1 Introduction

With the increase in cross border transactions there has come a substantial increase in cross border disputes. But what value is an English court order against a foreign defendant? How can you stop a defendant hiding its assets to prevent enforcement? The English Courts are ready, willing and able to prevent parties to litigation making themselves “judgment proof”, including by way of orders such as freezing injunctions and proprietary injunctions.

2 What is an “Injunction”?

An injunction is a Court order:

- prohibiting a person and/or entity from taking a particular action (otherwise known as a prohibitory injunction). You might use this, for example, to stop someone removing money or assets from the jurisdiction or breaching a contract; or
- requiring them to take particular action (otherwise known as a mandatory injunction). You might use this, for example, to compel someone to comply with the terms of a contract.

An injunction is a remedy, and not a cause of action.

3 When is an injunction available?

For an injunction to be obtained the applicant must:

- have commenced a claim against the respondent and/or will commence a claim forthwith (referred to in this note as the “Substantive Proceedings”); and
- require the injunction to protect their rights in the Substantive Proceedings as no other relief would provide an adequate solution.

In addition, the Court will only grant an injunction where it is just and convenient to do so (discussed in section 5 below).

In deciding whether an injunction provides an adequate remedy, the Court will consider the following guidelines:

- Whether there is a serious question to be tried in the Substantive Proceedings;
- Whether damages would be an adequate remedy;
- What would be the balance of convenience of each of the parties should an order be granted; and
- Whether there are any special factors¹.

¹ American Cyanamid Co v Ethicon Ltd [1975] UKHL 1.
An injunction, therefore, is a tool which can be used to aid existing or soon to be issued proceedings. An injunction will not be granted if there is no intention to issue Substantive Proceedings or if the Substantive Proceedings do not show a good arguable case.

This will be explored in further detail below.

4 What is a “Freezing Injunction”?

A freezing injunction is a type of injunction which prohibits a party from disposing of or dealing with its assets.

A freezing injunction is an interim injunction, as opposed to a final injunction. This means that it remains in place for a limited period of time, not indefinitely. The purpose of a freezing injunction is typically to preserve assets until judgment has been obtained and enforced in the Substantive Proceedings.

Assets to which a Freezing Injunction can attach:

- Freezing injunctions can be granted over assets held in the sole name of the Respondent, in the joint names of the Respondent and someone else or even, in appropriate cases, in the sole name of a third party. This last jurisdiction is known as the court’s Chabra jurisdiction.²

- It may be appropriate to ask the Court to exercise its Chabra jurisdiction where assets are held in the name of a third party but in reality belong to the proposed respondent. The applicant will need to provide good reason (and evidence) for supposing that those assets are, in truth, assets of the respondent³.

A freezing injunction can also be varied or discharged at the Court’s discretion where:

- The injunction has become oppressive.

- There has been inordinate delay by the applicant since bringing the claim (i.e. failing to take steps in the Substantive Proceedings).

- There has been material non-disclosure or non-compliance with its undertakings i.e. failure to comply with the rule of full and frank disclosure (see section 13 below).

Assets which can be frozen include, but are not limited to, the following:

- Cash in banks.

- Shares in companies.

- Cars.

² After the case in which this jurisdiction was established - TSB Private Bank International SA v Chabra [1992] 1 WLR 231

- Land.
- Non-perishable assets in personal name.
- Non-perishable assets held in the name of a third party on behalf of the respondent.
- After the event (ATE) insurance premiums.
- A contractual right to draw down funds under a loan agreement.
- Any additional assets acquired during the duration of the order.

5 The Test for obtaining a Freezing Injunction

Freezing injunctions have been described as the “nuclear weapons” of the litigator’s arsenal. Its effects are hugely destabilising on a respondent. As a result, the Courts approach freezing injunctions carefully.

The Court will grant a freezing injunction only where it is just and convenient to do so. In reaching that decision the Court will have to be satisfied of the following:

- There must be an existing cause of action (i.e. a claim or judgment to be enforced in the Substantive Proceedings).
- The applicant must have a good arguable case (this does not mean proving the case has a more than 50% chance of success but it does mean showing it is properly arguable and not fanciful).
- The respondent must have assets within the jurisdiction (although orders can be extended to include the respondents’ overseas assets including trusts, bank accounts and subsidiary companies - explored further at sections 8 and 9 below).
- There is a real risk of the respondent’s assets being dissipated.

All of these criteria must be satisfied if a freezing injunction is to be granted but evidence of the risk of dissipation is absolutely key.

