

GRAND COURT LAW (2006 REVISION)
THE GRAND COURT (AMENDMENT) RULES 2006

These Rules are made by the Rules Committee pursuant to Section 19(3) of the Grand Court Law 2006 Revision.

1. Citation, Commencement and Interpretation.

- (1) These Rules shall be cited as the Grand Court (Amendment) Rules 2006.
- (2) (a) These Rules shall come into operation on the 30th day of October 2006 referred to in this rule as the "Commencement Date".
(b) These rules shall apply to every proceeding which is pending or commenced in the Court on or after the Commencement Date.
- (3) Words and expressions in these Rules which are also used in the Grand Court Rules 1995 (Revised Edition) shall have the same meaning in these Rules as in the Grand Court Rules 1995.

2. Revocation and Replacement of Order 50.

GCR Order 50 is hereby revoked and replaced by the order contained in the schedule hereto.

Made by the Rules Committee on the 13th day of October 2006.

The Honourable Anthony Smellie QC, Chief Justice
The Honourable Sam Bulgin QC, Attorney General
Andrew J Jones QC, Legal Practitioner
Graham Ritchie QC, Legal Practitioner

Explanatory Note

Rule 14 of GCR Order 50 has been amended to simplify the procedure for the withdrawal of stop notices.

ORDER 50**CHARGING ORDERS, STOP ORDERS, ETC.****Order imposing a charge on a beneficial interest (O.50, r.1)**

1. (1) The power to make a charging order under paragraph 1 of the Law shall be exercisable by the Court.
- (2) An application by a judgment creditor for a charging order in respect of a judgment debtor's beneficial interest in any property may be made by an ex parte originating motion, and any order made on such an application shall in the first instance be an order, made in Form No. 33 in Appendix 1, to show cause, specifying the time and place for further consideration of the matter and imposing the charge in any event until that time.
- (3) The application shall be supported by an affidavit -
 - (a) identifying the judgment or order to be enforced and stating the amount unpaid at the date of the application;
 - (b) stating the name of the judgment debtor and of any creditor of whom the applicant can identify;
 - (c) giving full particulars of the subject matter of the intended charge, including -
 - (i) in the case of securities other than securities in Court, the full title of the securities, their amount and the name in which they stand;
 - (ii) and, in the case of funds in Court, the number of the account; and
 - (iii) in the case of land, the registration details.
 - (d) verifying that the interest to be charged is owned beneficially by the judgment debtor.
- (4) In any case where the subject matter of the intended charge is an interest in land, the supporting affidavit shall have exhibited to it an uncertified extract of the relevant Land Register.
- (5) Unless the Court otherwise directs, an affidavit for the purposes of this rule may contain statements of information or belief with the sources and grounds thereof.

- (6) An application may be made for a single charging order in respect of more than one judgment or order against the debtor provided that an order is first made pursuant to Order 4, rule 3, for all the causes or matters to be consolidated.

Interpretation (O.50, r.1A)

- 1A.** (1) In this Order "the Law" means the Third Schedule of The Judicature Law and any expressions used in this Order and in the Law have the same meanings in this Order as they have in the Law.
- (2) References to "Form RL9A", "Form RL10A" and "Form RL10B" are references to such forms as prescribed in the Third Schedule of the Registered Land Rules(2001 Revision).

Service of notice of order to show cause (O.50, r.2)

- 2.** (1) On the making of an order to show cause, notice of the order shall, unless the Court otherwise directs, be served as follows -
- (a) a copy of the order, together with a copy of the affidavit in support, shall be served on the judgment debtor;
 - (b) where the order relates to securities, other than securities in Court, copies of the order shall also be served -
 - (i) in the case of securities issued by or on behalf of the government of the Islands, the Financial Secretary and the stock transfer agent (if any);
 - (ii) in the case of shares in any company, not being a registered mutual fund, upon its registered office and share transfer agent (if any);
 - (iii) in the case of shares or units of any registered mutual fund, upon its licensed mutual fund administrator and its share transfer agent (if any);
 - (c) where the order relates to a fund in Court, a copy of the order shall be served on the Accountant General at the Court Funds Office; and
 - (d) where the order relates to an interest under a trust, not being a registered mutual fund, copies of the order shall be served on such of the trustees as the Court may direct.
- (2) Without prejudice to the provisions of paragraph (1), the Court may, on the making of the order to show cause, direct the service of copies of the order, and of the affidavit in support, on any other creditor of the judgment debtor or on any other interested person as may be appropriate in the circumstances.

