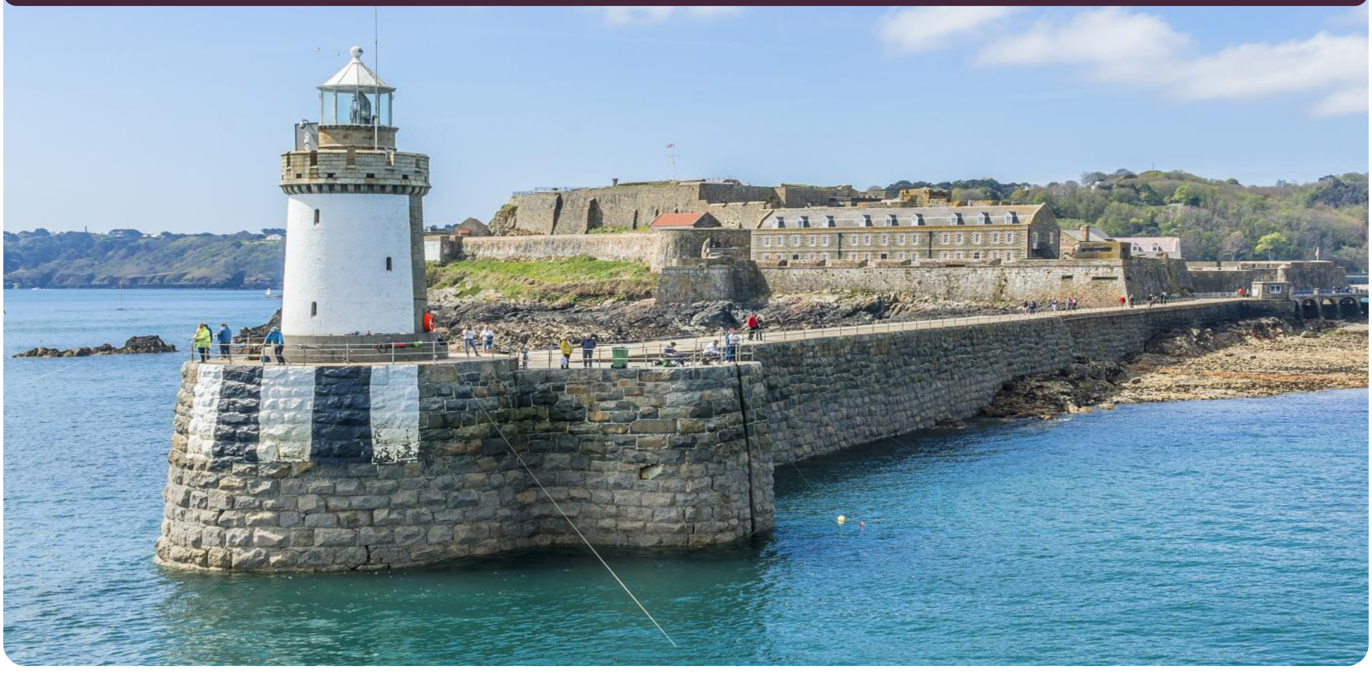
APPLEBY

GUIDE

# ASSET FREEZING INJUNCTIONS IN GUERNSEY



# GUERNSEY

As a British Crown Dependency, Guernsey has a stable and reliable legal system. With a long history of political stability, a highly respected regulatory framework and its accessibility via an established infrastructure make it a desirable international offshore destination for businesses. Guernsey's agile and pro-business government, low tax regime and compliance with international standards of regulation and transparency provide a secure and competitive choice for dispute resolution.

# INTRODUCTION

This Guide outlines the circumstances in which asset freezing injunctions, commonly known as freezing or Mareva injunctions, are available in Guernsey, the procedure by which they are obtained and their usual terms. It also summarises the principal considerations relevant to defendants and third parties affected by such orders.

This Guide was last updated in August 2026. It is routinely reviewed by Appleby and updated when changes to the law require it. This Guide is for general guidance only and does not constitute definitive advice. Please contact one of our lawyers if you require more detailed information.

Further publications are available from applebyglobal.com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# THE FREEZING INJUNCTION

A significant risk in litigation is that a defendant may use the period before judgment to dispose of, conceal or move assets so that they are no longer available to satisfy an eventual judgment.  A freezing injunction mitigates that risk by restraining the defendant from dealing with or disposing of assets.

The Royal Court's power to grant interim injunctions is principally contained in the Law Reform (Miscellaneous Provisions) (Guernsey) Law, 1987 (**1987 Law**).  A freezing injunction operates personally against the defendant. It does not give the claimant security over the assets, determine their ownership or prevent the defendant from using assets for purposes permitted by the order.

The order will usually require the defendant to provide information about their assets.   This enables the claimant to identify the assets protected by the order and to police compliance with it.

