

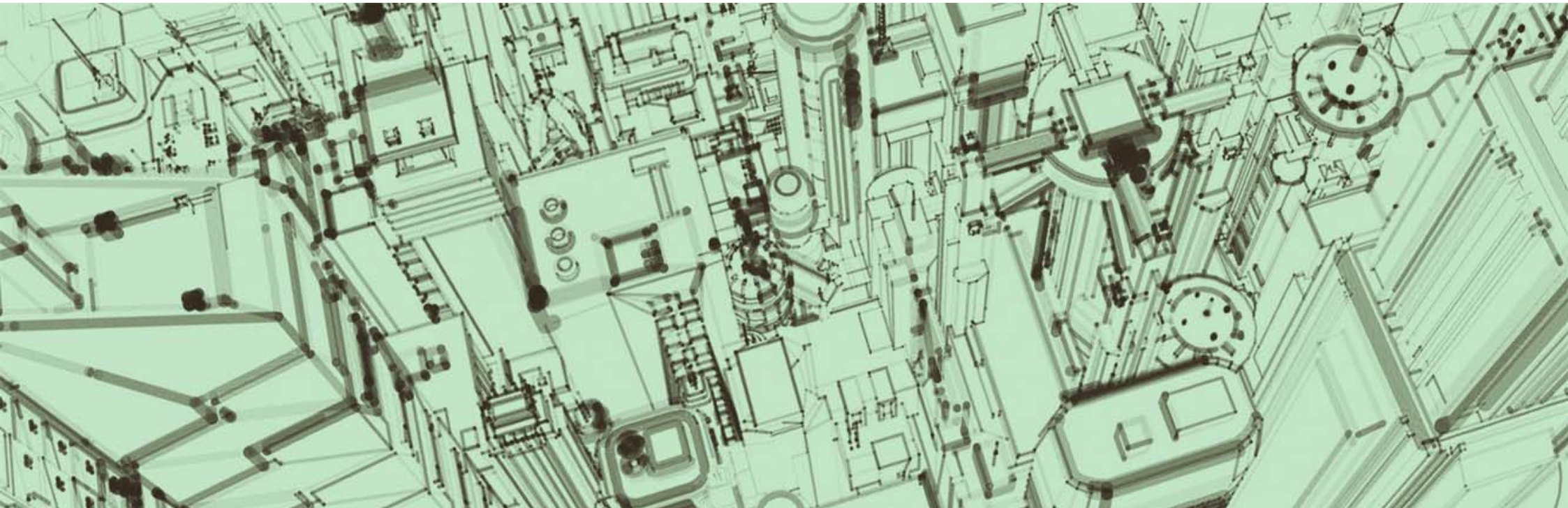


ENFORCEMENT OF CIVIL CASE JUDGMENTS IN MALAYSIA

MALAYSIAN JUDICIARY

OUTLINE

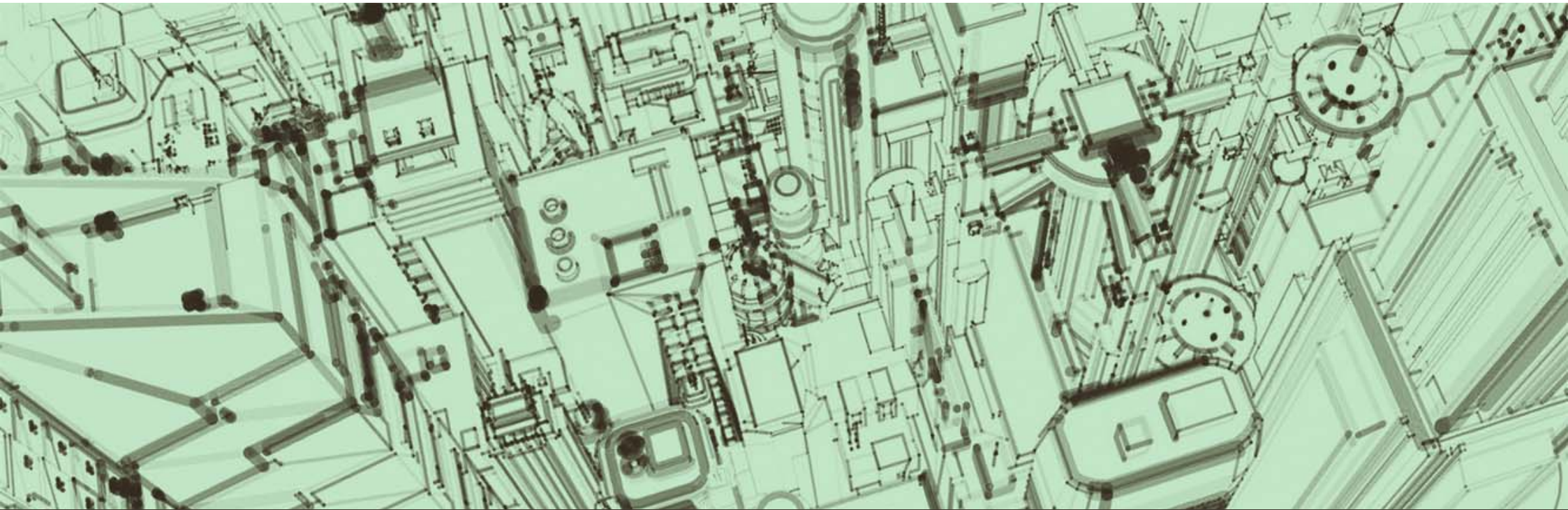
- **INTRODUCTION**
- **LAWS AND REGULATIONS GOVERNING ENFORCEMENT OF CIVIL CASE JUDGMENTS**
- **CIVIL JURISDICTION**
- **LEGAL RESTRICTIONS**
- **MODES OF EXECUTION**
- **PROCEDURE FOR EXECUTION**
- **CAPACITY BUILDING AND TRAINING OF JUDICIAL OFFICERS**
- **RECENT DEVELOPMENT / INNOVATIONS IN ENFORCEMENT OF CIVIL JUDGMENT**
- **CONCLUSION**



