

Show Me The Money - New Rights to Seize it in Scotland From 23 November 2009

Money attachment

The Bankruptcy and Diligence etc (Scotland) Act 2007 has brought about significant reforms to bankruptcy and diligence in Scotland. From 23 November 2009 money attachment will come into force as a new form of diligence.

This will mean creditors can instruct the seizing of cash at the place of business of the debtor. This could be a very useful new weapon for creditors.

Process of Attaching Money

Stage one

To attach money you need a court order for payment of the sum due (a decree) or some other document of debt, for example a guarantee or an appropriately registered lease. The creditor must also have served a charge for payment and the 14 days time limit on the charge must have expired without payment. After that sheriff officers can enter the debtor's premises and seize cash and banking instruments.

Banking instruments includes cheques, promissory notes, money and postal orders as well as other negotiable instruments. Money includes notes and coins in sterling as well as other currencies.

Stage two

There is a provision for the reporting and release of the attached money:-

- (1) Within 2 weeks of the day the money was attached, the sheriff officer must make a report to the sheriff specifying the money attached.
- (2) The creditor then has 14 days beginning with the day on which the report of money attachment was made to make an

application to the sheriff for an order authorising the payment, out of the money attached, of the sum due to the creditor.

Tips for creditors - pubs, clubs and shops, offices too

The attachment of money provision may be of particular benefit against cash-rich businesses such as pubs, clubs, restaurants and shops, which have tended to have larger amounts of money on the premises. Offices are not excluded, however, and certain office-based businesses may well hold cash or cheques of a significant value.

The new money attachment rules must be strictly followed in order to prevent the money attached being given back to the debtor due to a breach of the rules.

Tips for debtors - the piggybank and under the mattress

Money attachment cannot be used in relation to money kept within a dwelling house. A debtor could therefore safely stash cash in his house.

An attachment of money cannot take place before 8am or after 8pm, on a Sunday or during public holidays – unless the court allows this, as it seems likely they should in the case of pubs and clubs for example.

Circumstances where a debtor can object - the harsh realities

The court will consider the debtor's objections to the money being released to the creditor where the rules have not been followed to the letter, or where to allow the cash to be retained would be 'unduly harsh'.

Take advice

Our team of dispute resolution lawyers are experienced at providing practical, no-nonsense commercial advice and look forward to hearing from you with your query.

CONTACT US

This briefing note sets out a summary of the law at the time of writing and is for information purposes only. It should not be regarded as legal advice but if you would like further information please contact:

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