

MODEL ORDER FOR PROPRIETARY AND FREEZING INJUNCTIONS

IMPORTANT NOTE

An order based on this model order is an exceptional form of relief.

Applicants are reminded of their duty of full and frank disclosure to the court when making a without notice application. Any failure to comply with that duty may lead to the discharge of the order and other sanctions including in relation to costs.

An applicant for a proprietary injunction and a freezing injunction should always base their draft of the proposed order on the model order. The draft order presented to the court should only include those parts of the model order which are necessary based on a realistic assessment of what is required.

Departures from the model order are permissible, but the existence and scope of any suggested changes must be highlighted and the reasons for the proposed departures must be explained.

This model order should be used where the applicant is seeking both a proprietary injunction and a freezing injunction with related disclosure relief. The alternative form of model order should be used where only a freezing injunction with related disclosure relief is being sought.

This model order includes footnotes, which are provided for guidance, and do not form part of the model order itself. Two copies of the draft order proposed by the applicant must be submitted at or before the hearing in Word, one with the footnotes included for the assistance of the court and one without the footnotes for sealing and service.

PROPRIETARY AND FREEZING INJUNCTION

Claim No

IN THE HIGH COURT OF JUSTICE [BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES] [] DIVISION [[] LIST/ COURT] [[] DISTRICT REGISTRY]

Before [Name of Judge¹], (sitting in private)

Dated

BETWEEN

[Name]

Applicant(s)

and

[Name]

Respondent(s)²

To: [Name, address and reference of Respondent(s)]

PENAL NOTICE³

IF YOU [name of Respondent(s)] DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED OR FINED OR HAVE YOUR ASSETS SEIZED

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

¹ There are restrictions on the judges who may grant a freezing order. In the High Court a freezing order may only be made by a Judge (not including Insolvency and Companies Court Judges): Practice Direction 2B, paragraph 2 and Practice Direction – Insolvency Proceedings, paragraph 3.2(2). In the County Court a freezing injunction may only be made by a Circuit Judge authorised for the purpose by the Master of the Rolls or the Deputy Head of Civil Justice: Practice Direction 2B, paragraph 8.4

² It is possible to make a single freezing injunction against more than one respondent, and the wording of this model order caters for this. In general, however, the better practice is for a separate order to be made in relation to each respondent, particularly if any of the wording in the order is intended to cater specifically for, or apply specifically to, a particular respondent.

³ The penal notice is a warning endorsed on the front of the order by or at the request of the applicant (CPR 81.2) and see also the requirements of CPR 81.4(1)(e)). It is not part of the order.

ORDER

1. This is a proprietary asset preservation injunction, freezing injunction and order for related relief made against [*name of Respondent(s)*] (“the Respondent”) on [*date*] by [*name of judge*] (“the Judge”) on the application of [*name of applicant*] (“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, at which the court was satisfied that it was in the interests of justice to sit in private.] [Pursuant to CPR 39.2(5), it is in the interests of justice that this order is not published on the judiciary website until after 4.30pm on the Return Date.]
3. The Applicant was represented by [*name*] [of counsel]. The Respondent did not appear and was not represented.
4. There will be a further hearing in respect of this order on [*date*] (“the Return Date”)⁴.
5. In this order:
 - (1) “unencumbered value” means market value after deduction of the amount (if any) for the time being secured by any mortgages, charges or other security;
 - (2) if there is more than one Respondent, then
 - (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;
 - (3) a Respondent who is an individual and who is ordered not to do something must not do it personally, and must not do it through others acting on behalf of the Respondent or on the instruction or with the encouragement of the Respondent, or in any other way; and
 - (4) a Respondent which is not an individual and 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.

⁴ The timing of the Return Date is in the discretion of the Judge but will usually be 7 or 14 days after the order is made. In the Commercial Court in London, it should normally be a Friday.

PROPRIETARY INJUNCTION

6. Until after the Return Date or further order of the court:
 - (1) the Respondent must preserve and must not in any way dispose of, deal with or diminish the value of any of the Proprietary Assets, whether they are in or outside England and Wales, and must not remove from England and Wales any Proprietary Assets which are in England and Wales; and
 - (2) the Respondent must preserve and must not dispose of or part with possession of any document which relates to the transfer, receipt or possession of the Proprietary Assets, the use made of the Proprietary Assets or what has become of the Proprietary Assets.

