

Dispute Resolution

Charging Orders over Shares

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Judgment creditors can enforce judgment by charging the shareholdings of a judgment debtor

The issues

An important consideration for clients when contemplating litigation is whether a successful judgment will lead to any monetary satisfaction. Litigants, especially financial institutions, tend to consider their prospects of recovery at the same time as reviewing the strengths of their case. What can sometimes be overlooked and underappreciated is what shareholdings, if any, a debtor holds. This may tip the balance towards pursuing a judgment.

Can I charge a debtor's shareholdings?

If a judgment has been successfully obtained against an individual, then the simple answer is yes. At this stage in the process you will have ascertained if the individual holds any shares in private limited companies or public companies limited by shares. Provision for the charging of shares and satisfaction of judgment debts appears in the *Debtors (Ireland) Act, 1840 and the Common Law Procedure Amendment Act (Ireland) 1853*. The applicable procedure is set out in Order 46, Rules 1 and 2 of the Rules of the Superior Courts.

How does it work?

The application to charge the shares of a judgment debtor is relatively straightforward. You simply have to make an ex-parte application to the Court for a provisional Order which would charge the judgment debtor's shares. The benefit of such an application is that the debtor is not made aware of your application and this prevents them from transferring any shares out of his or her name. If you are successful in proving that such an Order is appropriate, then a Court will make the temporary Order and the creditor will have an opportunity to appear in Court on a subsequent date to explain as to why this Order should not be made absolute.

Can I sell the shares?

The charging Order only gives you an equitable interest in the shareholdings and therefore you cannot sell the shares. However, you can make an application to have the shares transferred into the name of the relevant County Sheriff. The County Sheriff may then sell the shares to satisfy your debt (*Section 133 of the 1853 Act*). This application will be on notice to the debtor and any Order granted should be directed at both the debtor and the company. If the application is successful then the Sheriff will begin the process of valuing the shares and attempting to have the shares sold.

In conclusion

Significant issues may arise in relation to minority shareholdings and agreement on shareholding valuations. Yet the obvious benefit of such applications is that it puts enormous pressure on debtors to come to an agreement with creditors as they will not want to lose control of profitable shareholdings of significant value. This is a rarely used piece of legislation which can, in the right circumstances, be of huge benefit to creditors. In particular, financial institutions should consider this option as a novel and practical way of seeking to recover on foot of judgments.

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