# WHEN IS A FREEZING INJUNCTION AVAILABLE?

An applicant will generally need to show:

- a good arguable case on the merits of the underlying claim;
- credible evidence that the defendant has assets which the order can sensibly protect;
- a real risk that, unless restrained, the defendant will dissipate those assets so as to frustrate the enforcement of a judgment; and
- that it is just and convenient to grant the injunction.

Where the substantive proceedings are outside Guernsey, the applicant must also satisfy the additional requirements of section 1(7) of the 1987 Law.

## GOOD ARGUABLE CASE

A good arguable case is one which is more than barely capable of serious argument, although the applicant need not show at the interim stage that the claim is more likely than not to succeed.  The Court will not conduct a trial of the underlying claim, but the evidence must enable it to assess whether the claim has sufficient substance to justify the restraint sought.

Where the application supports foreign proceedings, the applicant must identify the actual or prospective proceedings and the prospective judgment whose enforcement is to be protected.

## ASSETS

The applicant must identify assets or provide credible evidence that relevant assets exist.  Assets may include land, bank accounts, investments, shares and valuable personal property.  The order may extend to assets held in the defendant's own name and, where the evidence and the terms of the order justify it, assets which the defendant has the power to deal with as if they were their own.

The order will ordinarily be limited to the value of the claim, together with an appropriate allowance for interest and costs.  It should not restrain more assets than are reasonably required to protect the claimant's position.

### REAL RISK OF DISSIPATION

The applicant must establish a real risk of unjustified dissipation. It is not enough that the defendant is based outside Guernsey, that the assets are readily moveable or that enforcement may be difficult. The risk must be supported by evidence and assessed objectively in the circumstances of the case.

Relevant factors may include:

- the defendant's previous conduct and response to the claim;
- threatened or recent movement of assets;
- secrecy, evasiveness or lack of candour about assets;
- unexplained transactions or the use of structures which may facilitate dissipation;
- the defendant's financial position, credit record and connections with other persons or entities;
- the location of the defendant and their assets; and
- the practical prospects of enforcing a Guernsey judgment, or the relevant foreign judgment, in the places to which assets might be moved.

Allegations of fraud or dishonesty may be relevant, but do not of themselves establish a risk of dissipation. The Court will consider the evidence as a whole.

### JUST AND CONVENIENT

Even where the other requirements are met, the Court must be satisfied under section 4 of the 1987 Law that it is just and convenient to grant the injunction. The scope and effect of the order must be proportionate to the risk identified.

The Court may take into account the effect on the defendant and third parties, the adequacy of the claimant's undertaking in damages and whether the order would impede legitimate business or operate oppressively. A freezing injunction is protective. It must not be used to obtain security for the claim or to place improper pressure on the defendant.

## SUPPORT FOR FOREIGN PROCEEDINGS

Section 1(7) of the 1987 Law expressly permits the Royal Court, in exceptional circumstances, to grant an injunction even though substantive proceedings have not been and are not to be instituted in Guernsey. The requirement for exceptional circumstances is an additional statutory gateway. It requires the Court to exercise particular caution, but it is not a prohibition on free-standing relief in support of foreign proceedings.

The Guernsey Court of Appeal considered this jurisdiction in *Garnet Investments Limited v BNP Paribas (Suisse) SA* (2009-10) GLR 1. The applicant must identify the foreign proceedings, or prospective proceedings, and the prospective judgment which the injunction is intended to protect. The Court will consider the connection with Guernsey, including the presence of assets or relevant persons in the jurisdiction, whether the prospective judgment is capable of recognition or enforcement in Guernsey, and the steps taken or available in the court dealing with the substantive dispute.

It may weigh against the relief if the foreign court could have granted equivalent protection but has declined to do so.  The Royal Court is not, however, confined to granting only relief which the foreign court could or would grant.  Each application turns on its own facts.

## OTHER FACTORS FOR THE APPLICANT

### PROCEDURE

An application may be made before proceedings are issued or while they are pending.  If the application is made before proceedings are commenced, the Court will ordinarily require an undertaking to issue and serve them promptly.  Delay may undermine the asserted urgency or lead the Court to refuse relief.

Most applications are made without notice because advance warning may defeat the purpose of the order.  The application is usually supported by affidavit evidence addressing the legal tests, the assets to be protected, the proposed terms of the order and the applicant's ability to meet the required undertakings.

An order made without notice will provide for a prompt further hearing, commonly referred to as the return date, at which the defendant may appear and seek to discharge or vary the injunction.  The initial order will remain in force until that hearing or further order.

### DUTY OF FULL AND FRANK DISCLOSURE

An applicant seeking relief without notice must make full and frank disclosure of all material matters.  This includes facts and legal principles adverse to the application, potential defences, weaknesses in the evidence and any relevant applications made to or decisions of another court.  The applicant must make proper enquiries and identify the source of material information.

