 46.27(4) before issuing the claim.

46.29

Sample forms of orders for sale are set out in Schedule A to this Part for guidance. They may be adapted or varied by the Court to meet the requirements of individual cases.

Charging order against property belonging to a partnership**46.30**

A charging order or interim charging order may be made against any property, within the DIFC , belonging to a judgment debtor that is a partnership.

46.31

For the purposes of Rule 46.10(1) (service of the interim order), the specified documents must be served on:

- (1) a member of the partnership within the DIFC or Dubai;
- (2) a person authorised by a partner; or
- (3) some other person having the control or management of the partnership business.

46.32

Where an order requires a partnership to appear before the Court , it will be sufficient for a partner to appear before the Court .

Interpretation**46.33**

In this Section, 'stop order' means an order of the Court not to take, in relation to funds in Court or securities specified in the order, any of the following steps:

- (1) the registration of any transfer of the securities;

- (2) in the case of funds in Court , the transfer, sale, delivery out, payment or other dealing with the funds, or of the income thereon;
- (3) the making of any payment by way of dividend, interest or otherwise in respect of the securities; and
- (4) in the case of a unit trust, any acquisition of or other dealing with the units by any person or body exercising functions under the trust.

Application for stop order

46.34

The Court may make:

- (1) a stop order relating to funds in Court , on the application of any person:
 - (a) who has a mortgage or charge on the interest of any person in the funds; or
 - (b) to whom that interest has been assigned; or
 - (c) who is a judgment creditor of the person entitled to that interest; or
- (2) a stop order relating to securities other than securities held in Court , on the application of any person claiming to be beneficially entitled to an interest in the securities.

46.35

An application for a stop order must be made:

- (1) by application notice in existing proceedings; or
- (2) by Part 8 claim form if there are no existing proceedings in the Court .

46.36

The application notice or claim form must be served on:

- (1) every person whose interest may be affected by the order applied for; and
- (2) either:

- (a) the Registrar , if the application relates to funds in Court ; or
- (b) the person specified in Rule 46.10(4) if the application relates to securities other than securities held in Court .

Stop order relating to funds in Court

46.37

A stop order relating to funds in Court shall prohibit the transfer, sale, delivery out, payment or other dealing with:

- (1) the funds or any part of them; or
- (2) any income on the funds.

Stop order relating to securities

46.38

A stop order relating to securities other than securities held in Court may prohibit all or any of the following steps:

- (1) the registration of any transfer of the securities;
- (2) the making of any payment by way of dividend, interest or otherwise in respect of the securities; and
- (3) in the case of units of a unit trust, any acquisition of or other dealing with the units by any person or body exercising functions under the trust.

46.39

The order shall specify:

- (1) the securities to which it relates;
- (2) the name in which the securities stand;
- (3) the steps which may not be taken; and
- (4) whether the prohibition applies to the securities only or to the dividends or interest as well.

Variation or discharge of order

46.40

The Court may, on the application of any person claiming to have a beneficial interest in the funds or securities to which a stop order relates, make an order discharging or varying the order.

46.41

An application notice seeking the variation or discharge of a stop order must be served on the person who obtained the order.

General

46.42

In this Section:

(1) 'stop notice' means a notice issued by the Court which requires a person or body not to take, in relation to securities specified in the notice, any of the steps listed Rule 46.33, without first giving notice to the person who obtained the notice; and

(2) 'securities' does not include securities held in Court .

Request for stop notice

46.43

The Court may, on the request of any person claiming to be beneficially entitled to an interest in securities , issue a stop notice .

(A stop notice may also be included in a final charging order under Rule 46.18)

46.44

A request for a stop notice must be made by filing :

(1) a draft stop notice ; and

(2) written evidence which:

(a) identifies the securities in question;

(b) describes the applicant's interest in the securities ; and

(c) gives an address for service for the applicant.

(A sample form of stop notice is annexed to this Part at Schedule B)

46.45

If the Court considers that the request complies with Rule 46.44, it will issue a stop notice .

46.46

The applicant must serve copies of the stop notice and his written evidence on the person to whom the stop notice is addressed.

Effect of stop notice

46.47

A stop notice :

(1) takes effect when it is served in accordance with Rule 46.46; and

(2) remains in force unless it is withdrawn or discharged in accordance with Rules 46.53 and 46.54.

46.48

While a stop notice is in force, the person on whom it is served:

(1) must not:

(a) register a transfer of the securities described in the notice; or

(b) take any other step restrained by the notice;

without first giving 14 days' notice to the person who obtained the stop notice ; but

(2) must not, by reason only of the notice, refuse to register a transfer or to take any other step, after he has given 14 days' notice under Rule 46.48(1) and that period has expired.

Amendment of stop notice

46.49

If any securities are incorrectly described in a stop notice which has been obtained and served in accordance with Rules 46.43 to 46.46 the applicant may request an amended stop notice .

46.50

The amended stop notice takes effect when it is served.

Withdrawal of stop notice

46.51

A person who has obtained a stop notice may withdraw it by serving a request for its withdrawal on:

- (1) the person or body on whom the stop notice was served; and
- (2) the Court .

46.52

The request must be signed by the person who obtained the stop notice , and his signature must be witnessed by a practising lawyer.

Discharge or variation of stop notice

46.53

The Court may, on the application of any person claiming to be beneficially entitled to an interest in the securities to which a stop notice relates, make an order discharging or varying the notice.

46.54

The application notice must be served on the person who obtained the stop notice .

IV APPLICATIONS FOR ORDERS CHARGING PARTNER'S INTEREST IN

PARTNERSHIP PROPERTY

46.55

Rules 46.56 to 46.60 relate to orders made under Article 37 of the General Partnership Law 2004 ("Article 37").

46.56

The following applications must be made in accordance with Part 23:

- (1) an application for an order under Article 37 made by a judgment creditor of a partner;
- (2) an application for any order by a partner of the judgment debtor in consequence of any application made by the judgment creditor under Article 37.

46.57

The powers conferred on the Court by Article 37 may be exercised by the Registrar .

46.58

Every application notice filed under Rule 46.56(1) by a judgment creditor , and every order made following such an application, must be served on the judgment debtor and on any of the other partners that are within the DIFC or Dubai.

46.59

Every application notice filed under Rule 46.56(2) by a partner of a judgment debtor , and every order made following such an application, must be served:

- (1) on the judgment creditor and the judgment debtor ; and
- (2) on the other partners of the judgment debtor who are not joined in the application and who are within the DIFC and Dubai.

46.60

An application notice or order served under Rule 46.57 or 46.59 on one or more, but not all, of the partners of a partnership shall be deemed to have been served on all the partners of that

partnership.

Schedule A

Schedule B