

## Snapshot: notification injunctions in the Cayman Islands

Insights - 01/04/2021

### What is a notification injunction?

A notification injunction is an alternative to the conventional freezing order that is available where there is concern that a respondent may deal with their assets so as to frustrate the enforcement of any future judgment. This new breed of *quia timet* "notification" injunction does not prevent the disposal of or dealings with assets, but instead requires a respondent to give an applicant prior notice before the defendant can dispose of or deal with its assets.

Notification injunctions are granted as an alternative to a freezing order, where the grounds for a freezing order are made out but the court prefers to order a less intrusive form of relief and does not consider a freezing order to be necessary. However, the value of a notification injunction is plain as, once notice has been given of an intention to dispose of or deal with assets, the plaintiff may then decline consent or seek further relief from the Cayman court such as a freezing order.

### Notification injunctions in the Cayman Islands

The Cayman court has confirmed that it has jurisdiction to grant a notification injunction: ArcelorMittal v Essar (unreported, Grand Court, 29-30 May 2019), Kawaley J, relying on the English Court of Appeal authority of *Holyoake v Candy* [2018] Ch 297.[1]

The criteria which must be met by a plaintiff seeking a notification injunction is the same as the criteria for a freezing injunction, as follows:

1. A good arguable case on the underlying merits
2. A real risk, judged objectively, that a future judgment would not be met because of unjustified dissipation of assets. In *ArcelorMittal*, the Judge commented, obiter, that "*without deciding the point, it seems to me that the bar required for demonstrating a risk of asset dissipation ought to be lower for a judgment creditor than a plaintiff*" and that "*where a judgment debtor displays a steadfast unwillingness to meet its obligations.... the Court*

*should be slow to withhold relief essential by way of enforcement, on technical evidential grounds."*<sup>[2]</sup>

3. Not every risk of a judgment being unsatisfied will justify injunctive relief. Solid evidence is required to support a conclusion that the relief is justified, and what this entails will vary in any given case according to the surrounding circumstances of the case
4. The court must be satisfied that it is just and convenient to grant the injunction. It is clear from the judgment in **Holyoake** that "*the intrusiveness of relief will be a highly relevant factor when considering the overall justice and convenience of granting the proposed injunction. Hence, even if there is solid evidence of a real risk of unjustifiable dissipation, an applicant should consider what form of relief a court is likely to accept as just and convenient in all the circumstances, including the scope of the exceptions to the prohibition on dispositions.*"<sup>[3]</sup> An applicant should therefore carefully consider what form of relief (i.e. a notification injunction v a freezing order) the court is likely to accept as being just and convenient in all the circumstances

The decision of **ArcelorMittal** therefore helpfully confirms that the Cayman court will grant notification injunctions, as an alternative to a freezing order, in appropriate cases where the grounds for a freezing order are made out but a less intrusive remedy is desired.

In **ArcelorMittal**, the Judge ultimately refused the application for a notification injunction on the grounds that there was presently no serious issue to be tried on the merits and it was not therefore just and convenient to grant the relief sought. The Judge did, however, note that his findings were subject to being revisited if the applicant was able to show an arguable case on the merits.<sup>[4]</sup>

Where such injunction is granted, it is important to note that it is the act of asset disposal or dealing itself which would be in breach of the notification injunction rather than the omission to give advance notice. This distinction is important as the consequence is that providing late notice may not be sufficient to cure the breach of the injunction.

Overall, the evolution of the freezing order jurisdiction in this regard is to be welcomed: it represents a further weapon in the Cayman court's arsenal to assist litigants, particularly in fraud and asset tracing cases, to prevent the frustration of judgments.

For further information please reach out to your usual Ogier contact.

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<sup>[1]</sup> See paragraph 71.

<sup>[2]</sup> See paragraph 73.

<sup>[3]</sup> See paragraph 45.

[4] See paragraph 75.

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