INTRODUCTION



- The Malaysian Civil Judicial system is based on common law
- The hierarchy of courts in Malaysia is comprised of the Subordinate Courts and the Superior Courts
- The Subordinate Courts comprises the Magistrates Court and the Session Court
- The Superior Courts consists of the High Court, Court of Appeal and the Federal Court of Malaysia



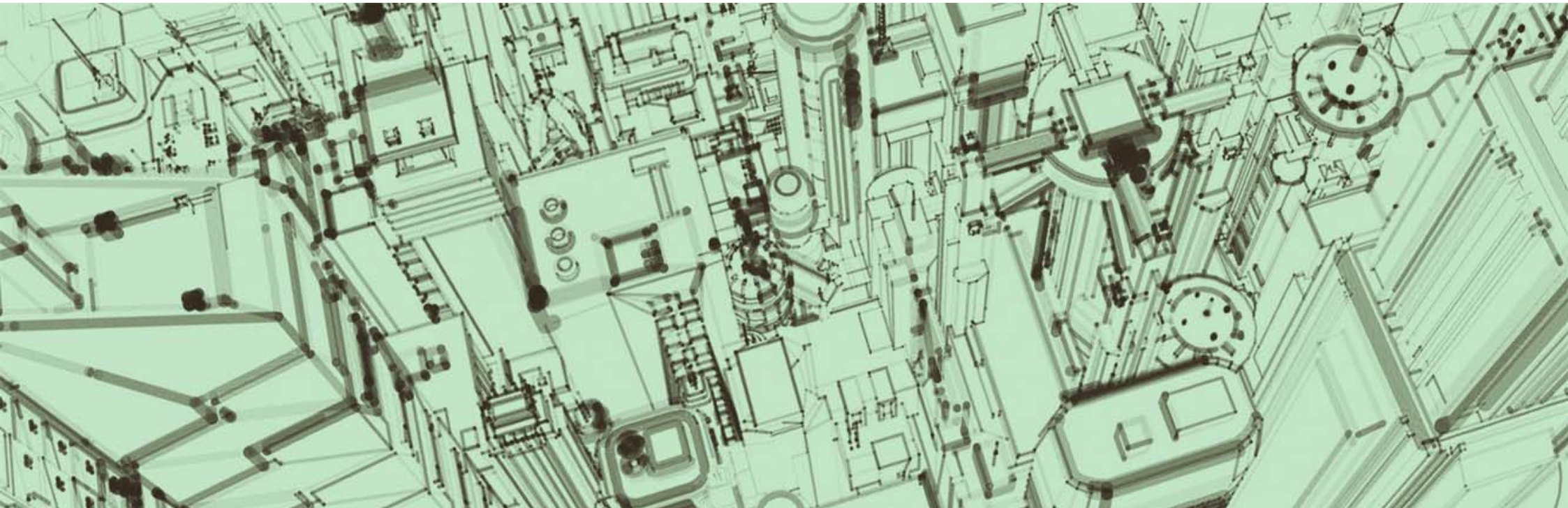
LAWS AND REGULATIONS GOVERNING CIVIL CASE JUDGMENTS



- Enforcement of Civil Judgments under Malaysian Law is vested under the powers conferred section 17 of the Courts of Judicature Act 1964 [Act 91], section 4 of the Subordinate Courts Rules Act 1955 [Act 55] and Rules of Court 2012
- The Rules of Court 2012 came into operation on 1 August 2012, before this, it was known as the Rules of the High Court 1980 and the Rules of the Subordinate Court 1980.
- All references to enforcement procedures in the High Court, Sessions Court and Magistrate's Court are covered by the Rules

Related Legislation :

- **Debtor's Act 1967**
- **Distress Act 1951**
- **Specific Relief Act 1950**
- **Hire Purchase Act 1967**
- **National Land Code 1965**
- **Auction States Enactments**
- **Bankruptcy Act 1967**
- **Bankruptcy Rules 1969**
- **Companies Act 1965**
- **Companies (Winding-up) Rules 1972**
- **The Reciprocal Enforcement Of Judgments Act 1958 (REJA 1958)**