- (3) Documents to be served under this rule must be served at least 7 days before the time appointed for the further consideration of the matter.

Order made on further consideration (O.50, r.3)

3. (1) On the further consideration of the matter the Court shall, either make the order absolute, with or without modifications, or discharge it.
- (2) Where the order is made absolute, it shall be made in Form No. 34 of Appendix 1, and where it is discharged, the provisions of rule 7, regarding the service of copies of the order of discharge, shall apply.

Order imposing a charge on an interest held by a trustee (O.50, r.4)

4. (1) Save as provided by this rule, the provisions of rules 1, 2 and 3 shall apply to an order charging an interest held by a trustee as they apply to an order charging the judgment debtor's beneficial interest.
- (2) Instead of verifying the judgment debtor's beneficial ownership of the interest to be charged, the affidavit required by rule 1(3) shall state the ground on which the application is based and shall verify the material facts.
- (3) On making the order to show cause, the Court shall give directions for copies of the order, and of the affidavit in support, to be served on such of the trustees and beneficiaries, if any, as may be appropriate.
- (4) Rules 5, 6 and 7 shall apply to an order charging an interest held by a trustee as they apply to an order charging the judgment debtor's beneficial interest, except that, where the order is made under subsection (ii) or (iii) of paragraph 2(1)(b) of the Law references in those rules to "the judgment debtor" shall be references to the trustee.
- (5) Form Nos. 33 and 34 of Appendix 1 shall be modified so as to indicate that the interest is held by the debtor as trustee or, as the case may be, that it is held by a trustee (to be named in the order) on trust for the debtor beneficially.

Registration of order imposing a charge on an interest in land (O.50, r.4A)

- 4A. (1) An order made under rule 1 in respect of any interest in land shall be registered in the encumbrances section of the relevant land register.
- (2) When making an order, in Form 33 of Appendix I, to which this rule applies the Judge shall also sign an order in Form RL9A and it shall be the judgment creditor's duty to present the original of such order, together with at least three copies, to the Registrar of Lands for registration.

- (3) When the judgment creditor receives back from the Registrar of Lands the receipted copies of the order, he shall forthwith file one copy in Court and serve one copy on the judgment debtor.
- (4) If an order nisi to which this rule applies -
 - (a) is made absolute without any modification, the fact that it is made absolute shall not be registered;
 - (b) is made absolute with modifications, a variation of charge order in Form RL10B shall be signed by the Judge; or
 - (c) is discharged, a discharge of charge order in Form RL10A shall be signed by the Judge,

and it shall be the duty of the judgment creditor to present such order together with the appropriate number of copies to the Registrar of Lands and file and serve the receipted copies in accordance with the provisions of paragraph (3) of this rule.

- (5) If an order to which this rule applies relates to more than one registered parcel of land, the Judge shall sign separate orders, Form RL9A or RL10A or RL10B, as the case may be, in respect of each parcel.
- (6) A charging order or variation of charge or discharge of a charging order to which this rule applies shall take effect from the date upon which it is registered in the incumbrances section of the relevant land register.

Effect of order in relation to securities out of Court (O.50, r.5)

- 5. (1) No disposition by the judgment debtor of his interest in any securities to which an order to show cause relates made after the making of that order shall, so long as that order remains in force, be valid as against the judgment creditor.
- (2) Until such order is discharged or made absolute, any person or body served in accordance with rule 2(1)(b) shall not permit any transfer of any of the securities specified in the order, or pay any dividend, interest or redemption payment in relation thereto, except with the authority of the Court, and, if it does so, shall be liable to pay the judgment creditor the value of the securities transferred or, as the case may be, the amount of the payment made or, if that value or amount is more than sufficient to satisfy the judgment or order to which such order relates, so much thereof as is sufficient to satisfy it.
- (3) If the Court makes the order absolute, a copy of the order, including a stop notice as provided in Form No. 34 of Appendix 1, shall be served on such person or body specified in rule 2(1)(b) as may be appropriate and, save as provided in rule 7(5), rules 11 to 14 shall apply to such a notice as they apply to a stop notice made and served under rule 11.