7. In this order, the term “Proprietary Assets” shall mean:
 - (1) [*define the Proprietary Assets as appropriate, e.g. the sums received into bank accounts held by the Respondent itemised in Annex A to this Order*”]; and
 - (2) [*if appropriate*] any asset purchased with, or representing the value of, the [sums] [assets] referred to in subparagraph (1) above.

FREEZING INJUNCTION

8. [*For injunction limited to assets in England and Wales*]
Until after the Return Date or further order of the court, the Respondent must not remove from England and Wales or in any way dispose of, deal with or diminish the value of any of the Respondent’s assets in England and Wales, save that:
 - (1) if the total unencumbered value of the Respondent’s assets in England and Wales exceeds £ [*amount*⁵], the Respondent may remove from England and Wales and may dispose of, deal with or diminish the value of such part of the Respondent’s assets as exceeds that amount, so long as the total unencumbered value of the Respondent’s assets remaining in England and Wales continues to exceed £ [*amount*]; and
 - (2) the exceptions in paragraphs 11 and 12 of this order shall apply.

[*For worldwide injunction*]

Until after the Return Date or further order of the court, the Respondent must not remove from England and Wales any of the Respondent’s assets which are in England and Wales

⁵ This and the other amounts in this paragraph will normally be the value of the claim for which the applicant has a good arguable case, together with an appropriate allowance for interest and costs.

and must not in any way dispose of, deal with or diminish the value of any of the Respondent's assets whether they are in or outside England and Wales, save that:

- (1) if the total unencumbered value of the Respondents' assets in England and Wales exceeds £ [amount⁶], the Respondent may remove from England and Wales and may dispose of, deal with or diminish the value of such part of the Respondent's assets as exceeds that amount, so long as the total unencumbered value of the Respondent's assets remaining in England and Wales continues to exceed £ [amount]; and
- (2) if the total unencumbered value of the Respondents' assets in England and Wales does not exceed £ [amount], but the total unencumbered value of the Respondent's assets in and outside England and Wales does exceed £ [amount], the Respondent:
 - a. must not remove from England and Wales, and must not dispose of, deal with or diminish the value of any of the Respondent's assets in England and Wales;
 - b. may dispose of, deal with or diminish the value of such part of the Respondent's assets outside England and Wales as, taken together with the value of the Respondent's assets in England and Wales, exceeds £ [amount], so long as the total unencumbered value of all the Respondent's assets whether in or outside England and Wales continues to exceed £ [amount].
- (3) the exceptions in paragraphs 11 and 12 of this order shall apply.

9. [For both forms of injunction]

Paragraph 8 of this order applies to all the Respondent's assets whether or not they are in the name of the Respondent [and] whether they are solely or jointly owned [and whether the Respondent is interested in them legally, beneficially or otherwise]⁷. For the purpose of this order the Respondent's assets include any asset which the Respondent has the power, directly or indirectly, to dispose of or deal with as if it were the Respondent's own. [The Respondent is to be regarded as having such power if a third party holds or controls the asset in accordance with the Respondent's direct or indirect instructions.]

10. This prohibition includes the following assets in particular:

- (1) [the property known as [title/address] or the net sale money after payment of any mortgages if it has been sold;]

⁶ This and the other amounts in this paragraph will normally be the value of the claim for which the applicant has a good arguable case, together with an appropriate allowance for interest and costs.

⁷ Whether this wider wording should be included in relation to the order and/or the provision of information should be considered on a case by case basis. The wider form of order should not be sought as a matter of course, and its inclusion must be justified.

- (2) [the property and assets of the Respondent's business⁸ [known as [name]] [carried on at [address]] or the sale money if any of them have been sold; and]
- (3) [any money standing to the credit of any bank account [including the amount of any cheque drawn on such account which has not been cleared⁹].]

EXCEPTIONS TO THIS ORDER

11. This order does not prohibit the Respondent from:

- (1) spending £ [amount] a week towards the Respondent's ordinary living expenses and also [£ [amount]] [a reasonable sum] on legal advice and representation [relating to these proceedings¹⁰], [but (a) before spending any money, the Respondent must tell the Applicant's legal representatives where the money is to come from [and approximately how much is to be spent]¹¹]; and (b) the Respondent must not spend any Proprietary Assets without the prior permission of the court¹²].
- (2) dealing with or disposing of any of the Respondent's assets in the ordinary and proper course of business, but [(a) before doing so the Respondent must tell the Applicant's legal representatives¹³; and (b)] the Respondent must not spend any Proprietary Assets without the prior permission of the court¹⁴.

