

Where appropriate, reference is made to the relevant Practice Directions and Law Society Circulars. It is to be hoped that this comprehensive and practical approach ensures that the procedures canvassed are not simply viewed in isolation and that the practitioner is equipped with all the necessary tools to devise an effective scheme for the enforcement of his client's judgment.

I am indebted to my colleague and friend, Philip Smart, for writing the chapter on the enforcement of foreign judgments, without which this book would not be complete. I would also like to express my appreciation to the Honourable Mr. Justice Anthony Rogers for writing the Foreword. I am also grateful to Mr. CW Tsang, formerly Chief Bailiff of the High Court, who provided many practical and incisive insights into the workings of the bailiff's office in Hong Kong and to the Judiciary Administrator who kindly provided the statistical information that is incorporated in this book.

Thanks are also due to the staff at the Faculty of Law, in particular Veronica Yiu who assisted with the typing of the manuscript, and Priscilla Wong, who helped me track down various unreported judgments.

Last but not least, I would like to thank both my family and the dynamic team at LexisNexis, in particular, Dmitri Hubbard and Bala Shunmugam, for their support and encouragement throughout the course of this project.

Christine N Booth

Faculty of Law

The University of Hong Kong, Pokfulam

3 June 2004

Contents

<i>Foreword</i>	vii
<i>Preface</i>	ix
<i>Table of cases</i>	xvii
<i>Table of statutes</i>	xxxix

Chapter 1	The Judgment and its Enforcement: General	1
1	The judgment	2
	a) Drawing up and entering judgment	2
	b) Interest	5
	c) Determining the methods of enforcement available	5
	d) Limitation periods	8
2	Enforcement of arbitral awards under the Arbitration Ordinance	9
Chapter 2	Provisional Remedies	15
1	Prohibition orders	16
	a) Jurisdiction of the court to make a prohibition order	16
	b) Procedure	19
	c) Effect of the prohibition order	20
	d) Duration of the order	21
	e) Discharge of order	21
	f) Power to award compensation	22
2	Injunctions	23
	a) Jurisdiction of the court to grant injunctions	23
	b) Procedure and preconditions for a Mareva injunction	28

Chapter 3	Oral Examination of the Judgment Debtor	31
1	Differences between Order 48 and Order 49B	33
2	Conditions for applying for an order for oral examination	35
3	Procedural matters	36
4	Who may be examined?	39
5	Nature and scope of oral examination	40
	a) Order 48	40
	b) Order 49B	44
6	Court's powers following an examination under either Order 48 or 49B	45
	a) Imprisonment	45
	b) Payment by instalments	48
7	Provisions relating to judgment debtors held in prison	49
8	Release of judgment debtor	50
Chapter 4	Writs of Execution	51
1	General principles	52
	a) Against whom execution be levied	52
	b) Limitation periods	53
	c) Procedure for issue of writ of execution	54
	d) Registration at the land registry	58
	e) The bailiff and his duties	58
	f) Duration and renewal of writ	60
2	Writ of <i>fi fieri facias</i> (fi fa)	61
	a) Procedure for issue of writ of fi fa	61
	b) Delivery of writ to bailiff	63
	c) Seizure by the bailiff	68
	d) Property liable to be attached and sold	73
	e) Sale	79
	f) Liability of bailiff and judgment creditor to third parties	83
	g) Insolvency of the judgment debtor	88
	h) Nature of return to the writ of fi fa	90
	i) Stay of execution by writ of fi fa	91
3	Writ of possession	91
	a) Procedure	91
	b) Delivery of possession	93
	c) Completion of the execution	94
	d) The return to the writ	94
4	Writ of delivery of goods	94
5	Writ of sequestration	96

a)	Nature and scope of order	96
b)	Procedure for issue of the writ of sequestration	98
c)	Leave to issue writ of sequestration	103
d)	Form and effect of the writ	107
e)	Duty and powers of sequestrators	108
f)	Discharge of the writ of sequestration	108
6	Writs in aid of execution	109
	a) Writ of assistance	109
	b) Writ of restitution	110

Chapter 5 Committal Proceedings 113

1	Judgments enforceable by committal and prerequisites to committal	115
2	Procedure	119
	a) The application for leave	120
	b) The motion to commit	125
3	The hearing	127
	a) Hearing in open court	127
	b) Evidence	128
	c) Procedural safeguards	130
4	The order for committal	132
	a) Form and contents of the order	132
	b) Execution of the order	133
5	Effect of procedural irregularities	133
6	Discharge of contemnor	137