- (4) This rule does not apply to orders in respect of securities in Court.

Effect of order in relation to funds in Court (O.50, r.6)

6. (1) Where an order to show cause has been made in relation to funds in Court (including securities in Court) and a copy thereof has been served on the Accountant General in accordance with rule 2, no disposition by the judgment debtor of any interest to which the order relates, made after the making of that order, shall, so long as the order remains in force, be valid as against the judgment creditor.
- (2) If the Court makes the order absolute, a copy of the order shall be served on the Accountant General at the Court Funds Office.

Discharge, etc., of charging order (O.50, r.7)

7. (1) Subject to paragraph (2), on the application of the judgment debtor or any other person interested in the subject matter of the charge, the Court may, at any time, whether before or after the order is made absolute, discharge or vary the order on such terms (if any) as to costs or otherwise as it thinks fit.
- (2) Notice of the application for the discharge or variation of the order shall be served on such interested parties as the Court may direct.
- (3) Where an order is made for the discharge or variation of a charging order in respect of funds in Court, a copy thereof shall be served on the Accountant General at the Court Funds Office.
- (4) Where an order is made for the discharge or variation of a charging order in respect of securities other than securities in Court, a copy thereof shall be served on the body or person specified in rule 2(1)(b) as may be appropriate, and the service thereof shall discharge, or, as the case may be, vary any stop notice in respect of such securities which may be in force pursuant to the original order.
- (5) Where an order is made under this rule for the discharge or variation of a charge of an interest in land, the provisions of rule 4A shall apply.

Enforcement of order charging an interest in land (O.50, r.8)

8. (1) A registered charge of an interest in land may be enforced by sale or the appointment of a receiver only if an order absolute has been made in accordance with rule 3.
- (2) A judgment creditor may exercise his power of sale in respect of a charge to which this rule applies by public auction in accordance with Section 75 of the Registered Land Law (1995 Revision) without applying to the Court for an order for sale and without giving any notice in accordance with Section 72 of the Registered Land Law (1995 Revision).

- (3) A judgment creditor may apply to the Court for an order for sale by private treaty, tender or any other means and upon such application the Court shall give directions for sale in accordance with Order 31, rule 2.
- (4) An application for an order for sale under this rule shall be supported by an affidavit -
 - (a) identifying the charging order sought to be enforced and giving full particulars of the registered title of the land;
 - (b) specifying the amount in respect of which the charge was imposed and the balance outstanding at the date of the affidavit;
 - (c) identifying any persons having a prior interest registered in the incumbrances section in the relevant land register; and
 - (d) setting out the judgment creditor's proposals as to the manner of sale.
- (5) Order 31, rule 3, shall apply to sales made pursuant to paragraph (2) or pursuant to an order made under paragraph (3) of this rule.

Enforcement of order charging property other than land (O.50, r.9)

- 9. (1) An application for an order for sale of any property other than land made subject to a charging order shall be made by summons and Order 31 shall apply, with such variations as may be necessary, as if the charged property were land.
- (2) An application for the appointment of a receiver of property other than land shall be made by summons and Order 30 shall apply.

Funds in Court: stop order (O.50, r.10)

- 10. (1) The Court, on the application of any person -
 - (a) who has a charge on the interest of any person in funds in Court; or
 - (b) to whom that interest has been assigned; or
 - (c) who is a judgment creditor of the person entitled to that interest,
 may make an order prohibiting the transfer, sale, delivery out, payment or other dealing with such funds, or any part thereof, or the income thereon, without notice to the applicant.
- (2) An application for an order under this rule must be made by summons in the cause or matter relating to the funds in Court, or, if there is no cause or matter, by originating summons.