6 Risk of Dissipation

Applicants must demonstrate a real risk that the respondent will take steps to dissipate or hide their assets to avoid enforcement. It is not necessary to show an intention to dissipate. The Court applies an objective test (i.e. whether a reasonable person would think there is a risk of dissipation) and will consider whether the effect of the respondent’s actions to date indicate a real risk of dissipation.

This is often very difficult to prove. It is not enough to argue that the commencement of enforcement proceedings might, itself, prompt the respondent to hide their assets and therefore create a risk of dissipation; the risk of dissipation must exist at the moment of the application.

Relevant factors in demonstrating a risk of dissipation include:
The ease with which the assets in question could be moved out of the applicant’s reach.

If the assets are overseas, the ease or difficulty of enforcement. For instance where assets are in countries with which England and Wales does not have an enforcement agreement.

The nature and financial standing of the respondent – does the applicant have the skills/experience to move assets and manage them abroad?

Where the respondent’s business is located (although the mere fact that a respondent is foreign is not sufficient evidence of risk of dissipation).

Whether there is any adverse inference to be drawn from the respondent’s incorporation in a tax or finance haven.

Any failure by the respondent to file accounts when obliged to do so.

The respondent’s past and present credit record, i.e. whether the respondent has previously been declared bankrupt.

Any failures in the past to pay debts (though doubts as to a respondent’s creditworthiness are not enough on their own to amount to risk of dissipation).

Evidence of dishonesty, particularly in relation to misuse of assets.

7 Delay

An applicant is expected to act promptly if they think there is a risk of dissipation. The Court may refuse to grant a freezing injunction, even where such a risk arises, if the applicant has delayed (without a good explanation) in making the application. There is often a connection made between delay and the risk of dissipation, in that it may be said that:

• delay is evidence that the applicant does not really believe there is a risk of dissipation; or

• if there was a risk of dissipation, it would have occurred in the period of the delay, such that a freezing injunction would be of no practical use.

8 Worldwide Freezing Injunctions

The English Courts may also grant a “worldwide” freezing injunction over assets belonging to the respondent where it does not think there is sufficient money or value in assets within England and Wales to satisfy any subsequent Court order in the Substantive Proceedings.

The Court will only exercise this discretion where it is just and expedient to do so. If assets within the jurisdiction provide sufficient protection, it is unlikely that the Court will grant a worldwide freezing injunction. Additional factors which will be considered by the Court include:

• Whether the order would interfere with the management of the Substantive
Proceedings.

- If the policy in the primary jurisdiction is to refuse the relief sought.
- If there is a danger that the order would give rise to disharmony or confusion and/or risk of conflicting, inconsistent or overlapping orders in other jurisdictions.
- If at the time the order was sought there was likely to be a jurisdictional conflict.
- Whether the freezing order once obtained could be enforced in the foreign jurisdiction.

9 Enforcement

Whether an English judgment or order can be enforced abroad will depend on the private international law of the foreign jurisdiction. This will require the advice of a local lawyer.

England is party to a number of reciprocal agreements, which streamline the process for enforcement and recognition of court orders amongst contracting parties.

In basic terms, to enforce an English judgment or order in a foreign jurisdiction, you will have to:

- Seek the foreign court’s recognition of the English judgment or order; and
- Follow the procedure of the foreign jurisdiction to enforce the judgment and, for example, seize the respondent’s property.

10 Freezing Injunctions in Support of Foreign Litigation

Under section 25 of the Civil Jurisdiction and Judgments Act 1982 (“CJJA 1982”), the Court has discretion to grant interim relief, including freezing injunctions, in support of Substantive Proceedings commenced in a foreign Court. The Court will take into account whether:

- it has in personam jurisdiction over a respondent (either because the respondent is resident or otherwise present in the jurisdiction)
- the respondent has assets within the jurisdiction
- there are other, exceptional circumstances justifying the exercise of the Court’s discretion.

In order to establish exceptional circumstances, applicants need to show:

- A real connecting link between the assets and the territorial jurisdiction of the English Court (for example, a dispute arising out of a contract with an English governing law clause).
That the case is one where it is appropriate for the English Court to act as an international policeman in relation to assets abroad (for example, because there is no other way to police an international fraud).

That it is “just and expedient” to grant a worldwide freezing order, taking into account the discretionary factors set out at section 8 above.

