

Global Asset Recovery Guide Ireland



Introduction

Our Global Asset Recovery Comparison Guides are a collection of authoritative resources that provide a key overview of the various court orders available globally in civil asset recovery.

Our guides explore the various types of asset and evidence freezing remedies available in different jurisdictions and how they work in practice.

Key considerations for recovering your assets

1. Identifying the fraudster

- A Norwich Pharmacal Order (NPO) requires the disclosure of information or documentation by a third party to identify a wrongdoer, for the purposes of seeking redress against that wrongdoer.
- A non-party disclosure order allows for the disclosure of information by a non-party to the litigation, where the Court is satisfied it would not have been otherwise obtainable.
- Pursuant to the Bankers' Book Evidence Acts 1879-1989 ("BBEA") an order may be obtained to inspect and take copies of any entries in a banker's books before trial, whether the books relate to the account of a party to the litigation or a third party.

2. Securing assets and obtaining information or evidence before trial

- Norwich Pharmacal Orders (NPOs) detailed above.
- A Mareva Injunction can be sought to freeze assets and prevent a defendant from dissipating or placing assets "beyond the reach of the Court in the event of a successful action".
- Asset Disclosure Orders (ancillary orders in support of a Mareva Injunction) ensure defendants give full and accurate disclosure as to their assets, wherever situated.
- A proprietary injunction can prevent a defendant from disposing of certain assets where there is a claim of proprietary rights.
- Anton Piller Orders permit entry to premises to look for evidence and demand information about the whereabouts of assets.
- A European Account Preservation Order prevents the transfer or withdrawal of funds up to the amount specified in the order held by a debtor or on their behalf in a bank account.
- The Irish Courts have the power to take evidence for use in proceedings in other EU member states (Regulation (EU) 2020/1783) and outside of the EU (Foreign Tribunals Evidence Act of 1856).





3. How quickly can you obtain these orders?

- Interlocutory injunctions can be obtained on short notice to the other party, usually within a matter of days.
- In very urgent cases, a judge can be contacted out of hours and the Court can grant interim relief without notice to the other party.

4. Notification to the Defendant

- If orders are obtained without notice to a defendant, usually the first time they will obtain any knowledge of it is when it is served on them or otherwise executed. This is caveated to the extent that applications are made in open court save in extremely limited circumstances.

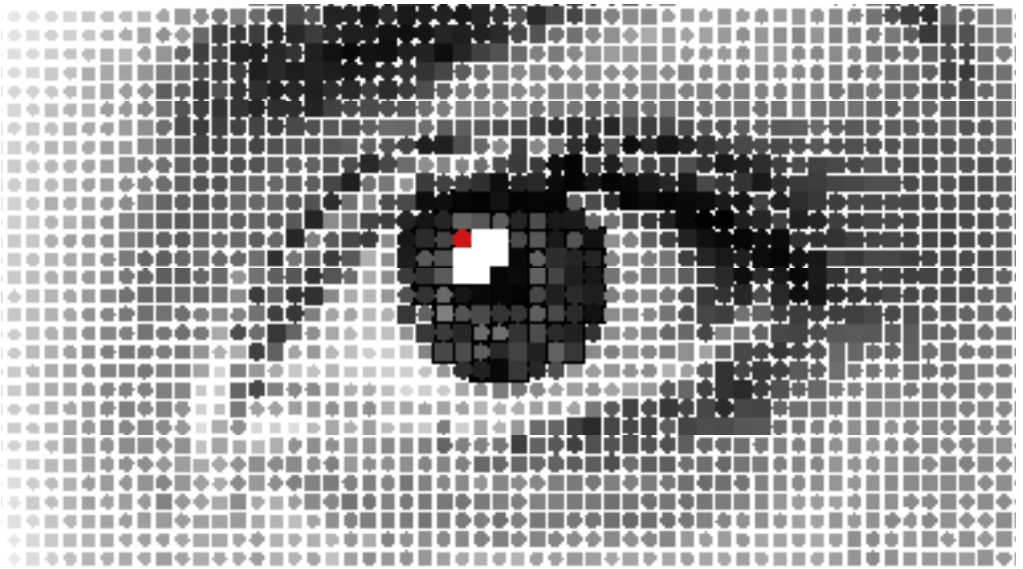
5. What is the worldwide reach of these orders?

