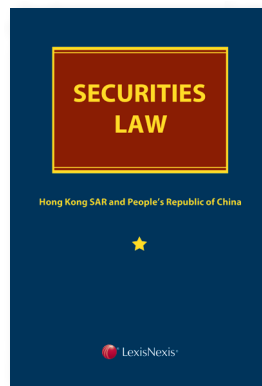
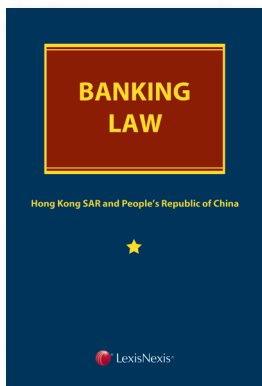


## TRAINING TIPS

# Lexis Advance® Hong Kong – Banking & Securities Law Resources



Lexis Advance® Hong Kong's suite of banking and securities resources include *Banking Law: Hong Kong SAR and People's Republic of China*, *Securities Law: Hong Kong SAR and People's Republic of China*, *Atkin's Court Forms Hong Kong*, *Hong Kong Encyclopaedia of Forms and Precedents* and *Practical Guidance*.

Duty of Confidentiality

- Disclosure by Compulsion of Law
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- Information which can be Required – Bankers' Orders
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- Bankruptcy or Winding-up Notices
- Duty to the Public to Disclose
- Disclosure in the Bank's Interests
- Express consent
- Implied consent
- Disclosure with consent

**[751] Disclosure by Compulsion of Law**

In Hong Kong, there are seven instances of disclosure under compulsion of law:

- (1) garnishee order;
- (2) Mareva injunctions;
- (3) disclosure notice under the [Police Force Ordinance](#);
- (4) disclosure notice under the [Inland Revenue Ordinance](#);
- (5) [Prevention of Bribery Ordinance](#);
- (6) Anti-Money Laundering and Counter-Terrorist Financing Ordinance, the [Drug Trafficking \(Recovery of Proceeds\) Ordinance](#), and the [Organized and Serious Crimes Ordinance](#);
- (7) bankruptcy or winding-up notice.

**[752] Garnishee Order**

A garnishee order is an order of a court which attaches itself to the cash assets of a debtor.<sup>1</sup> Upon the receipt of such an order, a bank is required by law to attach either a specified or an unlimited amount.<sup>2</sup> This will be stated in the order itself and is not at the bank's discretion. It is argued that by confirming the existence of the account and the sum attachable, a bank has already made disclosure.<sup>3</sup> However, more importantly, apart from disclosing the information which is required for the execution of the order, a bank should not volunteer to the judgment creditor or his agent further information, such as the judgment debtor's other assets with the bank.<sup>4</sup>

<sup>1</sup> Order 49 rule 1 of the [Rules of the High Court \(Cap.65\)](#) provides that a judgment creditor who has obtained a judgment or order for the payment by the judgment debtor of a sum of money amounting in value to at least \$1,000, the court may order the garnishee to pay the judgment creditor the amount of any debt due or occurring to the judgment debtor from the garnishee. The debt must be in existence and be operative at the date of the attachment: [Wells v Director \[1991\] 11 HKLR 310, 322](#), Cf per Brett J in [MacDonald v Miller \[1995\] 2 HKLR 522](#) (debt not attachable); [Lester v Lucas and High Court for India \[1961\] 2 All ER 110](#) (salary of employee of India officer not attachable as the debtor could not have maintained an action for it). The debt must also be one which the judgment debtor could enforce himself for his own benefit: [Windsor v Windsor \[1962\] 11 BCLR 393](#); [Inch v Inverness Railway Co \[1871\] 4 F & S 22](#); cf [Chapman v Callis \[1962\] 6 LT 283](#); [Windsor v Windsor \[1962\] 2 All ER 655](#); see also 4.2 of the [Banking Law Ordinance \(Cap.65\)](#).

<sup>2</sup> Service of the order nisi is regarded as a demand by the customer: [Joachimson v Swiss Bank Corp \[1921\] 1 KB 110, 121 and 121 \(CA\)](#). The balance in the account is not prevented from being attached by the order even if the customer has given instructions for a transfer, provided that the transferee has not been advised of it: [Reid v Zaverio \(Attorney-General v Zaverio\)](#) (Attorney-General v Zaverio) (Attorney-General v Reid) for [Reid v Zaverio Ltd \[1991\] 1 All ER 521 \(CA\)](#), considered in [Horne v Barclays Bank International Ltd \[1977\] 1 All ER 209](#); [\[1975\] 1 All ER 888](#). In addition, the garnishee order may be attached to a solicitor's client account for a sum due personally from the solicitor: [Pflanzel v Barclays Bank Ltd \[1990\] 2 All ER 307, \[1990\] 1 All ER 650](#).

<sup>3</sup> However, the nature of the disclosure is by compulsion of law, an exception to the banker's duty of confidentiality to the customer. If the bank refuses to disclose such information, it is liable for contempt of the court's order.

<sup>4</sup> The garnishee order must contain a correct description of the judgment debtor or the bank will not be bound: [Koch v Federal One Syndicate, London and South-Western Bank Ltd, Garnishee \[1912\] 54 Sol Jo 600 \(CA\)](#).

Our “Duty of Confidentiality” chapter in *Banking Law: Hong Kong SAR and People's Republic of China* shares with you some commentaries, the applicable statutory law along with some recent & leading common law principles and the relevant practical requirements for the banks to comply. For example, banks are always required to keep secret of every customer's personal information unless they have an obligation to disclose under compulsion of law or there is a duty to the public to do so.