11 Respondent’s Day to Day Costs

A freezing injunction cannot be used to ‘suffocate’ a respondent from defending Substantive Proceedings and/or meeting their day to day costs such as children’s school fees, rent/mortgage repayments, household expenses, salaries, paying suppliers etc. The respondent’s assets will be frozen save to the extent that payments need to be made for everyday living expenses or in the ordinary course of business.

The amount permitted for living expenses and legal costs will be decided by the Court, taking into account all the circumstances, including the respondents’ usual standard of living. Usually, £500 per week is considered a reasonable living expense, but we have also seen freezing orders permitting living expenses of £10,000 per week, or unspecific orders allowing a “reasonable amount” for legal costs.

If the respondent retains “unfrozen” assets (i.e. because the value of its assets exceeds the value of the claim), the Court may direct that normal living expenses, legal costs and/or business costs should be funded from there, rather from the “frozen” assets.

12 Arbitration & Freezing Injunctions

The court has the power to grant a freezing injunction in support of arbitral proceedings (section 44(1) Arbitration Act 1996).

A freezing injunction can be obtained from the Court in support of arbitral proceedings in the following circumstances:

- the parties have not agreed otherwise;
- the application has been made with the permission of the arbitral tribunal or by written agreement of the parties, unless the case is one of urgency;

In the normal way, the Court may refuse to grant a freezing injunction in support of arbitral proceedings if, in its discretion, it appears to be inappropriate; for example, if the arbitration has a foreign seat and is governed by foreign law, and the majority of the respondent’s assets are located outside of England and Wales.

13 Applicant Obligations

The Duty to Provide Full and Frank Disclosure

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4 English Courts have wide common law powers to give active help to foreign insolvency office holders, unless it would be improper to do so England v Smith [2001] CH 419.

5 Where there is respondent discretion, the Order should specifically provide for applicant approval prior to payment.
Usually, an application for a freezing injunction will be made without notice to the respondent, in order to avoid tipping them off and giving an opportunity to dissipate the assets that you are seeking to freeze. This means that, at the point a freezing injunction is granted, a respondent is unlikely to have had any opportunity to defend itself. In the interests of justice, applicants and their advisors are, therefore, under a strict obligation to disclose to the court all relevant information, including any information in the respondent’s favour, even if this is likely to hinder your application. This is known as the duty of full and frank disclosure.

If you fail to provide full and frank disclosure, the Court may discharge the injunction and award the respondent costs.

The Cross Undertaking in Damages: The “Price” of the Injunction

A freezing injunction is usually granted before trial or any thorough consideration of the merits of a claim. For this reason, an applicant will be required to provide an “undertaking in damages”. This is a promise to the Court (not to the respondent) to compensate the respondent for any loss or damage the respondent may incur as a result of the injunction, in the event the Court subsequently considers that the injunction should not have been made.

Foreign applicants or those with limited funds may also be required to ‘fortify’ their undertaking by making a payment into Court, providing a bank guarantee, or providing security over an asset up to the value of the undertaking.

In principle, a respondent may be entitled to recover damages:

- for loss of business, the adverse effects caused by the inappropriate policing of the injunction, upset, stress and loss of reputation;

- for loss of future trade.

A claimant should not be liable for losses that no reasonable person would have foreseen unless the claimant knew or ought to have known of circumstances that were likely to give rise to the type of loss in question.

14 Enforcement of the Freezing Injunction

An order granting a freezing injunction usually contains a penal notice and it is the penal notice which gives the application “teeth”.

Penal Notice

A penal notice is a warning to the respondent and third parties that any disobedience or non-compliance with the order will be a contempt of Court punishable by:

- imprisonment for up to two years; or

- an unlimited fine; and/or
- seizure of assets.

- A freezing order together with the penal notice must be served personally on a respondent (and any other third parties, such as banks if you are freezing bank accounts) to enable an applicant to pursue contempt proceedings for breach of it. However, the Court may dispense with personal service and make an order for alternative service by other means, such as service on solicitors etc., if necessary i.e. where the respondent cannot be found and/or deliberately evades service.

- A standard form freezing order, together with penal notice is included as Appendix 1. As can be seen at paragraph 16 of the draft penal notice, a freezing order usually includes a paragraph dealing with the effect of the order on third parties. It is standard that any third party notified of an order who knowingly assists in or permits a breach of the order can also be found liable for contempt of court and be imprisoned, fined or have their assets seized.

