

COLLAS DAY | DISPUTE RESOLUTION

Asset Tracing, Freezing and Recovery

July 2008

You act for a Claimant in contemplated High Court proceedings. You have ascertained that the Defendant's assets are widespread internationally. Your client is concerned that those assets will be dealt with by the Defendant in such a way as to frustrate any judgment you obtain.

You successfully obtain a freezing injunction in the High Court which is said to have "worldwide" effect.

You know or believe that there are substantial assets in one of the many licensed banks operating in Guernsey.

What must you do to ensure that the funds in question are not spirited away to another less cooperative offshore jurisdiction?

The High Court order is not directly or automatically enforceable against a Guernsey entity. The bank will not refuse to act on a customer's instructions to transfer away money on the strength of a UK High Court order alone.

A "mirror order" must therefore be obtained in the Royal Court of Guernsey.

The Royal Court of Guernsey recognises the High Court as a competent Court (one would hope so); indeed, there is a reciprocal enforcement law between the UK and Guernsey but that does not help with injunctions which need to be obtained at the speed of light on an ex parte basis; in such circumstances, the registration/enforcement procedure under that law is simply not appropriate.

What we need from you

- a copy of the application to the High Court;
- a copy of the affidavit filed in support of the application;
- a copy of the skeleton argument (if any) filed in support of the application;
- a copy of the transcript of the hearing (if available in time);
- a copy of the High Court order; and
- any further information regarding the assets believed or known to reside in Guernsey.

What we will do

We will make an ex parte application in the Royal Court of Guernsey. This will be supported by an affidavit sworn by one of our advocates. The order of the Royal Court of Guernsey will mirror the terms of the UK order.

If one is required, we will also obtain an ancillary disclosure order requiring the relevant bank or third party to disclose by way of affidavit all customer related account information held in relation to the Defendant within a certain time.

We will then work with you to ensure that the order is served on the appropriate parties including the Defendant/Respondent and any third party.

All the usual preconditions for a freezing order apply in Guernsey, including:

- (i) a good arguable case against the Defendant;
- (ii) the likelihood of assets being within the jurisdiction; and
- (iii) a real risk of dissipation of such assets if the order is not granted.

The requirement for full and frank disclosure by an applicant for an ex parte order also applies.

Timing

We can usually guarantee to obtain the order within 24 hours of the original order being granted in the High Court subject to you providing us with all relevant information. Certain information can usually be provided before the High Court order is obtained to enable us to prepare our application in advance.

Collas Day Dispute Resolution offers an effective one-stop service to assist in the avoidance or resolution of any contentious issue.

For further information or professional advice, please contact:

Christian Hay
t: +44 (0)1481 734275
e: christian.hay@collasday.com