

No. of 2019

VIRGIN ISLANDS
CHARGING ORDERS ACT, 2019
ARRANGEMENT OF SECTIONS

Section

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No. of 2019

Charging Orders Act, 2019

Virgin
Islands

I Assent

Governor

, 2019

VIRGIN ISLANDS

No. of 2019

A Bill for

An Act to confer jurisdiction on the High Court to make orders imposing a charge for securing the payment of money due under judgments or orders of the High Court and to provide for matters incidental thereto.

[Gazetted , 2019]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title and
commencement.

1. (1) This Act may be cited as the Charging Orders Act, 2019.

(2) This Act shall come into force on a date the Governor may, by Proclamation published in the *Gazette*, appoint.

Interpretation.

2. In this Act, unless the context otherwise requires,

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

"CPR" means the Eastern Caribbean Supreme Court Civil Procedure Rules 2000;

"Court" means the High Court;

"creditor" means any person who holds a judgment or order of the Court requiring any other person to pay a sum of money;

"debtor" means any person who is required to pay a sum of money to another person under a judgment or order of the Court;

"interest" means any direct or indirect legal, beneficial or equitable interest in the ownership of property, including without limiting the foregoing, whether property is (a) held in a debtor's own name or otherwise, or (b) is solely or jointly held by a debtor, or (c) where a debtor has the power, directly or indirectly, to dispose of or deal with property as if it were his or her own;

"property" includes

- (a) land;
- (b) property of any of the following kind
 - (i) government securities or notes situated in the Territory;
 - (ii) shares, debentures, or any securities of any company or other body incorporated within the Territory;
 - (iii) shares, debentures, or any securities of any company or other body incorporated outside the Territory being shares registered in a register kept at any place within the Territory;
 - (iv) units of any unit trust in respect of which a register of the unit holders is kept at any place within the Territory;
 - (v) funds in the Court
 - (vi) funds held on deposit in any bank in the Territory;
 - (vii) the title to any motor vessel or yacht registered in the Territory
- (c) any interest in any form of partnership domiciled in the Territory, or

(viii) shares in any mutual fund registered under the Mutual Funds Act, 1996; and

(x) all other forms of tangible or intangible personal property situated in the Territory;

"situated in the Territory" means any property which is located inside the Territory of the Virgin Islands whether physically or as a matter of law and, any liquidated or unliquidated claim, chose-in-action, debt or other obligation, whether matured or contingently owed by any debtor, account debtor or other obligor who is resident or domiciled in the Territory, shall be deemed to be situated in the Territory;

“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.

Jurisdiction to issue charging orders.

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

(2) For the purposes of this Act, references to a judgment or order of the Court shall be taken to include references to a judgment, order, decree or award (however called) of any court or arbitral tribunal (including any foreign court or arbitral tribunal) which is or has become enforceable (whether wholly or to a limited extent) as if it were a judgment or order of the Court.

(3) Subject to other provisions of this Act, the Court may, on application of a person prosecuting the enforcement of a judgment or order, make a charging order in accordance with the CPR.

Property which may be charged.

4. (1) Subject to subsection (2), a charge may be imposed by a charging order only on

(a) any interest held by a debtor

(i) in all or any portion of any property, or

- (ii) any asset or property held under any trust (a "trust"), or
- (b) any interest held by a person as trustee of a trust, if the Interest is in such an asset or property 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 a debtor unencumbered and for his or her 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) In any case where a charge is imposed by a charging order on any interest in property which yields or pays income, interest, royalties, dividends or other forms of value, the Court making the order may provide for the charge to extend to any right to be paid or receive value therefrom.

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.

Supplemental provisions.

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

(3) The Court by which a charging order was made may, on the basis of an inter partes application of the debtor or of any person interested in any Property to which the order relates (with at least 7 clear days' notice to the Creditor and any other interested person), make an order discharging or varying the charging order.

(4) Any order made or notice given under CPR Part 48 shall, if still in force when the provisions of this Act come into force, continue to have force and effect as if made under this Act and anything done pursuant to a charging order granted under CPR Part 48 prior to the date when this Act came into force, shall be conclusively deemed valid.

(5) The Court shall have the jurisdiction to authorise the service of provisional or final charging orders on any debtor or interested person who may be found outside the Territory.

(6) Service of a provisional or final charging order may be made in the Territory on the legal practitioners of record for any debtor in respect of the proceedings which gave rise to a money judgment or arbitration award sought to be enforced in the Territory and, in such cases, it shall not be necessary for a judgment creditor to obtain an order authorising service outside the Territory.

(7) An application for a provisional or final charging order can be made either

- (a) in the proceedings which gave rise to the judgment or order sought to be enforced, or
- (b) in stand-alone proceedings brought to enforce any foreign or domestic arbitral or judicial judgement, order, decree or award.

Passed by the House of Assembly this day of , 2019.

Speaker.

Clerk of the House of Assembly.

OBJECTS AND REASONS

This Bill seeks to confer jurisdiction on the High Court to make orders imposing a charge for securing the payment of money due under judgments or orders of the High Court. Clause 3 confers jurisdiction on the Court to make charging orders. Thus where, under a judgment or order of the Court a debtor is required to pay a sum of money to a creditor then, for the purpose of enforcing that judgment or order, the Court may make an order in accordance with the provisions of this Act imposing on any property as may be specified in the order a charge for securing the payment of any money due or to become due under the judgment or order.

In addition, for the purposes of the Act, references to a judgment or order of the Court shall be taken to include references to a judgment, order, decree or award (however called) of any court or arbitral tribunal (including any foreign court or arbitral tribunal) which is or has become enforceable (whether wholly or to a limited extent) as if it were a judgment or order of the Court. Charging orders would be made or applied for in accordance with the CPR.

By clause 4, a charge may be imposed by a charging order only on

- (a) any interest held by a debtor
 - (i) in all or any portion of any property, or
 - (ii) any asset or property held under any trust (a "trust"), or
- (b) any interest held by a person as trustee of a trust, if the Interest is in such an asset or property 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 a debtor unencumbered and for his or her 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.

By clause 5, a charging order would 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 and, a charge imposed by a charging order would have the like effect and shall be enforceable by the Courts in the same

manner as an equitable charge created by the debtor by writing under his or her hand.

Attorney General