

新修強制執行法就強制扣薪規定之評釋

羅俊瑋*、馮善詮**

目 次

壹、前言	三、執行法院面向
貳、強制執行法禁止執行之債權	(一)權衡義務
一、執行之界限	(二)職權加註扶助資訊
二、修法緣由	肆、新修強制執行法適用上疑義
參、新修強制執行法特色	一、債權平等原則破壞之疑慮
一、債務人面向	二、新舊案處理上之困境
(一)明定債務人生活所需額度	三、扣押與換價命令同時核發之檢討
(二)非對債務人均有利	四、執行名義內容之審查難題
二、債權人面向	五、小結
(一)兼顧債權實現	伍、結論
(二)債權人之釋明義務	

關鍵詞：強制執行、權衡扣押、扣押、換價命令、執行法院、執行名義

Keywords：Compulsory Execution, Attachments of Balance, Attachment, Assignment Order, Execution Court, Entitlement Foreclosure

* 國立中正大學法律學系教授、財團法人金融消費評議中心評議委員，政治大學風險管理與保險研究所法學組博士。

** 臺灣嘉義地方法院司法事務官，國立中正大學法律研究所碩士。

摘 要

新修正強制執行法，雖係維護債務人基本生活及人性尊嚴，並兼顧債權人債權之實現，且課予執行法院權衡義務，適時調整扣薪額度，立意甚佳，但新制實行，可能產生債權平等原則破壞之疑慮，在新舊案處理上採消極作法亦於法未洽，且影響當事人權益。再者，非所有執行名義之內容，均得以明確審查債權發生之原因或情節，執行法院在判斷上恐將遭遇難題。另現行執行法院扣押與換價命令同時核發之傳統作法，與新制採權衡扣押有所不符，應一併檢討。

Comments on the Provisions for Garnering Wages in the Amended Compulsory Enforcement Act

Lo, Chun-Wei、Feng, Shan-Chuan

Abstract

While the Compulsory Enforcement Act protects the livelihood and dignity of debtors, it is also intended to take due account of the rights of creditors, and thus grants the execution court considerable freedom to consider all aspects of each case and to determine the amount of wages to be garnered. However, some are concerned that the actual implementation of this recently passed act may result in an equality of claims. Moreover, adopting a passive approach for dealing with both old and new cases would be legally unsuitable and could infringe upon the rights of the concerned parties. Furthermore, entitlement foreclosure doesn't always clearly determine the causes of the debt and the debtor's situation, and this is likely to lead to difficulties for the execution court. Also, the traditional approach is to simultaneously implement attachments and assignment orders, but this conflicts with the new act's emphasis on attachments which balance the rights of both parties; in fact, the two need to be considered together.