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Insolvency & Restructuring

Factsheet: Freezing orders and injunctions

When considering freezing someone’s assets or if someone is trying to freeze your assets, it is essential to gain legal advice to understand the correct procedure and implications.



What is a freezing order?

A freezing order is a temporary court order, prohibiting someone from moving or disposing of assets, either in the UK or abroad. A court order to freeze assets is very serious and only granted in certain circumstances. A freezing order is also known as a 'freezing injunction' or 'Mareva injunction' and can be applied to both individuals and companies. Here at Isadore Goldman, we have expert freezing injunction solicitors who can help you through every aspect of this process, whether you are seeking a freezing order or opposing one.

What can be frozen with a freezing order?

Various types of assets can be frozen, including bank accounts, property, land, shares and investments.

When is a freezing injunction used?

Freezing orders are commonly used in cases of debt recovery where the 'debtor' (being the person who owes money) is suspected of moving or planning to move money or other assets (known as 'dissipation of assets') that is owed out of reach of whoever is pursuing them. Usually the claims against the debtor will be significant.

What is a worldwide freezing order?

Freezing orders can be limited to England and Wales, or be extended to a worldwide freezing order, restraining individuals or companies from moving or disposing of assets in other countries.

How do I apply for a court order to freeze assets?

Three main documents must be completed to obtain a freezing order:

1. Application notice – this will be accompanied by evidence in the form of a sworn affidavit to support the application.
2. Draft order – this details the terms of the freezing order.
3. Ancillary orders (not always required) – this can include items such as an order for a court appointed receiver, delivery of a passport or order for cross-examination.

The application for a freezing order must be prepared precisely and must provide full and frank disclosure. It is therefore advisable to have a freezing order solicitor complete the documents you.

If you are the target of a freezing order or injunction it is quite unlikely that you will know about it until after it has already been granted against you. If the freezing injunction has been granted, it is fixed for a specific amount of time (usually 7-14 days), and a future date for a full hearing will be set (within this time frame) which you can attend and try to persuade the court that the order should be cancelled or modified.

What do I need to prove to gain an injunction to freeze assets?

For a freezing injunction or order to be granted, several conditions must be met: The person applying for it must have a substantial claim and a good arguable case; There must be a real risk of the debtor dissipating their assets; For Domestic Freezing Orders the assets must be within the jurisdiction of the court. However, the court may grant a freezing order that extends to assets located outside the jurisdiction; There must be proof of the existence of the assets; It must be appropriate and convenient to grant the order or injunction bearing in mind the rights of any third parties who may be affected by it and also whether it would cause legitimate and disproportionate hardship for the debtor.

I've been served with an injunction to freeze assets, what do I do?

If you or your company has been served with a freezing order, there are several actions you should take:

1. Seek legal advice

Freezing orders are very serious and often include specific restrictions which, if not complied with, can have serious implications including criminal sanctions. Early legal advice will put you in the best position possible, being able to fully understand the freezing order and its restrictions. A specialist freezing injunction solicitor will also be able to advise if you can either challenge the overall freezing order or request that some of the terms are modified. For example, if your bank account has been frozen and that is where your income is paid into, you may be able to get an order allowing a certain amount to be withdrawn so you can use it for day to day living expenses or legal advice. You can also seek advice on whether you can claim costs if you successfully defend the claim against you.

2. Obtain note of the hearing

Freezing orders are often obtained without notice to the debtor, taking away the opportunity for you to attend court when the freezing order is granted. However, you are entitled to see a full note of the hearing that the applicant's legal advisors will have produced. This is usually included within the papers served on you, but if not, you should request this immediately.

3. Consider requesting a full hearing transcript

The applicant's solicitors' notes are useful, but you are also entitled to request the full transcript of the hearing. Requests of this type can take time to fulfil, so it's best to put the request in early as possible and in writing. If you are considering challenging the freezing order, it is beneficial to have the full information of the hearing.

4. Carefully read the grounds the applicant used to obtain the freezing injunction

To obtain a freezing order, the court must be satisfied that the grounds to do so are very strong. Once you have the hearing notes/transcript, we recommend that with your legal advisers, you take a detailed look at the grounds that the applicant is relying upon to gain the freezing order. From this, you can begin to formulate your response or consider whether the terms can be discharged or varied.

5. Examine whether the applicant has been ‘full and frank.’

There is a duty upon the applicant of a freezing injunction to be ‘full and frank’, meaning that they must be entirely truthful and disclose all information and details known in relation to the injunction. If the applicant has failed to be full and frank, this can be ground for having the freezing order varied or even discharged/cancelled.

6. Read and understand the freezing order fully

You must read the freezing order and all of its terms as soon as possible after receiving. If you do not comply with the terms set out in the order, you may face a fine or even imprisonment. We recommend that you seek legal advice as soon as a freezing order is received. Respondents are usually given a number of obligations, which come into effect from the time the order is served. A freezing order solicitor will help you to understand these obligations and how to comply with them.

7. Check the dates involved

A freezing order will include dates by which certain tasks or actions must be carried out. It is essential that you understand these dates and the actions connected to them. Doing this will help to ensure you comply with the terms of the freezing order, and if you are unable to meet any of the dates, you can apply to the court to vary the terms of the order in good time before the deadline/s.

8. Check if the applicant’s undertaking in damages is adequate

When a freezing order is granted without telling you, the court requires that the applicant provides a ‘cross-undertaking’ in damages. This is a sum of money that the applicant may have to pay in damages if it is later proven that the order should not have been made. You should check this amount, and if it is not enough to cover your own damages caused by the freezing order, you can apply to the court for the amount to be increased.

9. Consider whether you have enough time

Do you have enough time to comply with the freezing order? Do you need the full hearing to be adjourned? It is better to deal with these issues in advance, or you could be in contempt of court and face a prison sentence and/or pay the applicant’s legal costs.

10. Prepare for the return date in court

When a without notice freezing order is granted, the court will set a further date for all the parties to attend court. This is usually within 7-14 days of the freezing order being made. This hearing gives you the opportunity to reply to the freezing order application and either contest the order, request to vary some/all of the terms or agree to a continuation of it pending other events. For example, if you are in contested legal proceedings then the freezing order may remain in place until after the trial.

It is essential that you seek legal advice as soon as possible and prepare thoroughly for this date. If you are the recipient of a freezing order, contact our expert solicitors for advice.

How will a freezing injunction affect my living expenses?

A freezing order cannot be used to make your life so difficult that you cannot afford to live or your business has to cease trading. An individual affected by a freezing order is allowed a weekly amount for living expenses and businesses are entitled to continue trading and pay necessary costs, i.e. staff and suppliers. If you receive a freezing injunction, contact our specialist solicitors immediately. We will advise you on the best and most cost-effective actions to take.

What are the freezing order costs?

There are several costs associated with a freezing injunction, and this can become an expensive process, whether you are the applicant or target. We can advise on freezing injunction costs for your situation and will help guide you through this complicated process. Whatever your situation, Isadore Goldman can help. Please contact one of our freezing injunction lawyers for your expert friendly consultation.

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To find out how we can help, get in touch



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