Committal Proceedings

- Committal proceedings are the most serious penalty for contempt/failure to comply with an order. If there are other options which could or should have been pursued (such as ancillary orders listed below) they should be sought before commencing committal proceedings. Failure to do so can result in a costs order against the unsuccessful applicant.

- In relation to corporate entities, contempt proceedings may be brought against a director or other officer, provided the order was served on the individual director and that director has wilfully breached the order.

15 Directors of Respondent Companies

Pursuant to the case of Dar Al Arkan Real Estate Development v Majid Al-Sayed Bader Hashim Al Refai, committal orders may be made against foreign based directors of corporate respondents, although permission to serve the director in a foreign jurisdiction will need to be obtained. In this case, the director was responsible for the Claimant companies’ obstinate breaches of the court order and so, taking into account the public interest in enforcement of judgments, the Court allowed committal proceedings to be served upon him.

To obtain an order for committal, the applicant must show:

- The respondent was aware of the order (hence the need for personal service, not via post);

- The respondent knew what was required i.e. not to deal with and/or dispose of assets or to provide disclosure; and

- The respondent wilfully breached the order in any event.

It is necessary to show a “wilful” breach of a freezing injunction to avoid a director/

6 [2014] Civ 715
respondent arguing that they reasonably believed that someone else was/ had taken steps to comply with the freezing injunction order. Carelessness as to whether an order has been breached is no defence.7

In establishing contempt of court by a director of a respondent company for breach of an order or undertaking it is necessary to show:

- That the persons who did the prohibited acts were servants or agents of the company; and
- That the breach was carried out by the servant or agent in the course of their service or agency

Alternatively or in addition, the Court can impose a fine or order sequestration (seizure) of assets where a respondent is found guilty of contempt.

There is currently no statutory limit to the amount of fine which can be imposed.

However, where a respondent is abroad with no assets in England or Wales, which can often be the case with cross border transactions, a fine or sequestration order will essentially be of little use. In such circumstances, it is open to the Court to disbar a guilty party from defending proceedings.

The Court has no such power in relation to arbitrations.

16 Ancillary Orders

While ancillary orders will be the subject of a different note we set out a summary of the different orders which can be sought in support of a freezing order, including an order:

- For disclosure;
- for the appointment of a receiver;
- requiring the respondent to sign a document authorising his bank to disclose information to the applicant;
- requiring the disclosure of the identity of a third party funder;
- for the cross-examination of a respondent about his assets; and/or
- for delivery up of the respondent’s passport to prevent the respondent from leaving the jurisdiction.

These ancillary orders are discussed further below.

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7 Sectorguard plc v Dienne plc [2009] EWHC 2693 (Ch), where it was held that a failure to disclose the identity of customers contacted by the defendant in breach of an undertaking was not contempt because it was impossible for the defendant to comply with the undertaking because no records of those contacts had been kept. It was held, the defendant had been careless in providing the undertaking.
17 Disclosure Orders

A disclosure order is usually sought and made at the same time as a freezing injunction. Indeed, the disclosure order is often the real prize for litigants in disputes where the entities involved are in jurisdictions with minimal, or even no, public domain information as to their ultimate beneficial ownership.

Clients who obtain a disclosure order can find out the exact location of a respondent’s assets wherever they are in the world, their value and what exactly they consist of, which is useful information if a respondent subsequently claims not to be able to, or fails to, pay an award of damages or costs against them in the Substantive Proceedings.

Typically, a disclosure order will impose a relatively short deadline for the respondent to file an affidavit setting out the nature, value and location of its assets, including assets situated outside the jurisdiction. The disclosure order may extend to the respondent’s rights or interests held in companies and other corporate entities. Standard disclosure orders usually require a respondent to set out in an affidavit or witness statement verified by a statement of truth:

- All their assets, either in England or Wales, or worldwide, up to a certain value.
- Whether those assets are held in their own name or not or whether owned solely or jointly.
- To provide the value of those assets, their location and any other relevant details.

De minimis provisions usually apply, so that assets with a small value (for example, anything less than £500) need not be disclosed.

If there is a risk that disclosure may infringe a respondent’s privilege against self-incrimination, the Court may not grant the order.

18 Receivership Order

If a receiver is appointed, this removes the assets from the control of the respondent. It is an invasive remedy. Therefore, the Court will only make a receivership order if it is satisfied that no other order (including a freezing order) will provide adequate protection against the risk of dissipation of assets.

The Court will consider the following circumstances in deciding whether it is just and convenient to make a receivership order:

- Whether a freezing injunction provides adequate protection against dissipation of a respondent’s assets.
- Any circumstances showing the respondent cannot be trusted to comply with the freezing order.

