

**To be inserted by Court**

Case Number:

Date Signed:

FDN:

## **FREEZING ORDER**

[*SUPREME/DISTRICT/MAGISTRATES*] Delete all but one COURT OF SOUTH AUSTRALIA

[*COURT OF APPEAL*] If applicable

CIVIL JURISDICTION

[*MINOR CIVIL*] If applicable

[*NAME OF LIST*] LIST If applicable

Please specify the Full Name including capacity (eg Administrator, Liquidator, Trustee) and Litigation Guardian Name (if applicable) for each party. Each party should include a party number if more than one party of the same type.

First Applicant

First Respondent

First Interested Party

### **Introduction**

### **Hearing**

Hearing Location: [*suburb*]

[*Hearing date*] [*Listed starting time*]

[*Presiding Officer*]

Application made by:

### **Appearances**

[*Applicant Appearance Information*]

[*Respondent Appearance Information*]

[*Third Party Appearance Information*]

[*Interested Party Appearance Information*]

### **Recitals**

This is a freezing order made against [*Party title*] [*name of person against whom order is made*] at a hearing without notice after the Court was given the undertakings set out in Schedule A to this order and after the Court read the affidavits listed in Schedule B to this order.

**Date of Order:**

**Terms of Order**

It is ordered that:

**Introduction**

- 1 (a) The application for this order is made returnable immediately.
- (b) The time for service of the application, supporting affidavits and originating process is abridged and service is to be effected by *[time and date]*.<sup>1</sup>
2. Subject to paragraph 3 below, this order has effect up to and including *[date]* (***the Return Date***). On the Return Date at *[time]*, there will be a further hearing in respect of this order in the in the *[name]* Court of South Australia *[address]*.<sup>2</sup>
- 3 Anyone served with or notified of this order, including you, may apply to the Court at any time to vary or discharge this order or so much of it as affects the person served or notified.
- 4 In this order:
  - (a) ***applicant***, if there is more than one applicant, includes all the applicants;
  - (b) ***you***, when there is more than one of you, includes all of you and includes you if you are a corporation;
  - (c) ***third party*** means a person other than you and the applicant; and
  - (d) ***unencumbered value*** means value free of mortgages, charges, liens or other encumbrances.
- 5 (a) If you are ordered to do something, you must do it yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions.
- (b) If you are ordered not to do something, you must not do it yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions or with your encouragement or in any other way.

For order limited to assets in Australia

**Freezing of assets**

- 6 (a) You must not remove from Australia or in any way dispose of, deal with or diminish the value of any of your assets in Australia (***Australian assets***) up to the unencumbered value of AUD\$*[amount]* (***the Relevant Amount***).
- (b) If the unencumbered value of your Australian assets exceeds the Relevant Amount, you may remove any of those assets from Australia or dispose of or deal with them or diminish their value, so long as the total unencumbered value of your Australian assets still exceeds the Relevant Amount.

If the Court makes a worldwide order, the following additional paragraph (c) also applies

- (c) If the unencumbered value of your Australian assets is less than the Relevant Amount, and you have assets outside Australia (***ex-Australian assets***):
  - (i) you must not dispose of, deal with or diminish the value of any of your Australian assets and ex-Australian assets up to the unencumbered value of your Australian and ex-Australian assets of the Relevant Amount; and
  - (ii) you may dispose of, deal with or diminish the value of any of your ex-Australian assets, so long as the unencumbered value of your Australian assets and ex-Australian assets still exceeds the Relevant Amount.
- 7 For the purposes of this order:
  - (a) your assets include:
    - (i) all your assets, whether or not they are in your name and whether they are solely or co-owned;
    - (ii) any assets that you have the power, directly or indirectly, to dispose of or deal with as if they were your own (you are to be regarded as having such power if a third party holds or controls the asset in accordance with your direct or indirect instructions); and
    - (iii) the following assets in particular:
      - the property known as *[title/address]* or, if it has been sold, the net proceeds of the sale;
      - the assets of your business (known as *[name]*) (carried on at *[address]*) or, if any or all of the assets have been sold, the net proceeds of the sale; and
      - any money in account number *[number]* in the name of *[name]* at *[name of bank]* *[name and address of branch]*;
  - (b) the value of your assets is the value of the interest you have individually in your assets.

