

PART 47 Attachment Of Future Assets And Earnings

PART 47

Scope of this Part and interpretation

47.1

This Part contains rules which provide for a judgment creditor to obtain an order for the payment to him of money which a third party, who is within the DIFC , owes to the judgment debtor .

47.2

In this Part, 'bank' includes any person carrying on a business in the course of which he lawfully accepts deposits in the DIFC .

Third Party debt order

47.3

Upon the application of a judgment creditor , the Court may make an order (a 'final third party debt order') requiring a third party to pay to the judgment creditor :

- (1) the amount of any debt due or accruing due to the judgment debtor from the third party; or
- (2) so much of that debt as is sufficient to satisfy the judgment debt and the judgment creditor's costs of the application.

47.4

The Court will not make an order under Rule 47.3 without first making an order (an 'interim third party debt order') as provided by Rules 47.11 to 47.15.

47.5

In deciding whether money standing to the credit of the judgment debtor in an account may be made the subject of a third party debt order, the following conditions will be disregarded:

- (1) any condition applying to the account that a receipt for money deposited in the account must be

produced before any money is withdrawn;

(2) any condition that notice is required before any money or share is withdrawn;

(3) any condition that a personal application must be made before any money or share is withdrawn;

(4) any condition that a deposit book or share-account book must be produced before any money or share is withdrawn; or

(5) any other prescribed condition.

Application for third party debt order

47.6

An application for a third party debt order may be made without notice.

47.7

An application for a third party debt order must be made by **filing** an application notice in Form P47/01.

47.8

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) the name and address of the third party;

(6) if the third party is a bank :

(a) its name and the address of the branch at which the judgment debtor's account is believed to be held; and

(b) the account number;

or, if the judgment creditor does not know all or part of this information, that fact;

(7) confirmation that to the best of the judgment creditor's knowledge or belief the third party:

(a) is within the DIFC ; and

(b) owes money to or holds money to the credit of the judgment debtor ;

(8) if the judgment creditor knows or believes that any person other than the judgment debtor has any claim to the money owed by the third party:

(a) his name and (if known) his address; and

(b) such information as is known to the judgment creditor about his claim;

(9) details of any other applications for third party debt orders issued by the judgment creditor in respect of the same judgment debt; and

(10) the sources or grounds of the judgment creditor's knowledge or belief of the matters referred to in (7), (8) and (9).

47.9

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

47.10

The Court will not grant speculative applications for third party debt orders, and will only make an interim third party debt order against a bank if the judgment creditor's application notice contains evidence to substantiate his belief that the judgment debtor has an account with the bank in question.

Interim third party debt order

47.11

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

47.12

The Registrar may make an interim third party debt order:

- (1) fixing a hearing to consider whether to make a final third party debt order; and
- (2) directing that until that hearing the third party must not make any payment which reduces the amount he owes the judgment debtor to less than the amount specified in the order.

47.13

An interim third party debt order will specify the amount of money which the third party must retain, which will be the total of:

- (1) the amount of money remaining due to the judgment creditor under the judgment or order ; and
- (2) an amount for the judgment creditor's fixed costs of the application, as specified in Part 39.

47.14

An interim third party debt order becomes binding on a third party when it is served on him.

47.15

The date of the hearing to consider the application shall be not less than 28 days after the interim third party debt order is made.

Service of interim order**47.16**

Copies of an interim third party debt order, the application notice and any documents filed in support of it must be served by the judgment creditor :

- (1) on the third party, not less than 21 days before the date fixed for the hearing; and
- (2) on the judgment debtor not less than:
 - (a) 7 days after a copy has been served on the third party; and
 - (b) 7 days before the date fixed for the hearing.

47.17

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.

Obligations of third parties served with an interim order**47.18**

A bank served with an interim third party debt order must carry out a search to identify all accounts held with it by the judgment debtor .

47.19

The bank must disclose to the Court and the creditor within 7 days of being served with the order, in respect of each account held by the judgment debtor :

- (1) the number of the account;
- (2) whether the account is in credit; and
- (3) if the account is in credit:
 - (a) whether the balance of the account is sufficient to cover the amount specified in the order;
 - (b) the amount of the balance at the date it was served with the order, if it is less than the amount specified in the order; and
 - (c) whether the bank asserts any right to the money in the account, whether pursuant to a right of set-off or otherwise, and if so giving details of the grounds for that assertion.

