

On the Improvement of the System of Asset Reporting by Judgment Debtors

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Abstract

Asset reporting by the judgment debtor is the most effective and fastest way to identify the assets of the judgment debtor in the enforcement procedure. However, the refusal or false reporting by the judgment debtor is a common issue that impedes the effectiveness of the asset reporting system. This article proposes several improvements to enhance the system's efficacy. Firstly, it suggests that the insufficiency of the debtor's assets to satisfy claims determined by valid legal instruments should be a prerequisite for the debtor's reporting obligation, which requires court review. Secondly, it advocates for expanding the scope of the asset report to encompass all assets and changes in assets within the preceding five years from the date of the asset reporting order. Thirdly, it recommends an appropriate increase in the duration of detention for non-compliance during the asset reporting procedure. Lastly, the article calls for clarification of the judgment debtor's right to object, as well as the conditions and scope for the petitioner for enforcement to access and inquire about the asset information obtained through court investigation.

Key words: Judgment debtors; Asset status; Punishment for dishonesty; Asset reporting orders

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The requirement for judgment debtors to report their assets was initially outlined in the *Provisions on Issues Concerning the Enforcement of the People's Courts (for Trial Implementation)* by the Supreme People's Court in 1998. Article 28 mandates that "the judgment debtor must truthfully report to the people's court on the status of his or her assets." The 2007 amendment to the *Civil Procedure Law of the People's Republic of China* established at the legal level a system for asset reporting by judgment debtors, stipulating that "in the event a judgment debtor does not fulfill the obligations specified by the legal instrument as directed by the enforcement notice, they are required to report their assets for both the current and the preceding year up to the date of receiving the enforcement notice. Should the judgment debtor refuse to report or provide a fraudulent report, the people's court holds the authority to impose sanctions, which may include a fine or detention. These sanctions may be applied not only to the judgment debtor but also to the corporate legal representative, the principal person in charge, and the directly responsible individual, based on the severity of the infraction."

The *2008 Interpretation of the Supreme People's Court of Issues concerning the Enforcement Procedures in the Application of the Civil Procedure Law of the People's Republic of China* further refined this system. Despite the establishment of an asset reporting obligation, the effectiveness of regulations on judgment debtors has been limited due to the simplicity of provisions and a lack of operability. Consequently, the *Provisions of the Supreme People's Court on Issues Concerning Property Investigations in Civil Enforcement Procedures*, issued in 2017, delineated responsibilities for asset investigation and reiterated the asset reporting obligations of judgment debtors.

Furthermore, Article 1 of the *Provisions of the Supreme People's Court on Issuing the Information on the*

List of Dishonest Judgment Debtors (2017) stipulates that a judgment debtor who fails to fulfill legal obligations and violates the asset reporting system may be included in the List of Dishonest Judgment Debtors, subjecting them to penalties. This development signifies the establishment of an asset inspection and control system centered around the judgment debtor's reporting, with punishment for dishonesty as a guarantee.

Under this system, the court's role transitions from exhaustive investigation to verification in identifying and assessing the judgment debtor's capacity to perform obligations. The court is no longer solely reviewing the "ability to perform" but can also determine default status based on violations of the asset reporting system. This paper aims to analyze and elucidate issues arising in the asset reporting of judgment debtors from the perspective of enforcing punishment for dishonesty, offering theoretical support for enforcement practices.

1. ASSET REPORTING ORDERS AND ENFORCEMENT NOTICES

The sequence of issuing an asset reporting order in relation to an enforcement notice is a matter that requires clarification within the legal framework. Article 252 of the *Civil Procedure Law* stipulates that the enforcement notice must precede the asset reporting order, establishing the enforcement notice as a prerequisite for the latter. Consequently, the court is only empowered to issue an asset reporting order when a judgment debtor has failed to meet the obligations specified in the enforcement notice. However, Article 3 of the *Provisions on Asset Examination* suggests that the court should issue both the enforcement notice and the asset reporting order concurrently to the judgment debtor. This discrepancy between the two provisions appears to present a contradiction. To address this conflict, the author posits that a proper resolution necessitates consideration from several perspectives.