- Worldwide Asset Freezing Orders may require the co-operation of the Courts where the Defendant resides. It may be necessary to obtain enforcement orders or equivalent relief in another jurisdiction. The EU Brussels Recast Regulation has provision for the recognition of interim measures and the automatic recognition of judgements between member states.

- To enforce Irish judgments in the UK, a court application will be required. Once the UK has ratified the Hague Judgments Convention enforcement will be streamlined.

6. Claimant's obligations when applying for these orders

- For a pre-trial injunction it must be shown that there is a fair or bona fide or serious question to be tried. The Applicant needs to give an adequate undertaking in damages.
- Applications on a without notice basis require the Applicant to provide full and frank disclosure of all relevant facts. Failure to disclose all material facts may result in an award of damages being made against the Claimant.
- A mandatory injunction compels a person to do something and is traditionally more difficult to obtain. The Court grants relief on a discretionary basis and requires a high level of likelihood that the Applicant has a strong case.



7. What about crypto assets?

- The Irish Courts have recognised that ‘crypto’ assets can be ‘assets’ subject to freezing orders. The Criminal Assets Bureau (CAB) has obtained freezing orders over the contents of a digital wallet, which contained the proceeds of crime.
- The Irish Courts have recently granted NPOs in aid of US proceedings involving crypto fraud. Plaintiffs can use cryptographic tracing firms to trace stolen Bitcoin to accounts.

8. Forcing defendants to disclose the value and whereabouts of their assets

- Asset Freezing Orders are virtually always made together with an order compelling the Defendant to disclose the whereabouts and value of all their assets.
- If a Defendant does not make full and honest disclosure the Claimant can cross examine them and/or apply to send the Defendant to prison for contempt of court.

9. McCann FitzGerald commentary on the Irish Legal System

- The Irish legal system has a wide range of asset recovery tools available to parties seeking to uncover fraud and to prevent dissipation of assets.
- Recent case law has shown the Court’s willingness to apply these tools in new and evolving areas, for example in relation to digital and crypto assets and on a worldwide basis, where appropriate.
- Ireland’s status as an EU Member State benefits parties seeking timely enforcement of asset freezing orders granted in other EU jurisdictions.

About the International Fraud Group

The International Fraud Group (“IFG”) is a network of international lawyers who are experts in Asset Recovery and Fraud Investigation.

We have members spanning over 56 jurisdictions and we cover the globe. In 1994 a Bank that Mishcon de Reya were working for in the international recovery space expressed a need to access like minded and similarly skilled lawyers across the globe to help them when their and their client’s assets had gone astray. The IFG was born in response to that need.

The ethos of the IFG is based on responsiveness, know how and commerciality.

In the Asset Recovery Fraud Investigation space there is no time to lose when a problem is discovered. Sometimes injunctions are needed on an immediate basis. The IFG’s members know that every second is valuable when chasing crooks and understand that responsiveness is critical.

There is a huge difference between knowledge and know how. It is the practical application of the law to get a result that the client wants which is at the very core of the IFG.

Knowing what to do and how to do it is not enough. What lawyers in this space need to understand is that clients want and are right to insist on a return on their investment. The costs that a client incurs in an Asset Recovery scenario and/or Fraud Investigation represent an investment. IFG Members know that to justify their existence they must produce a return on that investment in terms of funds or assets recovered.

The IFG also has in-depth expertise in the following sectors which are represented by 5 sub-groups namely Crypto Currency, White Collar Crime & Investigations, Arbitration, Shipping and Insolvency.

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This guide is intended only as a general statement of the law and no action should be taken in reliance on it without specific legal advice.

Developed in conjunction with

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