47.20

A bank served with an interim third party debt order is only required, unless the order states otherwise:

- (1) to retain money in accounts held solely by the judgment debtor (or, if there are joint judgment debtors , accounts held jointly by them or solely by either or any of them); and
- (2) to search for and disclose information about such accounts.

47.21

The bank is not required, for example, to retain money in, or disclose information about:

- (1) accounts in the joint names of the judgment debtor and another person; or
- (2) if the interim order has been made against a firm, accounts in the names of individual members of that firm.

47.22

If:

- (1) the judgment debtor does not hold an account with the bank ; or
- (2) the bank is unable to comply with the order for any other reason (for example, because it has more than one account holder whose details match the information contained in the order, and cannot identify which account the order applies to);

the bank must inform the Court and the judgment creditor of that fact within 7 days of being served with the order.

47.23

Any third party other than a bank served with an interim third party debt order must notify the Court and the judgment creditor in writing within 7 days of being served with the order, if he claims:

- (1) not to owe any money to the judgment debtor ; or
- (2) to owe less than the amount specified in the order.

Attachment of debts owed by a partnership**47.24**

Rules 47.25 and 47.26 relate to debts due or accruing due to a judgment creditor from a partnership.

47.25

An interim third party debt order under Rule 47.12 relating to such debts must be served on:

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

47.26

Where an order made under Rule 47.12 requires a partnership to appear before the Court , it will be sufficient for a partner to appear before the Court .

Arrangements for debtors in hardship

47.27

If:

- (1) a judgment debtor is an individual;
- (2) he is prevented from withdrawing money from his account with a bank as a result of an interim third party debt order; and
- (3) he or his family is suffering hardship in meeting ordinary living expenses as a result;

the Court may, on an application by the judgment debtor , make an order permitting the bank to make a payment or payments out of the account ('a hardship payment order').

47.28

An application notice seeking a hardship payment order must:

- (1) include detailed evidence explaining why the judgment debtor needs a payment of the amount requested; and
- (2) be verified by a statement of truth.

47.29

The evidence filed by a judgment debtor in support of an application for a hardship payment order should include documentary evidence, for example (if appropriate) bank statements, wage slips and mortgage statements, to prove his financial position and need for the payment.

47.30

The Court will treat an application for a hardship payment order as being made:

- (1) in the proceedings in which the interim third party debt order was made; and
- (2) under the same claim number.

47.31

Unless the Court orders otherwise, the application notice :

- (1) must be served on the judgment creditor at least 2 days before the hearing; but
- (2) does not need to be served on the third party.

47.32

In cases of exceptional urgency the judgment debtor may apply for a hardship payment order without notice to the judgment creditor and the Court will decide whether to:

- (1) deal with the application without it being served on the judgment creditor ; or
- (2) direct it to be served.

47.33

If the Court decides to deal with the application without it being served on the judgment creditor , where possible it will normally:

- (1) direct that the judgment creditor be informed of the application; and
- (2) give him the opportunity to make representations;

by telephone, fax or other appropriate method of communication.

47.34

A hardship payment order may:

- (1) permit the third party to make one or more payments out of the account; and
- (2) specify to whom the payments may be made.

Further consideration of the application

47.35

If the judgment debtor or the third party objects to the Court making a final third party debt order, he must file and serve written evidence stating the grounds for his objections.

47.36

If the judgment debtor or the third party knows or believes that a person other than the judgment debtor has any claim to the money specified in the interim order, he must file and serve written evidence stating his knowledge of that matter.

47.37

If:

- (1) the third party has given notice under Rule 47.23 that he does not owe any money to the judgment debtor, or that the amount which he owes is less than the amount specified in the interim order; and
- (2) the judgment creditor wishes to dispute this;

the judgment creditor must file and serve written evidence setting out the grounds on which he disputes the third party's case.

47.38

Written evidence under Rules 47.35, 47.36 and 47.37 must be filed and served on each other party as soon as possible, and in any event not less than 3 days before the hearing.

47.39

If the judgment creditor is notified that some person other than the judgment debtor may have a

claim to the money specified in the interim order, he must serve on that person notice of the application and the hearing.

47.40

At the hearing the Court may:

- (1) make a final third party debt order;
- (2) discharge the interim third party debt 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 has a claim to the money specified in the interim order; or
- (4) direct a trial of any such issues, and if necessary give directions.

Effect of final third party order

47.41

A final third party debt order shall be enforceable as an order to pay money.

