COLLAS CRILL

Freezing injunctions in Guernsey, Channel Islands

JANUARY 2019

Background

Freezing injunctions are often used in Guernsey to preserve the assets of a defendant whilst proceedings are, or are going to be, pursued in the Guernsey courts. It is also common for the Royal Court of Guernsey to grant freezing injunctions ancillary to proceedings and/or injunctions in other jurisdictions.

The effect of the freezing injunction is to compel the affected party from dealing with their assets that are the subject of the order. If the order is breached the person subject to the order will be in contempt of court. Accordingly, the injunction operates *in personam* rather than *in rem* against the property.

The Application

Generally applications for a freezing order are made *ex parte* in the first instance because there is a risk that the respondent will dissipate his assets. If the application is made *ex parte* the usual obligations of full and frank disclosure are imposed upon the applicant and his advocate because the nature of the freezing order is a draconian one. If an order is made *ex parte* the court will set a date when the application must return on an inter partes basis. This is generally done with as short amount of time as possible between the two hearings.

The threshold criteria for obtaining a freezing injunction is:

1. The plaintiff has a good arguable case on a substantive claim over which the court has jurisdiction;
2. The defendant has assets in the jurisdiction; and
3. There is a real risk of dissipation or secretion of assets which would render the plaintiff's judgment worthless.

In addition to the above if the injunction is sought in respect of foreign proceedings there is an additional limb to the above of "exceptional circumstances". The Guernsey Court of Appeal has considered this limb of the test to mean that the court should exercise caution before granting the freezing injunction.

If the applicant is seeking a worldwide freezing injunction the court will want to be satisfied that the assets within the jurisdiction are insufficient to satisfy the judgment and that the respondent has assets outside the jurisdiction.

Even if the above criteria are satisfied the court still retains a discretion that it may only grant the injunction if it considers that it is just and convenient to do so.

Undertakings by the Applicant

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

The court will typically expect the applicant to give the following undertakings when applying for a freezing injunction:

- To compensate the respondent if the court later finds that the injunction should not have been granted;
- To pay the costs incurred by any third parties in complying with the order; and
- Not to use any of the information obtained by virtue of the freezing injunction for any proceedings without the permission of the court.

Once the injunction has been ordered it must be served upon the respondent and any third party which will ordinarily be done in Guernsey by HM Sergeant. If the respondent is resident outside of the jurisdiction the applicant will need to ensure that he seeks an order granting service out of the jurisdiction in the draft order. It is important to ensure that the order is drafted carefully so that its terms cover all the assets that the applicant wants to be covered and that a penal notice is included.

Disclosure Order

In addition to the preservation of assets an ancillary order that is made by the court upon a freezing injunction being ordered is the disclosure of information in respect of the assets. This is likely to be a statement disclosing his assets to be supported by evidence of the same. The ancillary disclosure order is necessary to give teeth to the injunction as without it the applicant would not know what assets belonged to the respondent and if they are actually frozen.

It should also be noted that third parties that have disclosure orders made against them are also bound as regards the freezing injunction and must not knowingly assist the respondent in removing or disposing of the assets or else risk committal proceedings. The ancillary disclosure order is clearly of benefit to any potential creditor or IP pursuing a defendant. There is also potential for a respondent to have to disclose any interest which is held in trust which may reveal another pool of assets to enforce against that were unknown to the applicant.

Next Steps

The freezing order will remain in force until it is varied or discharged by the court or if the respondent pays a sum equivalent to the value of the applicant's claim into court. The respondent will frequently apply to the court for variation of the order. The order will also usually specify that the respondent is not prevented from dealing with his asset in the usual course of business, although it should be noted that if the applicant is asserting a proprietary right in the asset it will be completely frozen.

Summary

Injunctions in Guernsey are a means of assuring that the respondent is not able to frustrate any judgment in substantive proceedings both in Guernsey and other jurisdictions. Further, it can be a useful tool to ascertain the extent of the respondent's assets in Guernsey, both those directly owned and those in which he has a beneficial interest. If a proprietary interest in the asset is asserted in the substantive proceedings this may lead to the asset being completely frozen. In order to bolster Guernsey's status as an international financial centre,

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

the Royal Court will aide foreign claimants to ensure that any judgment that they obtain around the world will not be frustrated by defendants attempting to hide their assets within its jurisdiction.

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

COLLAS CRILL

For more information please contact:



James Tee

Partner (Advocate)^ | Guernsey

t: +44 (0) 1481 734284 | **e:** james.tee@collascrill.com

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.