Firstly, an enforcement notice is a legal document issued by the court to a judgment debtor upon acceptance of an enforcement application. It requires the debtor to fulfill specified obligations within a designated timeframe. The notice serves not only to safeguard the debtor's right to be informed but also exerts supervisory and deterrent effects. An asset reporting order, in contrast, is a directive issued by the court during the enforcement process, commanding the judgment debtor to disclose their assets. Its utility is twofold: it aids the petitioner for enforcement or the enforcement authority in identifying the debtor's assets while also protecting the debtor from improper disclosure and misuse of asset information. (Chang, 2009) Therefore, the enforcement notice and the asset reporting order are distinct legal instruments. The issuance of an enforcement notice is a fundamental and mandatory step

in every enforcement case, whereas an asset reporting order is not obligatory in all instances. It is issued only under certain conditions. Issuing both the asset reporting order and the enforcement notice simultaneously could potentially render Article 252 of the *Civil Procedure Law* nominal, leading to indiscriminate use of asset reporting and a significant expenditure of judicial resources. Additionally, concurrent issuance may be seen as depriving the judgment debtor of the right to choose. Upon receiving the enforcement notice, the debtor may either fulfill the obligations or fail to do so. If the debtor complies, the court need not issue an asset reporting order.

Secondly, "the refusal of the judgment debtor to fulfill their legal obligations often precipitates the need for compulsory enforcement. The underlying purpose of compulsory enforcement, as established by law, is to facilitate the realization of rights for the petitioner for enforcement. (Tan & Li, 2013) "The concept of 'res judicata' and the subject matter of the lawsuit formally linked to the main text of the judgment, but substantively, they are connected to the essence of the lawsuit itself." (Jiang & Chang, 2008) Therefore, proposition to integrate the enforcement notice into the main text of the judgment (Lu & Li, 2021) may contravene the established doctrine of separating the judiciary from the executive branch, potentially undermining the content requirements and the structural integrity of the decree. However, a practical approach could involve either attaching the enforcement notice to the judgment and serving it upon the parties or including information about the enforcement stage at the end of the judgment. This could involve specifying the obligations to be performed, the timeline for performance, and emphasizing the duty to report assets in the event of non-compliance, as well as the legal consequences of failing to report truthfully. (Bai & Bai, 2018)

Thirdly, this discussion addresses the applicability of asset reporting orders to different case types. In enforcement cases concerning monetary obligations, it is both justified and reasonable for a court to issue an asset reporting order against the judgment debtor when they fail to satisfy the obligation within a specified timeframe. However, the issuance of such orders in performance enforcement cases is more contentious, with two prevailing perspectives. Proponents argue that asset reporting orders should be issuable in both monetary and performance enforcement cases, provided the legal prerequisites are met. In contrast, opponents contend that these orders are neither necessary nor beneficial in the context of performance enforcement. The author concurs with the latter view, positing that performance obligations, whether they involve performing an act or refraining from one, should be executed according to the stipulated requirements without necessitating an asset status inquiry. Consequently, in such cases, there is no need or necessity for the issuance of a property reporting order. Instead,

the court may still play a role in facilitating enforcement through notifications to relevant entities, which can then assist in the completion of the required actions.

Furthermore, the issue of exempting the judgment debtor from asset reporting obligations merits examination. Some jurisdictions permit exemption when the petitioner for enforcement consents to the judgment debtor's non-disclosure. Other jurisdictions stipulate that, in addition to a settlement agreement between the parties, court approval is required for such an exemption. Essentially, a judgment debtor can be exempted from reporting assets under two conditions: (1) Consent of the petitioner. The petitioner for enforcement explicitly waives the debtor's duty to report assets. Since the requirement for asset reporting falls within the discretion of the petitioner, they may decide, based on their circumstances, whether to require such reporting. The court is bound by this decision; thus, if the petitioner applies for and expressly waives the asset report, the court can grant the exemption. (2) Court discretion. The court possesses the discretionary power to exempt a debtor from asset reporting under specific conditions. Compulsory enforcement proceedings are not solely focused on fulfilling the petitioner's claim but also have broader implications for upholding the dignity and authority of the legal system. Therefore, when the public interest is involved, the court may legally exempt the debtor from the asset reporting requirement.