47.42

If:

- (1) the third party pays money to the judgment creditor in compliance with a third party debt order;
or
- (2) the order is enforced against him;

the third party shall, to the extent of the amount paid by him or realised by enforcement against him, be discharged from his debt to the judgment debtor .

47.43

Rule 47.42 applies even if the third party debt order, or the original judgment or order against the judgment debtor , is later set aside .

Money in Court

47.44

If money is standing to the credit of the judgment debtor in Court:

- (1) the judgment creditor may not apply for a third party debt order in respect of that money; but
- (2) he may apply for an order that the money in Court , or so much of it as is sufficient to satisfy the judgment or order and the costs of the application, be paid to him.

47.45

An application notice seeking an order under Rule 47.44(2) must be served on:

- (1) the judgment debtor ; and
- (2) the Registrar .

47.46

If an application notice has been issued under Rule 47.45, the money in Court must not be paid out until the application has been disposed of.

Costs

47.47

If the judgment creditor is awarded costs on an application for an order under Rule 47.3 or 47.44:

- (1) he shall, unless the Court otherwise directs, retain those costs out of the money recovered by him under the order; and
- (2) the costs shall be considered to be paid first out of the money he recovers, in priority to the judgment debt.

Mode of applying

47.48

A judgment creditor who desires to apply for an attachment of earnings order shall file his application certifying the amount of money remaining due under the judgment or order and that the whole or part of any instalment due remains unpaid.

Service and reply**47.49**

Notice of the application together with a form of reply in the appropriate form, shall be served on the judgment debtor in the manner set out in Rule 9.2.

47.50

The judgment debtor shall, within 8 days after service on him of the documents mentioned in Rule 47.49, file a reply in the form provided.

47.51

Nothing in Rule 47.50 shall require a defendant to file a reply if, within the period of time mentioned in that Rule, he pays to the judgment creditor the money remaining due under the judgment or order and, where such payment is made, the judgment creditor shall so inform the Court .

47.52

On receipt of a reply the Court shall send a copy to the applicant.

Notice to employer**47.53**

The Court may, at any stage of the proceedings, send to any person appearing to have the judgment debtor in his employment a notice requesting him to give to the Court , within such period as may be specified in the notice, a statement of the judgment debtor's earnings and anticipated earnings with such particulars as may be so specified.

Attachment of earnings order

47.54

On receipt of the judgment debtor's reply, the Court may, if it has sufficient information to do so, make an attachment of earnings order and a copy of the order shall be sent to the parties and to the judgment debtor's employer.

47.55

Where an order is made under Rule 47.54, the judgment creditor or the judgment debtor may, within 14 days of service of the order on him and giving his reasons, apply on notice for the order to be re-considered and the Court shall fix a day for the hearing of the application and give to the judgment creditor and the judgment debtor not less than 2 days' notice of the day so fixed.

47.56

On hearing an application under Rule 47.55, the Court may confirm the order or set it aside and make such new order as he thinks fit and the order so made shall be entered in the records of the Court .

47.57

Where an order is not made under Rule 47.54, the Court will fix a day for the hearing of the application and give to the judgment creditor and the judgment debtor not less than 8 days' notice of the day so fixed.

47.58

If the judgment creditor does not appear at the hearing of the application under Rule 47.57 but:

- (1) the Court has received a witness statement or affidavit of evidence from him; or
- (2) the judgment creditor requests the Court in writing to proceed in his absence, the Court may proceed to hear the application and to make an order thereon.

47.59

An attachment of earnings order may be made to secure the payment of a judgment debt if the debt is:

- (1) of not less than US\$100; or

(2) for the amount remaining payable under a judgment for a sum of not less than US\$100.

Failure by judgment debtor

47.60

If the judgment debtor has failed to comply with Rule 47.50 or to make payment to the judgment creditor , the Court may issue an order which shall:

- (1) be indorsed with or incorporate a notice warning the judgment debtor of the consequences of disobedience to the order;
- (2) be served on the judgment debtor personally; and
- (3) direct that any payments made thereafter shall be paid into the Court and not direct to the judgment creditor .

47.61

If the person served with an order made pursuant to Rule 47.60 fails to obey it or to file a statement of his means or to make payment, the Court will issue a notice calling on that person to show good reason why he should not be committed for contempt of Court and any such notice shall be served on the judgment debtor personally not less than 5 days before the hearing.