12. The Respondent may agree with the Applicant's legal representatives that the spending limits referred to in paragraph 11 of this order should be increased or that this order should be varied in any other respect, but any agreement must be in writing.

⁸ This subparagraph is designed for any business of the Respondent carried on under a trading or business name. It is not designed for the business of a company with separate legal personality that is owned by a Respondent, or where the Respondent's property and assets comprise their interest in the company rather than the property and assets of the company.

⁹ These words should be included only where appropriate. The court should bear in mind that, in addition to affecting banks notified of the order, they might be construed as requiring the Respondent to take steps to stop payment of uncleared cheques unless the payment falls within one of the exceptions set out in paragraph 11 of this model order.

¹⁰ These words may be appropriate if, in the particular case, the cost of legal advice and representation in other proceedings (if any) is considered likely to fall within the ordinary and proper course of business exception in paragraph 11(2) of this model order.

¹¹ The proviso requiring advance notice should only be included where really necessary, more particularly where the amount to be spent is required to be notified. It is not to be included otherwise. It will often be a form of order better sought on the Return Date

¹² This proviso is appropriate where the order is granted, wholly or partly, in support of a proprietary claim. It will be for the court to consider whether to grant permission applying the principles set out in the relevant case law.

¹³ The proviso requiring advance notice should only be included where really necessary and should be regarded as exceptional given its potential consequences for the conduct of business. It is not to be included otherwise. It will often be a form of order better sought on the Return Date.

¹⁴ It will be for the court to consider whether to grant permission applying the principles set out in the relevant case law.

PROVISION OF INFORMATION

13. Save to the extent that paragraph 15 of this order applies:

- (1) the Respondent must within [*number of days*] days¹⁵ of service of this order and to the best of their ability inform the Applicant's legal representatives of all Proprietary Assets worldwide exceeding [*amount*] in market value (ignoring charges or other security)¹⁶, giving the value, location and details of all such Proprietary Assets and what has become of them since their receipt by the Respondent or any nominee for the Respondent and details of any charges or other security over all such Proprietary Assets including the amount currently secured thereby. Such details shall include (but not be limited to) the name and contact details of any individual or company to which any Proprietary Assets have been transferred and the account number and sort code of any bank account to which any such transfer was made.
- (2) the Respondent must [within [*number of days*] days¹⁷ of service of this order] and to the best of their ability inform the Applicant's legal representatives of:
 - (a) all the Respondent's assets [in England and Wales] [worldwide] [exceeding £ [*amount*] in market value (ignoring charges or other security)¹⁸] whether in the Respondent's own name or not and whether solely or jointly owned, giving the value, location and details of all such assets; and
 - (b) details of any charges or other security over such assets including the amount currently secured thereby.

14. Save to the extent that paragraph 15 of this order applies, within [*number of working days*] working days¹⁹ after being served with this order, the Respondent must swear and serve on the Applicant's legal representatives an affidavit setting out:

- (1) the information referred to in paragraph 13(1) of this order, exhibiting copies of such documents in the possession, power, custody or control of the Respondent as are sufficient to identify the existence, location, value and details of any Proprietary Assets with a market value (ignoring charges or other security) exceeding £ [*amount*]; and

¹⁵ Careful consideration should be given to ensuring that this period is realistic having regard to the nature and volume of information that may be involved. It is not acceptable to invite the court to impose unrealistic time limits, and costs orders may be made where this results in the party subject to the order having to bring the matter back before a judge.

¹⁶ Careful consideration must be given to inserting a realistic lower limit below which value proprietary assets (as defined) need not be disclosed.

¹⁷ See fn 15 above.

¹⁸ Careful consideration must be given to inserting a realistic lower limit below which value assets need not be disclosed.

¹⁹ See footnote [5] above.

(2) the information referred to in paragraph 13(2) of this order.

15. If the provision of any of the information referred to in paragraphs 13 and 14 of this order is likely to incriminate the Respondent, the Respondent may be entitled to refuse to provide it, but the Respondent 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 or fined or to have their assets seized.

DISCONTINUANCE OF THE ORDER

16. Paragraphs 8 to 12, 13(2) and 14(2) of this order will cease to have effect if the Respondent provides security by paying the sum of £ [amount] into court, to be held to the order of the court, or makes provision for security in that sum by another method agreed with the Applicant's legal representatives.

COSTS

17. The costs of this application are reserved to the judge hearing the application on the Return Date.

VARIATION OR DISCHARGE OF THIS ORDER

18. 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 legal representatives. 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 legal representatives in advance.