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8 In cases where there are complex asset holding structures, it may be appropriate to extend the deadline for disclosure by agreement with the respondent.
- Any potential harm that could be caused to the respondent’s interests by appointment of a receiver.

- The extent of the applicant’s undertaking in damages, and any fortification of that undertaking.

- Whether all of the respondent’s assets are covered in the application (the more assets that are included, the greater the risk of harm to the respondent’s interests).

In our experience, the Courts are slow to appoint receivers because of:

- Cost – the receiver will have to be paid by the company/trust which, if it is a complicated matter, can be for several years. Depending on the particular circumstances, paying receivers can erode the total value of the asset and make the Substantive Proceedings and/or subsequent litigation effectively pointless; and

- The impact it can have on the value of an asset/trust – appointing a receiver to a public/trading company can signal issues to the market. In our experience, we have seen instances where independent third companies have cancelled contracts, value of shares have decreased and/or the public reaction to a receiver has been a real consideration for the Court.

19 Proprietary Injunctions

An alternative to a freezing injunction is a proprietary injunction. This can be sought where the applicant alleges that the respondent has something that, in fact, belongs to the applicant. This can include property, cash sums or traceable proceeds (e.g., where the respondent has taken the applicant’s property and sold it. The proceeds of sale will belong to the applicant, and therefore are considered “traceable proceeds”.)

If this situation applies, the applicant has a proprietary claim and the Court may grant a proprietary injunction.

A proprietary injunction can be used to restrain the respondent from having any dealings with the subject matter of the injunction. As a consequence, the respondent cannot use the assets to pay for living expenses or legal fees because the allegation is that those assets are not the respondent’s to use.  

The essence of a proprietary injunction means that an applicant will be given priority over a respondent’s creditors if the respondent becomes insolvent. This is because the relevant assets are deemed to be owned by the applicant, so cannot form part of the respondent’s asset pool. This differs from a freezing injunction, which does not give an applicant priority over the respondent’s creditors on insolvency.

To apply for a proprietary injunction, the following must be established:

- the applicant must have an arguable case;

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9 As discussed above at section 7, freezing orders usually allow payment of the respondent’s reasonable legal and/or residential costs. Both may be capped.
it must be just and convenient to grant the injunction; and

the Court will then take into account the merits of the applicant’s case.

There is no need to prove a risk of dissipation when you have a proprietary claim to the assets in question.

20 Conclusion

If you are thinking of applying for a freezing injunction, ask yourself the following questions:

- Is there an existing cause of action? (i.e., is there an existing substantive claim or arbitration).
- Is the injunction necessary because damages are not an adequate remedy?
- Is there a connection with England?
- Is there a “good arguable case”? (i.e., a case which is not merely fanciful).
- Are there assets to which the order can attach?
- Is there a real risk of dissipation?
- Can you provide an undertaking and/or fortify?

If you can answer yes to all of these questions, your application is likely to be successful. If the answer to any of these questions is ‘no’, it is likely you will run into difficulties.

Injunctions can be a very useful and deadly tool to use in support of Substantive Proceedings. However, given their very serious impact, the Courts require strong evidence in support of any application. In addition, the price to be paid by an applicant for an injunction can be heavy, including providing full and frank disclosure, a cross undertaking in damages, which sometimes needs to be fortified. In reality, the need to provide a cross undertaking in damages can be very onerous particularly in situations where a fraud has been committed such that the applicant has already been deprived of its assets (which is the subject of the Substantive Proceedings).

However, in our experience obtaining a freezing injunction, despite the hurdles to be jumped, can be very effective and tends to focus the parties’ minds towards finding a relatively quick and commercial settlement.

21 Summary

A table summarising the different conditions an applicant must satisfy for a freezing and proprietary injunction is set out below:

<table>
<thead>
<tr>
<th>Elements to prove</th>
<th>Freezing Injunction</th>
<th>Proprietary Injunction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Good arguable case</td>
<td>✔</td>
<td>✔</td>
</tr>
</tbody>
</table>
A glossary of key terms discussed above is set out below:

