

German Article on the Cross-Border Enforcement of English Freezing Injunctions

Christian Heinze (Hamburg) has published an article on the enforcement of English world-wide freezing injunctions in a foreign jurisdiction (“Grenzüberschreitende Vollstreckung englischer freezing injunctions”) in the latest issue of “Praxis des Internationalen Privat- und Verfahrensrechts” (IPRax 2007, 343 et seq.).

An English abstract has kindly been provided by the author:

*In recent years, the English freezing (former Mareva) injunction has become an important instrument of international litigation. Worldwide freezing orders were subject to enforcement proceedings in several European countries (e.g. Germany, France and Switzerland) and have recently served as a model for Art. 9 (2) of the directive 2004/48/EC on the enforcement of intellectual property rights. Under English law, the cross-border enforcement of freezing orders is normally not automatically permitted after such an order is granted, but rather subject to the permission of the English court to seek to enforce the order in a country outside England and Wales (Civil Procedure Rules Part 25 Practice Direction Annex Schedule B paragraph 10). In *Dadourian Group International v. Simms* (11 April 2006, [2006] 1 WLR 2499 = [2006] 3 All ER 48), the Court of Appeal has set out guidelines how to exercise its discretion to permit a party to enforce a worldwide freezing order in a foreign jurisdiction. The article discusses these guidelines and their implications with reference to the enforcement of freezing orders in Germany and Switzerland. As a result of the *Dadourian Guidelines*, evidence as to the applicable law and practice in the foreign court and the nature and terms of foreign relief might become more important (see guidelines 4 and 5) which would create a practical need for comparative studies in the field of enforcement.*

Here the **Dadourian Guidelines** of the Court of Appeal:

Guideline 1: The principle applying to the grant of permission to enforce a

worldwide freezing order (WFO) abroad is that the grant of that permission should be just and convenient for the purpose of ensuring the effectiveness of the WFO, and in addition that it is not oppressive to the parties to the English proceedings or to third parties who may be joined to the foreign proceedings.

Guideline 2: All the relevant circumstances and options need to be considered. In particular consideration should be given to granting relief on terms, for example terms as to the extension to third parties of the undertaking to compensate for costs incurred as a result of the WFO and as to the type of proceedings that may be commenced abroad. Consideration should also be given to the proportionality of the steps proposed to be taken abroad, as well as the form of any order.

Guideline 3: The interests of the applicant should be balanced against the interests of the other parties to the proceedings and any new party likely to be joined to the foreign proceedings.

Guideline 4: Permission should not normally be given in terms that would enable the applicant to obtain relief in the foreign proceedings which is superior to the relief given by the WFO.

Guideline 5: The evidence in support of the application for permission should contain all the information (so far as it can reasonably be obtained in the time available) necessary to enable the judge to reach an informed decision, including evidence as to the applicable law and practice in the foreign court, evidence as to the nature of the proposed proceedings to be commenced and evidence as to the assets believed to be located in the jurisdiction of the foreign court and the names of the parties by whom such assets are held.

Guideline 6: The standard of proof as to the existence of assets that are both within the WFO and within the jurisdiction of the foreign court is a real prospect, that is the applicant must show that there is a real prospect that such assets are located within the jurisdiction of the foreign court in question.

Guideline 7: There must be evidence of a risk of dissipation of the assets in question.

Guideline 8: Normally the application should be made on notice to the respondent, but in cases of urgency, where it is just to do so, the permission may be given without notice to the party against whom relief will be sought in the

foreign proceedings but that party should have the earliest practicable opportunity of having the matter reconsidered by the court at a hearing of which he is given notice.