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Enforcing of Claims in Singapore

presented by
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In Association with T S Oon & Partners, Malaysia



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The firm, together with our associate firm T S Oon & Partners in Malaysia, advise clients all over the world on doing business in Asia. Apart from Singapore and Malaysia qualified lawyers, the firm also employs lawyers licenced to practise in the region to ensure that we are able to meet client's needs.

OUR EXPERTISE

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Topics

1. Gathering evidence
2. Obtaining security
3. Preventing dissipation of assets
4. Enforcing judgment
5. Resisting security for costs application

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1. Gathering evidence

Problem:

- Lack of access to evidence in the Defendant's possession

Solutions:

- Mare del Nord order
- Search order (a.k.a. Anton Piller order)

1.1. Mare del Nord order

What is it?

- An order for the inspection of the ship or other property to obtain evidence

How to apply for it?

- *Inter partes* application (***The Arktis Fighter***)
- *Ex parte* injunction restraining destruction of evidence may be sought pending *inter partes* application for Mare del Nord order

1.1. Mare del Nord order

When will it be given?

- When the benefit of the inspection to the Plaintiff outweighs any inconvenience to the Defendant
 - Plaintiff has a good arguable case on the merits
 - Evidence to be obtained may assist the trial judge
 - Plaintiff gives an undertaking in damages
- Low threshold
 - “It is in the interest of justice that, when in doubt, it is better to preserve evidence than to let pass an opportunity of obtaining evidence.” (*The Mare del Nord*)

1.2. Search order (a.k.a. Anton Piller order)

What is it?

- A mandatory injunction permitting entry to the Defendant's premises to obtain evidence

How to apply for it?

- *Ex parte* application

1.2. Search order (a.k.a. Anton Piller order)

When will it be given?

- 4 requirements have to be satisfied:
 - Plaintiff has an extremely strong *prima facie* case
 - Damage to the Plaintiff would have been very serious
 - Real possibility that the Defendant would destroy relevant documents
 - Effect of the order would not be out of proportion to the legitimate object of the order

(Asian Corporate Services (SEA) Pte Ltd v Eastwest Management Ltd (Singapore Branch))

1.3. Mare del Nord order vs Search order

	Mare del Nord order	Search order
Presence of element of surprise	<ul style="list-style-type: none"> - No element of surprise - Application must be made <i>inter partes</i> + Injunction restraining destruction of evidence may be sought <i>ex parte</i> pending <i>inter partes</i> application for Mare del Nord order 	<ul style="list-style-type: none"> + Element of surprise present + Application is made <i>ex parte</i>
Ease of obtaining order	<ul style="list-style-type: none"> + Low threshold required to obtain order 	<ul style="list-style-type: none"> - Only granted in exceptional cases due to the invasive nature of the remedy - There must be a real possibility of destruction of evidence by the Defendant

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2. Obtaining security

Problem:

- Lack of assets (belonging to the Defendant) within jurisdiction to enforce judgment against

Solutions:

- Arrest vessel as security or to obtain security
- Mandatory injunction to enforce undertaking to provide security

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3. Preventing dissipation of assets

Problem:

- Defendant may dispose of or dissipate assets for the purpose of avoiding satisfaction of the judgment

Solution:

- Mareva injunction

3.1. Mareva injunction

What is it?

- An injunction restraining the Defendant from disposing of or dissipating assets for the purpose of avoiding satisfaction of the judgment
- Can affect assets located within and outside Singapore (worldwide Mareva injunction)

When will it be given?

- 4 requirements to be satisfied:
 - Singapore court has jurisdiction over cause of action
 - Plaintiff has a good arguable case
 - Defendant has assets within or outside the jurisdiction
 - Real risk that those assets may be disposed of or dissipated so that judgment cannot be enforced

3.2. Ship arrest vs Mareva injunction

	Ship arrest	Mareva injunction
Nature of remedy	<ul style="list-style-type: none"> • <i>In rem</i> 	<ul style="list-style-type: none"> • <i>In personam</i>
Ease of obtaining remedy	+ Easy to obtain as long as statutory requirements are satisfied	- Only granted in exceptional cases due to the invasive nature of the remedy
Assets affected	<ul style="list-style-type: none"> - Ship - One claim, one ship 	+ All of the Defendant's assets, both within and outside Singapore
Effect of security	- Plaintiff's claim may be subject to interveners' claims	+ All of the Defendant's assets will be available for Plaintiff's claim

3.2. Ship arrest vs Mareva injunction

When is a Mareva injunction more suitable than a ship arrest?

