

ORDINANCE OF THE CHIEF PLEAS OF SARK

Ordinance No. VII of 2021

The Saisie (Sark) Ordinance, 2021

ARRANGEMENT OF SECTIONS

PART I
PRELIMINARY

1. Purpose and objectives.
2. Application of Ordinance.

PART II
SAISIE ADMINISTRATION ORDERS

3. Execution of judgment on real property.
4. Effects and duration of saisie administration order.
5. Property subject to saisie administration order.
6. Functions of Prévôt in relation to administered property.
7. Register of claims.
8. Registered claimants.
9. Effect of death of debtor.
10. Marshalling of claims.
11. Duty of creditors.
12. Revocation of saisie administration order.

PART III
SAISIE VESTING ORDERS

13. Saisie vesting order.
14. Procedure in case of inability to sell trust property.
15. Liability for breach of trust.
16. Court may relieve Prévôt of liability.

PART IV
GENERAL

17. Notifications to the debtor.

18. Functions of Prévôt.
19. Appointment of Prévôt Délégué.
20. Appointment of attorney.
21. Dealings with third parties.
22. Prévôt's lien.
23. Applications for directions.
24. General powers of the Court.
25. Rules of Court.
26. Repeals.
27. Interpretation.
28. Savings.
29. Citation.
30. Commencement.

The Saisie (Sark) Ordinance, 2021

THE CHIEF PLEAS OF SARK, in pursuance of their Resolutions of the 11th April, 2018 and the 7th July, 2021, and in exercise of the powers conferred on them by section 3 of the Land Reform (Sark) Law, 2019^a, and all other powers enabling them in that behalf, hereby order:

PART I PRELIMINARY

Purpose and objectives.

1. (1) The principal purpose of this Ordinance ("**principal purpose**") is to provide for the enforcement of judgment debts against the real property of a judgment debtor in a fair, effective and timely manner.

(2) Without limiting the generality of the principal purpose under subsection (1), this Ordinance has the objectives –

(a) of empowering the Prévôt, under the supervision of the Court –

(i) to administer the real property of the judgment debtor pending its sale,

^a Order in Council No. VII of 2020.

(ii) to marshal the claims of the original judgment creditor and any other judgment creditors against the said real property,

(iii) to sell the said real property and distribute the proceeds of sale in satisfaction of the judgment debts, with any surplus accruing to the judgment debtor, and

(b) of empowering the Court to oversee the management of the procedure and to make such orders as it thinks just in pursuance of the principal purpose.

(3) The Court must seek to give effect to the principal purpose when

it –

(a) exercises any function given to it by this Ordinance, or

(b) interprets any provision.

Application of Ordinance.

2. (1) Subject to subsection (2), the provisions of this Ordinance shall apply where a person ("**original judgment creditor**") obtains judgment ("**original judgment**") for a sum of money against another person ("**debtor**") and proceeds to execute that judgment against the real property of the debtor, whether –

(a) as the original action in enforcement, or

(b) where the judgment creditor has first obtained judgment with power to levy execution on the personal property of the debtor and is subsequently granted leave to desist from such execution.

(2) No action or proceedings under this Ordinance may be taken in respect of a judgment for arrears of rente or otherwise founded on a rente.

(3) For the purposes of this Ordinance, a judgment –

- (a) must be given by the Court,
- (b) may originate in the Court or may be given by the Court for the purposes of enforcement of a judgment of a court in another jurisdiction, whether in accordance with the Judgments (Reciprocal Enforcement) (Guernsey) Law, 1957^b or otherwise, and
- (c) includes a judgment or order for the payment of money given or made in civil proceedings or such a judgment or order given or made in any criminal proceedings in respect of compensation or damages to an injured party.

(4) For the avoidance of doubt, where the ownership of any real property which is subject to a charge passes to a third party without the charge having been cancelled or otherwise vacated, the person in favour of whom the charge is secured may, pursuant to that person's droit de suite, bring proceedings under this Ordinance in respect of that real property notwithstanding the change of ownership; and for the purpose of any such proceedings any reference in this Ordinance to the real property of the debtor shall include a reference to the real property in the ownership of the successors in title to the debtor.

^b Ordres en Conseil Vol. XVII, p. 178; amended by Vol. XXXV(1), p. 218.

PART II
SAISIE ADMINISTRATION ORDERS

Execution of judgment on real property.

