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**FRIDAY 19<sup>TH</sup> JULY, 2019**

**GUYANA**

**No. 1 of 2019**

**RULES**

**Made under**

**THE HIGH COURT ACT**

**(CAP. 3:02)**

**IN EXERCISE OF THE POWERS CONFERRED UPON THE RULES COMMITTEE BY  
SECTIONS 67 AND 68 OF THE HIGH COURT ACT, THE RULES COMMITTEE  
MAKE THE FOLLOWING RULES:-**

**ARRANGEMENT OF RULES**

**Rule**

1. Citation.
2. Amendment of the Table of Contents to the Principal Rules.
3. Amendment of Rule 2.03(1) of the Principal Rules.
4. Amendment of the Principal Rules.
5. Amendment of Schedule 3 to the Principal Rules.
6. Application of these Rules.

**SCHEDULE**

Citation.

No. 2 of  
2016

1. These Rules, which amend the Civil Procedure Rules 2016, may be cited as the Civil Procedure (Amendment) Rules 2019.

Amendment of  
the Table of  
Contents to the  
Principal Rules.

2. The Table of Contents to the Principal Rules is amended by substituting for the contents of Parts 43 to 53, the following –

**“PART 43: ENFORCEMENT OF JUDGMENTS AND ORDERS**

- 43.01 Methods of Enforcement
- 43.02 Interpretation
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Amendment of Rule 2.03(1) of the Principal Rules.

3. Rule 2.03(1) of the Principal Rules is amended by substituting for the definition of the word “company”, the following –

“ “**company**” means a company as defined under the Companies Act, Chapter 89:01, or a local or foreign corporate legal entity;”.

Amendment of the Principal Rules.

4. The Principal Rules are amended by substituting for Parts 43 to 53, the following –

### “PART 43: ENFORCEMENT OF JUDGMENTS AND ORDERS

#### 43.01 Methods of Enforcement

- (1) Enforcement proceedings refer to the measures a person may take under these Rules to compel a Judgment Debtor to obey a Judgment or an order.
- (2) The Rules of Parts 43 to 53A deal with the methods available for the enforcement of different types of Judgments or orders and the type of Judgment or order may affect the method of enforcement that will be available to enforce the Judgment or order.

#### 43.02 Interpretation

- (1) In Parts 43 to 53A,

“a plantation in cultivation” means a parcel of land not less than two hundred and fifty acres in area used for agriculture or the rearing of cattle or both;

“issuing execution against any party” means the issuing of any process of execution against the person or property of the person as is applicable to the case;

“property, movable and immovable” includes all leases, servitudes and *jura ad rem* vested in a Judgment Debtor; and

“writ of execution” includes writs of seizure and sale, *feri facias*, *capias*, sequestration, attachment, delivery, possession.

#### 43.03 Judgment to be obeyed

- (1) Where any person is by any Judgment or order directed to pay any money, or to deliver up or transfer any property, it is not necessary to make any demand for the money or property, but the person so directed must obey the Judgment or order upon being duly served with it without demand.
- (2) Where the Court sets aside any Judgment or order, any Judgment or order made for the purpose of enforcing that Judgment or order ceases to have effect unless the Court directs otherwise.

#### 43.04 Waiver or conditional Judgment or order

- (1) Where any person who has obtained any Judgment or order upon condition does not perform or comply with such condition, the person shall be considered to have waived or abandoned the Judgment or order so far as it is beneficial to the person.
- (2) Any other person interested in the matter may on breach or non-performance of the condition take either those proceedings as the Judgment or order may in the case warrant, or those proceedings as might have been taken if no such Judgment or order had been

made, unless the Court otherwise directs.

#### **43.05 Enforcing Judgment for recovery of money**

- (1) A Judgment or order for the recovery by or payment to any person of money may be enforced by –
  - (a) a writ of seizure and sale of property, movable and immovable;
  - (b) a garnishment order, to garnish the debts due to the person directed by the Judgment or order to pay the money; or
  - (c) an order charging the interest of the person directed by the Judgment or order to pay the money in the shares or scrip of any company.
- (2) In all cases in which a lease or servitude or *jus ad rem* is to be taken in execution both such lease or servitude or *jus ad rem* and also the corporeal property subject to the lease, or servitude or to which the *jus ad rem* relates must be specifically mentioned and described in the writ and advertisement of sale and the form of the writ must be varied accordingly.
- (3) The rate of interest payable on a Judgment debt is the statutory rate of interest unless the Court has directed some other rate.

#### **43.06 Recovery of land**

- (1) A Judgment for the recovery or for the delivery of the possession of land may be enforced by writ of possession.

#### **43.07 For recovery of other property**

- (1) A Judgment for the recovery of any property other than land or money may be enforced by –
  - (a) writ for delivery of the property;
  - (b) writ of attachment;
  - (c) writ of sequestration.

#### **43.08 To do or abstain from any act**

- (1) A Judgment requiring any person to do any act other than the payment of money or to abstain from doing anything may be enforced by writ of attachment or by committal.

#### **43.09 Payment into court**

- (1) A Judgment for the payment of money into Court may be enforced by a writ of sequestration, or in cases in which attachment is authorised by law, by attachment.

#### **43.10 Execution of Judgment on condition**

- (1) Where a Judgment or order is to the effect that any party is entitled to any relief subject to or upon the fulfilment of any condition or contingency, the party so entitled may, upon the fulfilment of the condition or contingency, and demand made upon the party against whom he or she is entitled to relief, apply to the Court for permission to issue execution against such party, and the Court may –
  - (a) if satisfied that the right to relief has arisen according to the terms of the



- Judgment or order, order that execution issue accordingly; or
- (b) direct that any issue or question necessary for the determination of the rights of the parties be tried in any of the ways in which questions arising in an action may be tried.

#### **43.11 Execution of Judgment against a firm**

- (1) Where a Judgment or order is against a firm, execution may issue –
  - (a) against any property of the partnership within the jurisdiction;
  - (b) against any person who has defended a proceeding in his or her own name under Part 10, where sued as a partner in the name of the firm sued or who has admitted on the pleadings that he or she is, or who has been adjudged to be, a partner; or
  - (c) against any person who has been individually served, as a partner, with the originating process, and has failed to defend.
- (2) If the party who has obtained Judgment or an order claims to be entitled to issue execution against any other person as being a member of the firm, the party may apply to the Court for permission so to do.
- (3) The Court may give the permission if the liability is not disputed, or if the liability is disputed may order that the liability of that person be tried and determined in any manner in which any issue or question in an action may be tried and determined.
- (4) Except as against any property of the partnership, a Judgment against a firm shall not render liable, release or otherwise affect any member of the firm,
  - (a) who was out of the jurisdiction when the originating process was issued;
  - (b) who has not defended the originating process unless the member has been made a party to the action under Rule 7.05 by service out of jurisdiction or service of foreign legal process; or
  - (c) who has been served within the jurisdiction after the originating process was issued.

#### **43.12 Writ not to be issued prematurely**

- (1) No writ of execution shall be issued until the proper time has elapsed to entitle the creditor to execution.

#### **43.13 Request for issue of writ**

- (1) Any party desiring to issue a writ of execution must file with the Registrar a request in writing for that purpose signed by the party or his Attorney-at-Law.
- (2) The request must contain the title of the action, the date of the Judgment, and of the order, if any, directing the execution to be issued, the names of the parties against whom, or the firm against whose goods, the execution is to be issued.
- (3) Forms 43A to 43E must be used with such variations as circumstances may require.
- (4) In respect of any immovable property, or interest in the property, to be taken in execution, the request must be accompanied with the affidavit annotated by the Registrar of Deeds or Registrar of Lands (as the case may be), as to ownership of the property and any incumbrances on the property under Rule 48.10.

**43.14 Issue and form of writ**

- (1) Every writ of execution must be sealed with the seal of the Court and upon sealing the writ is deemed to be issued, and must bear the date of the day on which it is issued.
- (2) Forms 45 to 48A must be used with such variations as circumstances may require.

**43.15 Expenses of execution**

- (1) In every case of execution the party entitled to execution may levy all fees and expenses of execution over and above the sum recovered.

**43.16 Indorsement on writ**

- (1) There must be indorsed on every writ of execution for the recovery of money, or in the instructions to levy, a direction to the marshal to levy the money due and payable and sought to be recovered under the Judgment or order, stating the amount and also to levy such interest on it as may be allowed in the Judgment or order.

**43.17 Levy includes all writs of execution extant against the same Judgment Debtor**

- (1) Any property levied on and taken in execution or levied on, taken in execution and sold by the Registrar or marshal under a writ of execution, shall be deemed to be levied on and taken in execution, or levied on, taken in execution and sold (as the case may be) under all writs of execution against the same Judgment Debtor which the Registrar or Marshal held at the time of the levy or of the levy and sale (as the case may be) and the property and the proceeds of sale of the property shall be dealt with accordingly without prejudice to any right of priority of payment to which any Judgment Creditor may be entitled.
- (2) This Rule shall have effect notwithstanding the directions or instructions to levy given where any writs have been delivered to the Registrar or Marshal may not be instructions to levy on the property itself of the Judgment Debtor but only instructions to levy on the surplus proceeds of the sale of such property already directed to be levied on under another execution.
- (3) Writs of Execution and payments under them shall *prima facie* have priority as of the time of the day and date of the filing of the request for a writ of execution.

**43.18 Time of issue of writ for recovery of money**

- (1) Every person to whom any sum of money or any costs is payable under a Judgment or order shall, as soon as the money or costs is payable, be entitled to apply for one or more writs of execution to enforce payment, subject to the following –
  - (a) if the Judgment or order is for payment within a period mentioned in the Judgment or order, no such writ shall be issued until after the expiration of the period; and
  - (b) the Court may, at or after the time of giving Judgment or of making an order, stay execution until such time as it thinks fit.

**43.19 Writs for recovery of money and costs may be separate**

- (1) Upon any Judgment or order for the recovery or payment of a sum of money and costs,

there may be, at the election of the party entitled to the recovery or payment, either one writ or separate writs of execution for the recovery of the sum, and for the recovery of the costs, but a second writ shall only be for costs, and must be issued not less than 8 days after the first writ.

#### **43.20 Renewal of writ**

- (1) A writ of execution if unexecuted shall remain in force for one year only from its issue, unless renewed.
- (2) The writ may, at any time before its expiration, with permission of the Court, be renewed by the party issuing it for one year from the date of the renewal, and may be further renewed from time to time during the continuance of the renewed writ.
- (3) The renewed writ must be marked with the seal of the Court, bearing the date of the day, month and year of the renewal.
- (4) A writ of execution so renewed shall have effect, and be entitled to priority according to the time of the filing of the original request for the writ.

#### **43.21 Evidence of renewal**

- (1) The production of the writ of execution purporting to be marked with the seal of the Court, showing that it has been renewed, shall be sufficient evidence of its having been so renewed.

#### **43.22 Execution to issue within ten years and in certain cases with permission of Court**

- (1) As between the original parties to a Judgment or order, execution may issue at any time within ten years from the date of the Judgment or order.
- (2) A party may apply to the Court for permission to issue execution where –
  - (a) 10 years have elapsed since the judgment or date of the order;
  - (b) any change has taken place by or otherwise in the parties entitled or liable to execution;
  - (c) the party is entitled to execution upon a judgment of assets *in futuro*; or
  - (d) the party is entitled to execution against any of the shareholders of a joint stock company upon a judgment recorded against such company or against a public officer or other person representing such company.
- (3) The Court, under sub-Rule (2), may, if satisfied that the party applying for permission is entitled to issue execution, make an order to that effect, or may order that any issue or question necessary to determine the rights of the parties shall be tried in any of the ways in which any question in an action may be tried; and in either case the Court may impose such terms as to costs or otherwise as shall be just.