<table>
<thead>
<tr>
<th>Key Term</th>
<th>Meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chabra Jurisdiction</td>
<td>Court’s ability to grant a freezing injunction over third parties where it can be shown that the assets are held on behalf of the respondent/ the respondent controls the assets.</td>
</tr>
<tr>
<td>Good arguable case</td>
<td>To show one has “much the better argument”</td>
</tr>
<tr>
<td>Just and Convenient</td>
<td>Factor to be considered by the court before granting an injunction. The Court will consider, irrespective of the technical merits whether (a) it is right, (b) is it just and (c) is it fair to grant the injunction.</td>
</tr>
<tr>
<td>Proprietary injunction</td>
<td>Order preventing a party from doing something</td>
</tr>
<tr>
<td>Mandatory injunction</td>
<td>Order compelling a party to do something</td>
</tr>
<tr>
<td>Duty of full and frank disclosure</td>
<td>The duty to provide of facts both for and against the granting of an injunction</td>
</tr>
<tr>
<td>Undertaking in damages</td>
<td>A promise to the court that the applicant will pay any damages that the respondent (or any other party notified of the order) sustains by reason of the freezing order if it subsequently becomes known that the freezing order should not have been granted.</td>
</tr>
</tbody>
</table>
Memery Crystal’s Dispute Resolution team:

Nicholas Scott, Partner and Co-Head of Dispute Resolution

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Nick is Co-Head of the Dispute Resolution Department. He specialises in complex high value commercial litigation and arbitration. He has extensive experience of international litigation and arbitration matters (ICC, LCIA, AAA, WIPO, ICSID, LME) in the natural resources, commodities, financial services, tax, intellectual property and banking sectors.

Nick has been recommended for Commercial Litigation in the 2013 - 2015 editions of *The Legal 500 UK*, where he is praised as a lawyer who ‘shows excellent judgement’. He has also been ranked as a Rising Star in Commercial Litigation in the 2013 - 2015 editions of *London Super Lawyers*.

Nick was a key member of the team acting for Gulf Keystone Petroleum Limited in its successful defence of a claim for damages of up to US$1.65bn in relation to four oil fields in Kurdistan. Initiated by a Delaware company supported by litigation funders, the case lasted over two and half years and culminated in a 57-day trial in the Commercial Court. In addition to finding in favour of Gulf on all issues, the Court awarded indemnity costs of £17.5 million, a payment on account of the defendants’ costs, and gave permission for Gulf to pursue the claimant’s funders. For its success, the team was awarded “Dispute Resolution Team of the Year” at the 2014 Legal Business Awards and “Litigation Team of the Year” at the 2014 Lawyer Awards.

Jenni Jenkins, Senior Associate

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Jenni Jenkins is a Member of the Chartered Institute of Arbitrators and the Commercial Fraud Lawyers Association, as well as a CEDR accredited mediator.

Jenni’s litigation practice incorporates a broad range of commercial disputes with a focus on insolvency and commercial fraud.

Jenni has recently handled cases including an alleged fraud of US$1.1 billion from a Kazakh bank, a EUR36 million misfeasance claim brought by a liquidator against former directors of an insolvent company, a breach of contract claim against a Formula One team and a claim for dishonest assistance and conspiracy by an investment fund against its former employee.
Jenni has extensive experience of applying for and opposing interim relief such as freezing orders, disclosure orders and contempt applications.

Jenni’s mediation practice incorporates property, professional negligence, partnership and employment disputes. Jenni is also a member of the Employment Lawyers’ Association Arbitration and ADR Group, with a focus on mediation.

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Nikola is one of our commercial litigators, acting for claimants and defendants on a variety of commercial disputes. Nikola has acted on a range of commercial disputes for clients including in the natural resources, contentious construction, insurance and energy sectors. She has experience in a variety of courts and specialist tribunals (NZ) on both procedural and substantive matters.

Nikola is experienced in many forms of alternative dispute resolution including negotiation, mediation and Court directed settlement conferences.
Appendix 1 - Standard Form Freezing Order and Penal Notice

Article I. FREEZING INJUNCTION IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

Before The Honourable Mr Justice Q

Claim No.

Dated 9 November 20XX

Article II. Applicant

A Plc

Article III. Respondent

CD

Article IV. Name, address and reference of Respondent

CD of 321 Holly Road, Anytown, Anyshire AT12 3YZ

PENAL NOTICE

Article V. IF YOU CD DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED.

ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS THE RESPONDENT TO BREACH THE TERMS OF THIS ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED.

Article VI. THIS ORDER

1. This is a Freezing Injunction made against CD (‘the Respondent’) on 9 November 20XX by Mr Justice Q on the application of A plc (‘the Applicant’). The Judge read the Affidavits listed in Schedule A and accepted the undertakings set out in Schedule B at the end of this Order.