3. (1) The original judgment creditor may, at the time of the original judgment or, subject to section 2(1)(b) and subsection (5), at any time thereafter, apply for an order containing the words "with power to levy execution on the real property of the defendant", or words to the like effect, and such order shall be referred to as a "**saisie administration order**".

(2) Where the original judgment is founded upon an obligation secured by the debtor by way of charge in favour of the original judgment creditor over any real property of the debtor, such judgment –

- (a) must specify, by reference to the written document creating such charge, the real property of the debtor so charged, and
- (b) may be executed only on the real property so charged.

(3) Where the original judgment is founded otherwise than upon an obligation secured by way of charge in favour of the original judgment creditor over any real property of the debtor, the judgment shall be registered in the Charges Register under section 3(1)(b) of the Land Reform Ordinance and may be executed on -

- (a) all the real property of the debtor on the date of registration of the judgment, or
- (b) such of the real property of the debtor as the Court prescribes pursuant to section 3(1)(b)(ii) of the Land Reform Ordinance.

- (4) Where –
- (a) a person seeking judgment intends to apply for a saisie administration order, or
 - (b) a judgment creditor intends to apply for leave to desist from levying execution of the original judgment on the personal property of the debtor and for a saisie administration order,

prior notification of such intention must be given to the Prévôt and in the summons to the debtor by which judgment or leave to desist is sought.

(5) For the avoidance of doubt, any benefit received by a judgment creditor as a result of levying execution on the personal property of the debtor must be brought into account for the benefit of the debtor as a condition of being granted leave to desist from such execution for the purposes of this section.

(6) When a saisie administration order is made, the original judgment creditor in whose favour the order is made, and the debtor, if present or represented in the Court, shall furnish to the Prévôt an address for notification.

Effects and duration of saisie administration order.

4. (1) Where the Court has made a saisie administration order the following provisions shall apply.

(2) The original judgment creditor shall be deemed to have elected irrevocably, as respects the judgment debt to which the proceedings relate, not to levy execution on, or be entitled to recover out of, the personal property of the debtor other than –

- (a) personal property which, being real property on the date on which notification of the saisie administration order was delivered to the debtor under section 6(2) and which was at that date subject to the saisie administration order, subsequently becomes personal property by operation of law while the saisie administration order is still in force, or
 - (b) the net proceeds of the sale of the real property of the debtor, being a sale effected by the debtor while the saisie administration order in respect of the same real property is still in force or a sale effected by the Prévôt under this Ordinance.
- (3) During the subsistence of a saisie administration order –
- (a) no other saisie administration order may be granted in respect of the real property of the debtor which is subject to that saisie administration order ("**administered property**"),
 - (b) the debtor shall not be entitled to take any action in respect of the administered property without the prior written authority of the Prévôt, and
 - (c) without prejudice to paragraph (b), no disposition of the administered property or any part thereof may be made by or on behalf of the debtor (including, for the avoidance of doubt, by the Prévôt or by the judgment creditor acting as the agent or attorney of the debtor) without the leave of the Court; and for the purposes of

this paragraph "**disposition**" means a sale, or the grant of a lease, licence to occupy or grant of possession or occupation for a term exceeding one year, or any agreement for any such sale, lease, licence or grant.

(4) Where two or more judgment creditors obtain an original judgment against the same debtor in respect of the same real property and, having each applied for a saisie administration order, register the respective judgments under section 3(3) on the same day –

- (a) each such judgment creditor shall be an original judgment creditor under the saisie administration order, and
- (b) any reference in this Ordinance to the original judgment creditor shall be deemed to include each such original judgment creditor.

(5) A saisie administration order shall remain in force until –

- (a) it is revoked by the Court in accordance with section 12, or
- (b) a saisie vesting order is made under section 13.

Property subject to saisie administration order.

5. The administered property shall comprise –

- (a) such of the real property of the debtor on which the judgment of the original judgment creditor may be executed pursuant to section 3(2) or (3), and

- (b) such of the real property of the debtor on which the judgment of any other creditor who is registered as a claimant under section 7 ("**registered claimant**") may be executed pursuant to that section.

Functions of Prévôt in relation to administered property.

6. (1) During the subsistence of a saisie administration order, the Prévôt shall be the administrator of the administered property and shall have the functions assigned to the Prévôt for that purpose under this Ordinance.