#### **43.23 Orders enforceable like Judgments**

- (1) Every order of the Court in any cause or matter may be enforced against all persons bound by it in the same manner as a Judgment to the same effect.

#### **43.24 Execution by or against a person not a party**

- (1) Any person not being a party to a cause or matter, who obtains any order or in whose

favour any order is made, shall be entitled to enforce obedience to such order by the same process as if the person were a party to such cause or matter.

- (2) Any person not being a party to a cause or matter, against whom obedience to any Judgment or order may be enforced, shall be liable to the same process for enforcing obedience to such Judgment or order as if the person were a party to such cause or matter.

#### **43.25 Stay of execution**

- (1) Any party against whom Judgment has been given may apply to a Court for a stay of execution or other relief against such Judgment upon the ground that facts have arisen too late to be pleaded; and the Court may give such relief and upon such terms as may be just.

#### **43.26 Suspension of writ by Marshal**

- (1) The Judgment Creditor may request the Marshal in writing to suspend execution.
- (2) Where the Judgment Creditor suspends execution, neither the Judgment Creditor nor the Marshal may take any further step under the writ of execution unless the Court first renews it and the Judgment Creditor gives written notice of such renewal to the Marshal to resume execution.

#### **43.27 Order of issue of writs**

- (1) Nothing in Parts 43 to 53A shall affect the order in which writs of execution may be issued.

#### **43.28 Court may order act to be done at expense of party refusing**

- (1) If a mandamus, granted in an action or otherwise, or a mandatory order, injunction, or Judgment for the specific performance of any contract is not complied with, the Court, instead of proceeding against the disobedient party for contempt, may direct that the act required to be done may be done so far as practicable by the party by whom the Judgment or order has been obtained, or some other person appointed by the Court, at the cost of the disobedient party, and upon the act being done, the expenses incurred may be ascertained in such manner as the Court may direct and execution may issue for the amount so ascertained, and costs.

#### **43.29 Enforcing Judgment or order against a company**

- (1) Any Judgment or order against a company wilfully disobeyed may, with permission of the Court, be enforced by sequestration against the property of the company, or by attachment against the directors or other officers of the company, or by writ of sequestration against their property.

#### **43.30 Enforcement of award**

- (1) An award may with the permission of the Court, and on such terms as may be just, be enforced at any time though the time for moving to set it aside has not elapsed.

#### **43.31 Irregularity in execution**

- (1) In the event of any irregularity being committed in any process in execution or in the event

of there being an excess in execution the person against whom or against whose property the process has issued may apply to the Court to stay proceedings in the execution until such irregularity is amended or the excess remedied.

- (2) The Court may make such order as will divest the proceedings of all irregularity or excess, reserving to the party aggrieved his or her remedy by action against all parties concerned for any injury or damage he or she may have sustained by reason for the irregularity or excess.

#### **43.32 Levy illegally or erroneously made**

- (1) Whenever a levy or other proceeding in execution is wrongly, illegally or erroneously done, the same may be cancelled by order of the Court on an application without notice of the party at whose instance such levy or other proceeding was done, and a new levy or other proceeding may be done.

#### **43.33 Where Judgment Debt Satisfied**

- (1) Where an order has been satisfied in full, the Judgment Creditor must withdraw all writs relating to the order by filing an affidavit to this effect with the Registrar.
- (2) Where the Judgment Creditor fails to withdraw a writ as required, the court may, on application by the Judgment Debtor, order that the writ be withdrawn.
- (3) Where there is a garnishment in effect and the Judgment debt has been satisfied in full, the Judgment Creditor must terminate the garnishment as required by Part 44.

### **PART 43A: PARATE EXECUTION, VALUATION IN PARATE EXECUTION AND EXECUTION IN PROCEEDINGS *IN REM***

#### **43A.01 Parate execution**

- (1) In any case where any sum is authorised by law to be recovered by parate execution, the summons must be served by the Marshal or any other person as may be appointed by the Registrar either generally or in any specific case to serve summonses, personally upon the Judgment Debtor or the proprietor of the property upon which the execution is sought.
- (2) If the Judgment Debtor or proprietor is dead or cannot be found or the proprietor is not known the Marshal or other person appointed to serve the summons must file a certificate to that effect in the Registry and after the filing, service shall be effected by affixing the summons to the main door of the principal building on the property or if there is no building to some conspicuous object on the property.
- (3) The appropriate writs may, after service is effected, be issued in the case of any sum so authorised to be recovered as may be issued under these Rules in the case of any sum directed to be paid by any Judgment or order.
- (4) Subject to these Rules, the practice and procedure relating to parate execution shall continue in force.

#### **43A.02 Person named in books as owner to be named in advertisement**

- (1) In all cases of proceedings to recover rates or taxes or other assessments by parate

execution –

- (a) the party applying for execution, must state in the application the name of the person appearing in the books of the party applying as the owner of the lot or lots in respect of or against which proceedings are being taken; and
- (b) the advertisement of the execution sale of the lot or lots must state that the person so named appears in such books as the owner, but the naming of the person in the advertisement shall not be deemed to show that the person is the legal owner, nor shall it in any way affect any question which may arise as to the ownership of the lot or lots.

**43A.03 Valuation of property in parate execution and execution in proceedings *in rem***

- (1) Before the day fixed for the sale of any property at parate execution or at any execution in proceedings *in rem*, the Registrar must, unless the proprietor of the property otherwise requests in writing, obtain from a competent valuer a sworn valuation of the property.
- (2) The cost of the valuation shall be part of the costs of execution.

**43A.04 Reserved price**

- (1) Where the sworn value of the property exceeds five hundred thousand dollars the property must not be sold at execution in the first instance at less than three-fourths of that value.

**43A.05 Sale without reserve**

- (1) If a property is not sold at execution in the first instance, the Registrar must, not less than 21 days after the first attempt, again advertise the property in the usual manner for sale and must after the advertisement sell the property without reserve to the highest bidder.

**PART 44: GARNISHMENT**

**44.01 Availability of garnishment**

- (1) A Judgment Creditor under an order for the payment or recovery of money may, by way of a Garnishment Order (Form 44A), obtain payment of all or part of the Judgment debt from a person who owes money to a Judgment Debtor.
- (2) A garnishment order may be made in respect of money standing to the credit of any account of the Judgment Debtor with a financial institution.
- (3) Where a person owes money to the Judgment Debtor and another person, only one-half of the indebtedness may be garnished, unless otherwise permitted by the Court.
- (4) A garnishment order may not be obtained in relation to an order that requires money to be paid into Court.
- (5) A garnishment order may only be made against a garnishee who resides within or carries on business in the jurisdiction.
- (6) Debts due from the State to the Judgment Debtor may not be garnished.

**44.02 Procedure for obtaining a Garnishment Order**

- (1) A Judgment Creditor who seeks to enforce an order for the payment or recovery of money

by garnishment must make an application for a Garnishment order, which application may be made without notice and in writing.

- (2) An application for a Garnishment order must,
  - (a) attach a copy of the order in favour of the Judgment Creditor for the payment or recovery of money; and
  - (b) include in the supporting Affidavit evidence that,
    - (i) the order is still unsatisfied;
    - (ii) the date and amount of any payments received since the order was made, if any;
    - (iii) the amount owing, including interest and the fixed costs of the garnishment proceeding, and details of how the amount owing and the interest are calculated;
    - (iv) the address of the Judgment Debtor;
    - (v) the name and address of the person to whom the garnishment order is to be directed;
    - (vi) that the Judgment Creditor believes that person is or will become indebted to the Judgment Debtor and the grounds for the belief; and
    - (vii) such particulars of the Judgment debt as are known to the creditor.
- (3) The Court may issue a garnishment order if it is satisfied that, on the evidence submitted in the application, the Judgment Creditor is entitled to the debt.

#### **44.03 Service and effect of service of Garnishment Order**

- (1) The Judgment Creditor must serve the garnishment order on the garnishee as well as on the Judgment Debtor.
- (2) If the garnishee is a financial institution, the garnishment order must be served on its head office or the branch at which the Judgment Debtor maintains an account, and the garnishee is not liable to pay to the Judgment Creditor an amount that would reduce the Judgment Debtor's account balance below the minimum balance required by the financial institution.
- (3) The garnishment order becomes binding on the garnishee as soon as it is served on the garnishee.
- (4) The garnishee is liable to pay to the Judgment Creditor any debt of the garnishee to the Judgment Debtor, up to the amount shown in the garnishment order, within 14 days of being served with the garnishment order or within 14 days after the debt becomes payable, whichever is later.
- (5) A debt of the garnishee to the Judgment Debtor,
  - (a) includes,
    - (i) a debt payable at the time the garnishment order is served; and
    - (ii) a debt payable after the garnishment order is served;
  - (b) does not include,
    - (i) if the garnishee is a financial institution, money in an account opened after the garnishment order is served;
    - (ii) if the garnishee is an employer, a debt arising out of employment that

- commences after the garnishment order is served; or
- (iii) if the garnishee is an insurer, a debt payable under an insurance policy that is entered into after the garnishment order is served.

**44.04 Garnishee must serve Statement and effect of failure to serve**

- (1) Within 14 days of being served with the garnishment order, a garnishee must serve upon the Judgment Creditor and file with the Court, with proof of service, a Garnishee's Statement (Form 44B).
- (2) Where the garnishee has paid the Judgment Creditor the full amount as set out in the garnishment order, the Garnishee's Statement must give the particulars of the payment.
- (3) Where the garnishee disputes the garnishment or pays to the Judgment Creditor an amount that is less than the amount set out in the garnishment order, the Garnishee's Statement must set out the reasons for disputing or failing to comply with the garnishment order.
- (4) Where the garnishee fails to serve a Garnishee's Statement upon the Judgment Creditor or if the Judgment Creditor is not satisfied with the garnishee's reasons for disputing or failing to comply with the garnishment order, the Judgment Creditor may make an application for a hearing for the garnishee to explain its failure to comply with the garnishment order, which application must be made on notice to the garnishee.
- (5) On an application for a hearing for the garnishee to explain its failure to comply with the garnishment order, the Court may,
  - (a) order that any issue or question necessary for determining the garnishee's liability be tried or determined as the court considers just;
  - (b) where the garnishee failed to serve and file a Garnishee's Statement, order,
    - (i) that the garnishee pay the amount that the court finds is payable to the Judgment Debtor by the garnishee, or the amount set out in the garnishment order, whichever is less; or
    - (ii) execution to issue, and it may issue accordingly, without any previous writ or process, to levy the amount due from such garnishee, or so much of the amount due as may be sufficient to satisfy the Judgment or order, together with the costs of the garnishee proceedings;
  - (c) determine any matter in relation to the garnishment order; or
  - (d) dismiss the application.

**44.04A When debt secured by mortgage or pledge**

- (1) In all cases in which a debt is ordered to be paid by garnishment, if such debt is secured by a mortgage or pledge given by the garnishee and vested in the debtor, the Court may declare executable the property mortgaged or pledged, and the same may be levied on and sold under execution issued without any previous or separate proceeding to enforce such mortgage or pledge being necessary.

**44.04B Lien or claim of third person in debt**

- (1) Whenever in any proceedings to obtain a garnishment order it is suggested by the garnishee that the debt sought to be garnished belongs to some third person, or that any



third person has a lien or charge upon it, the Court may order such third person to appear, and state the nature and particulars of his claim upon such debt.