2. This order was made at a hearing without notice to the Respondent. The Respondent has a right to apply to the court to vary or discharge the order – see paragraph 14 below.

3. There will be a further hearing in respect of this order on 16 November 20XX (‘the return date’).

4. If there is more than one Respondent–
   (a) unless otherwise stated, references in this order to ‘the Respondent’ mean both or all of them; and
   (b) this order is effective against any Respondent on whom it is served or who is given notice of it.
Article VII. FREEZING INJUNCTION

5. Until the return date or further order of the court, the Respondent must not–

   (1) remove from England and Wales any of his assets which are in England and Wales up to the value of £1,000,000; or

   (2) in any way dispose of, deal with or diminish the value of any of his assets whether they are in or outside England and Wales up to the same value.

6. Paragraph 5 applies to all the Respondent’s assets whether or not they are in his own name and whether they are solely or jointly owned. For the purpose of this order the Respondent’s assets include any asset which he has the power, directly or indirectly, to dispose of or deal with as if it were his own. The Respondent is to be regarded as having such power if a third party holds or controls the asset in accordance with his direct or indirect instructions.

7. This prohibition includes the following assets in particular–

   (a) the property known as 321 Holly Road, Anytown, Anyshire AT12 3YZ, or the net sale money after payment of any mortgages if it has been sold;

   (b) any money standing to the credit of any bank account (including account no. 666555444, sort code 66-55-44 with J Bank plc) including the amount of any cheque drawn on such account which has not been cleared.

8. (1) If the total value free of charges or other securities (‘unencumbered value’) of the Respondent's assets in England and Wales exceeds £1,000,000, the Respondent may remove any of those assets from England and Wales or may dispose of or deal with them so long as the total unencumbered value of the Respondent's assets still in England and Wales remains above £1,000,000.

   (2) If the total unencumbered value of the Respondent's assets in England and Wales does not exceed £1,000,000, the Respondent must not remove any of those assets from England and Wales and must not dispose of or deal with any of them. If the Respondent has other assets outside England and Wales, he may dispose of or deal with those assets outside England and Wales so long as the total unencumbered value of all his assets whether in or outside England and Wales remains above £1,000,000.

Article VIII. PROVISION OF INFORMATION

9. (1) Unless paragraph (2) applies, the Respondent must by 4.30pm on the day after service of this order and to the best of his ability inform the Applicant's solicitors of all his assets worldwide exceeding £1,000 in value whether in his own name or not and whether solely or jointly owned, giving the value, location and details of all such assets.

   (2) If the provision of any of this information is likely to incriminate the Respondent, he may be entitled to refuse to provide it, but is recommended to take legal advice before refusing to provide the information. Wrongful refusal to provide the information is contempt of court and may render the Respondent liable to be imprisoned, fined or have his assets seized.

10. Within 7 working days after being served with this order, the Respondent must swear and serve on the Applicant's solicitors an affidavit setting out the above information.

Article IX. PASSPORT ORDER

11. (1) The Respondent must not leave England and Wales until after the hearing on the return date.

   (2) By 4.30pm on the day after service of this order, the Respondent must deliver to the Applicant’s solicitors his passport.
Article X.   EXCEPTIONS TO THIS ORDER

12.   (1) This order does not prohibit the Respondent from spending £1,000 a week towards his ordinary living expenses and also a reasonable sum on legal advice and representation. But before spending any money the Respondent must tell the Applicant's legal representatives where the money is to come from.

                  (2) The Respondent may agree with the Applicant's legal representatives that the above spending limits should be increased or that this order should be varied in any other respect, but any agreement must be in writing.

                  (3) The order will cease to have effect if the Respondent-

                      (a) provides security by paying the sum of £1,000,000 into court, to be held to the order of the court; or

                      (b) makes provision for security in that sum by another method agreed with the Applicant's legal representatives.

Article XI.   COSTS

13.   The costs of this application are reserved to the judge hearing the application on the return date.

Article XII.   VARIATION OR DISCHARGE OF THIS ORDER

14.   Anyone served with or notified of this order may apply to the court at any time to vary or discharge this order (or so much of it as affects that person), but they must first inform the Applicant's solicitors. If any evidence is to be relied upon in support of the application, the substance of it must be communicated in writing to the Applicant's solicitors in advance.

Article XIII.   INTERPRETATION OF THIS ORDER

15.   A Respondent who is an individual who is ordered not to do something must not do it himself or in any other way. He must not do it through others acting on his behalf or on his instructions or with his encouragement.