(2) Except where the debtor was present or represented in the Court when the saisie administration order was made, the Prévôt shall not take any steps pursuant to that order unless the Prévôt has notified the debtor of the making of the order.

(3) During the subsistence of a saisie administration order the Prévôt shall, subject to subsection (2) -

- (a) have authority to take such action for the purposes of preserving and administering the administered property, including (without limitation) the maintenance, repair, insurance, security and occupation (including the lawful eviction of any person) of the administered property, as the Prévôt considers to be reasonably necessary or expedient in all the circumstances,
- (b) for the purposes of paragraph (a) -

- (i) have right of entry on the administered property for the purpose of exercising the Prévôt's functions under this Ordinance,
 - (ii) have the power to engage agents, workmen and others as the Prévôt thinks fit (who shall have the like right of entry set out in subparagraph (i) when so engaged), and
 - (iii) be deemed to be the duly authorised attorney of the debtor with power to do all such acts and things, and to perform and execute all such agreements, documents and instruments, in the name of the debtor, as if the act or thing were done, or the agreement, document or instrument were performed or executed, by the debtor personally,
- (c) if the debtor has remained in occupation of the administered property, or any part thereof, and the Prévôt proposes to take action under paragraph (a) which will affect the continuing ordinary and, in the circumstances, reasonable use by the debtor of the administered property, or of such part thereof, notify the debtor of the action which the debtor proposes to take, and
- (d) in any case, notify the original judgment creditor and the debtor before incurring any extraordinary expenditure under paragraph (a),

but failure to comply with paragraphs (c) and (d) shall not invalidate any action so taken.

Register of claims.

7. (1) Upon the making of a saisie administration order, and subject to section 6(2), the Prévôt shall open a register ("**claims register**") for the purpose of registering claims against the administered property.

(2) The claims register shall close on such date as the Court shall determine subject to the power of the Court, at any time before the claims register has closed, on the application of any person wishing to enter a claim ("**claimant**"), or of the Prévôt, the debtor, the original judgment creditor or a registered claimant, to defer the date when the claims register shall close.

(3) The Prévôt shall not enter a claim on the claims register unless the claimant has obtained judgment against the debtor, and

(a) the judgment is founded upon an obligation secured to the debtor by way of charge in favour of the claimant over any real property of the debtor, and the judgment specifies, by reference to the written document creating such charge, the real property of the debtor so charged, or

(b) the judgment is founded otherwise than upon an obligation secured by way of charge in favour of the claimant over any real property of the debtor, and the judgment is registered in the Charges Register under section 3(1)(b) of the Land Reform Ordinance.

(4) As soon as practicable after the making of the saisie administration order, subject to section 6(2), the Prévôt shall publish in the official notice boxes, in the Sark Gazette, and in La Gazette Officielle on two occasions in successive weeks, a notice –

- (a) stating that a saisie administration order has been made in favour of the original judgment creditor in respect of the administered property, and that a claims register has been opened in respect of that property, and specifying the date when such register will close in accordance with the direction of the Court ("**specified date**"),
- (b) identifying the administered property,
- (c) giving the name and address for notification of the original judgment creditor, and the name and address, or last known address, of the debtor,
- (d) requiring any person who intends to make a claim against the said real property to send to the Prévôt, before the specified date –
 - (i) particulars of the person's claim, including the date of the judgment referred to in subsection (3) and the Act of Court evidencing such judgment, or a certified copy thereof,
 - (ii) the date of registration of the charge in the Charges Register, whether such charge was registered in consequence of an obligation referred to in subsection (3)(a) or is a charge

consequent upon registration of the judgment referred to in subsection (3)(b),

(iii) particulars of the real property in respect of which the claim is made, and

(iv) an address for notification, and

(e) stating that priority of claims shall be determined by the order of registration in the Charges Register.

Registered claimants.

8. (1) Subject to subsection (3), a registered claimant shall be deemed to have elected irrevocably as respects the judgment debt to which the claim relates not to levy execution on, or be entitled to recover out of, the personal property of the debtor other than the personal property referred to in section 4(2)(a) and (b).

(2) A registered claimant may execute the judgment debt to which the claim relates –

(a) in the case of a judgment referred to in section 7(3)(a), only on the real property specified in the judgment, or

(b) in the case of a judgment referred to in section 7(3)(b), on –

(i) all the real property of the debtor on the date of registration of the judgment, or

(ii) such of the real property of the debtor as the Court prescribes pursuant to section 3(1)(b)(ii) of the Land Reform Ordinance.