47.62

Any failure to comply with an order made pursuant to Rule 47.60 is punishable by committal for contempt of Court .

Suspended committal order

47.63

If the judgment debtor fails to attend at an adjourned hearing of an application for an attachment of earnings order and a committal order is made, the Judge may direct that the committal order shall be suspended so long as the judgment debtor attends at the time and place specified in the committal order.

47.64

Where a committal order is suspended under Rule 47.63 and the judgment debtor fails to attend at the time and place specified under Rule 47.63, a certificate to that effect given by the Court shall be

sufficient authority for the issue of a warrant of committal.

Costs

47.65

Where costs are allowed to the judgment creditor on an application for an attachment of earnings order, there may be allowed:

- (1) a charge of a legal representative for attending the hearing and, if the Court so directs, for serving the application; and
- (2) the Court fee on the issue of the application.

47.66

For the purpose of Rule 47.65(1), a legal representative who has prepared on behalf of the judgment creditor a witness statement or affidavit or request under Rule 47.58 shall be treated as having attended the hearing.

47.67

The costs may be fixed and allowed without detailed assessment under Part 40.

Contents and service of order

47.68

An attachment of earnings order shall contain such of the following particulars relating to the debtor as are known to the Court , namely:

- (1) his full name and address;
- (2) his place of work; and
- (3) the nature of his work and his works number, if any.

47.69

An attachment of earnings order and any order varying or discharging such an order shall be served on the judgment debtor and on the person to whom the order is directed, and Part 9 and Rules

36.25, 36.26 and 36.27 shall apply with the further modification that where the order is directed to a corporation which has requested the Court that any communication relating to the judgment debtor or to the class of persons to whom he belongs shall be directed to the corporation at a particular address, service may, if the Court thinks fit, be effected on the corporation at that address.

Application to determine whether particular payments are earnings

47.70

Where an attachment of earnings order is in force, the Court shall, on the application of the employer, the judgment debtor or the person to whom payment under the relevant adjudication is required to be made, determine whether payments to the debtor of a particular class or description specified by the application are earnings for the purposes of the order; and the employer shall be entitled to give effect to any determination for the time being in force.

47.71

An application to the Court to determine whether payments to the debtor of a particular class or description are earnings for the purpose of an attachment of earnings order may be made to the Court in writing and the Court shall thereupon fix a date and time for the hearing of the application and give notice thereof to the employer, the judgment debtor and the person to whom payment under the relevant adjudication is required to be made.

Notice of order ceasing to have effect

47.72

An attachment of earnings order made to secure the payment of a judgment debt shall cease to have effect on the making of an order for committal or the issue of a warrant of committal for the enforcement of the debt.

47.73

Where an attachment of earnings order ceases to have effect as set out in Rule 47.72 above, the Court shall give notice to the person to whom the order was directed.

Variation and discharge by Court on own initiative

47.74

The Court may make an order discharging or varying an attachment of earnings order.

47.75

Subject to Rule 47.82, the Court may make an order under Rule 47.74 of its own motion in the circumstances mentioned in Rules 47.76 to 47.81.

47.76

Where it appears to the Court that a person served with an attachment of earnings order directed to him does not employ the judgment debtor, the Court may discharge the order.

47.77

Where an attachment of earnings order which has lapsed as a result of the judgment debtor ceasing to be in the employment of the person to whom the order is directed is again directed to a person who appears to the Court to have the judgment debtor in his employment, the Court may make such consequential variations in the order as it thinks fit.

47.78

Where, after making an attachment of earnings order, the Court makes or is notified of the making of another such order in respect of the same judgment debtor which is not to secure the payment of a judgment debt, the Court may discharge or vary the first-mentioned order in the following order of priority:

- (1) dealing first with any order which is not made to secure the payment of a judgment debt; and
- (2) dealing thereafter with any order which is made to secure the payment of a judgment debt as if the earnings to which it relates were the residue of the debtor's earnings after the making of any deduction to comply with an order having priority by virtue of (1); and
- (3) if there are two or more orders to which (2) applies:
 - (a) dealing with the orders according to the respective dates on which they were made, disregarding any later order until an earlier one has been dealt with;
 - (b) dealing with any later order as if the earnings to which it relates were the residue of the debtor's earnings after the making of any deduction to comply with any earlier order.

47.79

On making a consolidated attachment of earnings order the Court may discharge any earlier attachment of earnings order made to secure the payment of a judgment debt by the same debtor.