CIVIL JURISDICTION



SESSION COURT

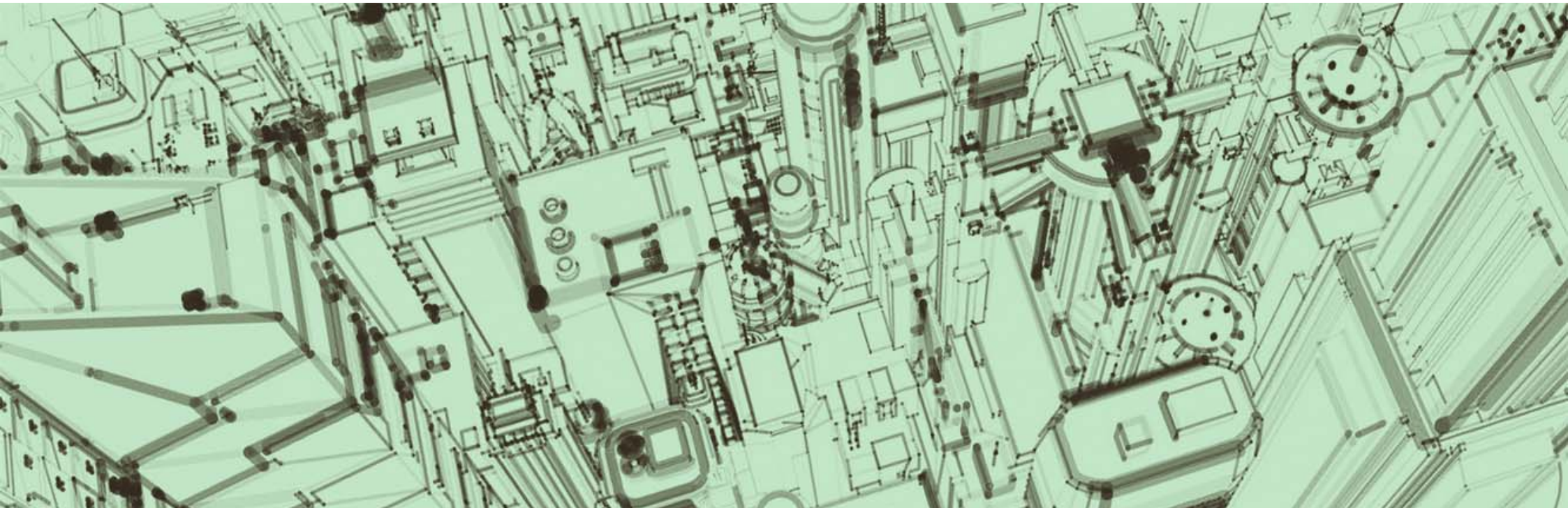


A Session Court may hear any civil matter involving motor vehicle accidents, disputes between landlord and tenant, and distress actions. The Session Court may also hear other matters where the amount in dispute does not exceed RM1,000,000.00

HIGH COURT



The High Court has jurisdiction to try all civil matters but generally confines itself to matters on which the Magistrate and Session Court have no jurisdiction. These include matters relating to divorce and matrimonial cases, appointment of guardians of infants, the granting of probate of wills and testaments and letters of administration of the estate of deceased persons, bankruptcy and other civil claims where the amount in dispute exceeds RM1,000,000.00



LEGAL RESTRICTIONS



JUDGMENTS



Judgment against government :
Generally no execution (section 33 (4) and section 35 Government Proceedings Act 1956)