(3) A registered claimant may, at any time before the closure of the claims register or, with leave of the Court, at any time before the grant of a saisie vesting order, apply to the Court for the claim to be withdrawn from the claims register; and upon such application being granted, the Court may make such consequential orders, including (without limitation) orders as to the execution of the claimant's judgment on the personal property of the debtor and as to costs, as the Court thinks fit.

(4) Where a claim entered on the claims register arises from a judgment which is or becomes subject to appeal –

(a) the registered claimant must notify the Prévôt of such appeal immediately upon becoming aware thereof, and keep the Prévôt informed of the progress of the appeal, and

(b) the Prévôt shall note the appeal against the entry relating to such claim on the claims register.

(5) For the purposes of subsection (4), "**appeal**" includes any proceedings by way of discharging or setting aside a judgment or an application for a new trial or a stay of execution.

Effect of death of debtor.

9. (1) In the event of the death of the debtor after the making of a saisie administration order, the following provisions of this section shall apply.

(2) The death of the debtor shall not -

(a) prejudice or affect the lawful and proper exercise by the Prévôt of the Prévôt's functions under this Ordinance, or

(b) extinguish or prejudice the right of a creditor pursuant to this Ordinance to execute judgment on the real property of a debtor in the ownership of the heirs to the said real property.

(3) The provisions of this Ordinance shall continue to apply to the original judgment creditor and to any registered claimants as at the date of the said death.

(4) If the death of the debtor occurs before the closure of the claims register –

(a) any person who has obtained judgment in the Court against the debtor but who has not, as at the date of the said death, registered a charge in the Charges Register in accordance with section 7(3)(b), may so register against such of the real property owned by the debtor immediately before the said death on which the person is entitled to execute judgment under section 8(2), and

(b) any person who intends to make a claim against the said real property but has not, as at the date of the said death, obtained judgment in the Court against the debtor may, notwithstanding the death of the debtor, proceed against the heirs to the real property of the debtor and register any judgment as a charge in the Charges Register for the purposes of this Ordinance against such of the real property owned by the debtor immediately before the said death on which the person is entitled to execute judgment under section 8(2),

and the person's claim may, before the closure of the claims register, be entered on the said register in accordance with section 7, whether or not the heirs of the debtor are, or include, the successors in title to the said real property; and thereafter each such person shall be a registered claimant for the purposes of this Ordinance.

(5) For the purposes of this section, "**heirs**" includes legatees and successors in title.

Marshalling of claims.

10. (1) Following the closure of the claims register, the Prévôt shall prepare a report ("**Report**") –

- (a) marshalling the claims of the original judgment creditor and the registered claimants,
- (b) summarising the actions taken by the Prévôt in the conduct of the saisie administration order, and
- (c) setting out the fees, expenses and liabilities recoverable by the Prévôt in accordance with section 18(2), up to the date of the Report.

(2) For the purposes of subsection (1)(a), the claims shall be ranked –

- (a) by reference to each of the parcels of the real property in respect of which each registered claimant has a claim, and
- (b) subject to paragraph (a), in order of priority,

and each parcel of such property shall be contained in a separate schedule and therein identified separately.

- (3) Having prepared the Report, the Prévôt shall –
 - (a) within seven days or such longer period as the Court may authorise, notify the original judgment creditor, the registered claimants and the debtor, and
 - (b) publish a notice in the official notice boxes, in the Sark Gazette, and on one occasion in La Gazette Officielle,

of the date and time when the Prévôt shall present the Report to the Court.

- (4) The Court may, having given the said creditor, the registered claimants and the debtor and, with leave of the Court, any other person wishing to make representations, an opportunity to be heard –
 - (a) approve the Report, with or without modifications,
 - (b) defer the approval of the Report, on such conditions, if any, as the Court thinks fit, or
 - (c) give such directions as it thinks fit.

Duty of creditors.

11. The original judgment creditor and any registered claimant shall each have a duty to report to the Prévôt any payment in full or partial satisfaction of that person's judgment debt made by or on behalf of the debtor at any time after the grant of a saisie administration order.

Revocation of saisie administration order.

