

# Charging Orders Act, 1988

## Principal Act

Act. No. 1988-34

*Commencement*

1.1.1989

*Assent*

15.12.1988

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## ARRANGEMENT OF SECTIONS

### Section

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AN ACT TO MAKE PROVISION FOR IMPOSING CHARGES TO SECURE PAYMENT OF MONEY DUE, OR TO BECOME DUE, UNDER JUDGMENTS OR ORDERS OF COURT; TO PROVIDE FOR RESTRAINING AND PROHIBITING DEALINGS WITH, AND THE MAKING OF PAYMENTS IN RESPECT OF, CERTAIN SECURITIES; AND FOR CONNECTED PURPOSES.

**Short title and commencement.**

1. This Act may be cited as the Charging Orders Act, 1988 and shall come into operation on such date as the Governor may by notice in the Gazette appoint.

**Interpretation.**

2. (1) In this Act, unless the context otherwise requires—

“charging order” means an order made under section 3(1);

“debtor” and “creditor” have the meanings given by section 3(1);

“dividend” includes any distribution in respect of any unit of a unit trust;

“government stock” means any stock issued by Her Majesty’s government in Gibraltar or any funds of, or annuity granted by that government;

“maintenance order” has the meaning given by section 30 of the Maintenance Act;

“stock” includes shares, debentures and any securities of the body concerned, whether or not constituting a charge on the assets of that body;

“unit trust” means any trust established for the purpose, or having the effect of providing, for persons having funds available for investment, facilities for the participation by them, as beneficiaries under the trust, in any profits or income arising from the acquisition, holding, management or disposal of any property whatsoever.

(2) For the purposes of section 3 references to a judgement or order of the Supreme Court or the Court of First Instance shall be taken to include references to a judgment, order, decree or award (however called) of any court or arbitrator (including any foreign court or arbitrator) which is or has become enforceable (whether wholly or to a limited extent) as if it were a judgment or order of the Supreme Court or the Court of First Instance.

(3) References in section 4 to any securities include references to any such securities standing in the name of the Accountant-General.

## **Charging Orders.**

3.(1) Where under a judgment or order of the Supreme Court or the Court of First Instance a person (the “debtor”) is required to pay a sum of money to another person (the “creditor”) then, for the purpose of enforcing that judgment or order, the appropriate court may make an order in accordance with the provisions of this Act imposing on any such property of the debtor as may be specified in that order a charge for securing the payment of any money due or to become due under the judgment or order.

(2) The appropriate court is–

- (a) in a case where the property to be charged is a fund in court, the court in which that fund is lodged;
- (b) in a case where paragraph (a) does not apply and the order to be enforced is a maintenance order of the Supreme Court, the Supreme Court or the Court of First Instance;
- (c) in a case where neither paragraph (a) nor paragraph (b) applies and the judgment or order to be enforced is a judgment or order of the Supreme Court for a sum exceeding £1,000, the Supreme Court;
- (d) in any other case the Court of First Instance.

(3) Where a person applies to the Supreme Court for a charging order to enforce more than one judgment or order, that court shall be the appropriate court in relation to the application if it would be the appropriate court, apart from this subsection, on an application relating to one or more of the judgments or orders concerned.

(4) In deciding whether to make a charging order the court shall consider all the circumstances of the case and, in particular, any evidence before it as to–

- (a) the personal circumstances of the debtor; and
- (b) whether any other creditor of the debtor would be likely to be unduly prejudiced by the making of the order.