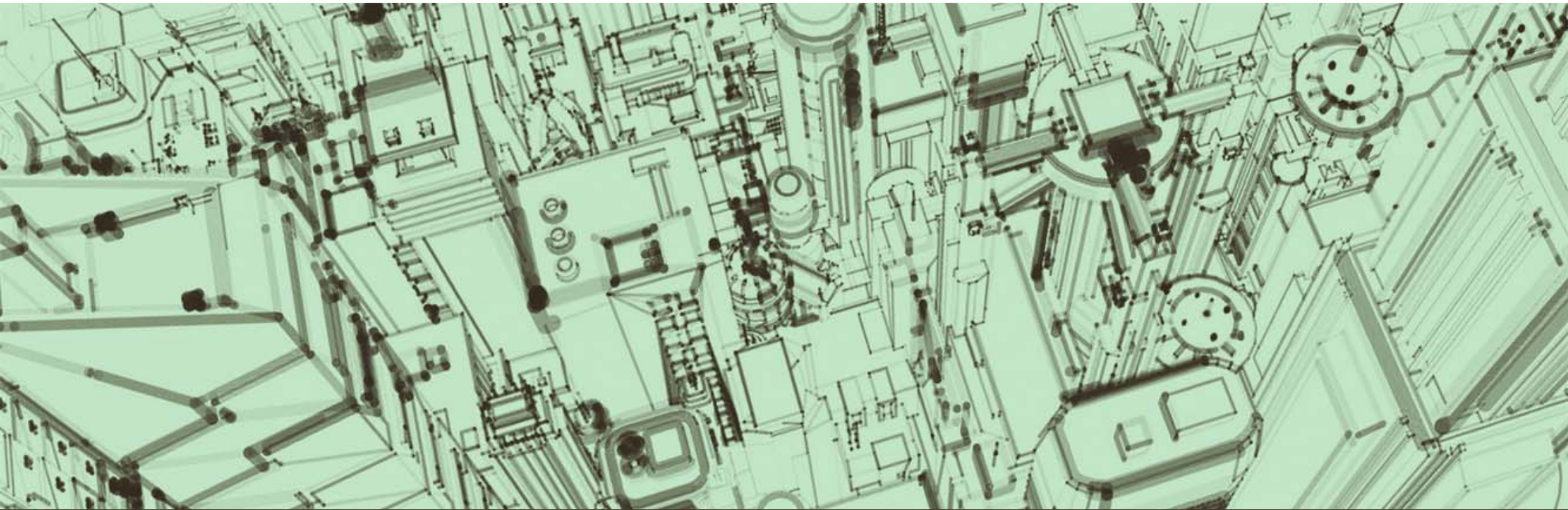
STATUTE BARRED

❖ Section 6 (3) Limitation Act 1953

- Action on a judgment is barred after 12 years
- *Ramani v Personal Representative Of The Estate Of Vaswani, decd (No 2), (1994) 2 SLR 750;*
 - the court will give leave under para 1 (a) if the applicant can show reasonably acceptable grounds

❖ Order 46 rule 2(1) (a) Rules Of Court 2012

- If more than 6 years has passed from date of judgment, leave of court is needed
- *Tio Chee Hing v Chung Khiaw Bank Ltd (1981) 1 MLJ 227,*
 - The grant of leave is the court's discretion



MODES OF EXECUTION



**NON-PAYMENT OF JUDGMENT
SUM**

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graph TD; A[NON-PAYMENT OF JUDGMENT SUM] --> B[Writ Of Seizure and Sale  
O45 r 1(1)(a)]; A --> C[Garnishee Proceedings  
O45 r 1(1)(b)]; A --> D[Judgment Debtor Summons  
O45 r 5]; B --> C; C --> D;
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Writ Of Seizure
and Sale
O45 r 1(1)(a)

Garnishee
Proceedings
O45 r 1(1)(b)

Judgment Debtor
Summons
O45 r 5

**NON-PAYMENT OF JUDGMENT
SUM**

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graph TD; A[NON-PAYMENT OF JUDGMENT SUM] --> B[Prohibitory Order  
O47 r 6]; B --> C[Auction of Immovable Property  
O83]; C --> D[Committal Proceedings  
O52]
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Auction of
Immovable
Property
O83

Prohibitory Order
O47 r 6

Committal
Proceedings
O52

**NON-PAYMENT OF JUDGMENT
SUM**



Charging
Order
O50



Bankruptcy
Proceedings



Winding Up



Reciprocal
Judgment
REJA 1958

POSSESSION OF IMMOVABLE
PROPERTY

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graph TD; A[POSSESSION OF IMMOVABLE PROPERTY] --> B[Writ of Possession  
045 r3 (1)(a)]; A --> C[Writ of Distress  
075]; B --> C;
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Writ of
Possession
045 r3 (1)(a)

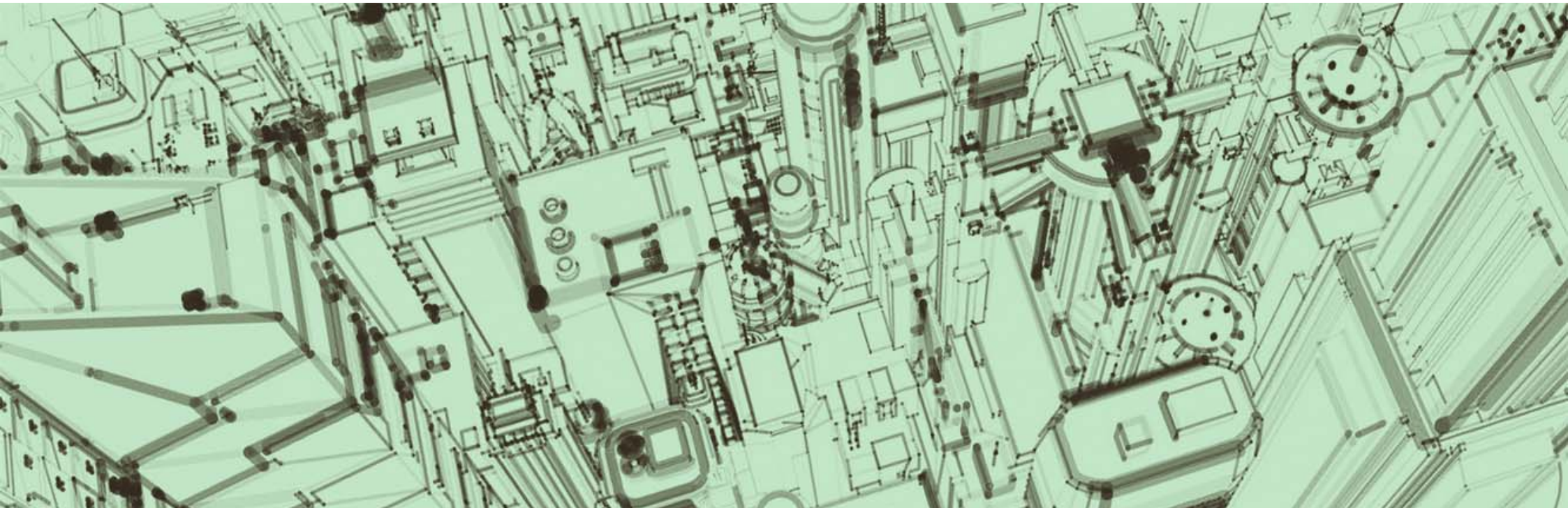
Writ of
Distress
075

POSSESSION OF MOVABLE
PROPERTY



Writ of Delivery

O45 r4



PROCEDURE FOR EXECUTION



1. Writ of Seizure and Sale

❖ Statute

- O 45 r 1(1)(a) Rules of Court 2012
- Debtors Act 1957

❖ Procedure – O 47

- The writ must be in Form prescribed ; Form 84 or 85 (O 45 r 12 (1))
- It may be enforced against both movable and immovable property as well as against the securities.