12. (1) Where, during the subsistence of a saisie administration order –

- (a) the judgment debt of the original judgment creditor is paid by or on behalf of the debtor, together with the recoverable costs and expenses of the original judgment creditor, or is otherwise satisfied, or
- (b) the original judgment creditor intends to desist from levying execution on the real property of the debtor,

the Court may, on the application of the Prévôt or the original judgment creditor, revoke the saisie administration order.

(2) On an application under subsection (1) the Court may make such order as to costs, including the fees, expenses and liabilities of the Prévôt recoverable under section 18(2), as it thinks fit.

PART III SAISIE VESTING ORDERS

Saisie vesting order.

13. (1) Where the Court has approved a Report pursuant to section 10(4), the Prévôt may, having notified the original judgment creditor and the debtor of the Prévôt's intention so to do, apply for a saisie vesting order.

(2) Where the Court makes a saisie vesting order, such parcels of the real property of the debtor to which the respective claims and priorities contained in the Report relate ("**trust property**"), shall vest in the Prévôt to hold the same as trustee for such of –

- (a) the original judgment creditor, and
- (b) the registered claimants,

whose judgments may, in accordance with section 3(2) or (3), or section 8(2), as the case may be, be executed on the trust property, and subject thereto for the debtor.

(3) The Prévôt shall –

(a) subject to subsection (4) –

(i) sell the trust property within such period or periods as the Court may specify in respect of each of the parcels of the trust property,

(ii) distribute the proceeds of sale thereof in accordance with the Report, and

(iii) pay any surplus to the debtor,

(b) pending the sale of the trust property or any part thereof, continue to administer that property, and

(c) after the sale of the trust property, or any part thereof, administer the said proceeds pending such distribution and payment,

in accordance with this Ordinance.

(4) The Prévôt, as trustee for sale pursuant to a saisie vesting order –

(a) may postpone, but shall not unreasonably delay, the sale of the trust property, but

(b) may not, pending the sale of the trust property, borrow against the security of the trust property, or otherwise

cause any charge or encumbrance to be attached to the trust property, without the prior approval of the Court.

(5) The Prévôt selling, letting or otherwise dealing with the trust property under a saisie vesting order shall be deemed to have, and to be able to convey, all such right, title and interest in that property as was vested in the debtor immediately before the making of the saisie vesting order, to the exclusion of any other person and for all purposes.

(6) Following the sale of the trust property, or any part thereof, which may be by private treaty, by public auction, by tender or by any other means, the Prévôt shall –

- (a) hold the proceeds of sale, and any income accrued in relation to the said trust property before the sale, less any fees, expenses and liabilities of the Prévôt recoverable under section 18(2), separate from any other property of which the Prévôt is trustee for sale, pending distribution of the proceeds in accordance with the Report,
- (b) as soon as reasonably practicable after the sale of the said trust property, distribute the proceeds of sale, less any further fees, expenses and liabilities of the Prévôt recoverable under section 18(2), in accordance with the Report.

Procedure in case of inability to sell trust property.

14. (1) Should the Prévôt, within the period or periods specified by the Court under section 13(3)(a)(i), be unable to sell the trust property or any part thereof ("**unsold property**") at a fair and reasonable price taking into consideration the market conditions prevailing at the time, and if there appears to be no reasonable prospect of

a sale within such period as the Court shall deem appropriate having regard to all the circumstances, the provisions of this section shall apply.

(2) For the purposes of this section "**relevant claimant**" means such of the original judgment creditor and the registered claimants whose judgments may, in accordance with section 3(2) or (3), or section 8(2), as the case may be, be executed on the unsold property.

(3) The Prévôt shall notify the relevant claimants and the debtor of the date and time when the Prévôt shall apply to the Court for permission to proceed in accordance with subsection (5).

(4) On an application under subsection (3), the Court may –

(a) grant the application, or

(b) make such other order concerning the unsold property as it thinks fit.

(5) If the application under subsection (3) is granted then, immediately or on such future date as the Court may specify, each relevant claimant shall appear personally or by counsel before the Court, in inverse order of priority, to declare whether or not that claimant elects to have the unsold property vested in that claimant for an estate of inheritance subject to the assumption of liability for all claims over the unsold property ranking in priority to that claimant's claim.