#### **44.04C Trial of claim of third person and order on the claim or on non-appearance**

- (1) After hearing the allegations of any third person under the preceding Rule, or in the case of such third person not appearing when ordered, the Court may,
  - (a) order execution to issue to levy the amount due from such garnishee together with the costs of the garnishee proceedings;
  - (b) order any issue or question to be tried or determined in any manner in which any issue or question in an action may be heard or determined;
  - (c) bar the claim of such third person; or
  - (d) make such other order as the Court deems fit, upon such terms, with respect to the lien or charge (if any) of such third person, as to costs.

#### **44.05 Discharge of garnishee's liability**

- (1) The garnishee's liability to the Judgment Creditor is discharged,
  - (a) upon the garnishee's filing of its Garnishee's Statement confirming that payment to the Judgment Creditor of the full amount due under the garnishment order has been made or upon execution levied upon the garnishee;
  - (b) if the Court sets aside the garnishment order or the original Judgment or order based upon which the garnishment order was made; or
  - (c) if the Judgment Creditor files, with proof of service on the garnishee, a Notice of Termination of Garnishment (Form 44C).

#### **44.06 Costs of garnishment proceedings**

- (1) The Judgment Creditor's costs of any garnishment proceedings may be fixed or assessed by the Court.
- (2) The Judgment Creditor may include its costs of the application for a garnishment order in the garnishment order.
- (3) Where the Court permits, a garnishee who appears at a hearing of an application under this Part may deduct his or her costs as fixed or assessed by the Court before paying any sum to the Judgment Creditor pursuant to the garnishment order.

#### **44.07 Garnishment Record**

- (1) There must be kept by the Registrar a Garnishment Record, and in which must be recorded every garnishment and proceedings on the garnishment, with names, dates, and statements of the amount recovered, and otherwise; and a copy of any record of garnishment may be granted to any person upon application to the Registrar.

### **PART 45: WRIT OF POSSESSION**

#### **45.01 Writ of Possession**

- (1) A Judgment or order that a party recover possession of any house, land or immovable

- property may be enforced by a Writ of Possession.
- (2) A Judgment Creditor may apply to the Court for permission for a Writ of Possession (Form 45) to be issued, which application must be made,
    - (a) without notice; and
    - (b) supported by affidavit showing that,
      - (i) a copy of such Judgment or order has been served upon the person directed to deliver up possession; and
      - (ii) the Judgment or order has not been obeyed.
  - (3) The court may order the issuance of a Writ of Possession only where it is satisfied that all persons in actual possession of the whole or any part of the house, land or immovable property have received sufficient notice of the proceeding in which the Judgment or order was obtained as to enable them to apply to the Court for relief or otherwise.

#### **45.02 Separate writs for possession and costs**

- (1) Upon any Judgment or order for the recovery of any house, land or immovable property and costs, there may be either one writ or separate writs of execution for the recovery of possession and for the costs at the election of the successful party.

#### **45.03 Writ gives authority to the Marshal**

- (1) A Writ of Possession shall be a direction to the Marshal to enter a specified house, land or immovable property and remove the person directed to deliver up possession or occupier and place the party who has obtained that Judgment or order in possession of that property.

#### **45.04 Payment of fee**

- (1) Where the Court orders the issuance of a Writ of Possession, the Registrar must issue a Writ of Possession at the request of any person, upon payment of the requisite fee.

### **PART 46: WRIT OF DELIVERY**

#### **46.01 Application for Writ of Delivery**

- (1) A Writ of Delivery may be used to enforce an order for the recovery of possession of any property other than a house, land, immovable property or money.
- (2) A Judgment Creditor may make an application to the Court for a Writ of Delivery (Form 46), which application must be made on notice to any person who is in possession of the property that is the subject of the Writ of Delivery, and the supporting Affidavit must,
  - (a) attach a copy of the order to which it relates;
  - (b) establish that the order to which it relates was served upon the person directed to deliver up possession; and
  - (c) establish that the person against whom the order was made did not deliver up possession as ordered.
- (3) The Court may order a Writ of Delivery only where it is satisfied that the person in possession of the property received sufficient notice of the proceeding in which the order

- was obtained and without giving the Judgment Debtor the option of retaining the property, upon paying the value assessed (if any).
- (4) If the property cannot be found, and unless the Court otherwise orders –
    - (a) the Marshal must levy upon all the Judgment Debtor's lands and chattels until the Judgment Debtor delivers the property; or
    - (b) at the option of the Judgment Creditor, that the Marshal must levy on the Judgment Debtor's goods for the assessed value, if any, of the property.
  - (5) Where the Court makes an order for the issuance of a Writ of Delivery, the Registrar must issue a Writ of Delivery at the request of any person, upon payment of the requisite fee.
  - (6) The Writ of Delivery must be delivered to the Marshal.
  - (7) Upon receipt of a Writ of Delivery, the Marshal must seize the property from the person to which the Writ of Delivery relates.

## **PART 47: WRIT OF SEQUESTRATION**

### **47.01 Application for Writ of Sequestration**

- (1) Where any person is by any Judgment or order directed to pay money into court or to do any other act or to abstain from doing an act in a limited time, and after due service of a copy of such Judgment or order refuses or neglects to obey the order, the person seeking to enforce the Judgment or order shall, at the expiration of the time limited for the performance of the Judgment or order, be entitled to issue a Writ of Sequestration (Form 47) against all or part of movable or immovable property and effects of the disobedient person.
- (2) An application for a Writ of Sequestration to be issued may be made to the Court without notice, and the application must,
  - (a) attach a copy of the order requiring the Judgment Debtor to pay a sum of money or to do or not to do an act;
  - (b) provide evidence that the order was personally served on the Judgment Debtor; and
  - (c) specify the precise term of the order which it is alleged that the Judgment Debtor disobeyed, the exact nature of the alleged breach of the order by the Judgment Debtor and when and where each breach occurred, if applicable.
- (3) On an application for a Writ of Sequestration, the Court may,
  - (a) order a Writ of Sequestration,
    - (i) against a Judgment Debtor; or
    - (ii) where the Judgment Debtor is a company, against an officer of the Judgment Debtor;
  - (b) require that the application be served on the Judgment Debtor and adjourn the application to another date;
  - (c) dismiss the application; or
  - (d) make such other order or impose terms on the Writ of Sequestration as it considers just.
- (4) The Court may not order a Writ of Sequestration unless it is satisfied that the order was

personally served on the Judgment Debtor and was served in sufficient time to give the Judgment Debtor a reasonable opportunity to do the act before the expiration of that time.

- (5) Notwithstanding sub-Rule (2)(b), where the order has not been served, the Court may order a Writ of Sequestration only if it is satisfied that the person against whom the order is to be enforced had notice of its terms by being present when the order was made or was notified of its terms by some other means.
- (6) The court may, on its own initiative or upon application, discharge or vary a Writ of Sequestration on such terms as are just.

#### **47.02 Service and Effect of Writ of Sequestration**

- (1) Where the Court orders a Writ of Sequestration,
  - (a) the Writ of Sequestration must authorize the Marshal to enter upon the immovable property of the person against whom Judgment has been given that is the subject of the Writ of Sequestration, and to receive and sequester all the rents, profits and issues of the said property, as well as the goods and chattels of the person on that property, and to keep same until the person complies with the Judgment or order or the court directs otherwise; and
  - (b) a copy of the issued Writ of Sequestration must immediately be,
    - (i) provided to the Marshal by the Registry; and
    - (ii) served on the Judgment Debtor by the Judgment Creditor.
- (2) The Judgment Creditor must not sell any property seized under an order for sequestration without permission of the Court.

#### **47.03 No subpoena for costs.**

- (1) No *subpoena* for the payment of costs must be issued.

### **PART 47A: WRIT OF ATTACHMENT**

#### **47A.01 Nature of Writ of Attachment**

- (1) A writ of attachment (Form 47A) shall be a direction to the Marshal to apprehend and lodge the person against whom such writ shall be issued in jail.
- (2) The person shall be kept in jail at the person's own expense for such time as may be mentioned in the writ, or if no such time is mentioned in the writ then until the person is discharged by order of the Court.

#### **47A.02: Issued only with permission of the Court**

- (1) No writ of attachment shall be issued without the permission of the Court, to be obtained on application made for such purpose.
- (2) Notice of the application must be served personally on the party against whom the attachment is to be issued.

## **PART 48: WRIT OF SEIZURE AND SALE**

### **48.01 Levy under Writ of Seizure and Sale**

- (1) A Writ of Seizure and Sale of property (Form 48A) provides the Marshal with the authority to seize and sell the movable or immovable property of a Judgment Debtor.
- (2) A Writ of Seizure and Sale of property when issued must be handed by the Registrar to the Marshal.
- (3) Upon receipt of a Writ of Seizure and Sale, the Marshal must levy upon and take in execution as much of the movable property of the Judgment Debtor to be pointed out by the Judgment Creditor or his agent as shall, in the Marshal's opinion, realise at execution sale proceeds sufficient to satisfy the Judgment and costs, together with the expenses of the levy and sale, unless the Judgment Debtor points out and desires execution to be levied on any other movable property sufficient in the Marshal's opinion for the purpose.
- (4) In the event of movable property taken in execution being in the Marshal's opinion insufficient, then the Marshal must, by virtue of the same writ, provided the writ is effective, immediately and without waiting for the sale of the movable property, levy on the immovable property of the Judgment Debtor to the extent in value of any part of the Judgment Creditor's claim as shall, in the Marshal's opinion, remain unsatisfied after the sale of the movable property levied upon.

### **48.02 Marshal's Return**

- (1) The Marshal must, immediately after he or she has executed or failed to execute the writ, return the writ to the Registrar, with an indorsement on the writ showing whether he or she has executed the writ wholly or in part, or, if he or she has failed to execute the writ, the reason of such failure.

### **48.03 Where property seized by Marshal**

- (1) Where a person alleges an interest in any property seized or about to be seized by a Marshal, he or she must give notice in writing to the Marshal of their claim within 7 days of the seizure, which notice must state,
  - (a) the person's name and address for service;
  - (b) identification of the property to which the person claims an interest; and
  - (c) the person's grounds for the claim.
- (2) Immediately upon receipt of a notice made in accordance with sub-Rule (1), the Marshal must serve a copy of the notice on the Judgment Creditor.
- (3) The Judgment Creditor must, within 4 days of receiving a copy of the notice, advise the Marshal in writing whether the Judgment Creditor admits or disputes the person's claim to the property and,
  - (a) where the Judgment Creditor admits the person's claim to the property,
    - (i) the Marshal must withdraw from possession of the property; and
    - (ii) the Judgment Creditor is liable only for the fees and expenses of the Marshal incurred before the Marshal received the notice;
  - (b) where the Judgment Creditor disputes the person's claim to the property or fails to advise the Marshal as required under this Rule, the Marshal may make an

application for relief pursuant to Part 54 (Interpleader).

### ***Movable Property***

#### **48.04 Seizure and sale of movable property**

- (1) Where movable property is seized under a Writ of Seizure and Sale, the Marshal must, on request, deliver an inventory of the property seized to the Judgment Debtor before or, where this is not practicable, within a reasonable time after the property is removed from the premises on which it was seized.
- (2) Movable property seized under a Writ of Seizure and Sale must be sold by the Marshal by auction to the highest bidder not less than 14 days after an advertisement, signed by the Registrar, of the sale has been published once in a newspaper of general circulation in Guyana, and simultaneously once in the *Gazette*.
- (4) The purchaser must pay in cash at the time of the sale, and so much of the proceeds of that sale, after deducting the costs of execution, as will satisfy the Judgment must be paid out by the Marshal in satisfaction of the Judgment.
- (4) Where the proceeds of the sale exceed five hundred thousand dollars, the purchaser must deposit in cash at the time of sale five hundred thousand dollars and pay the balance by manager's cheque by 3 p.m. of the next day after the sale, unless otherwise directed by the Registrar.