❖ When the property to be seized consists immovable property or any registered interest the seizure shall be made by an order prohibiting the judgment debtor from transferring, charging or leasing the property

2. Garnishee Proceedings

❖ Statute

- O 45 r 1(1)(b) Rules of Court 2012

❖ Procedure – O 49

- JC may garnish money JD is supposed to receive from a third party (garnishee)
- Ex parte notice of application
- Affidavit (Form 98)

2. Garnishee Proceedings

- Court will issue Garnishee Order to show cause (Form 97) – O 49 r 1
- Garnishee must show cause
- If Garnishee does not attend court : O 49 r 4
 - then the garnishee order is made absolute – O 49 r 4
- If garnishee attends court : O 49 r 5
 - Court can either decide the matter summarily
 - Court can fix the matter for trial

3. Judgment Debtor Summons

❖ Statute

- O 45 r 5 Rules of Court 2012
- Debtors Act 1957

❖ Procedure – O 48

- Ex parte notice of application
- Affidavit (Form 95)

❖ The objective is to give an opportunity to the judgment debtor to pay the judgment debt by installments commensurate his means. Even a judgment debtor himself could apply to the court to pay the judgment debt by installments.

3. Judgment Debtor Summons

- ❖ Alternatively, the defendant can under O 14, admit the Plaintiff's claim and propose to pay by installments and the court may so order if the plaintiff accepts the proposal

4. Auction of Immovable Property

❖ Statute

- Sec 256- 269 National Land Court 1965
- O 83 Rules of Court 2012
- Auction States Enactments:
 - **Auction Sales Enactment F.M.S Cap (No. 2 of 1929)**
 - **Auction Sales (Extension to Terengganu) Ordinance 1955 (F.M No. 58 of 1955)**
 - **Auction Sales Enactment Johore (En. No. 117)**
 - **Auction Sales Enactment Kelantan (En. No. 28 of 1930)**
 - **Auction Sales Enactment Perlis (En. No. 7 of 1337)**
 - **Auctioneer Enactment – Kedah (En. No. 8)**
 - **Auction Sales Rules – Selangor, Negeri Sembilan & Pahang**
 - **Miscellaneous Licences (Auctioneers & Valuers) Regulations 1957**

4. Auction of Immovable Property

❖ Procedure

- By way of Originating Summons - Order for sale
- Supported by affidavit

❖ Appointment of the Auctioneers and fixed a reserve price by the Registrar

❖ Proclamation for sale was done by the Auctioneer to advertise the property

4. Auction of Immovable Property

- ❖ Public auction is handled by the Registrar in his capacity as Sheriff assisted by the Auctioneer and Bailiff
- ❖ Bidders have to deposit bank draft before the auction

5. Prohibitory Order

❖ Statute

- O 47 r 6 Rules of Court 2012
- ❖ The Prohibitory order is a court order prohibiting the judgment debtor (owner) from dealing with his land which is subject to execution by way of seizure and sale by a judgment creditor
- ❖ The judgment debtor must either be a registered proprietor of the land in question or must have an interest in his own right

5. Prohibitory Order

- ❖ Execution creditor may present the prohibitory order to the appropriate registering authority for registration in the appropriate register of titles, and the registering authority shall register the prohibitory order
- ❖ Upon registration, the land or interest therein shall be deemed to have been seized
- ❖ After obtaining the Prohibitory Order, the judgment creditor can proceed to obtain the Order for Sale to auction the piece of land to recover the same – O 47 r 7

6. Committal Proceedings

❖ Statute

- O 52 Rules of Court 2012

❖ Procedure - Order 52 r 3, 4 & 6

- Leave application to commence committal proceedings
- Ex parte notice of application
- Statement under Order 52 r 3(2)
- Affidavit in support
- File an application for an order of committal and serve it on the contemnor after leave is granted (8 intervening days)
- Hearing of committal proceedings

7. Charging Order

❖ Statute

- O 50 Rules of Court 2012

❖ An order imposing a charge on securities eg shares

❖ Procedure – O 50 r 3 & 4

- Ex parte notice of application
- Supported by affidavit - specify the share which needs to “charged”
- Court gives leave

7. Charging Order

- Serve an Order to show cause on judgment debtor at least 7 days before the time appointed for consideration of the matter
- ❖ Effect of order to show cause : O 50 r 5
 - JD cannot sell, transfer shares
 - Court can make the charging order 'absolute' – O 50 r 6