47.80

Where it appears to the Court that a bankruptcy order has been made against a person in respect of whom an attachment of earnings order is in force to secure the payment of a judgment debt, the Court may discharge the attachment of earnings order.

47.81

Where an attachment of earnings order has been made to secure the payment of a judgment debt and the Court grants permission to issue execution for the recovery of the debt, the Court may discharge the order.

47.82

Before varying or discharging an attachment of earnings order of its own motion under Rules 47.76 to 47.81, the Court shall, unless it thinks it unnecessary in the circumstances to do so, give the judgment debtor and the person on whose application the order was made an opportunity of being heard on the question of whether the order should be varied or discharged, and for that purpose the Court Officer may give them notice of a date, time and place at which the question will be considered.

Cases in which consolidated order may be made**47.83**

Subject to the provisions of Rules 47.84 to 47.94, the Court may make a consolidated attachment order where:

(1) two or more attachment of earnings orders are in force to secure the payment of judgment debts by the same debtor; or

(2) on an application for an attachment of earnings order to secure the payment of a judgment debt, or for a consolidated attachment order to secure the payment of two or more judgment debts, it appears to the Court that an attachment of earnings order is already in force to secure the payment of a judgment debt by the same debtor.

Application for consolidated order**47.84**

An application for a consolidated attachment order may be made:

(1) by the judgment debtor in respect of whom the order is sought; or

(2) by any person who has obtained or is entitled to apply for an attachment of earnings order to secure the payment of a judgment debt by that debtor.

47.85

An application under Rule 47.84 may be made in the proceedings in which any attachment of earnings order is in force.

47.86

An application under Rule 47.84(2) shall certify the amount of money remaining due under the judgment or order and that the whole or part of any instalment due remains unpaid.

47.87

Where an application for a consolidated attachment of earnings order is made, the Court will:

- (1) notify any party who may be affected by the application of its terms; and
- (2) require him to notify the Court in writing, within 14 days of service of notification upon him, giving his reasons for any objection he may have to the granting of the application.

47.88

If notice of any objection is not given within the time stated, the Court will make a consolidated attachment of earnings order.

47.89

If any party objects to the making of a consolidated attachment of earnings order, the Court may grant the application after considering the objection made and the reasons given.

47.90

In Rule 47.87, a party affected by the application means:

- (1) where the application is made by the judgment debtor, the creditor in the proceedings in which the application is made and any other creditor who has obtained an attachment of earnings order which is in force to secure the payment of a judgment debt by the judgment debtor ;

(2) where the application is made by the judgment creditor , the judgment debtor and every person who, to the knowledge of the applicant, has obtained an attachment of earnings order which is in force to secure the payment of a judgment debt by the debtor.

47.91

A person to whom two or more attachment of earnings orders are directed to secure the payment of judgment debts by the same judgment debtor may request the Court in writing to make a consolidated attachment order to secure the payment of those debts, and on receipt of such a request Rules 47.87 to 47.90 will apply, with the necessary modifications, as if the request were an application by the judgment creditor .

Making of a consolidated order by the Court on its own initiative

47.92

Where an application is made for an attachment of earnings order to secure the payment of a judgment debt by a judgment debtor in respect of whom an attachment of earnings order is already in force to secure the payment of another judgment debt and no application is made for a consolidated attachment order, the Court may make such an order on its own initiative after giving all persons concerned an opportunity of submitting written objections.

Extension of consolidated order

47.93

Where a consolidated attachment order is in force to secure the payment of two or more judgment debts, any creditor to whom another judgment debt is owed by the same judgment debtor may apply to the Court for it to be extended so as to secure the payment of that debt as well as the first-mentioned debts and, if the application is granted, the Court may either vary the order accordingly or may discharge it and make a new consolidated attachment order to secure payment of all the aforesaid judgment debts.

47.94

An application under Rule 47.93 shall be treated for the purposes of Rules 47.84 to 47.91 as an application for a consolidated attachment order.

Payments under consolidated order

47.95

If the Court receives payments in compliance with a consolidated attachment order it will, after

deducting such Court fees, if any, in respect of proceedings for or arising out of the order as are deductible from those payments, deal with the sums paid as if they had been paid by the judgment debtor to satisfy the relevant adjudications in proportion to the amounts payable thereunder, and for that purpose dividends may from time to time be declared and distributed among the creditors entitled thereto.