PARTIES OTHER THAN THE APPLICANT AND RESPONDENT

19. 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 or fined, or have their assets seized.

20. 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.

21. 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.

22. Persons outside England and Wales [*For worldwide injunction*]

- (1) Except as provided in subparagraph (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 any officer or agent of the Respondent appointed by power of attorney;
 - (b) any person who is subject to the jurisdiction of this court, has been given written notice of this order at that person's residence or place of business within the jurisdiction of this court and 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;
 - (c) and 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.

23. Assets located outside England and Wales [*For worldwide injunction*]

Nothing in this order shall, in respect of assets located outside England and Wales, prevent any person other than the Respondent from complying with:

- (1) what that person reasonably believes to be their 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 that person 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 legal representatives.

COMMUNICATIONS WITH THE COURT

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

[*insert the address and telephone number of the appropriate court office*]

[*Where the order is made in the Chancery Division in London:-*

Chancery Judges' Listing, Ground Floor, The Rolls Building, 7 Rolls Building, Fetter Lane, London EC4A 1NL, quoting the case number.

Email: ChanceryJudgesListing@justice.gov.uk

Telephone: 020 7947 6297]

[Where the order is made in the King's Bench Division (apart from the Commercial Court) in London:-

King's Bench Judges' Listing, Royal Courts of Justice, Strand, London WC2A 2LL, quoting the case number.

Email: KBJudgesListingOffice@justice.gov.uk

Telephone: 020 3936 8957.]

[Where the order is made in the Commercial Court in London or the London Circuit Commercial Court:-

Commercial Court Listing Office, 7 Rolls Building, Fetter Lane, London EC4A 1NL, quoting the case number.

Email: comct.listing@justice.gov.uk

Telephone: 020 7947 7921 or 6966.]

[Where the order is made in the Technology and Construction Court in London:-

Technology & Construction Court Listing Office, 7 Rolls Building, Fetter Lane, London EC4A 1NL, quoting the case number.

Email: tcc.listing@justice.gov.uk

Telephone: 020 7947 7897.]

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

SCHEDULE A

AFFIDAVITS

The Applicant relied on the following affidavits-

[name] [number of affidavit] [date sworn] [filed on behalf of]

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) If the court later finds that this order has caused loss to anyone other than the Respondent, and decides that such person should be compensated for that loss, the Applicant will comply with any order the court may make.
- (3) [The Applicant will:
 - (a) on or before [*date*] cause a written guarantee in the sum of £ [*amount*] to be issued from a bank with a place of business within England or Wales, in respect of any order the court may make pursuant to paragraphs (1) and/or (2) of this Schedule; and
 - (b) immediately upon issue of the guarantee, cause a copy of it to be served on the Respondent].
- (4) [As soon as practicable the Applicant will issue and serve a claim form [in the form of the draft produced to the court] claiming the appropriate relief].
- (5) [As soon as practicable the Applicant will [swear and file an affidavit] [cause an affidavit to be sworn and filed] [substantially in the terms of the draft affidavit produced to the court] [confirming the substance of what was said to the court by the Applicant's legal representatives]].
- (6) [As soon as practicable the Applicant will serve upon the Respondent [together with this order]:
 - (a) copies of each affidavit [draft affidavit] and exhibits containing the evidence relied upon by the Applicant, and any other documents provided to the court on the making of the application including the skeleton argument;
 - (b) a note of any allegation of fact made orally to the court where such allegation is not contained in the affidavits or draft affidavits read by the judge;
 - (c) a transcript (if available), failing which a note, of the hearing at which this order was made;
 - (d) the claim form; and
 - (e) an application notice for hearing on the Return Date.]
- (7) Anyone notified of this order will be given a copy of it by the Applicant's legal representatives.

- (8) 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.
- (9) If this order or any part of it ceases to have effect (for example, if the Respondent provides security in accordance with paragraph 16 of this order), the Applicant will immediately take all reasonable steps to inform in writing anyone to whom notice of this order has been given by or on behalf of the Applicant, or who the Applicant has reasonable grounds for supposing may act upon this order, that it (or the relevant part of it) has ceased to have effect.
- (10) 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.
- (11) 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 any order conferring a charge or other security against the Respondent or the Respondent's assets.

NAME AND ADDRESS OF APPLICANT'S LEGAL REPRESENTATIVES

The Applicant's legal representatives are-

[Name, address, email, reference, fax (if any) and telephone numbers both in and out of office hours]