8. Bankruptcy Proceedings

❖ Statute

- Bankruptcy Act 1967
- Bankruptcy Rules 1969
- Rules of Court 2012

❖ Total judgment of debt must be more than RM 30,000.00

❖ The proceedings may be commenced if the judgment debtor has not complied with the judgment or order made against him. The debtor could be debt to individuals or companies

8. Bankruptcy Proceedings

❖ Procedure

- Bankruptcy Notice
- Bankruptcy Petition
- Receiving Order and Adjudication Order entered (Bankrupt)

❖ Once a debtor has been adjudged bankrupt, other creditors will file the Proof of Debt form and Proxy to be entitled to share in any distribution from the estate of the bankrupt

❖ The distribution of the estate is according to the priority of the creditors' claim

9. Winding Up

❖ Statute

- Companies Act 1965
- Companies (Winding Up) Rules 1972
- Rules of Court 2012

❖ 2 types of winding up (section 211 Companies Act)

- By the Court
- Voluntarily

❖ Winding up is also known as "liquidation", when a company cannot pay its debt and when it falls due, a company is insolvent

9. Winding Up

❖ By the Court :

- Section 218 (1)(a) - (n) Companies Act 1965
- The most common ground in which the company maybe wound up by the court is under section 218 (1) (e) where is the company is unable to pay its debt
- Section 218 (2) (a) – definition of inability to pay it debts, the company is indebted in a sum exceeding RM500 and a demand has been made to pay the sum and the company has for 3 weeks neglected to pay the sum.

9. Winding Up

❖ Voluntary winding up:

- Divided into 2 categories:-

- (a) members' voluntary winding up

- (b) Creditors' voluntary winding up

10. Enforcement of Foreign Judgments/ Reciprocal Enforcement of Judgments

❖ Statute

- The Reciprocal Enforcement of Judgments Act 1958 (REJA 1958)
- O 67 Rules of Court 2012

❖ REJA 1958 does not apply to all foreign judgments but only to judgments in the superior courts of the United Kingdom and countries specified in the first schedule to the Act (section 3):

- *Re Suppiah (Tara Rajaratnam, Judgment Creditor) (1989) 2 MLJ 479 at 481 per LC Vohrah J*

10. Enforcement of Foreign Judgments/ Reciprocal Enforcement of Judgments

- In *Re A Judgment Debtor (No 2716 of 1938) (1939) 1 All ER 1 at 6, *
 - It was held that in relation to sect 6 of the Foreign Judgments Reciprocal Enforcement Act 1933 (in pari material with sect 7 of the REJA 1958; ... ‘ *where a judgment is registrable under the Act, the only thing the holder of such a judgment is entitle, to do is to register it, and, after registering of course, he obtains the rights which h the Act expressly says shall follow upon registration*’. Therefore, it is understood from this act the only method of enforcing foreign judgment should be by registration

10. Enforcement of Foreign Judgments/ Reciprocal Enforcement of Judgments

❖ Procedures - O 67 r 2 Rules Of Court 2012

- Application by judgment creditor has to be made by way of Originating Summons supported by affidavit in support annexing the judgment obtained in the Superior Court of a country in the First Schedule to register in the High Court
- No appearance needs to be entered to an Originating Summons
- The application is heard ex parte;
 - *The Development Bank Of Singapore Ltd v Furniture Industries Pte Ltd & Ors (1992) 2 CLJ 809.*

11. Writ of Possession

❖ Statute

- Section 7 and 8 of the Specific Relief Act 1950
- O 45 r 3 Rules of Court 2012

❖ Procedure – O 45 r 3, 12(3) & O89

- Ex parte notice of application
- Affidavit in support (with particulars of any sub-letting or actual possession by other occupiers and whether requisite notice given to them of the proceedings)

11. Writ of Possession

- Once the application is granted, the order commands the sheriff to enter into the land and take possession of the immovable property
- The writ may also include provision for enforcing the payment of money usually rental arrears and legal cost and for that purpose, the writ will command seizure and sale of any movable property of the defendant to satisfy the party of the monetary judgment

12. Writ of Distress

❖ Statute

- Distress Act 1951
- Section 7 Specific Relief Act 1950
- O 75 Rules of Court 2012

❖ Application of Warrant of Distress

- Ex parte notice of application
- Affidavit in support (Affidavit affirmed by either landlord or his duly authorised agent)

12. Writ of Distress

❖ Requirement

- The relationship of landlord and tenant must exist, both when the rent becomes due and when the distress is levied and the rent must be in arrears

❖ Writ of distress (Form 120)