**Provision of information<sup>3</sup>**

- 8 Subject to paragraph 9, you must:

- (a) at or before the further hearing on the Return Date (or within such further time as the Court may allow) to the best of your ability inform the applicant in writing of all your assets [*in Australia/world wide*], giving their value, location and details (including any mortgages, charges or other encumbrances to which they are subject) and the extent of your interest in the assets;
- (b) within [*number*] business days after being served with this order, swear and serve on the applicant an affidavit setting out the above information.

- 9
- (a) This paragraph 9 applies if you are not a corporation and you wish to object that compliance with paragraph 8 may tend to incriminate you or make you liable to a civil penalty.
  - (b) This paragraph 9 also applies if you are a corporation and all of the persons who are able to comply with paragraph 8 on your behalf and with whom you have been able to communicate wish to object that compliance may tend to incriminate them respectively or make them respectively liable to a civil penalty.
  - (c) You must, at or before the further hearing on the Return Date (or within such further time as the Court may allow), notify the applicant in writing that you or all the persons referred to in (b) wish to take such objection and identify the extent of the objection.
  - (d) If you give such notice, you need comply with paragraph 8 only to the extent, if any, that it is possible to do so without disclosure of the material in respect of which the objection is taken.
  - (e) If you give such notice, the Court may give directions as to the filing and service of affidavits setting out such matters as you or the persons referred to in (b) wish to place before the Court in support of the objection.

### Exceptions to this order

- 10 This order does not prohibit you from:
- (a) paying up to \$[*amount*] a week/day on your ordinary living expenses;
  - (b) paying \$[*amount*] on your reasonable legal expenses;
  - (c) dealing with or disposing of any of your assets in the ordinary and proper course of your business, including paying business expenses bona fide and properly incurred; and
  - (d) in relation to matters not falling within (a), (b) or (c), dealing with or disposing of any of your assets in discharging obligations bona fide and properly incurred under a contract entered into before this order was made, provided that before doing so you give the applicant, if possible, at least two business days written notice of the particulars of the obligation.
- 11 You and the applicant may agree in writing that the exceptions in the preceding paragraph are to be varied. In that case the applicant or you must as soon as practicable file with the Court and serve on the other a minute of the proposed consent order recording the variation signed by or on behalf of the applicant and you, and the Court may order that the exceptions are varied accordingly.
- 12
- (a) This order will cease to have effect if you:
    - (i) pay the sum of \$[*amount*] into Court; or
    - (ii) pay that sum into a joint bank account in the name of your solicitor and the solicitor for the applicant as agreed in writing between them; or
    - (iii) provide security in that sum by a method agreed in writing with the applicant to be held subject to the order of the Court.
  - (b) Any such payment and any such security will not provide the applicant with any priority over your other creditors in the event of your insolvency.
  - (c) If this order ceases to have effect pursuant to paragraph 12(a), you must as soon as practicable file with the Court and serve on the applicant notice of that fact.

### Costs

- 13 The costs of this application are reserved to the Judge hearing the application on the Return Date.

### Persons other than the applicant and respondent

- 14 Set off by banks  
This order does not prevent any bank from exercising any right of set off it has in respect of any facility which it gave you before it was notified of this order.

<sup>1</sup> Paragraph 1 is appropriate only in the case of an order made without notice.

<sup>2</sup> Paragraph 2 is appropriate only in the case of an order made without notice.

<sup>3</sup> See Uniform Civil Rules Schedules, Schedule 3, Part 3, rule 6(7).

15 Bank withdrawals by the respondent  
No bank need inquire as to the application or proposed application of any money withdrawn by you if the withdrawal appears to be permitted by this order.