(6) A relevant claimant who does not elect to have the unsold property vested in that claimant in accordance with subsection (5) shall be deemed to have renounced the right to do so, and –

- (a) the right of such person to claim against the unsold property or its proceeds of sale shall cease to be of any effect, and
- (b) any charge in the Charges Register in favour of such person shall be deemed to be extinguished as respects the unsold property.

(7) Where a relevant claimant ("**electing creditor**") elects to have the unsold property vested in the electing creditor in accordance with subsection (5), the Court shall make an order –

- (a) vesting the unsold property in the electing creditor for an estate of inheritance, subject to the electing creditor making the payments specified in paragraph (b), and
- (b) declaring that the electing creditor shall, within such reasonable period as may be specified, pay –
 - (i) to any relevant claimant having a prior claim, the full amount of that claimant's claim with costs, and
 - (ii) to the Prévôt, the fees, expenses and liabilities recoverable under section 18(2).

Liability for breach of trust.

15. The Prévôt is not liable for a breach of trust unless the breach arises from the Prévôt's fraud or wilful misconduct, whether alone or with another person.

Court may relieve Prévôt of liability.

16. Subject to section 15, the Court may relieve the Prévôt wholly or partly of liability for a breach of trust if the Court is satisfied that the Prévôt –

- (a) has acted honestly and reasonably, and
- (b) ought fairly to be excused –
 - (i) for the breach, and
 - (ii) for failing to obtain the directions of the Court in the matter in respect of which the breach arose.

PART IV

GENERAL

Notifications to the debtor.

17. (1) Where the debtor has not furnished an address for notification pursuant to section 3(6), any requirement in this Ordinance that notification of any matter be given to the debtor shall be deemed to be satisfied, subject to any order of the Court in any particular case and without prejudice to any other lawful means of service -

- (a) by delivering such notification to the debtor personally,
- (b) by delivering such notification to a member of the debtor's family who –
 - (i) ordinarily occupies the same household as the debtor, and

(ii) undertakes to deliver the notification to the debtor, or to inform the debtor of the fact of such notification,

(and in such a case the notification shall be deemed to have been delivered to the debtor on the day following delivery to the said member of the debtor's family), or

(c) if the debtor is absent from Sark, without prejudice to paragraphs (a) and (b), by sending such notification to the last-known email address, if any, of the debtor,

and for the purposes of paragraph (b) a person is a member of the debtor's family if that person is the debtor's spouse, cohabitee, parent, sibling or adult child.

(2) Where the notification is sent by email, whether such address was given as the debtor's address for notification or whether the notification is sent pursuant to subsection (1)(c), the notification shall be deemed to be received by the addressee on the date when it is sent.

(3) Where in any case, despite the provisions of subsection (1), it is not practicable in the circumstances for the Prévôt to comply with a requirement in this Ordinance to notify the debtor of any matter, the failure of the Prévôt so to comply shall not of itself invalidate any action taken by the Prévôt.

Functions of Prévôt.

18. (1) The Prévôt shall, in the exercise of the Prévôt's functions under this Ordinance –

(a) observe the utmost good faith,

- (b) act in the interests of the original judgment creditor and the registered claimants, to the extent of their respective claims, and, subject thereto, in the interests of the debtor,
 - (c) act en bon père de famille,
 - (d) keep accurate accounts and records of the administration of the property and of the proceeds of sale thereof,
 - (e) at any time, at the reasonable written request of the original judgment creditor or any of the registered claimants, or at the direction of the Court, provide full and accurate information as to the state of the property and any income received and expenditure incurred in relation thereto and, after the sale of the trust property or any part thereof, provide full and accurate accounts in relation to the proceeds of sale, and
 - (f) without prejudice to paragraphs (d) and (e), provide a full account of the exercise of the Prévôt's functions, and the conduct of any proceedings, under this Ordinance at the conclusion of any such proceedings for whatever reason.
- (2) The Prévôt shall be entitled to –
- (a) such fees as shall be prescribed by regulations of the Committee, and
 - (b) reimbursement of all expenses and liabilities,

provided they have been reasonably and properly incurred in the exercise of the Prévôt's functions under this Ordinance and are reasonable in amount; and all such fees, expenses and liabilities shall be recoverable from, and shall constitute a charge on, the property and the proceeds of its sale, in priority to all other claims.

(3) Regulations made under subsection (2) shall be laid before a meeting of the Chief Pleas as soon as practicable after being made and if, at that meeting, the Chief Pleas resolve to annul them, they shall cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

Appointment of Prévôt Délégué.

