

# Rules of the District Court (Amendment) Rules 2008

## The Rules of the District Court (Cap. 336H)

### Order 49B – EXECUTION AND ENFORCEMENT OF JUDGMENT FOR MONEY BY IMPRISONMENT

#### Remarks

#### **1. Securing attendance at examination (O. 49B, r. 1)**

(1) Where a judgment for the payment of a specified sum of money is, wholly or partly, unsatisfied, the Court, on an ex parte application of the judgment creditor, may order that the judgment debtor be examined under rule 1A and shall, for the purpose of securing the attendance of the judgment debtor at an examination under rule 1A either –

- (a) order the judgment debtor, by an order which shall be served personally upon him, to appear before the Court at a time appointed by the Court, with such documents or records as the Court may specify; or
- (b) where it appears to the Court that there is reasonable cause, from all the circumstances of the case, including the conduct of the judgment debtor, to believe that an order under subparagraph (a) may be ineffective to secure the attendance of the judgment debtor for examination, order that he be arrested and brought before the Court before the expiry of the day after the day of arrest.

(2) On an application under paragraph (1), the Court may make an order prohibiting the judgment debtor from leaving Hong Kong.

(3) Where a judgment debtor fails to appear as ordered under paragraph (1)(a), the Court may order that he be arrested and brought before the Court for examination before the expiry of the day after the day of arrest.

(4) Section 71 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply to this rule.

(5) The order for arrest under paragraph (3) shall be in Form No. 102 in Appendix A.

#### **1A. Examination of judgment debtor (O. 49B, r. 1A)**

(1) Upon appearance of the judgment debtor for examination, he shall give evidence and he may be examined on oath by the judgment creditor and the Court; and the Court may receive such other evidence as it thinks fit.

- (2) The judgment debtor shall, at his examination, make a full disclosure of all his assets, liabilities, income and expenditure and of the disposal of any assets or income and shall, subject to the directions of the Court, answer all questions put to him.
- (3) Where the examination is adjourned, the Court shall order that the judgment debtor appear at the resumption of the examination and may –
- (a) order that he be prohibited from leaving Hong Kong; or
  - (b) where it appears to the Court that there is reasonable cause, from all the circumstances of the case, including any evidence heard by the Court and the conduct of the judgment debtor, to believe that he may not appear at the resumption of the examination, order that he be imprisoned until that resumption.
- (4) The order for imprisonment under paragraph (3)(b) shall be in Form No. 103 in Appendix A.

**1AA. Record of judgment debtor's evidence given at examination (O. 49B, r. 1AA)**

Rule 183  
Alignment with RHC

**The Court shall cause to be recorded, by means of shorthand notes or mechanical, electronic or optical device or otherwise, the evidence given by the judgment debtor at the examination conducted under rule 1A.**

**1B. Power of Court following examination (O. 49B, r. 1B)**

- (1) Where the Court is satisfied, following the examination conducted under rule 1A or following an examination conducted under Order 48, that the judgment debtor –
- (a) is able to satisfy the judgment, wholly or partly; or
  - (b) has disposed of assets with a view to avoiding satisfaction of the judgment or the liability which is the subject of the judgment, wholly or partly; or
  - (c) has wilfully failed to make a full disclosure as required under rule 1A(2) or at the examination under Order 48 or to answer any question as provided under that rule or Order,
- the Court may, in its discretion, order the imprisonment of the judgment debtor for a period not exceeding 3 months.
- (2) (a) Where the Court is satisfied, following the examination conducted under rule 1A or following an examination conducted under Order 48, that the judgment debtor is able or will be able to satisfy the judgment, wholly or partly, by instalments or otherwise, it may order him to satisfy the judgment in such manner as it thinks fit.
- (b) The Court may, on application, discharge, vary or suspend an order made under subparagraph (a), either absolutely or subject to such

- conditions as it thinks fit.
- (3) (a) Where the judgment debtor fails to comply with an order made under paragraph (2), the judgment creditor may apply to the Court, on not less than 2 clear days notice to the judgment debtor, for an order for the imprisonment of the judgment debtor and the Court may, unless the judgment debtor shows good cause, order the imprisonment of the judgment debtor for a period not exceeding 3 months.
- (b) Notwithstanding rule 7, the Court may order the imprisonment of the judgment debtor on each occasion of a failure to comply with an order made under paragraph (2) or more than once in respect of a continuing failure to comply with an order made under that paragraph.
- (4) The order for imprisonment under paragraph (1) shall be in Form No. 104 in Appendix A.
- (5) The application under paragraph (3)(a) shall be in Form No. 105 in Appendix A.
- (6) An order under paragraph (1), (2) or (3) shall not prevent execution of the judgment by other means unless the Court so directs.
- (7) An order for imprisonment of a judgment debtor shall be made in open court.

**1C. Imprisonment not to satisfy debt (O. 49B, r. 1C)**

An order for imprisonment under this Order shall not satisfy or extinguish any judgment debt.

**2. Support and maintenance allowance to prisoner for debt (O. 49B, r. 2)**

When a judgment debtor is committed to prison in execution of the judgment the Court shall fix whatever monthly allowance it may think sufficient for his support and maintenance, not exceeding \$660 per diem, which shall be paid by the person at whose instance the judgment has been executed to the Commissioner of Correctional Services by monthly payments in advance, the second and subsequent such payments to be made not less than 7 days before the last preceding such payment is exhausted.

**3. Removal to hospital of prisoner for debt in case of serious illness**  
(O. 49B, r. 3)

(1) In case of the serious illness of any person imprisoned in execution of a judgment it shall be lawful for the Court, on the certificate of the medical officer of the prison in which he is confined or of the Director of Health, to make an order for the removal of the judgment debtor to a hospital and for his treatment there under custody until further order.

(2) In any such case the period of the judgment debtor's stay in hospital shall be counted as part of his term of imprisonment and his support and maintenance money shall be paid as if no such order had been made.

**4. Release of prisoner for debt** (O. 49B, r. 4)

Every person arrested or imprisoned in execution of a judgment shall be released at any time on the judgment being fully satisfied, or at the request of the person at whose instance the judgment has been executed, or on such person omitting to pay his support and maintenance money.

**5. Recovery of amount of support and maintenance money**  
(O. 49B, r. 5)

All sums paid by a plaintiff for the support and maintenance of a person imprisoned in execution of a judgment shall be added to the costs of the judgment and shall be recoverable by the attachment and sale of the property of the judgment debtor; but the judgment debtor shall not be detained in custody or arrested on account of any sum so paid.

**6. Recovery of costs of execution** (O. 49B, r. 6)

The costs of obtaining and executing the order and warrant of arrest or imprisonment shall be added to the costs of the judgment and shall be recoverable accordingly.

**7. Effect of discharge of prisoner for debt** (O. 49B, r. 7)

Subject to rule 1B(3)(b), when any person imprisoned in execution of a judgment has been once discharged he shall not again be imprisoned on account of the same judgment, but his property shall continue liable, under the ordinary rules, to attachment and sale until the judgment is fully satisfied.

**8. Meaning of “judgment creditor” (O. 49B, r. 8)**

In this Order “judgment creditor” (判定債權人) includes any person entitled to enforce the judgment.