For worldwide order

16 Persons outside Australia

- (a) Except as provided in subparagraph (b) below, the terms of this order do not affect or concern anyone outside Australia.
- (b) The terms of this order will affect the following persons outside Australia:
  - (i) you and your directors, officers, employees and agents (except banks and financial institutions);
  - (ii) any person (including a bank or financial institution) who:
    - (A) is subject to the jurisdiction of this Court; and
    - (B) has been given written notice of this order, or has actual knowledge of the substance of the order and of its requirements; and
    - (C) is able to prevent or impede acts or omissions outside Australia that constitute or assist in a disobedience breach of the terms of this order; and
  - (iii) any other person (including a bank or financial institution), only to the extent that this order is declared enforceable by or is enforced by a court in a country or state that has jurisdiction over that person or over any of that person's assets.

For worldwide order

17 Assets located outside Australia

Nothing in this order shall, in respect of assets located outside Australia, prevent any third party from complying or acting in conformity with what it reasonably believes to be its bona fide and properly incurred legal obligations, whether contractual or pursuant to a court order or otherwise, under the law of the country or state in which those assets are situated or under the proper law of any contract between a third party and you, provided that in the case of any future order of a court of that country or state made on your or the third party's application, reasonable written notice of the making of the application is given to the applicant.

**To the parties against whom orders are made: WARNING**

If you disobey this order, you will be in **contempt of court** and liable to **imprisonment and/or a fine** or other punishment and any other person who knows of this order and does anything that helps or permits you to disobey this order may be similarly punished.

Court use only

.....  
Registrar

**SCHEDULE A**

**UNDERTAKINGS GIVEN TO THE COURT BY THE APPLICANT**

1. The applicant undertakes to submit to such order (if any) as the Court may consider to be just for the payment of compensation (to be assessed by the Court or as it may direct) to any person (whether or not a party) affected by the operation of the order.
2. As soon as practicable, the applicant will file and serve upon the respondent copies of:
  - (a) this order;
  - (b) the application for this order for hearing on the Return Date;
  - (c) the following material insofar as it was relied on by the applicant at the hearing when the order was made:
    - (i) affidavits (or draft affidavits);
    - (ii) exhibits capable of being copied;
    - (iii) any written submission; and
    - (iv) any other document that was provided to the Court;
  - (d) a transcript, or if none is available a note, of any exclusively oral allegation of fact that was made and of any exclusively oral submission that was put to the Court;
  - (e) the originating process, or if none was filed any draft originating process produced to the Court.
3. As soon as practicable, the applicant will cause anyone notified of this order to be given a copy of it.
4. The applicant will pay the reasonable costs of anyone other than the respondent that 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.
5. If this order ceases to have effect<sup>4</sup> the applicant will promptly take all reasonable steps to inform in writing anyone who has been notified of this order, or whoever the applicant has reasonable grounds for supposing may act upon this order, that it has ceased to have effect.
6. The applicant will not, without 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 or outside Australia, other than this proceeding.
7. The applicant will not, without permission of the Court, seek to enforce this order in any country outside Australia or seek in any country outside Australia an order of a similar nature or an order conferring a charge or other security against the respondent or the respondent's assets.
8. The applicant will:
  - (a) on or before [date] cause an irrevocable undertaking to pay in the sum of \$[amount] to be issued by a bank with a place of business within Australia, in respect of any order the Court may make pursuant to undertaking paragraph 1. above; and
  - (b) immediately upon issue of the irrevocable undertaking, cause a copy of it to be served on the respondent.<sup>5</sup>

<sup>4</sup> For example, if the respondent pays money into Court or provides security, as provided for in paragraph 12 of this Order.

<sup>5</sup> See Uniform Civil Rules Schedules, Schedule 3, Part 2, rule 4(3).

**SCHEDULE B<sup>6</sup>**

**AFFIDAVITS RELIED ON**

Name of Deponent  [name]	Date affidavit made  [date]
Provide for multiple affidavits	

**Name and address of applicant's solicitors**

The Applicant's solicitors are:

Name of firm	[name]			[F Code]
Name of individual solicitor responsible	[name] (Provide for multiple solicitors)			[L Code]
Address for service	[street] (include unit or level number and/or name of property where necessary)			
	[city/town/suburb]	[state]	[postcode]	
	[email address] Provide for multiple email addresses			
Telephone	[preferred phone no]	[after hours phone number]		
	Provide for multiple numbers	Provide for multiple numbers		

<sup>6</sup> Schedule B is appropriate only in the case of an order made without notice.