#### **48.05 Proceeds of movable property sold to be retained for 14 days**

- (1) In all cases of the sale of movable property the Marshal must not before the expiration of 14 days after the sale of such property, pay out the net proceeds of the sale to the party entitled.

### ***Animals and Perishable Goods***

#### **48.06 Appurtenances of a mortgaged plantation**

- (1) The term "movable property" does not include cattle, implements of husbandry, utensils, or instruments mortgaged with a plantation, and no cattle, implements of husbandry, utensils or instruments shall be taken in execution, except together and with the immovable property, with which, as appurtenant and appendant, they are mortgaged.

#### **48.07 Sale of live animals, etc., taken in execution**

- (1) Where live animals, spirituous or other liquors, or perishable goods are taken in execution, the Marshal may sell them after the expiration of 4 days from the publication of a notice of the intended sale once in a newspaper of general circulation in Guyana.
- (2) The Judgment Creditor or the Judgment Debtor, or other person claiming property in the live animals, spirituous or other liquors, or perishable goods, may have the same sold only after the lapse of time mentioned in sub-Rule (1) and its advertisement once in a newspaper of general circulation in Guyana, on his furnishing security to the Marshal, for the payment of any additional costs and expenses which may be incurred by the sale.

- (3) Where there is any dispute as to whether the goods levied on are perishable or not, the Marshal must apply in a summary manner to the Registrar to decide the question, and the decision of the Registrar on the point shall be final.

#### **48.08 Perishable goods claimed by third person may be sold**

- (1) Where any animals or perishable goods taken in execution are claimed by any person other than the Judgment Debtor, the Marshal may sell the animals or goods in the same manner as if no such claim had been made; and the proceeds of such sale shall for the purposes of the claim and of any interpleader be deemed to represent the property sold.
- (2) Nothing in this Rule shall affect the right of any person whose property has been wrongfully taken by the Marshal from recovering full compensation from all persons responsible for such act.
- (3) Any dispute as to whether goods are perishable for the purposes of this Rule must be decided in the manner provided in Rule 48.07(3).

#### **48.09 Tariff charges for keep of live animals, etc., taken in execution**

- (1) The Chancellor may by Practice Directions prescribe, and when prescribed, amend, a tariff of charges to be paid for the maintenance and keep of live animals and vehicles taken in execution.
- (2) Every tariff of charges prescribed or amended must be published once in a daily newspaper of general circulation in Guyana.
- (3) Tariff charges are costs incurred in execution and must be deducted from the proceeds of sale.

### ***Immovable Property***

#### **48.10 Proof of Judgment Debtor's ownership in aid of execution**

- (1) Before any immovable property, or interest in the property, is taken in execution to satisfy a Judgment or order, the person claiming to enforce the Judgment or order must deliver to the Registrar of Deeds or the Registrar of Lands (as the case may be) an affidavit of the facts and documents upon which his claim to take the immovable property or interest in the property in execution is based, and must lodge with the Registrar the documents mentioned in the affidavit, if they are not of record in the Deeds Registry.
- (2) The Registrar of Deeds or the Registrar of Lands (as the case may be) may require, and the claimant must furnish, evidence in support of the claim, in addition to the affidavit and documents required in sub-Rule (1), as the Registrar may deem necessary.
- (3) The immovable property or interest in the property mentioned in the affidavit shall not be taken in execution unless the Registrar of Deeds or the Registrar of Lands (as the case may be) upon examination of the facts stated in the affidavit and contained in the documents, and any further evidence in support of the claim, is satisfied that they show *prima facie* that the Judgment Debtor is the owner of the immovable property or interest in the property sought to be taken in execution.
- (4) The Registrar of Deeds or the Registrar of Lands (as the case may be), having satisfied himself or herself that the Judgment Debtor is the owner of the immovable property or

- interest in the property, must annotate on the affidavit,
- (a) that the Judgment Debtor is the owner of the property; and
  - (b) the incumbrances on the property (if any).
- (5) The annotated affidavit must be submitted with the request for the issue of a writ to the Registrar under Rule 43.13.
- (6) This Rule does not apply to proceedings by way of –
- (a) parate execution; or
  - (b) execution to enforce a registered incumbrance.

#### **48.11 Sale of immovable property by auction after advertisement**

- (1) The Marshal must sell by auction to the highest bidder the immovable property levied on under this Part, and not being a plantation in cultivation, not less than 14 days after an advertisement, signed by the Registrar, of the sale has been published once in a newspaper of general circulation in Guyana, and simultaneously once in the *Gazette*.
- (2) Where the highest bidder fails to pay the 25 per cent of purchase money required under Rule 48.14(1), the Marshal must by 9 a.m. the next day offer the property to the second highest bidder.
- (3) The second highest bidder must pay the full 25 per cent by way of manager's cheque by 3 p.m. that day and the remainder of the purchase money must be paid on the terms and conditions of payment provided for under Rule 48.14(2), (3), (4) and (5).
- (4) If the second highest bidder fails to pay the 25 per cent, then within 7 days of the attempt to sell to the second highest bidder, the Marshal must notify the Judgment Creditor that the property was not sold and the Registrar must fix a new date for the sale of the property and publish the date once in an advertisement of the sale in a newspaper of general circulation in Guyana.
- (5) If the property is unsold for want of buyers, the Marshal must, within 7 days of the attempt to sell, notify the Judgment Creditor that the property was not sold and the Registrar must fix a new date for the sale of the property and publish the date once in an advertisement of the sale in a newspaper of general circulation in Guyana.

#### **48.12 Sale not exceeding \$500,000 to be for cash**

- (1) Whenever any immovable property is to be sold at execution for a sum not exceeding five hundred thousand dollars, the purchase money must be paid by the purchaser in cash at the time of the sale.

#### **48.13 Sales at parate or summary execution to be at a month's credit**

- (1) Whenever any immovable property (not being a plantation in cultivation) is to be sold at parate or summary execution, the purchaser, unless he or she pays the money in cash at the time of the sale, must provide two sufficient sureties, who shall bind themselves as principal debtors along with and for and on behalf of the purchaser to and in favour of the Marshal for the payment of the said purchase money within 1 month after the day of sale with interest on the money at the rate of 6 per cent *per annum* from the day of sale until fully paid.



**48.14 Terms of sale where proceeds exceed \$500,000**

- (1) Whenever any immovable property (not being a plantation in cultivation) is to be sold at execution, other than summary or parate execution, for a sum exceeding five hundred thousand dollars the purchaser must, on the day of sale, pay 25 per cent of the purchase money, five hundred thousand dollars of which must be paid in cash at the time of sale and the balance of the 25 per cent must be paid by manager's cheque by 3 p.m. of the same day.
- (2) After the deposit of the 25 percent of the purchase money, the purchaser must,
  - (a) if the purchase money does not exceed the sum of five million dollars, pay the balance by three equal instalments, with interest at the rate of 6 per cent *per annum*, at the expiration of 1, 2 and 3 months respectively from the date of sale; and
  - (b) if the purchase money exceeds the sum of five million dollars, pay the balance with interest at the rate of 6 per cent *per annum*, by three equal instalments at the expiration of 2, 4 and 6 months, respectively from the date of sale.
- (3) In the event of the purchaser making default in payment of any of the instalments the amount of the deposit shall, unless the Court on an urgent application with notice filed within 7 days of the default extends the time for payment, be forfeited and applied by the Marshal towards discharge of the execution costs and Judgment debt or debts.
- (4) The Registrar must not effect forfeiture unless the Registrar indicates to the purchaser his or her intention to forfeit the deposit and gives the purchaser an opportunity to make any representation from which the Registrar can ascertain such information as the Registrar needs including whether the purchaser has applied to the Court for an extension of time.
- (5) If after application of the deposit as provided under sub-Rule (3), there is any balance due on the said costs and debts the property may, after being re-advertised, again be put up for sale by auction and sold, and if there is no balance due, the property shall be released to the Judgment Debtor.

**48.15 Proceeds of immovable property sold to be retained for 14 days**

- (1) The Registrar or Marshal must retain in his hands for a period not exceeding 14 days after the sale of immovable property (not being a plantation in cultivation) the proceeds of the sale except so much of the proceeds as is required to satisfy the costs incurred in execution.

**48.16 Practice Direction**

- (1) The Chancellor may by Practice Direction amend any sum of money prescribed in this Part.

***Opposition to Execution Sale of Immovable Property*****48.17 Notice of opposition**

- (1) Any person having a right to oppose the sale at execution of immovable property may enter opposition in the Registry by filing a notice of opposition (Form 48B) containing the particulars and requirements, including the reasons for opposition, in the form.

- (2) The time for entering opposition to the sale shall expire at 3 p.m of the fourteenth day after the advertisement of the sale.
- (3) No notice of opposition to the sale may be filed in the Registry after the time limited in this Rule for opposition, nor, except under Rule 48.19(1), may any amendment be made to the notice after it is filed.
- (4) Sale of more than one property may be opposed by a person by one notice of opposition if the advertisements of the intended sale are published on the same day.

**48.18 Entry of opposition**

- (1) At or immediately after the time when a notice of opposition is filed, the Registrar must certify in a register to be kept for that purpose against the property affected that opposition has been entered to the sale of the property, to which the notice relates.
- (2) The time for bringing a case pursuant to the notice of opposition shall commence to run from the date when the Registrar certifies that opposition has been entered, notwithstanding Rule 48.19(1).
- (3) The opposer must before or at the time of entering opposition to a sale in execution lodge with the Registrar the sum of five thousand dollars as security for the costs of certifying that opposition has been entered and re-advertisement mentioned in Rule 48.22(3) in the event of his failing to proceed to enforce his opposition, otherwise his opposition shall be void and of no effect.

**48.19 Extension of time for statement of reasons for opposition**

- (1) A notice of opposition may be filed without a statement of reasons for opposition, but in that case the opposer must, within 3 days after filing the notice (of which a Sunday, if that day intervenes, shall count as one), file in the Registry a statement of the reasons in Form 48C, and the Registrar must immediately certify in the manner provided under Rule 48.18(1) that the opposition has been perfected.

**48.20 Service of notice of opposition**

- (1) The opposer may within 3 days after filing the notice of opposition, serve a copy of the notice upon the Judgment Creditor, failing which, the Court may, in a case brought pursuant to the notice, disallow his costs (if any) of that case.

**48.21 Fixed Date Application within 10 days to enforce opposition**

- (1) Within 10 days after the Registrar has certified as required by Rule 48.18(1), the opposer must bring a case by way of fixed date application against the Judgment Creditor to restrain the sale of the property.
- (2) It shall not be competent for the applicant in the case to allege or rely upon any reason other than those stated under Rule 48.17(1) or 48.19(1).
- (3) If the Court is satisfied that the case has been established it may give Judgment accordingly.

**48.22 Abandonment of opposition**

- (1) If no case is brought within the time specified in Rule 48.21(1), the Registrar must certify

in the register, mentioned in Rule 48.18(1), against the opposition entered on the sale of the property, that no case has been instituted under Rule 48.21, and that the opposition has been deserted and abandoned.

- (2) A Judgment Creditor may apply to the Registrar (Form 48D) for a certificate of abandonment of opposition (Form 48E) in which the Registrar must certify that no case has been instituted under Rule 48.21, and the opposition has been deserted and abandoned.
- (3) Where an opposition has been abandoned, the Marshal after re-advertising the sale of the property once in a Saturday newspaper of general circulation in Guyana, may proceed to the sale of the property accordingly.
- (4) If a case is brought by the opposer within the time specified, the opposer shall be entitled to uplift the sum of money lodged by him as security under Rule 48.18(3).