Chapter 6 Garnishee Proceedings 141

1	Conditions for instituting garnishee proceedings	142
	a) Judgment for the payment of money	142
	b) Debt must be due or accruing due	143
	c) The garnishee must be within the jurisdiction	150
2	Procedural requirements	151
	a) Application for order nisi	151
	b) Service and effect of order nisi	152
	c) Special procedure where the Government is the garnishee	154
	d) Procedure for funds in court	155
3	Making the order absolute and the exercise of the court's discretion	156
	a) Garnishee not appearing or not disputing liability	156
	b) Garnishee disputing liability	156
	c) Claims of third persons	157

	d) Discretionary power to make order absolute	158		a) Equitable execution against land	206
4	The garnishee order absolute	161		b) Equitable execution against other property	206
	a) Effect of the garnishee order absolute	161	3	Where a receiver may be appointed	207
	b) Discharge of garnishee	163	4	Procedure for appointment of receiver	209
5	Costs of garnishee proceedings	163	5	Order for appointment of receiver	210
6	Effect of bankruptcy or liquidation of the judgment debtor	165	6	Role of receiver: rights and duties	211
			7	Effect of receivership order	212
Chapter 7	Charging Orders	167	Chapter 10	Bankruptcy and Winding Up	213
1	Legislative background	168	1	Relevant grounds for proceedings	213
2	Prerequisites to obtaining a charging order	169		a) Bankruptcy	213
3	What may be charged?	170		b) Winding up	216
4	Limitation periods	172	2	Costs and effects on creditor's own claim	217
5	Procedural requirements	172	3	Procedural matters	220
	a) Application for order nisi	172		a) Bankruptcy	220
	b) Service of the charging order nisi	174		b) Winding up by the court	221
6	Making the charging order absolute and the exercise of court's discretion	176	Chapter 11	Distress for Rent	225
	a) <i>Inter partes</i> hearing	176	1	Conditions to be satisfied	226
	b) Factors affecting exercise of the discretion	177	2	Procedure	227
7	The charging order absolute	181		a) Bailiff's powers	229
	a) Order must be in prescribed form	181		b) Sale	230
	b) Effective operating date of the order	182	3	What may be distrained	231
8	Effect of the order	183		a) Movable property	231
	a) Remedy of sale	183		b) Apparent possession	233
	b) Charging orders on land	183		c) Exceptions	235
	c) Charging orders on securities out of court and stop notices	186	4	Remedies for wrongful distress	237
	d) Charging orders on funds in court	189		a) Award of compensation	240
9	Effect of bankruptcy or liquidation of judgment debtor	189	5	Priority in distress	240
10	Enforcement of charging orders	191		a) Rights of execution creditors	240
11	Discharge or variation of charging order	194		b) Bankruptcy of the tenant	242
				c) Insolvency of the tenant	243
Chapter 8	Stop Orders and Stop Notices	197	Chapter 12	Stay of Execution	247
1	Stop orders in respect of funds in court	198	1	Stay of execution pending appeal	247
2	Stop notices in respect of securities not in court	198	2	Stay of execution on the grounds of matters occurring after judgment under Order 45 rule 11	250
Chapter 9	Appointment of Receiver by Way of Equitable Execution	203	3	Stay of execution by writ of <i>fi fa</i> under Order 47 rule 1(1)	251
1	Legislative history	204		a) Special circumstances which render it inexpedient to enforce the judgment	252
2	Equitable execution against land and other property	206		b) The debtor is unable to pay from any cause	253
				c) Procedure	253

Chapter 13	Enforcement of Foreign Judgments	255
	<i>by Philip Smart</i>	
1	Introduction	255
2	Recognition and enforcement	257
3	Enforcement at common law	258
	a) Jurisdiction of the foreign court	258
	b) Sum of money	260
	c) Finality	260
	d) Mainland PRC judgments	263
	e) Defences	269
4	Enforcement by statute	270
	a) FJREO: Overview	272
	b) The FJREO after 1997	273
	c) The Judgments (Facilities for Enforcement) Ordinance	280
5	Future developments	281
Appendix		283
<i>Index</i>		291