- (3) The summons must be served on every person whose interest may be affected by the order applied for and on the Accountant General but shall not be served on any other person.
- (4) Without prejudice to the Court's powers and discretion as to costs, the Court may order the applicant for an order under this rule to pay the costs of any party to the cause or matter relating to the funds in question, or of any person interested in those funds, occasioned by the application.

Securities not in Court: stop notice (O.50, r.11)

- 11. (1) Any person claiming to be beneficially entitled to an interest in any securities of the kinds set out in paragraph 2(2)(b) of the Law, other than securities in Court, who wishes to be notified of any proposed transfer or payment of those securities may avail himself of the provisions of this rule.
- (2) A person claiming to be so entitled must file in Court -
 - (a) an affidavit identifying the securities in question and describing his interest therein by reference to the document under which it arises; and
 - (b) a notice in Form No. 34A of Appendix 1 (a stop notice) signed by the deponent to the affidavit, and annexed to it, addressed to the person, body, state, territory or mutual fund concerned and must serve an office copy of the affidavit, and a sealed copy of the notice, on the other person or body, as provided in rule 2(1)(b).
- (3) There must be indorsed on the affidavit filed under this rule a note stating the address to which any such notice as is referred to in rule 12 is to be sent and, subject to paragraph (4), that address shall for the purposes of that rule be the address for service of the person on whose behalf the affidavit is filed.
- (4) A person on whose behalf an affidavit under this rule is filed may change his address for service for the purpose of rule 12 by serving on the other person or body, a notice to that effect, and, as from the date of service of such a notice, the address stated therein shall for the purposes of that rule be the address for service of that person.

Effect of stop notice (O.50, r.12)

- 12. Where a stop notice has been served in accordance with rule 11, then, so long as the stop notice is in force, the person or body on which it is served shall not register a transfer of the securities or take any other steps restrained by the stop notice until 14 days after sending notice thereof, by post, to the person on whose behalf the stop notice was filed, but shall not by reason only of that notice refuse to register a transfer, or to take any other step, after the expiry of that period.

Amendment of stop notice (O.50, r.13)

13. If any securities are incorrectly described in a stop notice which has been filed and of which a sealed copy has been served in accordance with rule 11, an amended stop notice may be filed and served in accordance with the same procedure and shall take effect as a stop notice on the day on which the sealed copy of the amended notice is served.

Withdrawal etc. of stop notice (O.50, r.14)

14. (1) The person on whose behalf a stop notice was filed may withdraw it by serving a request for its withdrawal on the person or body on whom the notice was served.
- (2) Such request must be signed by the person on whose behalf the notice was filed and his signature must be witnessed by a notary public and Order 41, rule 8(3) shall apply.
- (3) The Court, on the application of any person claiming to be beneficially entitled to an interest in the securities to which a stop notice relates, may by order discharge the notice.
- (4) An application for an order under paragraph (3) must be made:
- (a) by filing a consent order signed by on or behalf of the applicant and the person(s) claiming to be beneficially interested in the securities; or
- (b) by an application made by originating summons in Form No.3 of Appendix I.
- (5) Order 42, rule 5A(4) shall not apply to a consent order filed under this rule which may be signed by persons not represented by an attorney provided only that such persons' signatures have been witnessed by a notary public and Order 41, rule 8(3) shall apply.

Order prohibiting transfer, etc. of securities (O.50, r.15)

15. (1) The Court, on the application of any person claiming to be beneficially entitled to an interest in any securities of the kinds set out in paragraph 2(2)(b) of the Law, may by order prohibit the person or body concerned from registering any transfer of the securities or taking any other step to which paragraph 4(4) of the Law applies.

The order shall specify the securities to which the prohibition relates, the name in which they stand and the steps which must not be taken, and shall state whether the prohibition applies to the securities only or to the dividends or interest as well.

- (2) An application for an order under this rule must be made by motion.
- (3) The Court, on the application of any person claiming to be entitled to an interest in any securities to which an order under this rule relates, may discharge or vary the order on such terms (if any) as to costs or otherwise as it thinks fit.