## **PART 48A: SEQUESTRATION AND SALE OF PLANTATION IN CULTIVATION**

### **48A.01 Sequestration of a plantation.**

- (1) In the event of a plantation in cultivation being levied upon, the Court, upon application of the Marshal, shall appoint two capable persons, of whom, if the plantation is under mortgage, one must be the first mortgagee (or his agent) to be Sequestrators of the plantation.
- (2) The Sequestrators must administer the plantation and receive the produce or other revenue of it in favour of the rightful claimant until the day of sale, unless the produce of the said plantation is bound in consignment, in which case the produce during the sequestration shall be consigned or go to the person who previous to the sequestration was entitled to receive the produce.

### **48A.02 Sequestrators to report whether an immediate sale desirable.**

- (1) The Sequestrators must immediately upon being put into possession of a plantation in cultivation, and from time to time after that, examine into the condition of the plantation, and report to the Court as to whether an immediate sale or a continuation of the sequestration for the period mentioned in Rule 48A.08 will be most advantageous to the interest of the creditors.
- (2) Upon any such report after reference of the report to the proprietor, mortgagee and Judgment Creditors, and their being heard by counter report or otherwise, the Court may grant an order either for an immediate sale or continuation of the sequestration.

### **48A.03 Payment of salaries, etc.**

- (1) The Sequestrators may discharge from the first available funds of the sequestration all unpaid salaries due to employees of the estate, not being labourers, for 6 months preceding the sequestration, wages of labourers for the month preceding and the month in which execution is levied, and also the taxes due to the State for the previous year.

**48A.04 Power to be Sequestrators to borrow money**

- (1) The Sequestrators of a plantation in cultivation may, with permission of the Court, advance or procure for and on behalf of the plantation, such sum or sums of money as may be necessary to maintain the cultivation during the period of sequestration, as well as to keep in repair and in working order the machinery and buildings of the plantation.

**48A.05 Advances made a preferent claim**

- (1) All sums so advanced or procured by the Sequestrators for any of the purposes mentioned in Rule 48A.04 as well as for all necessary supplies furnished and necessary expenses incurred by the Sequestrators during the period of sequestration together with interest not exceeding the rate of 7 per cent *per annum*, shall be a preferent claim on the proceeds realised by the sale of such plantation after the expenses of the sale and debts due to the State and any local authority, have been paid in full.

**48A.06 Disposable fund in hands of sequestrators**

- (1) In case a disposable sum accumulates in the hands of the Sequestrators sufficient to pay off the debt for which such plantation is under sequestration, the Sequestrators must report to the Court the existence of such disposable fund, and the Court may order payment of such debt, and the debt being paid, the plantation shall be relieved from sequestration and restored to its owner.
- (2) Where any mortgage exists upon any such plantation, binding in consignment or otherwise the produce of the same, such plantation shall not be relieved from sequestration except on payment of such mortgage or consent of the holder of the mortgage.

**48A.07 Sequestrators' commission**

- (1) The amount of remuneration, by commission, to Sequestrators shall be determined by the Court, not however in any case to exceed 3 per cent on moneys received and two per cent on moneys disbursed.

**48A.08 Sale of plantation under sequestration**

- (1) No plantation under sequestration shall be sold, except as otherwise provided in these Rules, until 12 months after levy, and a description of the plantation and notice of sale shall, at least 4 months previously to the day of sale, be advertised once in a newspaper of general circulation in Guyana, and simultaneously once in the *Gazette*.
- (2) On the application of the Judgment Debtors with the consent of the Judgment Creditors holding three-fourths in value of the debt and the mortgagee, the sequestration may be extended from time to time by the Court.

**48A.09 Sale of plantation may be anticipated**

- (1) Upon the application of the owner of a plantation under sequestration, with the consent of the Judgment creditor and of the mortgagee of such plantation, if any, the Court may order the sale of any such plantation at any time agreed upon by such owner, creditor or mortgagee, before the expiration of the term of sequestration.

**48A.10 Precise day of sale of plantation**

- (1) At the expiration of the 12 months, and after due notice, or upon the order of the Court upon the report of the Sequestrators under Rule 48A.02, or upon the agreement of the owner, Judgment Creditor and mortgagee under Rule 48A.09 the Court, on the application of the Marshal, shall give directions regarding the sale and the terms of payment of such plantation with its appurtenances.
- (2) After a second advertisement of the day fixed for sale, once in a Saturday newspaper of general circulation in Guyana, at least 1 month before the day fixed for sale, the plantation must be publicly sold at a credit of 3, 6, 9 and 12 months from the day of sale, with interest at 6 per cent on each instalment from the day of sale, and the Marshal, on receipt of each instalment, after deducting all the costs incurred in execution, shall immediately deposit the same in the Registry in favour of the rightful claimant.
- (3) In the event of the plantation to be sold consisting of several lots of land with or without buildings, and upon which lots respectively there are separate or distinct mortgages, liens or claims, the holders of such distinct mortgages, liens or claims, may at any time before the sale apply to the Court for an order to sell such plantation, in such manner as may seem most advantageous for all parties under the circumstances of each particular case, and to enable the Court to ascertain the rights of the preferent and concurrent creditors.

**48A.11 Purchaser of plantation to provide two sureties**

- (1) The purchaser of a plantation in cultivation at execution sale, unless he or she pays cash at the time of the sale, must provide himself with two sufficient sureties, who shall bind themselves as principal debtors along with and for and on behalf of the purchaser to and in favour of the Marshal, for the payment of each of the instalments of the purchase money when it becomes due.
- (2) The purchaser shall be at liberty to anticipate the payment of any instalment; in which case interest shall be payable to the time of such anticipated payment only.
- (3) In any case the Marshal must immediately pay into the Registry the proceeds of such sale as they come into his or her hands, after deducting all the costs incurred in execution.

**48A.12 Rights of mortgagees preserved**

- (1) Every mortgage, legal or conventional, shall hold the same rank in respect to priority which it now holds by law, and nothing in this Part shall affect the validity or privilege of such mortgage.

**48A.13 Purchaser holding mortgage may deposit the same**

- (1) If the purchaser of a plantation under cultivation sold at execution sale becomes the holder of a mortgage on the plantation, he or she may deposit with the Registrar any such mortgage in lieu of so much of the purchase money as may be due on such mortgage, notwithstanding which, however, the purchaser and his or her sureties shall be liable, when ordered by the Court, to pay in cash whatever sum the Court may order to be paid into the Registry.

**48A.14 Purchaser holding second mortgage to pay in cash of first mortgage**

- (1) If the purchaser of a plantation under cultivation sold at execution sale becomes the holder of a second or subsequent mortgage, the purchaser and his or her sureties must, when the instalments become due, pay the same in cash into the Registry to the extent of the amount of the first mortgage, and of all claims preferent to the second or subsequent mortgage.
- (2) After the payment referred to in sub-Rule (1), the purchaser may deposit his or her second or subsequent mortgage for so much of the purchase money as the amount of the second or subsequent mortgage cover; notwithstanding which, however, the purchaser and his or her sureties shall be liable, when ordered by the Court, to pay in cash whatever sum the Court may order to be paid into the Registry.

**48A.15 In default of payment; then resale**

- (1) On the sale at execution of any plantation in cultivation, in default of payment of any instalment of purchase money when due, the Marshal may apply to the Court for an order to retake possession of such plantation or for Judgment against the purchaser and his or her sureties or for both possession and Judgment.
- (2) If an order is granted to retake possession, the Marshal must, after one notice in the *Gazette* and newspaper simultaneously, containing a description of the plantation and notice of sale resell the same to the highest bidder, according to the mode of payment and at a credit as will meet the instalments of the first sale then due, and which shall subsequently become due.
- (3) In the event of the plantation being sold for less at the second than at the first sale, the purchaser at the first sale, and his or her sureties shall each be liable for all and every deficiency, as well as for all costs, charges and expenses attending the second sale; and for such deficiency, costs, charges and expenses, the same being approved by the Court, the Marshal shall upon application to the Court, be authorised to levy execution upon and sell the properties of the purchaser and sureties, and of each of them, in manner and form prescribed for levies and sales at execution.
- (4) If the purchase money at the resale, together with any instalment already paid, is of a greater amount than the sum bid for the property at first sale, the excess or difference shall accrue to the benefit of the creditors in satisfaction of their claims, on the payment of all of which in full, and not before, the surplus, if any, shall belong and be paid to the purchaser at the first sale.

**PART 49: APPOINTMENT OF A RECEIVER****49.01 Application for appointment of Receiver**

- (1) Where the provisions for the appointment of a receiver under the *Companies Act*, Chapter 89:01, do not apply, the Court may appoint a receiver, on an application, to recover a Judgment debt from the income or capital assets of a Judgment Debtor.
- (2) In deciding whether to order the appointment of a receiver under this Part, the Court must have regard to,
  - (a) the amount of the Judgment debt;

- (b) the amount likely to be obtained by the receiver; and
  - (c) the probable cost of appointing and remunerating the receiver.
- (3) Where the Court makes an order appointing a receiver under this Part, the order must,
- (a) name the person appointed as receiver;
  - (b) specify the amount and terms of the security, if any, to be furnished by the receiver for the proper performance of the receiver's duties;
  - (c) state whether the receiver is also appointed as manager and, if necessary, define the scope of the receiver's managerial powers;
  - (d) specify who is to be responsible for paying the receiver or the property from which the receiver is to recover his or her remuneration;
  - (e) specify the dates by which the receiver must file the receiver's accounts; and
  - (f) contain such directions and impose such terms as are just.

#### **49.02 Remuneration of Receiver**

- (1) A receiver may only be remunerated for his or her services if the Court so orders and,
- (a) specifies the basis upon which the receiver is to be remunerated; or
  - (b) directs that the amount of the receiver's remuneration is to be determined by the Court.
- (2) Where the Court directs that the amount of the receiver's remuneration is to be determined by the Court,
- (a) the receiver may not recover any remuneration without a determination by the Court; and
  - (b) the receiver or any party may make an application at any time for such a determination to take place.
- (3) The receiver or any party may make an application for the determination of the amount of the receiver's remuneration and, where the application is made by the receiver, the application must attach the receiver's accounts as exhibits to the supporting Affidavit and show the basis upon which the remuneration is claimed.
- (4) An application for the determination of the amount of the receiver's remuneration must be made on notice to the receiver, Judgment Debtor and Judgment Creditor.
- (5) In considering the application for the remuneration of a receiver under this Part, the Court may,
- (a) award such sum as is justified, reasonable and proportionate in all the circumstances, taking into account,
    - (i) the time spent by the receiver and his or her staff;
    - (ii) the complexity of the receivership;
    - (iii) any responsibility of an exceptional kind or degree which fell on the receiver in consequence of the receivership;
    - (iv) the effectiveness with which the receiver appeared to be carrying out carried out his or her duties; and
    - (v) the value and nature of the subject matter of the receivership; or
  - (b) order the receiver to provide further information in support of his or her claim for remuneration and adjourn the hearing to a fixed date.

- (6) The receiver must pay into Court any balance shown on the accounts as due from the receiver within 7 days of the passing of any account.