2. SCOPE OF ASSET REPORTING BY JUDGMENT DEBTORS

Identifying the assets of the judgment debtor is pivotal to the enforcement process and an effective means to address challenges in implementation. As the debtor is typically best informed about their own assets, an ideal scenario would obviate the need for enforcement procedures if the debtor voluntarily and truthfully reports their asset status. The challenges commonly associated with enforcement would be mitigated or eliminated. However, the reality often diverges, with judgment debtors frequently failing to disclose or misrepresenting their assets, necessitating regulation of the asset reporting scope.

The scope of assets that a judgment debtor must report is a subject of debate. A minority view posits that the report should cover only assets equivalent to the debt amount determined by legal instruments, while the majority opinion supports a comprehensive disclosure of all asset holdings. (Chang, 2010) The author aligns with the prevailing perspective that the scope of an executor's property reporting should be all-encompassing.

Firstly, according to the literal interpretation of the law, the scope of the judgment debtor's asset reporting should encompass all of their assets, rather than being confined to the value of the claim as determined by the legal instrument. The normative intent behind requiring the

debtor to report their asset is to achieve a comprehensive understanding of the debtor's financial status, thereby facilitating the realization of claims as adjudicated by the legal system. Secondly, all assets of the debtor are considered part of the estate liable for the claim. Any changes to this estate directly impact the debtor's capacity to satisfy the obligations. Thirdly, comparative legal perspectives offer insight; German law mandates that the debtor must report all asset conditions, with the scope of the declaration having retroactivity. In the United States, judges have discretionary power to determine the extent of the asset report required from the debtor. Consequently, the debtor is expected to report all property, including both movable and immovable assets, as well as both static and dynamic financial conditions. Furthermore, Article 47 of the *Compulsory Enforcement Law of People's Republic of China (Draft)* makes a distinction between the application of property reporting by the judgment debtor in cases of "enforcement of pecuniary claims" and "enforcement of non-pecuniary claims." Additionally, it differentiates the specific content required in the debtor's asset report, recognizing that the information pertinent to different enforcement cases may vary.

The temporal framework for property reporting is also critical. While the *Civil Procedure Law* sets a one-year reporting period from the receipt of the enforcement notice, this timeframe may be insufficient to capture the full extent of a debtor's asset changes, especially considering the lengthy period from judgment to enforcement. Within this timeframe, the judgment debtor might engage in asset transfers designed to evade enforcement measures. In response, Article 47 of the *Compulsory Enforcement Law (Draft)* extends this period to five years, encompassing any property dispositions without compensation or provision of guarantees for others' debts. This extended period strengthens the regulation against the malicious transfer and concealment of asset by the judgment debtor and better protects the petitioner's interests.

However, the scope of the executor's property report is not sufficiently comprehensive to account for potential malicious transfers of assets. This limitation can provide an opportunity for the judgment debtor to inaccurately report their property holdings. Therefore, future developments of the *Compulsory Enforcement Law* should explicitly require that the report content include all asset changes that have occurred within the past five years to ensure a comprehensive and accurate disclosure.

3. LEGAL LIABILITY FOR ASSET REPORTING VIOLATIONS

The efficacy of the asset reporting system, as stipulated by the *Civil Procedure Law* and the *Provisions on Asset*

Examination, is undermined by the recurring issue of judgment debtors' non-compliance. Despite provisions that empower courts to impose fines, detention, and other disciplinary measures on debtors who violate asset reporting requirements, the system has not consistently achieved its intended outcomes. Since the introduction of the asset reporting system, instances of judgment debtors voluntarily and accurately declaring their executable assets have been exceedingly rare, as noted by the observation that "the enforcement of cases through the debtor's own declaration of assets, especially the declaration of assets available for enforcement, is almost non-existent." (Huang, 2005) To optimize the asset reporting system's effectiveness and facilitate smoother enforcement processes, a dual approach is proposed. Firstly, the legal consequences for non-disclosure or misrepresentation by the judgment debtor should be clearly defined and strictly enforced, including the use of decisive measures such as fines and detention, as well as the inclusion in the List of Dishonest Judgment Debtors, serving as a potent deterrent. Secondly, the legal repercussions for such non-compliance should be intensified to compel judgment debtors to proactively fulfill their reporting obligations. To optimize the efficacy of the asset reporting system, it is imperative to thoroughly examine and address the following four aspects.