- Defendant does not own any vessel at the time action is commenced
- Vessel is lost or destroyed
- Claim is not within the court's admiralty jurisdiction
- Claim enjoys lower priority compared with other known claims against the vessel

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4. Enforcing judgment

Problem:

- Judgment debtor is unwilling to pay

Solutions:

- Examination of judgment debtor
- Writ of seizure & sale
- Garnishee proceedings
- Bankruptcy or winding up proceedings

4.1. Examination of judgment debtor

- **Purpose:** To find out what assets the judgment debtor has and where they are situated
- **The process involves:**
 - Compelling the judgment debtor or an officer thereof to attend before the Registrar
 - Orally examining the judgment debtor to obtain information regarding the location of his or its assets
 - Compelling the judgment debtor to produce any documents in his or its possession

(Order 48 rule 1(1) of the Rules of Court)

4.2. Writ of seizure & sale

Purpose:

- To seize and sell assets belonging to the judgment debtor
- To satisfy judgment debt from sale proceeds

Types of property that may be seized and sold:

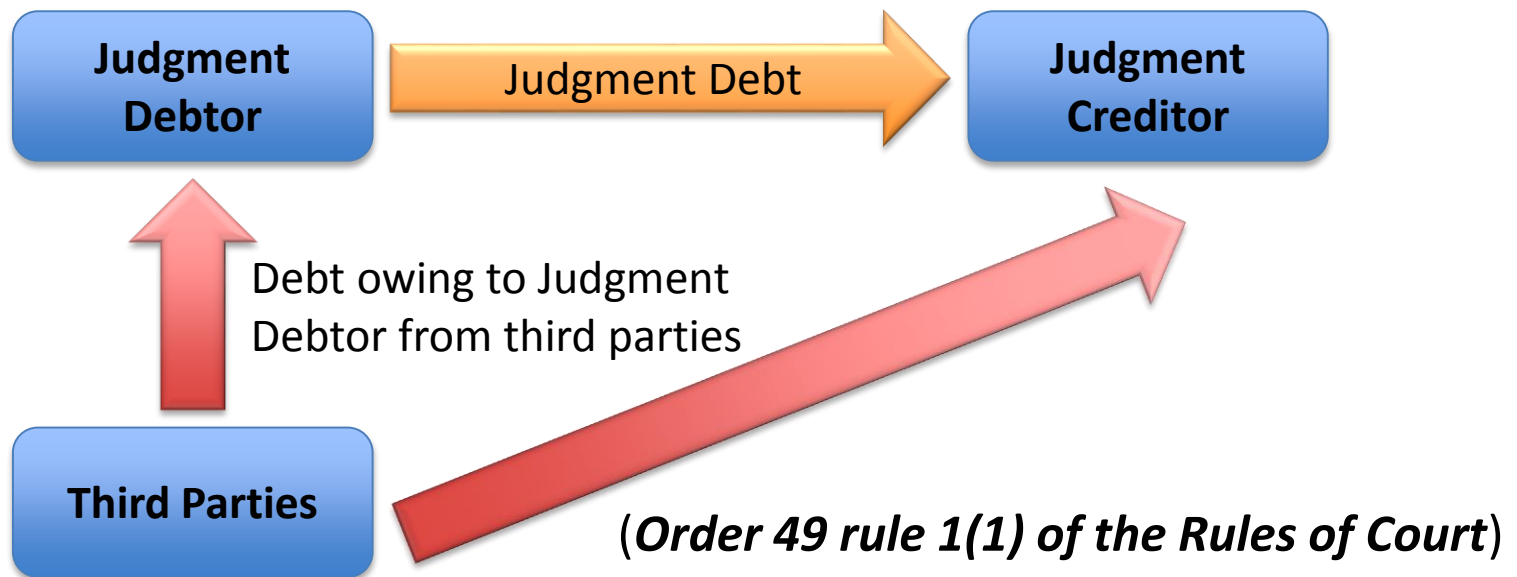
- Movable property – ***Order 46***
- Immovable property – ***Order 47 rules 4 and 5***
- Securities (i.e. stocks and shares) – ***Order 47 rule 6***

4.2. Ship arrest vs Writ of seizure & sale of vessel

	Ship arrest	Writ of seizure & sale of vessel
Nature of remedy	<ul style="list-style-type: none">• <i>In rem</i>	<ul style="list-style-type: none">• <i>In personam</i>
Ease of obtaining sale	<ul style="list-style-type: none">+ Easier to sell at a better price+ Vessel sold free of encumbrances	<ul style="list-style-type: none">- Difficult to sell at good price- Vessel sold with existing encumbrances

4.3. Garnishee proceedings

- **Purpose:** To get a third party to pay the judgment creditor debts, due to judgment debtor from the third party



- **Examples:** Judgment debtor's bank accounts; trade debts owing to the judgment debtor from its customers

4.4. Bankruptcy or winding up proceedings

Purpose:

- To liquidate the judgment debtor's assets for distribution
- This sometimes has the effect of motivating the judgment debtor to pay

How to place judgment debtor in liquidation?

- If the judgment debt is in excess of SGD 10,000, the most effective way to place the judgment debtor in liquidation is to first issue a statutory demand
- File a winding up application 3 weeks later

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5. Resisting security for costs applications

- Plaintiff ordinarily out of jurisdiction (***Order 23 rule 1(1)(a) or the Rules of Court***)

Stifling?

- Plaintiffs need not be worried that their claims will be stifled
- Court will only order the Plaintiff to provide security for costs if it is just in all the circumstances of the case (***Order 23 rule 1(1) of the Rules of Court; Creative Elegance (M) Sdn Bhd v Puay Kim Seng***)
- Court of consider:
 - Whether the Plaintiff has a *bona fide* claim with a reasonable prospect of success
 - Whether an order for security for costs would stifle the Plaintiff's claim
 - The ease of enforcement of order for payment of costs

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Q&A

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