#### **49.03 Default by Receiver**

- (1) Where a receiver fails to submit an account by the date ordered or pay into Court any balance shown on the account as due from the receiver, any party may make an application for the receiver to show cause for the failure, which application must be made on notice to the receiver.
- (2) At the hearing of an application for the receiver to show cause for the failure, the Court may,
  - (a) give directions to the receiver to remedy the default;
  - (b) discharge the receiver;
  - (c) appoint another receiver;
  - (d) disallow any remuneration claimed by the receiver; or
  - (e) order the receiver to,
    - (i) pay interest at the statutory rate on any monies which may appear from a subsequent account to be due from the receiver; and
    - (ii) pay the costs of the Applicant in bringing the application, which costs may be fixed or assessed by the Court.

### **PART 50: ORDER TO COMMIT**

#### **50.01 Application for Order to Commit**

- (1) Where permitted under the *Debtors Act*, Chapter 6:04, a Judgment Creditor may make an application for an Order to Commit (Form 50A) a Judgment Debtor for non-payment of all or part of an amount due under an order, which application must be made by Judgment Summons (Form 50B) with affidavit in support.
- (2) The Affidavit in support of the Judgment Summons must,
  - (a) attach a copy of the order requiring payment of the debt;
  - (b) provide the details of any payment that has been made by the Judgment Debtor up to the date of the application; and
  - (c) state the amount of interest claimed to the date of the application and the subsequent daily rate.
- (3) Upon payment of the prescribed fee, the Registry must insert the date for the hearing of the Judgment Summons and issue it.
- (4) Upon issuance of the Judgment Summons, the Applicant must serve it on the Judgment Debtor by way of personal service not less than 7 days before the date fixed for the hearing of the application to commit.
- (5) The Judgment Creditor must file proof of service or proof of attempted service not less than 4 days before the hearing, failing which the application must be struck from the Court docket and must not be heard.



**50.02 Hearing of application for Order to Commit**

- (1) At the hearing of the application for an order to commit, the Court may,
  - (a) dismiss the application to commit; or
  - (b) where the Court is satisfied that the Judgment Summons has come to the knowledge of the Judgment Debtor or that all reasonable efforts have been made to serve the Judgment Debtor and the Judgment Debtor is wilfully evading service, make an order to commit the Judgment Debtor for such fixed term as is permitted by law.
- (2) An order to commit must bear the date of the day on which such order was made and must continue in force for one year from such date, but it may be renewed in the manner provided for writs of execution by Rule 43.20.
- (3) Where a Judgment Debtor has once been imprisoned pursuant to an order to commit, no second order to commit may be made against that Judgment Debtor in respect of the same debt, unless the order for payment of the debt owing by the Judgment Debtor provides for payment by instalments in which case a power of committal arises on default of payment for each instalment.
- (4) Imprisonment of a Judgment Debtor pursuant to an order to commit does not operate as a satisfaction or extinguishment of the debt, and the Judgment Creditor is not prohibited from proceeding by any other means of enforcement against that Judgment Debtor as permitted by these Rules.

**PART 51: CONTEMPT ORDER****51.01 Application for Contempt Order**

- (1) Where a person fails to do an act (other than the payment of money) or fails to abstain from doing an act as required by a Judgment or an order, any person may make an application for a contempt order against that person.
- (2) An Affidavit in support of an application for a contempt order must,
  - (a) attach a copy of the Judgment or order that is alleged to have been disobeyed or breached;
  - (b) establish that the Judgment or order that is alleged to have been disobeyed or breached was served on the person or, where service could not be effected, that the Judgment or order would have come to the person's attention if the person had not been evading service;
  - (c) specify the term of the Judgment or order which it is alleged that the person has disobeyed or broken; and
  - (d) specify the exact nature of the alleged disobedience or breach and, where applicable, when and where each breach occurred.
- (3) An application for a contempt order must be personally served on the person against whom the contempt order is sought.
- (4) An Affidavit in support of an application for a contempt order may contain statements of the deponent's information and belief only with respect to facts that are not contentious, and the source of the information and the fact of the belief must be specified in the

Affidavit.

### **51.02 Hearing of application for Contempt Order**

- (1) In disposing of an application for a contempt order, the Court may make such order as is just, and where a finding of contempt is made, the Court may order that the person in contempt,
  - (a) be imprisoned for such period and on such terms as are just;
  - (b) be imprisoned if the person fails to comply with a term of the order;
  - (c) pay a fine;
  - (d) do or refrain from doing an act;
  - (e) pay such costs as are just; and
  - (f) comply with any other order that the Court considers necessary.
- (2) Where a company is in contempt, the Court may also make an order under sub-Rule (1) against any officer or director of the company.
- (3) Where a person fails to comply with a Judgment or an order requiring the doing of an act, other than the payment of money, the Court may, instead of or in addition to making a contempt order, order the act to be done, at the expense of the disobedient person, by the party enforcing the Judgment or order or any other person appointed by the Court.
- (4) The party enforcing the Judgment or order and any person appointed by the Court are entitled to the costs of the application under this Part and the expenses incurred in doing the act ordered to be done, which costs may be fixed or assessed by the Court.
- (5) Where an order for imprisonment is made, it may be enforced by the issue of a Warrant of Committal by the Registry.

### **51.03 Discharging or setting aside Contempt Order**

- (1) The Court may discharge, set aside, vary or give directions in respect of a contempt order and may grant any other relief and make any other order as is just.

## **PART 52: EXAMINATION IN AID OF EXECUTION**

### **52.01 Examination of Judgment Debtor**

- (1) A Judgment Creditor may examine a Judgment Debtor or the representative of the Judgment Debtor in relation to the enforcement of a Judgment or order, which examination may be referred to as an examination in aid of execution.
- (2) A Judgment Creditor may apply to the Court for an order that the Judgment Debtor liable under the Judgment or order, or the representative of the debtor, be examined in aid of execution of the Judgment or order before a Judge or the Registrar and the Court may make an order for the attendance and the oral examination of the Debtor, or any other person, and for the production of any books or documents.
- (3) Where the Judgment Debtor sought to be examined,
  - (a) is a company, the Judgment Creditor may examine any officer, director or employee on behalf of the company; or

- (b) is a partnership, the Judgment Creditor may examine any person who was, or is alleged to have been, a partner at the material time.
- (4) A Judgment Creditor may examine the Judgment Debtor in relation to,
- (a) the reason for non-payment or non-performance of the Judgment or order;
  - (b) the Judgment Debtor's income and property;
  - (c) the debts owed to and by the Judgment Debtor;
  - (d) the disposal the Judgment Debtor has made of any property either before or after the making of the Judgment or order;
  - (e) the Judgment Debtor's present, past and future means to satisfy the Judgment or order;
  - (f) whether the Judgment Debtor intends to obey the Judgment or order or has any reason for not doing so; and
  - (g) any other matter pertinent to the enforcement of the Judgment or order.
- (5) Where the Court grants the Examination in Aid of Execution Order, the Judgment Creditor must serve a Notice of Examination (Form 33A) on the Judgment Debtor in accordance with Part 33 and the provisions of Part 33 apply to the conduct of the examination in addition to the provisions of this Part.

#### **52.02 Limitation on examination in aid of execution**

- (1) A Judgment Creditor is entitled to only one examination in aid of execution of a Judgment Debtor, except with permission of the Court.
- (2) Where a Judgment Creditor seeks permission to conduct a further examination in aid of execution of a Judgment Debtor, the Judgment Creditor must make an application, which application may be made without notice and may be made in writing.
- (3) Any order for further examination in aid of execution must be served upon the Judgment Debtor together with the Notice of Examination.

#### **52.03 Statement of Financial Position**

- (1) Where the Judgment or order to be enforced is for the payment of an amount of money, the Judgment Creditor may serve, together with the Notice of Examination, a Statement of Financial Position (Form 52) requiring the Judgment Debtor to complete the requirements of the form.
- (2) The Judgment Debtor must serve his or her completed the Statement of Financial Position on the Judgment Creditor within 4 days of the date scheduled for the examination and, where the Judgment Creditor is satisfied with the answers provided by the Judgment Debtor, the Judgment Creditor may cancel the examination provided that the Judgment Debtor is notified of the cancellation.

#### **52.04 Impounded documents.**

- (1) Impounded documents while in the custody of the Court are not to be parted with; and are not to be inspected except on a written order signed by the Judge on whose order they were impounded or by some other Judge.
- (2) Impounded documents must not be delivered out of the custody of the Court except upon

an order made on fixed date application in open Court.

- (3) Notwithstanding sub-Rules (1) and (2), impounded documents in the custody of the Court must, upon the request in writing of the Attorney-General be given into the custody of a law officer.

#### **52.05 Costs of application under this Part.**

- (1) The costs of an application under this Part and of any proceedings arising from or incidental to the application, shall be in the discretion of the Court, or in the discretion of the Registrar when appointed under Rule 52.01(2), if the Court so directs.

### **PART 53: STOP NOTICES AND CHARGING ORDERS**

#### **53.01 Stop Notice for intended transfer, etc., of movable property or security**

- (1) Where a Judgment Creditor believes that there may be a transfer, disposition of or other dealing with movable property or a security of a Judgment Debtor by another person, the Judgment Creditor may file a Requisition (Form 13A), together with a draft Stop Notice (Form 53), with the Registry to obtain a Stop Notice.
- (2) Upon receipt of the Requisition, and payment of the requisite fee, the Registry must issue a Stop Notice, which requires any person served with the Stop Notice to provide the Judgment Creditor with at least 28 days written notice of any intended transfer, disposition of or other dealing with the movable property or security of the Judgment Debtor.
- (3) The Judgment Creditor must personally serve the Stop Notice on any person to whom it is directed, which may include the Registrar where there are any funds in Court.
- (4) Any person who was served with a Stop Notice but who makes a transfer, disposition of or otherwise deals with the movable property or security to which the Stop Notice relates without complying with the Stop Notice is liable to pay the Judgment Creditor an amount equivalent to the value of the property or security up to the amount of the outstanding Judgment debt, interest and costs.

#### **53.02 Charging Order**

- (1) A Judgment Creditor may, upon application, obtain a charge on the beneficial interest of the Judgment Debtor in,
  - (a) property, movable or immovable;
  - (b) any security; or
  - (c) any funds in Court, which include securities.
- (2) A Judgment Creditor may make an application for a single charging order in respect of more than one order against a Judgment Debtor.
- (3) No person on whom a charging order is served may transfer, dispose, or otherwise deal with the property or security to which the charging order relates unless the order has been discharged.
- (4) Any transfer, disposition of or other dealing with the property or security to which the

charging order relates by a person served with the charging order is invalid, unless the transfer, disposition or other dealing occurred after the charging order was discharged.

- (5) Any person who was served with a charging order but makes a transfer, disposition of or otherwise deals with the property or security to which the charging order relates is liable to pay the Judgment Creditor an amount equivalent to the value of the property or security up to the amount of the outstanding Judgment debt, interest and costs.
- (6) A charging order remains in force until it is discharged by order of the Court.

### **53.03 Application for Charging Order**

- (1) An application for a charging order may be made without notice but must be supported by an Affidavit that,
  - (a) identifies and attaches the order to be enforced against the Judgment Debtor;
  - (b) states that the Judgment debt is unsatisfied, either wholly or in part and to what extent;
  - (c) identifies the property or security in respect of which the order is sought and states in whose name it stands, as well as whether any person other than the Judgment Debtor who may have an interest in the property or security;
  - (d) identifies any known unsecured creditor of the Judgment Debtor; and
  - (e) states that the Judgment Debtor has a beneficial interest in the security and describing that interest.
- (2) An Affidavit under this Rule may contain statements of fact based on information and belief if the grounds for the information and belief are set out.
- (3) Where an application for a charging order is made on notice, it must be served on,
  - (a) the Judgment Debtor;
  - (b) where the securities to be charged are shares, the company;
  - (c) where the property or security to be charged is funds in Court, the Registrar;
  - (d) all known unsecured creditors of the Judgment Debtor; and
  - (e) any other person may allege an interest in the property or security to which the charging order relates.
- (4) Where an application for a charging order is made without notice, the Court may only grant a temporary charging order.
- (5) The Judgment Creditor may, at any time before the expiration of a temporary charging order, make an application to make the order absolute and, unless the Judgment Debtor attends at the hearing of the application and shows cause why the order should not be made absolute, the Court may, upon proof of service of the application, make the order absolute.