Firstly, it is essential to refine the classification of behaviors that constitute violations of the asset reporting requirements. While the *Civil Procedure Law* specifies potential disciplinary actions for non-reporting, misreporting, or other violations of the asset reporting system, it lacks clarity on the specific behaviors constituting these violations. The law also does not differentiate between types of non-compliance, often resulting in an indiscriminate application of penalties.¹ Additionally, the verification of reported assets such as equity and funds is challenging and costly for courts, contributing to the underutilization of the asset reporting system. To ensure the expeditious and precise identification of the debtor's executable assets and to fully realize the efficacy of the asset reporting system, it is essential to refine the classification of violations concerning property reporting. Article 50(1) of the *Compulsory Enforcement Law (Draft)* delineates five specific types of non-compliance by judgment debtors: failure to appear on the designated date, refusal to report upon appearance, false reporting, late reporting without justifiable reasons, and other failures to fulfill reporting obligations. For these infractions, the court may impose a range of penalties, including fines, detention, or the

inclusion of the debtor in the List of Dishonest Judgment Debtors, contingent upon the severity of the infraction.

Secondly, an examination of the duration of detention within the property reporting system is warranted. Article 118 of the *Civil Procedure Law* stipulates a maximum detention period of 15 days for non-compliance. While this measure serves as an effective deterrent for individuals who respect the law, its impact on those who are determined to evade their financial obligations is significantly diminished. As observed by Xu, "the current penalty of a 15-day detention may not suffice to influence the behavior of judgment debtors who demonstrate a lack of willingness to settle their debts. Some become even more resistant to settling after detention, potentially believing that the court has exhausted its punitive measures and no longer poses a threat." In contrast, Article 913 of the *German Code of Civil Procedure* permits detention of up to six months for debtors who refuse to provide an affirmation, with the possibility of additional detention in specific cases. "This approach has proven effective in ensuring compliance with reporting obligations." (Chang & Zhu, 2017) Therefore, it is suggested that the duration of detention be extended, in line with the provisions of German law, to enhance the deterrent effect of the asset reporting order. Article 50 of the *Compulsory Enforcement Law (Draft)* introduces revised provisions regarding detention. These include the authority to impose detention repeatedly and an amendment that increases the maximum detention period to less than six months. This legislative shift addresses the perceived "low cost of violating the law" and aims to dispel any misconceptions judgment debtors may harbor regarding the leniency of consequences for non-compliance with legal obligations.

Thirdly, the enforcement of legal standards to hold judgment debtors accountable for violations in asset reporting is essential. In Germany, a debtor who provides a false statement under an affirmation may be convicted of perjury, punishable by imprisonment for up to three years or a fine. Similarly, a debtor who, due to negligence, provides a false asset catalog as part of an affirmation, may be found guilty of the crime of negligent misrepresentation, which is punishable by imprisonment for a term not exceeding one year or by a fine. In China, judgment debtors who violate asset reporting obligations, refuse to declare, or provide false declarations resulting in serious consequences, can be prosecuted for refusal to satisfy obligations and held criminally liable. Nevertheless, in judicial practice, it is uncommon to prosecute the crime of refusal to enforce due to violations of the property reporting system. Despite the infrequency of such criminal penalties, their deterrent effect is nonetheless marked.