19. (1) The Court may, on application by the Prévôt and upon sufficient cause being shown, at any time give leave for the Prévôt to delegate the functions of the Prévôt under this Ordinance in any particular case to an individual who is –

- (a) resident in Sark or Guernsey,
- (b) in the opinion of the Court, independent and impartial,
and
- (c) otherwise, in the opinion of the Court, suitably qualified to exercise the said functions,

and such leave may be granted subject to such terms, conditions and limitations as the Court may deem necessary or expedient.

(2) An individual appointed as the delegate of the Prévôt pursuant to leave given under subsection (1) shall, for the purposes of the particular case for which the individual is so appointed (but not otherwise), be referred to as "**Prévôt Délégué**", and –

- (a) shall be sworn into office by the Court and shall not exercise any of the functions of the Prévôt under this Ordinance until so sworn, and
- (b) subject to paragraph (a) and to any order of the Court to the contrary, shall have the same functions, and be subject to the same obligations, as are conferred on the Prévôt by this Ordinance.

(3) As soon as reasonably practicable after an individual has been sworn into office as Prévôt Délégué in accordance with this section, the Prévôt shall publish notice of the appointment in the official notice boxes, in the Sark Gazette, and on one occasion in La Gazette Officielle.

(4) Where an individual has been appointed as Prévôt Délégué in any particular case in which the Prévôt has lawfully and properly exercised any function, the functions, rights and obligations of the Prévôt in such case shall be transferred to, and shall enure to the benefit of, and be binding upon, the Prévôt Délégué, without prejudice –

- (a) to any act or thing done by the Prévôt, or to the rights of any third parties in relation thereto, and
- (b) to the Prévôt's liability for any breach of trust,

before the said appointment.

Appointment of attorney.

20. The Prévôt may appoint any person as the Prévôt's attorney for the purpose of executing any document (including a document creating or evidencing any

charge or encumbrance on the property) or attending in court to consent to a sale of the trust property, but, in any such case, subject to the prior approval of the Prévôt to the terms of the document or the sale; and nothing in this section shall relieve the Prévôt from any liability therefor.

Dealings with third parties.

21. (1) Subject to subsections (3) and (4), where, in a transaction or matter affecting the property or the proceeds of sale, the Prévôt informs a third party that the Prévôt is acting as administrator or trustee pursuant to a saisie administration order or saisie vesting order in respect of the property, or the third party is otherwise aware of the fact, the Prévôt does not incur any personal liability and a claim by the third party in respect of the transaction or matter extends only to the property or proceeds of sale.

(2) If the Prévôt fails to inform the third party that the Prévôt is acting as administrator or trustee, and the third party is otherwise unaware of that fact -

- (a) the Prévôt incurs liability to the third party in respect of the transaction or matter, and
- (b) the Prévôt has a right of indemnity against the property and the proceeds of sale in respect of the Prévôt's personal liability, unless the Prévôt acted in breach of trust.

(3) Nothing in this section prejudices -

- (a) the Prévôt's liability for breach of trust or any claim for breach of warranty of authority, or

- (b) any lien, indemnity or other security over the trust property or its proceeds of sale, or any other right, subsisting for the benefit of the Prévôt as trustee.

(4) Any person, including the Prévôt, dealing with third parties in relation to the property or any part thereof, shall ensure that adequate notice is given to such third parties that the said property is the subject of a saisie administration order or a saisie vesting order, as the case may be; and for such purpose the use of the expression "**subject to saisie**" or "**en saisie**", or cognate expressions, coupled with the name or description of the property, shall be deemed to be sufficient.

Prévôt's lien.

22. Nothing in this Ordinance shall be taken to prejudice or affect any lien or other indemnity or security to which the Prévôt is entitled in the performance of the Prévôt's functions under this Ordinance.

Applications for directions.

23. The Prévôt may apply to the Court for directions as to how the Prévôt should or might act in the course of the Prévôt's functions under this Ordinance, and the Court may make such order as it thinks fit.

General powers of the Court.