### **53.04 Service of Charging Order**

- (1) Where the Court makes a charging order, whether or not temporary, the Judgment Creditor must personally serve a copy of the order on,
  - (a) the Judgment Debtor; and
  - (b) any known unsecured creditors or other person who may allege an interest in the property or security to which the charging order relates.

- (2) The charging order must be served within 7 days of the date of the charging order.
- (3) Where the charging order relates to shares of a company or funds in Court, it must be served together with a stop notice.

#### **53.05 Variation or discharge of Charging Order**

- (1) Any person may at any time make an application to vary or discharge a charging order.
- (2) An application to vary a charging order must be made on notice to,
  - (a) the Judgment Creditor, unless the Judgment Creditor is the Applicant;
  - (b) the Judgment Debtor, unless the Judgment Debtor is the Applicant; and
  - (c) any known unsecured creditors or other known person who may allege an interest in the property or security to which the charging order relates.
- (3) Where the Judgment Creditor is the Applicant, an application to discharge a charging order may be made without notice and in writing.
- (4) Unless the Judgment Creditor is the Applicant, an application to discharge a charging order must be made on notice to the Judgment Creditor.

#### **53.06 Enforcement of Charging Order**

- (1) The Judgment Creditor may, after 3 months of the date of a charging order, make an application for an order directing the sale of the Judgment Debtor's interest in the property or security with the proceeds of the sale being payable to the Judgment Creditor up to the amount of the outstanding Judgment debt, interest and costs.
- (2) The Judgment Creditor must serve a copy of the application directing a sale on,
  - (a) the Judgment Debtor; and
  - (b) any known unsecured creditors or other person who may allege an interest in the property or security to which the charging order relates.
- (3) The Court may give such directions as it considers appropriate to secure the expeditious sale of the property or security at a price that is fair to both Judgment Creditor and the Judgment Debtor.

#### **53.07 Payment of dividends to Judgment Creditor**

- (1) The Judgment Creditor may at any time after a charging order in his favour has been made apply to the Court for an order directing the payment to him of any dividend, interest or annual produce accrued due upon the property or security affected by the charging order, or of so much of it as is sufficient to satisfy the Judgment debt, and the Court may make such order accordingly.
- (2) Notice of any such application must be served on,
  - (a) the Judgment Debtor; and
  - (b) any known unsecured creditor or other known person who may allege an interest in the property or security to which the charging order relates.

#### **53.08 Application by separate Judgment Creditor of partner to charge interest in partnership property**

- (1) Every application by a separate Judgment Creditor of a partner for an order charging his or

her interest in the partnership property and profits under section 25 of the Partnership Act, Chapter 89:02, and for such other orders as are thereby authorised to be made, must be served on the Judgment Debtor, and on his partners, or those who are within the jurisdiction; and such service shall be good service on all the partners, and all orders made on the application must be similarly served.

**53.09 Service of application by partner of Judgment Debtor**

(1) Every application made by any partner of the Judgment Debtor under the same section must be served on the Judgment Creditor and on the Judgment Debtor and on any of the other partners who has not concurred in the application and as shall be within the jurisdiction, and such service shall be good service on all the partners, and all orders made on the application must be similarly served.

**PART 53A: APPLICATION OF PARTS 43 TO 53A TO CERTIFICATE UNDER SECTION 101 OF THE INCOME TAX ACT**

[Rule 1 of 1971]

**53A.01 Application of Parts 43 to 53A to certificate registered under section 101 of Income Tax Act, Cap 81:01.**

(1) Parts 43 to 53A in so far as they apply to a Judgment or an order for the recovery by or payment to any person of money shall, subject to Rule 53A.02, apply *mutatis mutandis* to a certificate which is issued under section 101 of the Income Tax Act and registered with the Registrar; and for the purpose of such application –

(a) the requirement under these Rules for the entry and service of a Judgment or an order shall be construed as the requirement of the Registrar to effect the registration of the certificate and the service of a certified copy under Rule 53A.02;

(b) Parts 43 to 53A shall be construed as if –

(i) for Rule 43.11 there had been substituted the following Rule –

"43.11. Where a certificate is issued against a firm, execution may issue –

(a) against any property of the partnership within the jurisdiction; or

(b) against the property of any person who has been named as a partner in the certificate and who has been served with notice of the intention to effect the registration of the certificate.";

(ii) the reference to the title of an action, record date of or other particulars relating to a Judgment obtained pursuant to a case were references to the particulars of a certificate (including the date of registration of the certificate).

**53A.02 Procedure after certificate registered.**

(1) In respect of a certificate mentioned in Rule 53A.01(1) no further proceedings subsequent

to its registration must be taken under these Rules unless –

- (a) there has been served, in the same manner as a statement of claim, upon the person named in the certificate, being the person by whom a sum of money is payable, a copy of the certificate certified by the Registrar as a true copy of that registered by him;
- (b) Part 7 with such adaptations as are necessary has been complied with;
- (c) 14 days have expired from the date of such service; and
- (d) where service other than personal service is effected as provided in this Rule an affidavit of service setting out that the requirements have been complied with, has been filed with the Registrar:

Provided that, where the person effecting such regular or personal service of the certificate is unable for whatever reason to comply with Part 7, but a return of service has been made with, such service shall be deemed to have been effected on the date of the last of two publications in a Sunday newspaper, the first publication being not earlier than 21 days of that date, of a notice setting out –

- (a) an extract of the certificate;
- (b) particulars of the date of the registration of the certificate; and
- (c) the date when and place where personal service of the registered certificate was ineffectual.”.

Amendment of  
Schedule 3 to the  
Principal Rules.

**5.** Schedule 3 to the Principal Rules is amended by –

- (a) inserting immediately after Form 37, Forms 43A, 43B, 43C, 43D and 43E set out in the Schedule; and
- (b) substituting for Forms 44A, 44B, 44C, 45, 46, 47, 48A and 48B, Forms 44A, 44B, 44C, 45, 46, 47, 47A, 48A, 48B, 48C, 48D and 48E as set out in the Schedule.

Application of these  
Rules.

**6. (1)** These Rules apply to –

- (a) all enforcement proceedings commenced on or after the date on which these Rules come into force; and
- (b) all enforcement proceedings pending at the date on which these Rules come into force.



**SCHEDULE**

**“Form 43A: Request for Issue of Writ – Seizure and Sale**

*(General Heading)*

**REQUEST FOR ISSUE OF WRIT SEIZURE AND SALE**

TO the Registrar of the Supreme Court.

Seal a Writ of Seizure and Sale, directed to the Marshal, to levy on the movable and immovable property of ..... for the sum of \$..... and interest thereon at the rate of ..... per cent *per annum* from the ..... day of ..... 20 ....., (and \$..... costs)

Judgment (or Order) dated the ..... day of ....., 20 .....

(Taxing Officer’s Certificate dated the .....day of.....20.....

Dated the ..... day of ....., 20 .....

*(Signed)*.....

Attorney-at-Law for .....

\_\_\_\_\_

**Form 43B: Request for Issue of Writ – Possession**

*(General Heading)*

**REQUEST FOR ISSUE OF WRIT POSSESSION**

TO the Registrar of the Supreme Court.

Seal a Writ of Possession directed to the Marshal to deliver possession to .....  
of .....

Judgment dated the ..... day of ....., 20.....

Dated the ..... day of ....., 20.....

*(Signed)*.....

Attorney-at-Law for .....

\_\_\_\_\_

**Form 43C: Request for Issue of Writ – Delivery**

*(General Heading)*

**REQUEST FOR ISSUE OF WRIT DELIVERY**

TO the Registrar of the Supreme Court.

Seal a Writ of Delivery directed to the Marshal to make delivery to .....  
of .....

Judgment dated the ..... day of ..... 20..... .

Dated the ..... day of ..... , 20 .....

*(Signed)* .....

Attorney-at-Law for .....

\_\_\_\_\_

**Form 43D: Request for Issue of Writ – Attachment**

*(General Heading)*

**REQUEST FOR ISSUE OF WRIT ATTACHMENT**

TO the Registrar of the Supreme Court.

Seal, in pursuance of Order dated the ..... day of ....., 20..... ,  
a Writ of Attachment directed to the Marshal against ..... (for not  
delivering to ..... *or as the case may be*).

Judgment dated the ..... day of ....., 20..... .

Dated the ..... day of ....., 20..... .

*(Signed)* .....

Attorney-at-Law for .....

\_\_\_\_\_

**Form 43E: Request for Issue of Writ – Sequestration**

*(General Heading)*

**REQUEST FOR ISSUE OF WRIT SEQUESTRATION**

TO the Registrar of the Supreme Court.

Seal, in pursuance of Order dated the ..... day of ..... 20..... ,  
a Writ of Sequestration directed to the Marshal against ..... ,  
for (not paying the sum of \$..... into Court *or as the case may be*).

Judgment dated the ..... day of ..... , 20..... .

Dated the ..... day of ..... , 20..... .

*(Signed)* .....

Attorney-at-Law for .....

\_\_\_\_\_

**Form 44A: Garnishment Order**

*(General Heading)*

*(Court seal)*

**NOTICE OF GARNISHMENT**

TO *(name and address of garnishee)*

A LEGAL PROCEEDING in this court between the creditor and the debtor has resulted in an order that the debtor pay a sum of money to the creditor. The creditor claims that you owe a debt to the debtor. A debt to the debtor includes both a debt payable to the debtor and a debt payable to the debtor and one or more co-owners. The creditor has had this notice of garnishment directed to you as garnishee in order to seize any debt that you owe or will owe to the debtor. Where the debt is payable to the debtor and to one or more co-owners, you must pay one-half of the indebtedness.

YOU ARE REQUIRED TO PAY to the Registrar of the Supreme Court of the *(name of county or district)*,

- (a) within 14 days after this notice is served on you, all debts now payable by you to the debtor; and
- (b) within 14 days after they become payable, all debts that become payable by you to the debtor within 6 years after this notice is served on you,

EACH PAYMENT MUST BE SENT with a copy of the attached garnishee's payment notice to the Registrar at the address shown below.

IF YOU DO NOT MAKE THE PAYMENT WITHIN 14 DAYS after this notice is served on you, because the debt is owed to the debtor and to one or more co-owners or for any other reason, you must within that time serve on the creditor and the debtor and file with the court a garnishee's statement in form attached to this notice.

IF YOU FAIL TO OBEY THIS NOTICE, THE COURT MAY MAKE AND ENFORCE AN ORDER AGAINST YOU for payment of the amount set out above and the costs of the creditor.

IF YOU MAKE PAYMENT TO ANYONE OTHER THAN THE REGISTRAR, YOU MAY BE LIABLE TO PAY AGAIN.

TO THE CREDITOR, THE DEBTOR AND THE GARNISHEE.

Any party may make an application to the court to determine any matter in relation to this notice of garnishment.

Date: \_\_\_\_\_

Signature of Registry

Issued by: *(name of person at Registry)*

Address of Registry where issued: *(address of Registry)*

Creditor's address

Debtor's address

Registrar's address

.....

.....

telephone no. ....

.....

