

The Indirect Enforcement on Money and Property Delivery

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Abstract

The Taiwan Compulsory Enforcement Law does not inherit from Germany the principle of “one-claim, one-enforcement method” and the theory of “supplemental indirect enforcement”. As for the method to enforce the money and the delivery of property, the Taiwan Compulsory Enforcement Law adopts both the direct enforcement and the indirect enforcement, without determining its applicable order of precedence. In comparison with the direct enforcement, the indirect enforcement does not less respect the debtor’s personal rights. It may also achieve the goal of enforcement more easily, quickly and economically. One sort of indirect enforcement is to restrict the debtor’s personal freedom as his or her penalty. Such indirect enforcement does not violate the freedom, equity right and due process protected by the Constitution, as long as it is imposed in the situation when (1) the debtor, without a just reason, should occupy the capacity to perform his or her obligation but refuses to do so, and (2) the debtor is given the opportunity to defend himself or herself or participate in the hearing or trial before he or she is taken into custody. However, since the direct enforcement is another alternative to enforce the property delivery, the competent court shall select its enforcement method in compliance with the principle of appropriation, the principle of causing the least damages, and the principle of interests balance. Furthermore, the court shall consider the feature and requirement of each specific enforcement case, including the nature of rights owned by the creditor, the value of subject matter debt, and the debtor’s solvency and the status of performance, and select either or both enforcement methods in order to implement the most appropriate

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enforcement.

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