



Y KONG, WONG & PARTNERS
MEMBER FIRM OF YINGKE INTERNATIONAL
ADVOCATES & SOLICITORS

LEGAL INSIGHTS



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ENFORCEMENT PROCEEDINGS - WINNING IN COURT IS NOT THE END

By Siow Chan Wai, Shawn & Tow Cai Tong



Introduction

In civil litigation, every dispute ends with a winner and a loser. When the court delivers its final judgment, it often includes an order for the losing party to pay a sum of money as compensation or damages. While such an order carries the authority of the court, it does not always guarantee voluntary compliance. In practice, some judgment debtors may refuse or fail to make payment, despite the clear terms of the judgment.

If you are the successful party, the judgement creditor, there are several legal avenues available to help you enforce the judgment and recover the sum awarded. This process is known as enforcement proceedings, and it plays a critical role in ensuring that court judgments are respected and carried out effectively.



Garnishee Proceedings

If the losing party (judgment debtor) does not pay after a court judgment, the winning party (judgment creditor) can apply to the court to recover the money from a third party — usually the debtor's bank. This process is called a garnishee proceeding, and it is governed by **Order 49 of the Rules of Court 2012**.

Once the court grants a Garnishee Order to Show Cause, the debtor's bank account may be frozen. If the bank confirms that funds are available, the court may then issue a **Garnishee Order Absolute** to release the money to the creditor.

However, this may not apply if:

- The account is jointly held with another person, or
- The funds are held in trust for someone else.

In such cases, the court may refuse to allow garnishment because the money does not fully belong to the judgment debtor.



Judgement Debtor Summons

A Judgment Debtor Summons is a court order requiring the judgment debtor (the losing party) to appear before the court to explain their financial situation. This includes details about their income, assets, liabilities, and any other relevant information.

This process is governed by **Order 48 of the Rules of Court 2012**. The court will assess whether the debtor is financially able to pay the judgment debt, and may order payment either in a lump sum or by instalments.

If the debtor fails to comply with the court's order, for example, by refusing to attend or failing to make payments as directed, the court may issue a further summons, and in serious cases, this can result in arrest or imprisonment.