*(The top portion of the garnishee's payment notice is to be completed by the creditor before the notice of garnishment is issued. Where it is anticipated that more than one payment will be made by the garnishee, the creditor should provide extra copies of the payment notice.)*

**GARNISHEE'S PAYMENT NOTICE**

Make payment by cheque or money order payable to the Registrar of the Supreme Court of the *(the name of county or district)* and send it, along with a copy of this payment notice, to the *(address)*.

Court ..... File no. ....

Office at ..... ..

Creditor.....

Debtor.....

Garnishee .....

**TO BE COMPLETED BY GARNISHEE FOR EACH PAYMENT**

Date of payment .....

Amount enclosed \$ .....



**Form 44B: Garnishee’s Statement**

*(General Heading)*

**GARNISHEE’S STATEMENT**

1. I/We acknowledge that I/we owe or will owe the debtor or the debtor and one or more co-owners the sum of \$ ..... , payable on *(date)* because *(Give reasons why you owe the debtor or the debtor and one or more co-owners money. If you are making payment of less than the amount stated in line 2 of this paragraph because the debt is owed to the debtor and to one or more co-owners or for any other reason, give a full explanation of the reason. If you owe the debtor wages, state how often the debtor is paid. State the gross amount of the debtor’s wages before any deductions and the net amount after all deductions and attach a copy of a pay slip.)*
2. *(If you do not owe the debtor money, explain why. Give any other information that will explain your financial relationship with the debtor.)*
3. *(If you have been served with any other notice of garnishment or a writ of execution against the debtor, give particulars.): Name of creditor, Date of notice or writ, Date of service on you.*
4. *(If you wish to object on the ground that service was improper, give particulars of your objection.)*

Date

.....

Signature of or for Garnishee

Name of garnishee

\_\_\_\_\_

Address

Telephone number

**Form 44C: Notice of Termination of Garnishment**

*(General Heading)*

**NOTICE OF TERMINATION OF GARNISHMENT**

TO *(name of garnishee)*

AND

TO the Registrar of the Supreme Court of the *(name of county or district)*

THE GARNISHMENT ORDER DATED *(date)* SERVED ON YOU IS  
TERMINATED and you are not to make any further payments under it.

*(Date)*

*(Signature of creditor or Attorney-at-Law)  
(Name, address, telephone number and fax  
number or email of creditor or Attorney-  
at-Law)*

---

**Form 45: Writ of Possession**

*(General Heading)*

*Court Seal*

**WRIT OF POSSESSION**

TO the Marshal of the Supreme Court.

Whereas by the Judgment of this Court dated the ..... day of .....  
20..... , it was ordered that .....(Judgment Creditor) do recover possession  
of (describe the property). This is therefore to command you to enter upon the said property and  
to remove .....(Judgment Debtor) or the person presently in occupation  
thereof, and to deliver possession of the said property to  
.....(Judgment Creditor) .

(Add directions for return and indorsement of writ.)

Dated this day ..... of ..... , 20.....

.....

Signature of Registrar of the Supreme Court

\_\_\_\_\_

**Form 46: Writ of Delivery***(General Heading)**Court Seal***WRIT OF DELIVERY****Form (No. 1)**

TO the Marshal of the Supreme Court.

Whereas by the Judgment of this Court dated the ..... day of ..... 20....., .....(Judgment Debtor) was directed to deliver to ..... (Judgment Creditor), the following chattels (here enumerate chattels ordered to be delivered). This is therefore to command you to cause the said chattels to be returned to .....(Judgment Creditor). And this is further to command you that if the said chattels cannot be found \*\* you do levy upon and seize all the movable and immovable property of the said .....(Judgment Debtor), and retain the same in your custody until ..... (Judgment Debtor) delivers the said chattels to .....(Judgment Creditor)

(Add directions for return and indorsement of writ.)

Dated this day ..... of ..... , 20.....

.....  
Signature of Registrar of the Supreme Court

---

**WRIT OF DELIVERY**

**Form (No. 2)**

The like, but instead of distress until the chattels are returned commanding the Marshal to levy on the goods of ..... (Judgment Debtor) the assessed value of the chattels (proceed as in Form No. 1 down to the \*\* and then this) you do seize and sell so much of the movable property of the said ..... (Judgment Debtor) as shall be sufficient to satisfy the sum of \$..... (*assessed value of chattels*).\*

(Add directions for return and indorsement or writ.)

(If it is wished to include damages, costs and interest, proceed to the \* and continue thus) and also the sum of \$..... (damages), together with interest thereon at the rate of..... per cent *per annum* from the ..... day of ..... 20..... , which said sum and interest were ordered to be paid under the said Judgment, and together with \$..... the amount of costs due under the said Judgment or as appears by the certificate of the Taxing Officer, dated the ..... day of ..... 20....., and together with the costs and charges of executing the writ.

(Add directions for return and indorsement of writ.)

Dated this day ..... of ....., 20.....

.....

Signature of Registrar of the Supreme Court

\_\_\_\_\_

**Form 47: Writ of Sequestration***(General Heading)**Court Seal***WRIT OF SEQUESTRATION**

TO the Marshal of the Supreme Court.

Whereas by the Judgment of this Court dated the ..... day of ..... 20..... , .....(Judgment Debtor) was directed to (pay money into court or perform any other act).

This is therefore to command you, in pursuance of the order of this Court dated the ..... day of ..... 20..... , to enter upon the immovable property of the said.....(Judgment Debtor), and to collect, receive, sequester and get into your hands not only all the rents and profits of his or her immovable property, but also all his or her goods and chattels whatsoever, and detain and keep the same under sequestration in your hands until the said .....(Judgment Debtor) shall (pay into Court or perform the other act as the case may be) and clear his or her contempt or until the further order of the Court.

Dated this day ..... of ..... , 20.....

.....  
Signature of Registrar of the Supreme Court

**Form 47A: Writ of Attachment**

*(General Heading)*

*Court Seal*

**WRIT OF ATTACHMENT**

TO the Marshal of the Supreme Court.

This is to command you, in pursuance of the order of this Court dated the ..... day of ..... 20..... , to attach ....., and convey him or her to the jail at ....., and deliver him or her to the jailer, together with this writ to the intent that he or she be there detained at his or her own cost and charge until the ..... day of ..... 20..... , or until the further order of the Court.

Dated this day ..... of ....., 20.....

.....

Signature of Registrar of the Supreme Court

\_\_\_\_\_

**Form 48A: Writ of Seizure and Sale***(General Heading)**Court Seal***WRIT OF SEIZURE AND SALE**

TO the Marshal of the Supreme Court.

You are commanded to seize and sell so much, of the movable property of .....(Judgment Debtor) of ..... as shall be sufficient to satisfy the sum of \$..... being the amount due under the Judgment (or order) of this Court, dated the ..... day of ....., 20....., together with interest thereon at the rate of ..... per cent *per annum* from the ..... day of ....., 20....., and together with the sum of \$..... the amount of costs due under the said Judgment (or order) or as appears by the certificate of the Taxing Officer, dated the ..... day of ..... 20....., and together with the costs and charges of executing this writ. And if sufficient movable property cannot be not found to satisfy the said Judgment, together with interest and costs, this is to command you to seize and sell so much of the immovable property of the said .....(Judgment Debtor) as shall be sufficient to satisfy the said Judgment and the amount of the said interest and costs. And this is further to direct you to return this writ to the Registrar of the Supreme Court immediately after you shall have executed or failed to execute the same, with an indorsement on the writ showing in what manner you have executed the same, or the reasons why you have failed to execute it.



Dated this day ..... of ..... , 20.....

.....

Signature of Registrar of the Supreme Court

**Form 48B: Notice of Opposition**

*(General Heading)*

*(Court seal)*

**NOTICE OF OPPOSITION**

TO..... of

and

TO the Registrar of the Supreme Court

Take notice that I, ..... of ..... oppose the sale of the property.....advertised in the Gazette/Newspaper dated the .....day of.....20.....

The following are my reasons for opposition.....

Dated the .....day of .....20.....

.....  
Signed in my presence,  
Registrar of the Supreme Court  
(only if signed by opposer in person)

.....  
Signature of Opposer or Attorney-at-Law

**Form 48C: Notice of Statement of Reasons**

*(General Heading)*

*(Court seal)*

**NOTICE OF STATEMENT OF REASONS**

TO..... of .....

and

TO the Registrar of the Supreme Court

Take Notice that the following are my reasons for opposition referred to in my notice of opposition dated the ..... day of ..... 20..... .

(State reasons for opposition)

Dated the .....day of .....20..... .

.....  
Signed in my presence,  
Registrar of the Supreme Court  
(only if signed by opposer in person).

.....  
Signature of Opposer or Attorney-at-Law

\_\_\_\_\_

**FORM 48D: Application for a Certificate of Abandonment of Opposition**

*(General Heading)*

**APPLICATION FOR A CERTIFICATE OF ABANDONMENT OF OPPOSITION**

TO the Registrar of the Supreme Court.

Application for the issue of a Certificate of Abandonment of Opposition by  
..... (Judgment Creditor).

Opposition to the sale of the property.....(describe  
property) was entered by .....(Opposer) on the  
..... day of ....., 20.....

Judgment dated the ..... day of ....., 20.....

Dated the ..... day of ....., 20.....

.....

Signature of Opposer or Attorney-at-Law

\_\_\_\_\_

**FORM 48E: Certificate of Abandonment of Opposition**

*(General Heading)*

*(Court seal)*

**CERTIFICATE OF ABANDONMENT OF OPPOSITION**

I, Registrar of the Supreme Court, hereby certify that, having made a search of the records in the Registry of the High Court, no case has been instituted under Rule 48.21 of the Civil Procedure Rules on behalf of ..... (Opposer) against..... (Judgment Creditor) to restrain the sale of the property..... (describe the property) and the opposition entered against the sale of the said property on the ..... day of ....., 20..... has been deserted and abandoned.

Judgment dated the ..... day of ....., 20..... .

Dated this day ..... of ....., 20..... .


.....

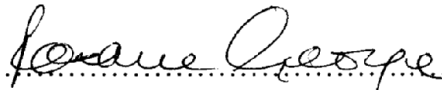
Signature of Registrar of the Supreme Court”.

\_\_\_\_\_

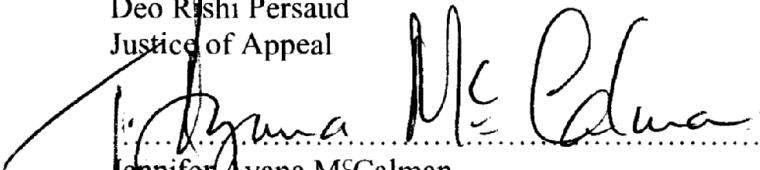
Made this 30<sup>th</sup> day of June, 2019.


MEMBERS OF THE RULES COMMITTEE:


  
.....  
Yonette Cummings-Edwards, O.R., C.C.H.  
Chancellor of the Judiciary (ag) and  
Chairperson of the Rules Committee

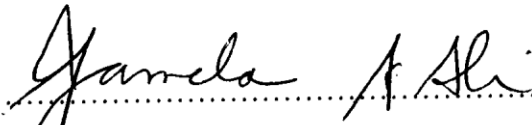
  
.....  
Roxane George, C.C.H., S.C.  
Chief Justice (ag)

  
.....  
Deo Rishi Persaud  
Justice of Appeal

  
.....  
Jennifer Ayana M<sup>c</sup>Calman  
State Solicitor, Official Receiver/Public Trustee

  
.....  
Sueanna Lovell  
Registrar of the Supreme Court

  
.....  
Rafiq Turhan Khan, S.C.  
Attorney-at-Law

  
.....  
Jamela Ali  
Attorney-at-Law