

ATTACHMENT ORDER

Attachment Order refers to orders issued by statutory authorities for recovery of Govt **dues. Section 226 (3) of Income Tax Act**, has delegated **powers to Assessing Officer or Tax Recovery Officer** to require any person from whom money is due or may become due to assessed to pay to the income tax authority that much money which is sufficient to meet the liability under the Income Tax Act

This section is also applicable to any Banking Company having any type of deposit in the name of the assesses may be due or accruing due normally we are familiar with the attachment orders issued by income tax authorities only.

But **similar powers are available to others authorities** in the different statutes such as Custom Authorities, Enforcement Directorate, authorities under Sales Tax, Excise and Money Laundering Act.

Once the order is issued by the authorities under any of the above-mentioned Acts, recovery will be done in the manner as the arrears of income tax are recovered.

If the bank does not comply with the attachment orders, bank will be treated as assesses in default which means as if the bank was to make the payment and recovery will be made from the bank along with the penalty as per the provisions of Income Tax Act 1961.

PARTICULARS	GARNISHEE ORDER	ATTACHMENT ORDER
Issuing authority	Competent Court at the request of judgement creditor	Income Tax, Sales Tax, Custom Authorities etc.

Legal provision	Civil Procedure Code, Sec. 60, Order XXI, Rule 46	Related statutes such as IT Act, Sales Tax Act etc.
Stages/ steps	Order Nisi & then Order Absolute	Always in the Absolute form.
Liability	Private liability	Statutory liability
Recovery of	Recovery of private dues.	Recovery of Govt dues
Depositor	Judgement debtor	Assesses in default
Bank	Judgement debtor's debtor	Assesses debtor
amount	May be mentioned specifically	Mentioned specifically
Applicable to which amount	On clear balance available in the a/c at the time of receipt.	Applicable or subsequent balance.
Limitation pd	12 years	30 years
Deposits	Demand & Time deposits	Demand & time deposits
Set-off / appropriation	Available for certain and due debts	Available for ascertainable and due debts
Joint a/cs, order in single name	Not applicable	Equal share depending upon the number of account holders
Joint a/cs order in same name	Applicable up to amount the order	Applicable up to the order amount
Order in the name of co's trustee	Not applicable for a/cs in the name of trusts or accounts in the representative capacity.	Not applicable for a/cs in the name of firm, trusts / or a/cs in the representative capacity.
Deceased a/c	Applicable	Applicable
Insolvent a/c	Not applicable	Not applicable
Undrawn CC or OD Limit	Not applicable	Not applicable
Utilised limit against FDR	Balance amount of FDR	Balance amount of FDR

FDR as collateral security	Not applicable if FDR kept as collateral security	Not applicable
Preference	AO will have the preference over GO if both received together. However, Bankers right of Set-Off is superior	AO will have the preference over GO if both received together. However, Bankers right of Set- off is superior.



OPERATING INSTRUCTIONS IN JOINT A/C

PARTICULARS	EITHER OR SURVIOUR	FORMER OR SURVIVOR	JOINT A/c (Two OR MORE)
OPENING OF ACCOUNT	Both have to sign	Both have to sign	Both / All have sign
STOP PAYMENT OF CHEQUE	Either can stop the payment	Former only can stop the payment	Anyone can stop the payment
CLOSING OF ACCOUNT	Both have to sign to close the account	Only former has to sign to close the account	Both / all have to sign to close the account
MAKING /cancellation of NOMINATION	Both have to sign for change in nomination	Both have to sign for change in nomination	Both / all have to sign for change
ATTACHMENT ORDER	Each of them is equally liable	Each of them is equally liable	Each of them is equally liable

a) PAYMENT ON MATURITY 'E OR S'

Fixed / term deposit accounts are opened with operating instructions Either or Survivor, the signatures of both the depositors need not be obtained for payment of the amount of the deposits on maturity.

b) PAYMENT BEFORE MATURITY

- Depositors may have maturity 'E OR S': The signatures of both to be obtained in case the deposit is to be paid before the operating instruction is either or Survivor and
- If one of the depositors expires before the maturity, no pre-payment of the fixed / term deposits may be allowed without the concurrence of the legal heirs of the deceased joint

holder.

- This, however, could not stand in the way of making payment to the survivor on maturity

c) PREMATURE WITHDRAWAL 'F OR S'

- In case the mandate is 'Former or Survivor, the **'Former alone can operate withdraw the matured amount of the fixed/term deposit, when both the depositors are alive.**
- However, the signature of both the depositors may have to be obtained, in case the deposit is to be paid before maturity.
- If the former expires before the maturity of the fixed/term deposit, the 'Survivor can withdraw the deposit on maturity.
- Premature withdrawal would however require the consent of both the parties, when both of them are alive, and that of the surviving depositor and the legal heirs of the deceased in case of death of one depositor.

d) PREMATURE WITHDRAWALS

If the joint depositors prefer to allow premature withdrawal of fixed/ term deposits also in accordance with the mandate of 'Either or Survivor or 'Former or Survivor, as the case may be, it would be up to the banks to do so, provided they have taken a specific joint mandate from the depositors for said purpose.