Writ of Seizure and Sale

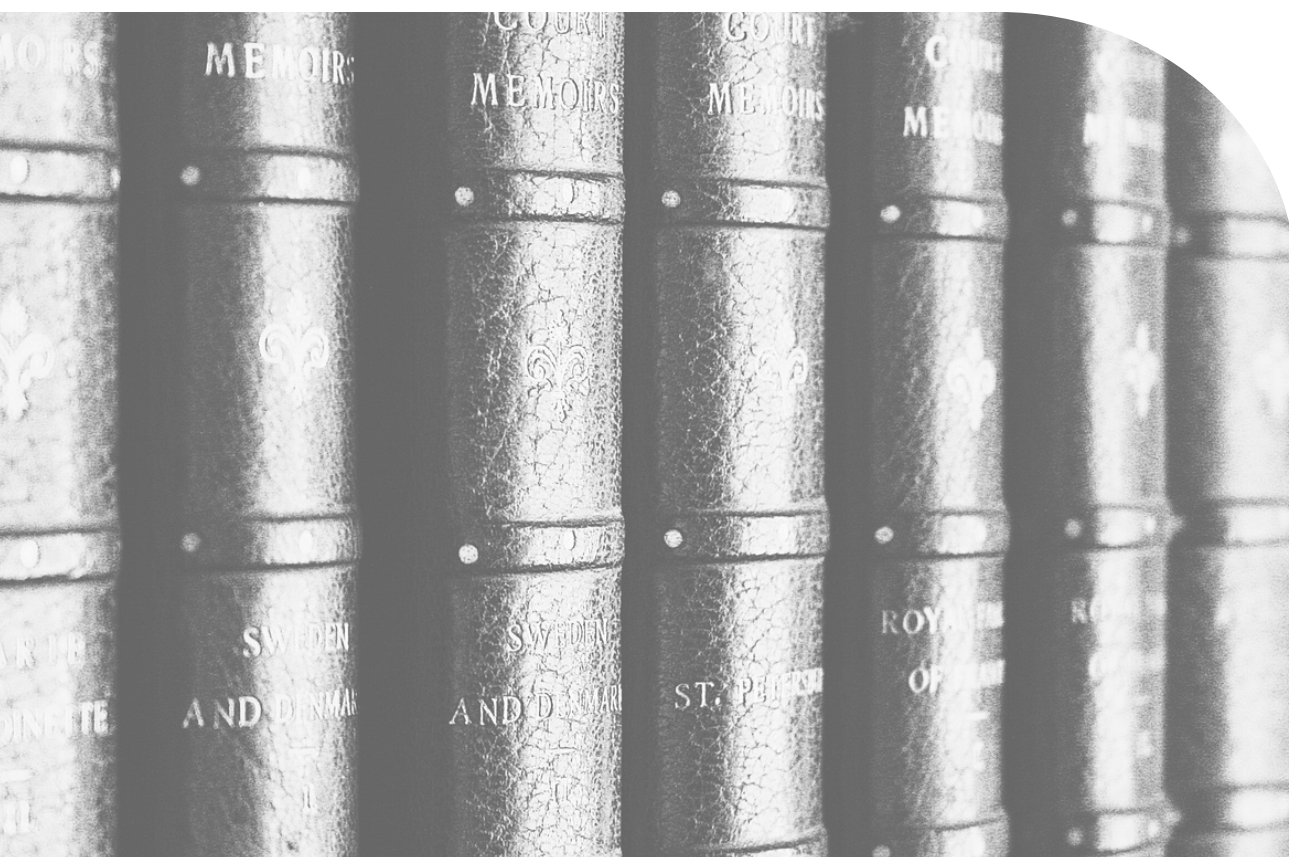


The judgement creditor can apply to seize and sell the debtor's movable or immovable properties to satisfy the judgement sum, and it will be commenced by the court sheriff/ bailiff through public auction. This process is carried out by the court sheriff or bailiff, and the seized items will usually be sold through public auction. It is governed by **Order 46 of the Rules of Court 2012**.

However, not all property can be seized under a **Writ of Seizure and Sale**. Certain items are legally exempted, including the debtor's personal belongings, clothing, tools of trade, pension funds, and wages, as these are considered essential for basic living and livelihood.

Winding-up Proceedings

Winding-up applies when the judgment debtor is a company. It is a legal process to dissolve the company and sell its assets to pay off debts. Under Section 466 of the **Companies Act 2016**, a creditor may file a winding-up petition in the High Court if the debt is RM50,000.00 or more. Before that, the creditor must serve a statutory notice of demand and wait **21 days**. If the company fails to pay within that period, the creditor can proceed with the petition. Once the court grants a winding-up order, the company's bank accounts will be frozen, operations must stop, and the directors lose their powers.





Bankruptcy Proceedings

Bankruptcy proceedings apply when the judgment debtor is an individual who fails to settle the judgment sum. Governed by the **Insolvency Act 1967 (formerly the Bankruptcy Act)**, and updated in 2017, the current minimum threshold for bankruptcy is RM100,000, as set by the Insolvency (Amendment) Bill 2020.

To begin, the creditor must serve a bankruptcy notice and allow **21 days** for payment. If there is no response, a bankruptcy petition may be filed in the High Court. Once the court declares the debtor bankrupt, their assets are automatically vested in the **Director General of Insolvency (DGI)**, who will manage, sell, or dispose of the assets to repay the creditor.



Conclusion

In short, enforcement proceedings offer several legal avenues for a judgment creditor to recover what is rightfully owed. These mechanisms reinforce the principle that a court order must be obeyed and enforced. Under **Section 6(3) of the Limitation Act 1953**, a judgment cannot be enforced after twelve years from the date it becomes enforceable — not the date of the judgment itself.

A final judgment, no matter how favourable, is merely a piece of paper if it is not acted upon. So, if you've won your case, don't delay, take the necessary steps to enforce your judgment and secure what is due to you.



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Contributors

SIOW CHAN WAI, SHAWN
(Partner)

✉ shawn@ykwong.com.my

TOW CAI TONG
(Intern)

✉ intern@ykwong.com.my

Get in Touch



03-2141 0172



www.ykwong.com.my/



16-03, Menara EcoWorld
Bukit Bintang City Centre
No. 2, Jalan Hang Tuah
55100 Kuala Lumpur



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please contact us, **Y Kong, Wong & Partners.***