24. (1) On the application of any person mentioned in subsection (2), or of its own motion, the Court may –

- (a) make any order in respect of –
 - (i) the execution or enforcement of a saisie administration order or a saisie vesting order,
 - (ii) the Prévôt, including (without limitation) an order as to the exercise of the Prévôt's functions,

the keeping, submission and approval of accounts and the making of payments, whether into court or otherwise,

(iii) the property, including (without limitation) an order as to its vesting, preservation, application or recovery,

(iv) any requirement under this Ordinance to give notice, including any order abrogating any such requirement, or extending or restricting any period of notice, or imposing any conditions on, or relating to, the giving of any notice,

(v) costs and expenses incurred by any person in relation to a saisie administration order or a saisie vesting order, including (without limitation) liability for, and the recoverability of, such costs and disbursements,

(b) rescind or vary an order or direction, or make a new or further order or direction,

as the Court thinks fit.

(2) An application under subsection (1) may be made by the Prévôt, the original judgment creditor, any registered claimant, the debtor or, with leave of the Court, any other person.

Rules of Court.

25. The Court may, from time to time, make rules making provision for all procedural and incidental matters which may be necessary or expedient for bringing this Ordinance into effect.

Repeals.

26. (1) The following Orders are revoked in their application to Sark –
- (a) the Saisie Procedure (Simplification) (Bailiwick) Order, 1952^c,
 - (b) the Saisie Procedure (Simplification) (Bailiwick) (Amendment) Order, 1989^d.

(2) Consent to the revocation in their application to Sark of the Orders referred to in subsection (1) was given for the purposes of section 3(2) of the Land Reform (Sark) Law, 2019 by order of the Royal Court dated 16th September, 2021.

Interpretation.

27. In this Ordinance, unless the context otherwise requires -

"**address for notification**" means an address in Sark or Guernsey to which any notification or other document for the purposes of this Ordinance can validly be sent or delivered to the person providing the address for notification, and may be an email address,

"**administered property**": see section 4(3),

^c Order of the Royal Court No. III of 1952; amended by No. XIV of 1989.

^d Order of the Royal Court No. XIV of 1989.

"**Charges Register**" means the register established under section 2(1) of the Land Reform Ordinance,

"**claims register**": see section 7(1),

"**closure of the claims register**" means the date when the claims register closes in accordance with section 7(2),

"**Committee**" means the Policy & Finance Committee of the Chief Pleas,

"**the Court**" means the Court of the Seneschal,

"**debtor**" has the meaning given in section 2(1) and includes any person against whom the judgment is enforceable,

"**expenses**" includes disbursements,

"**judgment**": see section 2(3),

"**judgment creditor**" means the person in whose favour the judgment was given and includes any person in whom the rights under the judgment have become vested by succession or assignment or otherwise,

"**La Gazette Officielle**" means La Gazette Officielle of Guernsey established under the Law entitled "Loi par rapport à la Publication des Annonces Officielles", registered on 21st March, 1936^e,

^e Ordres en Conseil Vol. X, p. 304.

"Land Reform Ordinance" means the Land Reform (Miscellaneous Provisions) (Sark) Ordinance, 2020^f,

"obligation" includes a debt or liability of whatsoever nature and howsoever incurred or arising, and, in the case of a contractual obligation, whether as principal, surety or otherwise,

"original judgment": see section 2(1),

"original judgment creditor": see sections 2(1) and 4(4),

"Prévôt" means the person appointed to act as Prévôt pursuant to section 49 of the Reform (Sark) Law, 2008 and includes the Deputy Prévôt and any individual appointed as a Prévôt Délégué pursuant to section 17,

"proceeds of sale" means the proceeds of sale of the trust property or part thereof,

"the property" means the administered property or the trust property, as the context may require,

"real property" includes a chargeable leasehold interest which is deemed to be real property under Part III of the Land Reform Ordinance,

"registered claimant" means a person whose claim has been entered on the claims register under section 7,

^f Ordinance No. IX of 2020.

"saisie administration order": see section 3(1),

"Sark Gazette" means the Sark Gazette Officielle published on the website of the Sark Gazette Officielle,

"trust property": see section 13(2).

Savings.

28. (1) Subsection (2) applies where, before commencement of this Ordinance, a preliminary vesting order has been made in favour of any person against the real property of a debtor.

(2) The provisions of the 1952 Order shall continue to apply in relation to the proceedings in saisie to which the preliminary vesting order relates.

Citation.

29. This Ordinance may be cited as the Saisie (Sark) Ordinance, 2021.

Commencement.

30. This Ordinance shall come into force on the 1st November, 2021.