TYPES OF DEPOSIT ACCOUNTS

INDIVIDUALS ACCOUNTS

As per Sec. 11 of Indian Contract Act, 1872, every person is competent to contract who is of the age of majority and who is of sound mind and is not disqualified from contracting by any law such as insolvent and resident of enemy country.

Even though minor has no capacity to contract, RBI has allowed the minor to open the deposit a/c as per the powers to become the drawer granted to him as per Sec 26 of NI Act.

JOINT ACCOUNTS

Two or more (competent) persons can open a joint account. Their operational instructions must be clear for operation of the account, including for payment of the balance in event of death of one or more joint account holders.

HINDU UNDIVIDED FAMILY (HUF)

Hindu Undivided Family (HUF) or Joint Hindu Family is not based on any Act, however, the share in ancestral property is decided on the basis of Hindu Succession Act, 1956.

The **HUF are managed by** the eldest male member called Karta.

As Per the latest amendment of the Hindu Succession Act, female members of HUF enjoy the same rights as male members.

Consequently, the Karta is now the eldest member of the HUF, male or female.

There are no restrictions on the number of coparceners. One coparcener is not an agent of other coparcener.

Powers of Karta

- As per law, Karta has powers to incur debt, execute documents pledge securities on behalf the family business, for that, consent of the co-parcener's not required.
- **Karta's liability is unlimited** but co-parceners are liable to the extent of their share in HUF property.
- However, if the documents are signed by all the co-parceners, only then they are personally liable.

Precautions while granting credit facility to HUF

- While giving loan to HUF the bank should ensure that the credit facility is for the **legal necessity** of HUF.
- As such, the loan documents should be got executed from Karta and all major co-parceners, and guardians of minor co-parceners so that they become personally liable.
- When the documents are executed by the Karta alone and not by the coparceners, HUF property is liable and Karta is personally liable and coparceners share in HUF liable, but coparceners are not personally liable.

Others

- If Karta stays abroad most of the time, he continues to be Karta and for operating the account he can give mandate to any one, may be the outsider or any member of the family.
- **A coparcener cannot countermand the cheques** unless the Karta has delegated the authority to operate the account.
- As per Supreme Court decision, **HUF cannot become the partner in any other partnership firm** as HUF does not have legal entity and it is not formed by the act of parties.

MINORS

- As per Section 3 of the Indian Majority Act, 1875, every person who is domicile in India will become major on completion of age of 18 years
- According to the Indian Contract Act, 1872 a minor is not capable of entering into a valid contract and the contract entered into by him is **void ab-initio**.
- A contract for the supply of necessities of life to a minor is, however, a valid contract, if it is done by a person who is legally bound to supply the necessities to the minor and these necessities must be suitable to the conditions of his life.
- In case of other contracts, a minor may repudiate his promise or his consent.
- RBI has also allowed the minor to open the self-operated deposit accounts provided he has completed the age of 10 years and is literate. Two minors can also open jointly operated deposit account if they have completed the age of 10 and are literate.

CHECK LIST

- Account can be opened in the name of the minor to be operated by his guardian (mother or father) or the guardian appointed by the court (legal guardian) or (Testamentary guardian) guardian appointed by the Will of father.
- **On attaining majority, there is no need to close the account** and after obtaining signature and identification of the erstwhile minor, the account will be continued as it is. No consent of the guardian is required.

- **RBI on the basis of Supreme Court Judgement has allowed mother to operate all types of accounts under all system of personal law even though the father is alive**, i.e., both mother and father will act in the capacity of natural guardian simultaneously.
- After the death of both, the guardian is to be appointed by the court.
- In case the minor dies, the balance in the account will be paid to the legal heirs of the minor and in case of joint account, the balance will be held at the disposal of the guardian.
- **No overdraft/ loan should be granted to a minor, even if security is provided.**
- In case an advance is granted to a minor on the guarantee of a third party, the guarantor will not be held liable because the contract is void ab-initio.
- According to **Section 26 of NI Act**, a minor can draw or endorse or negotiate a cheque or a bill but he cannot be held liable on such cheque or bill. He cannot be sued in respect of a bill accepted by him during his minority. Such bill, nevertheless, will be valid and other parties will be liable in their respective capacities.
- A minor can be admitted to the benefits of partnership with the consent of other partners as per Section 30 (1) of the Partnership Act.
- Within six months after he attains majority or when it comes to his knowledge after becoming major whichever is later, minor will have to give public notice whether he wants to continue as a partner.
- If he remains silent during this period, it amounts to his implied consent. If he chooses to become a partner, he will be held liable

as a partner from the date he has been admitted to the benefit of the partnership firm.

