

Attachment (Freezing) Orders in Hong Kong: Overview

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A Practice Note providing an overview on the Hong Kong law relating to the order of attachment issued by local courts to preserve the respondent's assets until judgment can be enforced. This Note covers the grounds on which these orders are made, the type of assets that can be attached, the procedure for applying for an attachment order, and enforcement of attachment orders. It also covers the scope of attachment orders in relation to overseas assets and in support of foreign proceedings.

The purpose of an attachment order is, typically, to preserve the respondent's assets until judgment can be enforced, to prevent the respondent from disposing of their assets to defeat a judgment. This Note gives an overview on the law relating to attachment orders in Hong Kong including:

- The grounds on which the orders are made.
- The type of assets that can be attached.
- The procedure for applying for an order.
- The enforcement of attachment orders, foreign and domestic, and the penalties for breaching the order.
- The scope of attachment orders in relation to overseas assets and in support of foreign proceedings.

All interim injunctions that restrain a party from disposing of or dealing with their assets until judgment can be obtained or enforced (also known as freezing orders or temporary injunctions in some jurisdictions) will be referred to as "attachment orders" in this Note.

Domestic Proceedings

Availability

The court has the power to grant a freezing (or *mareva*) injunction, a form of interlocutory relief which allows a defendant's assets to be frozen, and to prevent the defendant from removing its assets out of the jurisdiction before the court delivers a judgment at trial.

A freezing injunction is an equitable remedy and in practice can be difficult to obtain. A court will only grant a freezing injunction where it is just and convenient to do so, even if the requirements (see [Grounds](#)) are satisfied by an applicant. Given the draconian nature of freezing injunctions, the applicant is under a duty of full and frank disclosure (see [Procedure for Applying](#)).

Grounds

The fundamental elements that an applicant must establish to obtain a freezing injunction from the court are that:

- There is a good arguable case on a substantive claim against the defendant.
- The defendant has assets within Hong Kong.
- The balance of convenience is in favour of granting the freezing injunction.
- There is a real risk of dissipation of assets by the defendant before the court can make the final judgment at the coming trial.

(Hong Kong Civil Procedure 2022, Order 29, Rule 1/65 (Interlocutory Injunctions, Interim Preservation of Property, Interim Payments etc.))

Stage of the Proceedings

An applicant will typically seek a freezing injunction from the court pre-action, if it is concerned about dissipation of the defendant's assets intended to defeat any eventual judgment against that defendant. An applicant may also seek a freezing injunction following judgment in the substantive action but before enforcement proceedings, to ensure that a defendant does not attempt to dissipate its assets following an unfavourable judgment.

Alternative Remedies

Alternatively, and in circumstances where a plaintiff has a proprietary claim against specific assets held by a defendant, it may consider applying for a proprietary injunction in respect of those assets. The test for securing a proprietary injunction is less onerous than for a mareva-type freezing injunction. An application must meet the following requirements:

- There is a serious issue to be tried.
- The balance of convenience is in favour of granting the freezing injunction.
- It is just and convenient to grant the injunction.

Procedure for Applying

Applications for freezing injunctions are applied for and granted *ex parte*, to avoid tipping off the defendant and rendering the injunctions ineffective. The injunction order will then subsequently be heard at an *inter partes* hearing on a return date.

An application for a freezing injunction will be accompanied by a writ or a draft writ, together with a supporting affidavit setting out:

- The facts giving rise to the claim against the defendant.
- The facts giving rise to the claim for interim relief.

- The facts relied on to justify the *ex parte* application (that is, that there is a real risk of dissipation of the assets).
- Any response likely to be asserted by the defendant to the applicant's claims for interim and substantive relief.
- Any facts known to the applicant which may lead the court not to grant the freezing order (on an *ex parte* basis). Full and frank disclosure is required.
- The precise relief sought.

(*Hong Kong Civil Procedure 2022, Practice Direction 11.1 (Ex Parte, Interim and Interlocutory Applications for Relief (Including Injunctive Relief))*.)

A freezing injunction is an equitable remedy, meaning that the applicant has a duty of full and frank disclosure in respect of all of the facts that it knew or should have known, including those which may be unhelpful to its case. This is to ensure that the applicant comes to court with "clean hands" in seeking equitable relief.

If the court grants a freezing injunction, it will set a return date when the parties will appear before the court and the plaintiff must show cause. At this hearing, the defendant may apply to have the injunction set aside, varied or discharged (see [Variation and Discharge](#)).

An applicant should confirm that the defendant has assets within the jurisdiction (or outside the jurisdiction - see *Circumstances Where an Attachment Order Is Unavailable*). If known, the applicant can disclose details of the value and location of the assets.

The High Court and District Court have jurisdiction to grant a freezing injunction. The applicable fee for taking out an *ex parte* application is currently HKD1,045.