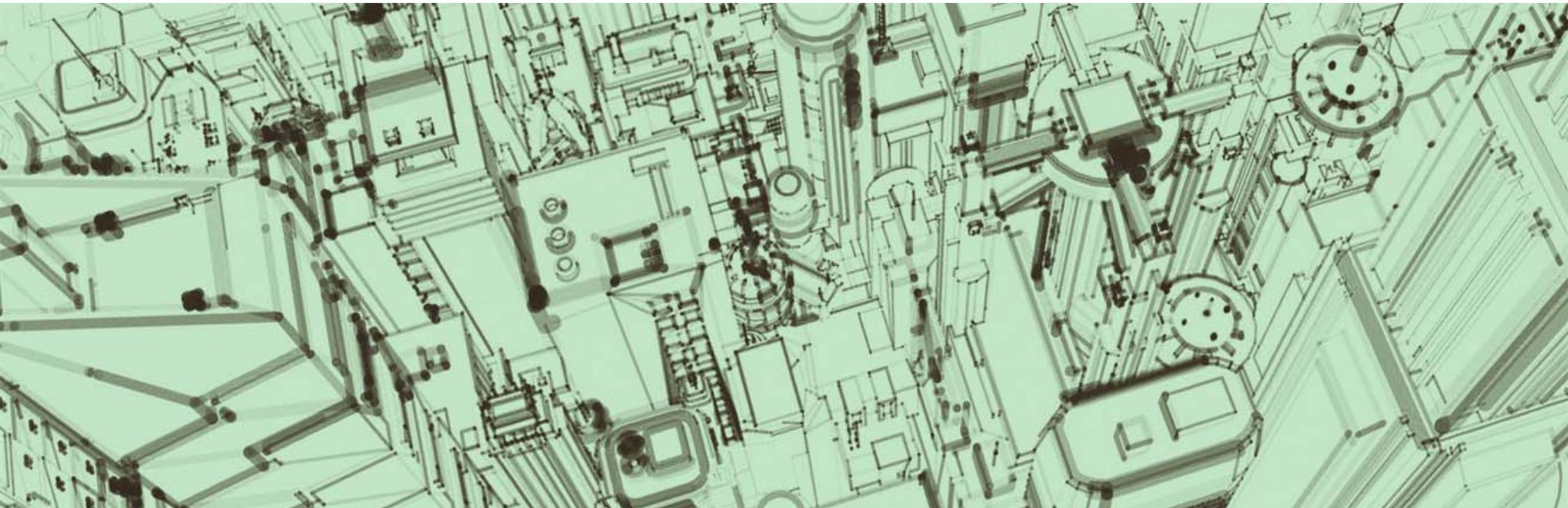
- Warrant of distress need not be served on the tenant.
- The writ of distress is addressed to the bailiff for execution and the entire process is carried out *ex parte*
- The element of surprise is expected because if the order is made known, the execution might not be fruitful.

13. Writ of Delivery

❖ Statute

- Sec 16, 16a, 17A, 17B, 19 and 20 Hire Purchase Act 1967
- O 45 r 4 Rules of Court 2012

- ❖ It is for the recovery of movable property or its assessed value where a judgment or order for the delivery of any movable property or payment of their assessed value to the judgment creditor has not been complied with
- ❖ Writ of delivery may include provision for enforcing the payment of any money adjudged or ordered to be paid by the judgment



CAPACITY BUILDING AND TRAINING OF JUDICIAL OFFICERS



COURSES FOR THE JUDICIAL OFFICERS

- Continuous training
- Module with regards to the procedure is reviewed every year in line with the recent development of law
- Compulsory courses
- Pre requisite for promotion

1

COURSES FOR THE BAILIFFS

- Continuous training
- Module with regards to the procedure is reviewed every year in line with the recent development of law
- Compulsory courses

2

ORGANIZER

- Chief Registrar's Office
- Judicial and Legal Training Institute

3

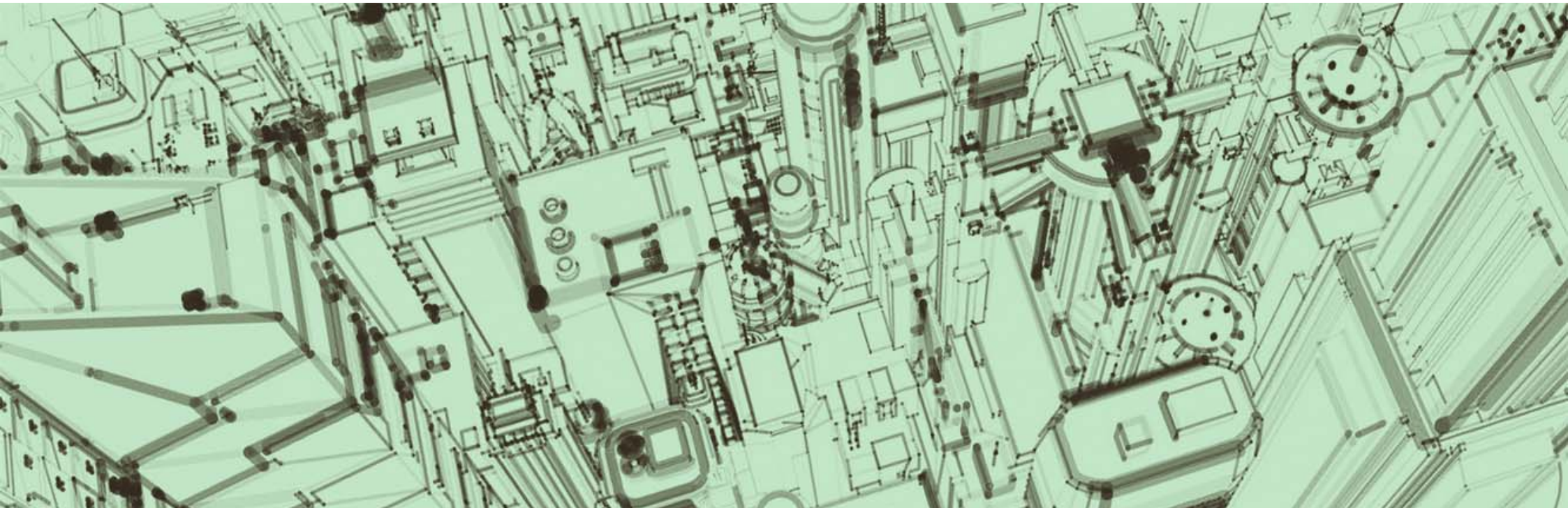
Continuous
and
Compulsory
Training for
Judicial
Officers and
Bailiffs