Failure to comply may result in the injunction being discharged, even where the applicant might otherwise have been entitled to relief.  The applicant may also be ordered to pay costs.

### UNDERTAKINGS REQUIRED OF THE APPLICANT

The Court will usually require the applicant to give an undertaking in damages.  If the injunction is later found to have caused loss and the Court decides that compensation should be paid, the applicant must comply with the resulting order.

The applicant will also usually undertake to meet the reasonable costs and expenses incurred by third parties in complying with the injunction and to comply with any order compensating them for loss caused by it.

If the applicant cannot demonstrate sufficient resources to meet these obligations, the Court may require the undertakings to be fortified, for example by a payment into court, a bank guarantee or other security.

## THE TERMS OF THE ORDER

The order will prohibit the defendant from disposing of, dealing with or diminishing the value of assets up to a stated amount.  That amount will ordinarily reflect the value of the claim, together with interest and an allowance for costs.

The restraint will often be limited to assets in Guernsey. In an appropriate case, the Royal Court may grant a worldwide freezing injunction. A worldwide order operates personally against the defendant. Its practical effect on third parties outside Guernsey will depend on the terms of the order and the law of the country concerned, and recognition or enforcement by a foreign court may be required.

The order will contain exceptions allowing the defendant to spend reasonable sums on legal advice and representation and, in the case of an individual, ordinary living expenses. A corporate defendant will usually be permitted to deal with assets in the ordinary and proper course of business. The amounts and terms of these exceptions may be varied if they prove inadequate or unworkable.

The order will also usually require the defendant to disclose information about their assets and to confirm that information by affidavit. In *Seed International Limited v Tracey* (2003-04) GLR 98, the Guernsey Court of Appeal confirmed that ancillary disclosure may, in an appropriate case, extend beyond the precise geographical scope of the freezing restraint. The disclosure must nevertheless be connected with the purpose of the injunction and be proportionate.

The use of information obtained under compulsion will normally be restricted. It may not be used for a collateral purpose, including to commence new foreign proceedings, without the permission of the Royal Court where the order so provides.

## CONSIDERATIONS FOR DEFENDANTS

A defendant served with a freezing injunction should obtain legal advice immediately. Breach of the order may constitute contempt of court and can result in serious sanctions, including a fine and, in the case of an individual, imprisonment.

The defendant should consider whether to apply to discharge the injunction because the legal tests were not met, the applicant failed to make full and frank disclosure, the order is disproportionate or the requirements for relief in support of foreign proceedings were not satisfied. The defendant may instead seek to vary the order, for example to increase permitted expenditure, allow a transaction or enable a company to continue its ordinary business.

A defendant with sufficient assets may offer security in place of the injunction. The appropriate form and amount of any security will depend on the claim and the circumstances.

## CONSIDERATIONS FOR THIRD PARTIES

Although the order is addressed to the defendant, a third party in Guernsey who knows of it and assists or permits a breach may risk being held in contempt of court. Banks, fiduciaries and other service providers must therefore identify the assets and relationships affected by the order and comply with its terms.

A third party may apply for directions or for the order to be varied where its obligations are unclear, compliance is unduly burdensome or the order affects its own rights. The order will ordinarily protect a complying third party through the applicant’s undertakings as to costs, expenses and loss.

The effect of a worldwide order on a third party outside Guernsey depends on the terms of the order and the law applicable in the country where the third party is located. Local advice may be required.

A freezing injunction is a powerful protective remedy where there is a genuine risk that assets will be dissipated before a judgment can be enforced. The application must be supported by careful evidence, appropriately limited terms and full disclosure to the Court. Where those requirements are met, the Royal Court can grant effective relief in support of proceedings in Guernsey or, in exceptional circumstances, elsewhere.

For more specific advice on asset freezing injunctions in Guernsey, we invite you to contact one of the following:

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## ABOUT APPLEBY

Appleby is one of the world's leading international law firms. Our global teams of legal specialists advise public and private companies, financial institutions and private individuals. We are a full service law firm providing comprehensive, expert advice and services across corporate, dispute resolution, property, regulatory and private client and trusts practice areas. We work with our clients to achieve practical solutions whether from a single location or across multiple jurisdictions. We have offices in ten highly regarded, well-regulated global locations, operating in nine and practising the laws of eight jurisdictions. Our office locations include the key international jurisdictions of Bermuda, the British Virgin Islands, the Cayman Islands, Guernsey, Isle of Man, Jersey, Mauritius, and the Seychelles, as well as the international financial centres of Hong Kong and Shanghai. Our global presence enables us to provide comprehensive, multi-jurisdictional legal advice at the times most beneficial to our clients. We are regularly recognised for our professionalism, integrity and excellent client service, and these are the values we pride ourselves on and are at the core of our business.

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