Lastly, it is imperative to establish necessary protective measures. While compulsory enforcement serves a

¹ In reality, the societal consequences of submitting false reports are arguably more detrimental than those of refusing to report altogether. It is imperative that the legal system distinguishes between these two forms of non-compliance, addressing each with appropriate measures.

deterrent purpose, it is more important to shield judgment debtors from unnecessary negative impacts on their reputation. (Liu, 2011) The current asset reporting system in China has been criticized for the disproportionate exercise of court authority, which does not consider the value of subject of the enforcement or the size of the debt fulfillment. The requirement for a uniform asset report fails to adhere to the principle of proportionality and may infringe upon the rights of the judgment debtors. To address these concerns, improvements should be made in the following areas:

First, courts should exercise reasonable scrutiny over applications for asset reporting. According to the *Japanese Civil Enforcement Act*, a creditor's application for asset disclosure must be supported by prima facie evidence that the debtor's known assets will not suffice to cover the full compensation claimed. Conversely, in Korea, enforcement courts are empowered to dismiss an application for asset disclosure in the absence of justifiable reasons, such as when the application is not aimed at monetary enforcement or when the debtor's assets are easily identifiable. The conditions for issuing an asset reporting order under Article 252 of the *Civil Procedure Law* and Article 3 of the *Provisions on Asset Examination* may be so lenient as to effectively nullify the conditions themselves, thereby universalizing the asset reporting system. Therefore, it is suggested that, drawing on the legislative approaches of Germany and Japan, the insufficiency of the debtor's assets to satisfy the claim, as determined by legal instruments, should be a prerequisite for applying for an asset reporting order, which the court should examine with due diligence.

Second, the judgment debtor should have the right to object to the court's decision on the asset reporting order. The *Japanese Civil Enforcement Act* allows a debtor to file an enforcement appeal against an asset disclosure decision, while the *Civil Execution Act of South Korea* stipulates that a debtor may file an objection within one week of receiving the asset disclosure decision, seeking a judicial review of the application's legality. In contrast, in some jurisdictions, there is an absence of relief channels for debtors dissatisfied with asset reporting orders. It is recommended that, following the examples of Japan and South Korea, judgment debtors be granted the right to object, thereby preventing the abuse of rights by the petitioner and safeguarding the legitimate interests of the debtor.

Third, Article 48 of the *Compulsory Enforcement Law (Draft)* curtails the frequency of asset reporting by the debtor, stating that "within six months after the judgment debtor has fully reported their assets, the court shall not order another asset report unless there is evidence of inaccurate reporting." This provision reflects a protective stance towards the debtor's rights, recognizing that the

obligation to report assets is onerous. Repeated demands for reporting within a short period, especially when the debtor lacks the ability to perform, are not only futile but also detrimental to the efficiency of the court and the debtor's cooperation with enforcement proceedings.

Finally, the protection of reported information by the judgment debtor merits attention. In Germany, access to the debtor's register is restricted to specific purposes, including compulsory enforcement actions, financial credit checks, investigation of public payment elements, prevention of economic loss due to debtor's payment defaults, and prosecution of criminal acts. Similarly, in Japan, "access to reported information is limited to the petitioner for disclosure, the obligor, and eligible creditors, with utilization restricted to the exercise of claims" (Bao, 2010); violators face fines up to 300,000 yen. In China, Article 12(3) of the *Provisions on Asset Examination* stipulates that when a petitioner for enforcement requests access to such property information, the people's court has the discretion to grant or deny permission based on the case's specific needs. It also mandates that the petitioner for enforcement and their agent must maintain the confidentiality of any information obtained during the inquiry process. However, the provision lacks detailed operational guidelines and punitive measures, limiting its effectiveness. Therefore, it is essential to refine this provision, clarifying the conditions and scope of the petitioner's inquiries and access to the court-investigated asset information of the judgment debtor, as well as reinforcing the confidentiality of the property information of the judgment creditor.

In the digital age, Article 49 of the *Compulsory Enforcement Law (Draft)* calls for the establishment of an asset reporting database, where reports are registered and stored. The petitioner for enforcement can, with court permission, query the contents of the judgment debtor's previous report through this database. The establishment of such a database can mitigate the frequency of asset reporting orders and facilitate inter-regional court database networking to ease off-site enforcement challenges. It is recommended that the *Compulsory Enforcement Law*, when formulated, should clarify and enhance these provisions to ensure the efficient and secure management of asset reporting information.

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