16.   A Respondent which is not an individual which is ordered not to do something must not do it itself or by its directors, officers, partners, employees or agents or in any other way.

Article XIV.   PARTIES OTHER THAN THE APPLICANT AND RESPONDENT

17.   Effect of this order

                  It is a contempt of court for any person notified of this order knowingly to assist in or permit a breach of this order. Any person doing so may be imprisoned, fined or have their assets seized.

18.   Set off by banks

                  This injunction does not prevent any bank from exercising any right of set off it may have in respect of any facility which it gave to the Respondent before it was notified of this order.

19.   Withdrawals by the Respondent

                  No bank need enquire as to the application or proposed application of any money withdrawn by the Respondent if the withdrawal appears to be permitted by this order.

20.   Persons outside England and Wales
(1) Except as provided in paragraph (2) below, the terms of this order do not affect or concern anyone outside the jurisdiction of this court.

(2) The terms of this order will affect the following persons in a country or state outside the jurisdiction of this court -

(a) the Respondent or his officer or agent appointed by power of attorney;

(b) any person who-

(i) is subject to the jurisdiction of this court;

(ii) has been given written notice of this order at his residence or place of business within the jurisdiction of this court; and

(iii) is able to prevent acts or omissions outside the jurisdiction of this court which constitute or assist in a breach of the terms of this order; and

(c) any other person, only to the extent that this order is declared enforceable by or is enforced by a court in that country or state.

21. **Assets located outside England and Wales**

Nothing in this order shall, in respect of assets located outside England and Wales, prevent any third party from complying with-

(1) what it reasonably believes to be its obligations, contractual or otherwise, under the laws and obligations of the country or state in which those assets are situated or under the proper law of any contract between itself and the Respondent; and

(2) any orders of the courts of that country or state, provided that reasonable notice of any application for such an order is given to the Applicant's solicitors.

**Article XV. COMMUNICATIONS WITH THE COURT**

All communications to the court about this order should be sent to-

The Senior Associate, Fifth Floor, The Rolls Building, 7 Rolls Buildings, Fetter Lane, London EC4A 1NL quoting the case number. The telephone number is 020 7947 6690.

The offices are open between 10 a.m. and 4.30 p.m. Monday to Friday.

**SCHEDULE A**

**Article XVI. AFFIDAVITS**

The Applicant relied on the following affidavit-

John Smith, first affidavit, sworn on 9 November 20XX filed on behalf of the Applicant

**SCHEDULE B**

**UNDERTAKINGS GIVEN TO THE COURT BY THE APPLICANT**

(1) If the court later finds that this order has caused loss to the Respondent, and decides that the Respondent should be compensated for that loss, the Applicant will comply with any order
the court may make.

2) As soon as practicable the Applicant will issue and serve a claim form claiming the appropriate relief.

3) The Applicant will serve upon the Respondent together with this order as soon as practicable-

   (i) copies of the affidavits and exhibits containing the evidence relied upon by the Applicant, and any other documents provided to the court on the making of the application;

   (ii) the claim form; and

   (iii) an application notice for continuation of the order.

4) Anyone notified of this order will be given a copy of it by the Applicant's legal representatives.

5) The Applicant will pay the reasonable costs of anyone other than the Respondent which have been incurred as a result of this order including the costs of finding out whether that person holds any of the Respondent's assets and if the court later finds that this order has caused such person loss, and decides that such person should be compensated for that loss, the Applicant will comply with any order the court may make.

6) If this order ceases to have effect (for example, if the Respondent provides security) the Applicant will immediately take all reasonable steps to inform in writing anyone to whom he has given notice of this order, or who he has reasonable grounds for supposing may act upon this order, that it has ceased to have effect.

7) The Applicant will not without the permission of the court use any information obtained as a result of this order for the purpose of any civil or criminal proceedings, either in England and Wales or in any other jurisdiction, other than this claim.

8) The Applicant will not without the permission of the court seek to enforce this order in any country outside England and Wales or seek an order of a similar nature including orders conferring a charge or other security against the Respondent or the Respondent's assets.

Article XVII. NAME AND ADDRESS OF APPLICANT'S LEGAL REPRESENTATIVES

The Applicant's legal representatives are-

Y LLP
99 Any Street
London
WC1 ZZZ

Ref: JS.999

Tel: 020 7000 9999, Out of hours tel: 07958 7000 9999, Fax: 020 7000 9999