- Minor cannot give stop payment instructions in partnership account but he has every right to demand statement of account from the bank.
- A minor may be appointed as an agent to act on behalf of his principal, but legally he cannot be held responsible to his principal as well as third parties.
- In case of self-operated account, if minor dies the amount will be paid to the legal heirs i.e. claim case.

NATURAL GUARDIAN OF A MINOR

a)Hindu	Father and after the death of Father, the Mother of minor
b)married Hindu Girl	Husband
c)Widow Hindu Girl	Guardian of the husband
d)Minor with step father	Mother and after her father
e)Minor with step mother	Father and after her mother
f)Muslim	Father and after him executor of father's 'WILL' except mother and after him father's father

TRUST ACCOUNTS

- No bank account of **Public trust** can be opened without taking the registration certificate issued by the Charity Commissioner.
- For Private trusts, registration is optional and, for public trusts, registration is compulsory
- A Bank is not bound by trust means, if the trust is oral there is no responsibility, on the part of the bank to enquire as to whether an account is Trust account or not. Bank is not bound by trust, if it is not within its knowledge.

- If anyone trustee dies, the provisions of **trust deed** will operate. If the sole trustee dies, further operation in the a/c should be stopped and cheque already signed be paid.
- Stop payment instructions for cheque can be given by any trust including those who is not authorised to operate the trust account.
- Trustee cannot delegate his powers unless it is provided in trust deed Power to Borrow. Trustees cannot borrow unless it is specifically provided in trust deed.
- Trustee's Death. Insanity or Insolvency: Cheque issued by the trustee will be paid if otherwise in order.

PARTNERSHIP FIRMS

- Partnership firms are governed by Indian Partnership Act, 1932.
- **MINOR:** Minor can be admitted to the benefits of partnership with the consent of all the partners. He is not personally liable but his share of property is liable.
- **REGISTRATION**
Registration of partnership firms is done with Registrar of Firms. Banks normally do not grant any type of credit facility to the non-registered firms because **unregistered firm** cannot enforce any suit against the third parties.
- **NUMBER OF PARTNERS:** Minimum 02, Maximum - 10 Banking Business and 20 for other Business.
- HUF cannot be a partner. However since the Company has separate legal entity, can become the partner if permitted by Articles of Association.
- U/s 19 (1), the acts of a partner to carry on business of the firm in a usual way, bind the firm and a partner is an agent of the firm for

the purpose of business of the firm. In order to bind the firm by his acts, a partner must sign for and on behalf of the firm.

- As per Section 18 of Partnership Act, every partner is the agent of firm for the purpose of the business of the firm. Therefore, act of a partner is known as the act of the firm. This is also known as the implied authority of the partner.
- This rule has certain exceptions contained in Sec 19 (2). The exceptions are:
 - (a) Opening of the account,
 - (b) Closing of account
 - (c) Mortgage
 - (d) Giving of guarantee
 - (e) Entering into compromise
 - (f) Filing of suit
 - (g) Acknowledgment of liability
 - (h) Withdrawal of suit

THE NEW COMPANIES BILL 2013

	PVT LTD	PUBLIC LTD
MEMBERS MIN	TWO	SEVEN
MEMBERS MAX	Two hundred	No LIMIT
DIRECTORS	MIN-2, Max -15	MIN-3,Max-15

The maximum number is exclusive of employees / former employees who are the member of the Co.

The new companies Bill 2013, contains 470 sections and 7 schedules

It should be registered with the **Registrar of Companies**. Though a company consists of a number of persons, yet it is a separate single entity. It has perpetual succession.

MEMORANDUM OF ASSOCIATION: MOA the constitution of the company and it establishes the relationship of the company with the rest of the world. The Company is incorporated only for the objects and purposes expressed in the memorandum. Any act purported to be done by the company which is beyond the scope of the memorandum is **ultra vires**.

ARTICLES OF ASSOCIATION (AOA): Articles of Association are the by-laws and internal rules and regulations of the company. Any act done by the Co which is beyond the scope of AOA is **intra vires**.

CERTIFICATE OF INCORPORATION: Issued by the Registrar of Companies after the company has been registered with it. The legal existence of the company begins from the date of issue of certificate.

DEATH OF A DIRECTOR: As the company has an existence separate from that of the shareholders / directors the death of a director does not affect the operations in the account. Even if a cheque signed by an authorized director who has died, is presented after his death, the banker cannot return the cheque.

CONVERSION: A cheque payable to the company should never be deposited in the personal account of directors, as it would amount to conversion u/s 131 of NI Act.

SEC 2(62) - ONE PERSON COMPANIES (OPC)

- 'One Person Company means a company which has only one person as a member.
- It is a private limited company.

- Only a natural person who is an Indian citizen and resident can set up the company or become nominee for the sole member of OPC.
- A person can incorporate one OPC only or become a nominee in one such company only.
- OPC is meant for very small businesses.
- In the case of OPC the Memorandum of association should state the name of the person, who, in the event of the death of the subscriber shall become the member of the company.