## **Property which may be charged.**

4.(1) Subject to subsection (3), a charge may be imposed by a charging order only on–

- (a) any interest held by the debtor beneficially–
  - (i) in any asset of a kind mentioned in subsection (2), or

- (ii) under any trust; or
- (b) any interest held by a person as trustee of a trust (“the trust”), if the interest is in such an asset or is an interest under another trust and–
  - (i) the judgment or order in respect of which a charge is to be imposed was made against that person as trustee of the trust, or
  - (ii) the whole beneficial interest under the trust is held by the debtor unencumbered and for his own benefit, or
  - (iii) in a case where there are two or more debtors all of whom are liable to the creditor for the same debt, they together hold the whole beneficial interest under the trust unencumbered and for their own benefit.
- (2) The assets referred to in subsection (1) are–
  - (a) land;
  - (b) securities of any of the following kinds–
    - (i) government stock;
    - (ii) stock of any body incorporated within Gibraltar;
    - (iii) stock of any body incorporated outside Gibraltar or of any state or territory outside Gibraltar being stock registered in a register kept in Gibraltar;
    - (iv) units of any unit trust in respect of which a register of the unit holders is kept in Gibraltar; or
  - (c) funds in court.
- (3) In any case where a charge is imposed by a charging order on any interest in an asset of a kind mentioned in paragraph (b) or (c) of subsection (2) the court making the order may provide for the charge to extend to any interest or dividend payable in respect of the asset.

**Provisions supplementing sections 3 and 4.**

5.(1) A charging order may be made either absolutely or subject to conditions as to notifying the debtor or as to the time when the charge is to become enforceable, or as to other matters.

(2) Subject to the provisions of this Act, a charge imposed by a charging order shall have the like effect and shall be enforceable in the same courts and in the same manner as an equitable charge created by the debtor by writing under his hand.

(3) The court by which a charging order was made may at any time, on the application of the debtor or of any person interested in any property to which the order relates, make an order discharging or varying the charging order.

(4) Where a charging order has been registered in the Supreme Court under section 3 of the Land (Titles) Act an order under subsection (3) discharging the charging order may direct that the entry be cancelled.

(5) The Governor on the advice of the Chief Justice may by order amend section 4(2) by adding to, or removing from, the kinds of asset for the time being referred to there, any asset of a kind which ought to be so added or removed.

### **Rules of court relating to stop orders and notices.**

6.(1) The power to make rules of court under section 38 of the Supreme Court Act shall include power by any such rules to make provision—

- (a) for the court to make a stop order on the application of any person claiming to be entitled to an interest in prescribed securities;
- (b) for the service of a stop notice by any person claiming to be entitled to an interest in prescribed securities.

(2) The power to make rules of court under section 55 of the Court of First Instance Act shall include power by any such rules to make provision for the service of a stop notice by any person entitled to an interest in any securities by virtue of a charging order made by the Court of First Instance.

(3) Rules of court made by virtue of subsection (1) or (2) shall prescribe the person or body on whom a copy of any stop order or a stop notice is to be served.

(4) Any rules of court made by virtue of this section may include such incidental, supplemental and consequential provisions as the authority making them considers necessary or expedient, and may make different provision in relation to different cases or classes of case.

(5) In this section—

“stop order” means an order of the court prohibiting the taking, in respect of any of the securities specified in the order, of any of the steps mentioned in subsection (6);

“stop notice” means a notice requiring any person or body on whom it is duly served to refrain from taking, in respect of any of the securities specified in the notice, any of those steps without first notifying the person by whom, or on whose behalf, the notice was served; and

“prescribed securities” means securities (including funds in court) of a kind prescribed by rules of court made under this section.

- (6) The steps mentioned in subsection (5) are—
- (a) the registration of any transfer of the securities;
  - (b) in the case of funds in court, the transfer, sale, delivery out, payment or other dealing with the funds, or of the income thereon;
  - (c) the making of any payment by way of dividend, interest or otherwise in respect of the securities; and
  - (d) 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.

**Consequential amendments relating to completion of execution.**

7. In section 40 of the Bankruptcy Act and in section 245 of the Companies Act (which restrict the rights of creditors under execution or attachment) there is substituted, in each case for subsection (2), the following subsection-

"(2) For the purposes of this Act-

- (a) an execution against goods is completed by seizure and sale or by the making of a charge order under section 3 of the Charging Orders Act 1988;
- (b) an attachment of a debt is completed by the receipt of debt; and
- (c) an execution against land is completed by seizure, by the appointment of a receiver, or by the making of a charging order under the said section 3."