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graph LR; A[Continuous and Compulsory Training for Judicial Officers and Bailiffs] --> B[Module with regards to the procedure is reviewed every year in line with the recent development of law]; B --> C[Speakers and facilitators include judges and senior officers]; C --> D[Organized by the Chief Registrar's Office and Judicial and Legal Training Institute];
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Organized by
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Registrar's
Office and
Judicial and
Legal
Training
Institute



RECENT DEVELOPMENT/INNOVATIONS IN ENFORCEMENT OF CIVIL JUDGMENT



1

STUDIES BY WORLD BANK GROUP

29:189

2

UNIFORMITY OF PRACTICE AMONG THE STATES IN MALAYA

3

PUBLIC AUCTION HELD IN A SPECIFIC ROOM

4

AUCTION LAWS REFORM BY ATTORNEY-GENERAL'S CHAMBERS

(STUDY WAS DONE FROM 2012 UNTIL NOW)

5

INSOLVENCY LAW REFORM BY MALAYSIAN DEPARTMENT DEPARTMENT

(STUDY WAS DONE FROM 2010 UNTIL NOW)

6

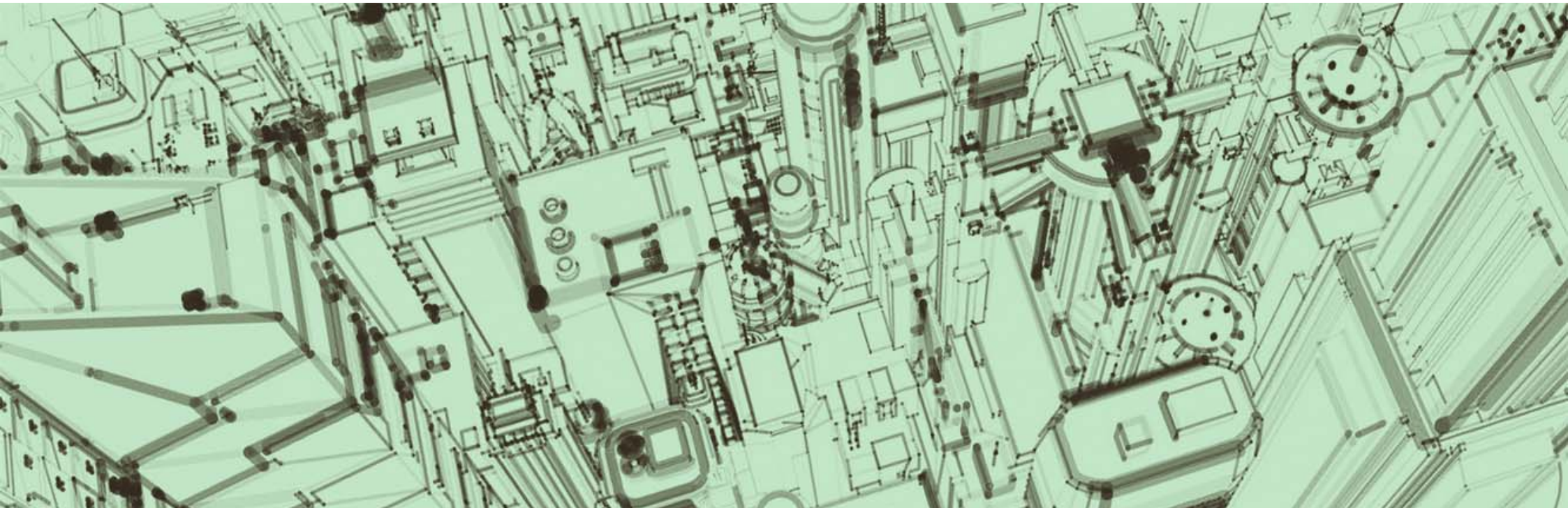
REFORMING THE CORPORATE INSOLVENCY REGIME REFORM BY COMPANIES COMMISSION OF MALAYSIA

(RECENTLY HAS BEEN FINALISED AND WILL BE
TABLED SOON AT THE PARLIAMENT)

7

E-BIDDING IN PUBLIC AUCTION FOR IMMOVABLE PROPERTY

(STUDY WAS DONE FROM 2014 UNTIL NOW)



CONCLUSION



- Malaysia recognizes the need for speedy and efficient enforcement of civil case judgments which is pertinent in the context of Dynamic Regional Economic Integration
- Towards this end, Malaysia is striving to improve its enforcement of civil judgment mechanism to promote and facilitate the needs of individual litigants and the business community as a whole
- Malaysia further acknowledges the importance of cooperation among enforcement of civil judgment agencies among the ASEAN community



THANK YOU