Type of Assets That Can Be Frozen

Generally, all types of assets can be frozen, including bank accounts, shares, securities, and insurance money. Other tangible assets that can be frozen include motor vehicles, ships, aircraft, trade goods, jewellery, and paintings. A freezing injunction can be used to prevent land being mortgaged or charged. The precise effect of this will depend on whether the land is registered or unregistered.

The assets generally cannot comprise perishable goods, but may be intangible assets such as goodwill. A freezing order can also cover assets obtained or acquired by the defendant during the duration of the order (after-acquired assets).

A freezing injunction can also be sought against assets located within the jurisdiction but belonging to defendants outside Hong Kong (see [Foreign Court Proceedings](#)).

Trustee or Nominee Interest

Assets which a defendant holds on trust for a third party can be caught by a freezing injunction. The court may look at the extent to which a defendant has control over the assets of a third party even though that third party is not a nominee or trustee of the defendant.

Jointly Owned Assets

Assets which are held jointly (for example with a business partner or spouse) can also be caught by a freezing injunction.

Exempt Assets

In general, perishable goods cannot be included in an attachment order.

Types of Attachment Order

The court has discretion to make any order it sees fit with regard to freezing the defendant's assets, including making an order to freeze all of the defendant's assets or a certain amount of assets (for example up to the value of the claim if proceedings have started and a judgment has already been made).

Location of Assets

There are a number of ways in which an applicant can obtain information as to the location of a defendant's assets in Hong Kong and overseas:

- **Norwich Pharmacal Order.** Before an action is commenced, an applicant may seek a Norwich Pharmacal Order to obtain documents from an innocent party that unknowingly facilitated or was caught up in the wrongdoing of others. An order such as this may be granted alongside a *mareva* injunction to identify assets belonging to wrongdoers (this is most often seen in money laundering or fraud cases). For example, an innocent third party (such as a bank) may hold funds derived from fraud, and a Norwich Pharmacal Order may require that third party to reveal from whom the funds were obtained, and to produce any documentation evidencing that transfer.
- **Prohibition against debtors leaving Hong Kong.** A plaintiff or a judgment creditor may apply *ex parte* to the court for an order prohibiting a debtor from leaving Hong Kong, ensuring the debtor cannot escape to a more judgment-proof jurisdiction (*Order 44A, Rules of the High Court*). The court will grant the application only where the prohibition is reasonably and properly conducive to the enforcement of a judgment involving money or property.
- **Interim attachment of property.** Order 44A of the Rules of the High Court also provides for the attachment of property of a defendant where a defendant is about to dispose of property with intent to obstruct or delay the execution of a judgment. The court may order the defendant to provide security sufficient to satisfy any judgment that may be rendered against them. If the defendant fails to provide the required security, the court may direct any property of the defendant to be attached as security.
- **Appointment of receiver or provisional liquidator.** Where it is just and convenient, the court may appoint a receiver to recover and protect assets that defendants obtain in connection with fraudulent activity. The receiver may then realise and distribute the assets among victims of the fraud.
- **Anton Pillar Order.** To prevent the destruction of evidence, a plaintiff may seek an injunction requiring the defendant to permit the plaintiff to enter the defendant's premises to enable the inspection, seizure and removal of documents relating to the underlying matter. This is a particularly draconian measure and will only be granted in extreme cases.

Supplementary Orders

See [Location of Assets](#).

Undertaking and Security

An applicant will be required to make an undertaking to the court to pay damages to the defendant or a third party (for example, a bank) for the loss or damages that may be suffered by the defendant as a result of complying with the order, in the event that the order is subsequently discharged.

Form or Amount of Undertaking and Security

The applicant might be required to fortify their cross-undertaking by making a payment into court or in the form of a bank guarantee, among other forms of security. However, it should be noted that the need to provide security and the security amount vary from case to case.

Exceptions to the Attachment Order

The court may allow a defendant to maintain a certain amount of assets to remain unfrozen to cover daily living expenses, reasonable legal fees, or already incurred debts.

Duration of the Attachment Order

A freezing injunction will remain in place until the return date (see [Procedure for Applying](#)), when the court will make an order to vary, discharge or continue the injunction. If it is continued, the freezing injunction typically remains in place until the conclusion of the substantive trial, or the parties may otherwise agree by consent at a later stage for the freezing order to be withdrawn.

When a freezing order is granted post-judgment, the order may be granted indefinitely until payment.

Proprietary Right and Lien

A freezing injunction does not provide any security over assets that are subject to it. Nor does it give a plaintiff priority over the defendant's other creditors if the defendant becomes insolvent. Other creditors of the defendant may enforce judgments against the frozen assets.

Appeal

A defendant may apply to vary or discharge a freezing injunction to allow the release of all or part of the assets restrained or frozen by the injunction. The courts are generally cautious when determining whether to grant a variation or discharge, requiring that this be done for a proper reason, so as not to defeat the purpose of granting the injunction in the first place.

The list of what constitutes a proper purpose is not exhaustive. The following are instances that generally warrant variation of a freezing injunction:

- To provide for the defendant's ordinary business or operational expenses.

