



COMMERCIAL DISPUTES **KNOW-HOW GUIDES**

# FREEZING INJUNCTIONS

Freezing orders are a form of interim court order used to prevent the respondent from moving, hiding or otherwise dissipating assets that would be subject to a judgment and thereby frustrating the enforcement of the judgement.

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# GROUNDS FOR OBTAINING A FREEZING ORDER

Freezing orders are a severe injunction and are not available by right – the court will exercise its discretion in ordering them and will only make the order in limited circumstances.

The applicant must satisfy the court of the following:

- (1) There is a substantive underlying claim;
- (2) There is a real risk of dissipation;
- (3) The applicant has a good arguable case on the merits of the underlying claim;
- (4) (4) There are assets owned by the respondent; and
- (5) It is just and convenient to make a freezing order.

# ASSETS THAT CAN BE SUBJECT TO A FREEZING ORDER

A freezing order can apply to all types of assets – including bank accounts, shares, property, and even cryptocurrency (*Vorotyntseva v Money-4 Limited* [2018] EWHC 2596 (Ch)).

Assets can be frozen within England and Wales or outside of the jurisdiction (domestic and worldwide freezing injunctions, respectively).

The freezing order will be specific as to which assets are frozen. It may (in descending order of likelihood) be (i) limited to the value of the claim, (ii) in respect of specific assets only, or (iii) unlimited, i.e. freezing all of the respondent's assets.

# KEY LIMITATIONS ON FREEZING ORDERS

Although freezing orders are most useful because they preserve the status quo, there are a number of limitations.

- They do not provide security over the assets that are frozen.
- They do not give the applicant priority over (other) creditors.
- The sanctions for a respondent's failure to comply with a freezing order are committal to prison for contempt of court or a fine. Whilst this is usually a severe deterrent, it will not be a sufficient deterrent in all cases.
- Freezing orders should be limited. For corporate respondents, this should not cause them to cease trading. For individual respondents, this should allow them to meet living expenses and legal costs. Individual respondents should still be able to access an amount that allows them to maintain their previous standard of living, even if this is very lavish (*Vneshprombank LLC v Bedzhamov and others* [2019] EWCA Civ 1992).

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# RESPONDENTS TO FREEZING ORDERS

Freezing orders can be made against both parties and non-parties to proceedings. A third party can also be served a freezing order where they hold or control assets owned by the respondent, for example a bank which holds the defendant's account. Third parties must not breach the freezing order or help or permit the Defendant in doing so.

## PROCEDURE

An application for a freezing order is usually made without notice to the respondent. This is to avoid giving a respondent a warning, allowing them time to dissipate assets before the order is made.

### DUTY OF FULL AND FRANK DISCLOSURE

Where a hearing is made without notice, the applicant has a duty of full and frank disclosure and so it must disclose all matters that are material to the court, including any adverse to the applicant. If not complied with, the respondent may be able to apply to discharge the order and may be awarded costs against the applicant on an indemnity basis.

### UNDERTAKINGS

The applicant will usually have to give an undertaking in damages to the court to compensate the respondent if it is subsequently determined that the applicant was not entitled to the order. If the court doubts the applicant's financial resources, the applicant could also be required to make a payment into the court to support the undertaking.

### TIME FACTORS

Freezing orders can be sought pre-action, once proceedings have been issued or even after a judgment has been made. Delay may result in dissipation but also can be a reason for the court to refuse to grant the order.

If a freezing order is made at a hearing where prior notice was not given to the respondent then it will ordinarily be granted until a full on-notice hearing can be held (when the respondent can challenge the order). At the full hearing, the applicant will typically seek to continue the order until judgement.

### ENFORCEMENT

Freezing orders are enforced by way of committal proceedings for contempt of court and/or a fine. Committal proceedings are a form of criminal proceeding and can carry a sentence of a maximum of 2 years. The proceedings can be brought against the respondent, or against any party on whom the freezing order was served who has breached the order.

This is part of a series of practical know-how guides for those involved in commercial disputes whether the dispute has led to litigation or not. They provide basic information on a wide range of disputes topics but are not a substitute for specific legal advice.

## FOR MORE INFORMATION PLEASE CONTACT



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