- For the purpose of the defendant's ordinary living expenses (for individuals).
- For the purpose of the payment of the defendant's legal fees or representation.

In most cases, the defendant need only show that it wishes to use the frozen assets for a purpose that is usual for the defendant, and that the expenses that are required by it are legitimate and reasonable.

The following are instances in which the discharge of a *mareva* injunction can be sought:

- Failure of the plaintiff to make a full and frank disclosure in the course of obtaining the freezing injunction.
- If it is shown that the risk of dissipation of the assets leading to the granting of the injunction was unfounded.
- Where the rights of a third party have been infringed.

Variation and Discharge

See [Appeal](#).

Third Parties

Freezing orders can be made against third parties against whom an applicant has no claims, but who appear to hold assets on behalf of a defendant.

Any third party notified of a freezing order is required to adhere to its terms in the same way as the defendant.

A third party may also apply to the court at any time to vary or discharge a freezing order. The order itself will typically provide that anyone served with or notified of a freezing order may apply to the court at any time to vary or discharge it.

Circumstances Where an Attachment Order Is Unavailable

Freezing injunctions are draconian measures and a court will not order them lightly. Even if all of the requirements are satisfied by an applicant (see [Availability](#) and [Grounds](#)), a court can still refuse to grant a freezing injunction if it is not just and convenient to do so.

Overseas Assets

If a defendant has assets outside of Hong Kong, a court may grant an order to freeze assets both within Hong Kong and worldwide by virtue of a Worldwide Freezing Order (WFO) (*section 21L(3), High Court Ordinance*). A WFO can freeze a respondent's assets anywhere in the world.

Usually, the terms of a WFO will provide that a defendant must not dispose of or deal with their assets, wherever they are situated, subject to a cap that is equal to the value of the claim.

A WFO can be granted by the court under the same jurisdiction as a freezing order covering assets solely based within Hong Kong.

Foreign Court Proceedings

The court has the power to grant a freezing injunction notwithstanding substantive litigation concurrently taking place in a foreign court (*section 21M, High Court Ordinance*). The relief granted by the court is therefore free-standing and not ancillary to any substantive cause of action being pursued in a Hong Kong court (that is, the applicant is not required to file any other action in a Hong Kong court). This would apply for example where a judgment has been entered into in a foreign jurisdiction, but the applicant has not yet commenced enforcement proceedings in Hong Kong (see for example *Export-Import Bank of China v Taifeng Textile Group Co Ltd [2018] HKCFI 1840*).

Before granting a free-standing injunction under section 21M High Court Ordinance, the court has first to consider whether, if the plaintiff succeeds in the primary jurisdiction, the resultant judgment is one that the Hong Kong court would enforce. If the answer is yes, the court has to form a view, on all the available materials, including any findings of the foreign court itself, whether the plaintiff has a good, arguable case before the foreign court and whether there is a real risk that the defendant will dissipate their assets if the freezing order is not granted. Secondly, the court must decide whether to exercise its discretion to refuse to make the order sought if the fact that the substantive claim is being litigated in a foreign court will have consequences that make the grant of a freezing order unjust or inconvenient (*Compania Sud Americana De Vapores SA v Hin-Pro International Logistics Ltd (2016) 19 HKCFAR 586*).

To make the freezing injunction effective and to ensure that the judicial processes are not defeated, the court may make a disclosure order ancillary to the freezing injunction requiring the defendant to disclose their assets inside and outside the jurisdiction. This disclosure order is aimed at identifying the existence, nature and location of assets that the freezing injunction attaches.

Enforcement of Attachment Orders

Domestic Attachment Orders

The principal method of enforcing a freezing injunction is by bringing committal proceedings for contempt of court.

Penalties for Breach

If a defendant (or a third party notified of the freezing order) breaches an order of the court, they are liable to be fined, have their assets seized or face imprisonment.

Overseas Assets

Until a freezing order has been recognised, registered or enforced in Hong Kong, it is not enforceable outside the jurisdiction, and is therefore not binding on third parties overseas.

Foreign Attachment Orders

The court has jurisdiction to make an order in support of proceedings outside Hong Kong under section 21M, High Court Ordinance (see [Foreign Court Proceedings](#)). A plaintiff can therefore apply for a domestic freezing order under section 21M, High Court Ordinance. The procedure for making such an application is governed by Order 29 Rule

8A, Rules of the High Court. As the freezing order granted is a domestic freezing order, the principal method of enforcing a freezing injunction is by bringing committal proceedings for contempt of court.

Penalties for Breach

If a defendant (or a third party notified of the freezing order) breaches an order of the court, they are liable to be fined, have their assets seized or face imprisonment.

Damages

A defendant may enforce the undertaking in damages made by the applicant when the application for a freezing injunction was made (see *Undertaking and Security*) if it is subsequently determined that the applicant was not entitled to the freezing order.

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