

**EASTERN CARIBBEAN SUPREME COURT**  
**CIVIL PROCEDURE RULES (REVISED EDITION) 2023**

**PRACTICE DIRECTION 17**

**No. 4 of 2023**

**PROCEDURE FOR APPLYING TO THE COURT  
FOR AN INTERIM ORDER**

This Practice Direction is made pursuant to Part 4.2(2) of the Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023 and supplements rules 17.1(5) and 17.1(6) and shall be applicable to all the Member States and Territories in the jurisdiction of the Eastern Caribbean Supreme Court.

**1. INTRODUCTORY NOTE AND DEFINITIONS**

1.1 This Practice Direction outlines the procedure for applying to the court for an interim order, including, in particular:

- (a) an interim injunction;
- (b) a freezing order; and
- (c) a search order.

1.2 In this Practice Direction, unless it appears otherwise from the context —

“appropriate case” or “appropriate cases” means a case where giving notice would enable the respondent to take steps to defeat the purpose of the interim order, or a case where there has been literally no time to give notice before the interim order is required to prevent the threatened wrongful act.

“court” means a Judge of the High Court in a Member State or Territory;

“document” means a document in both physical and electronic form;

“electronic device” includes computers and other electronic devices as well as computer data storage in digital forms such as cloud computing storage;

“material” means material in both physical and electronic form;

“responsible person” means in relation to a workplace, the employer or a person who exercises managerial responsibility and in relation to any premises to be searched that is not a workplace, a person who has control of those premises, as occupier or otherwise, in connection with the carrying on by them of a trade, business or other undertaking.

**2. APPLICATION FOR AN INTERIM ORDER**

2.1 An application for an interim order is made in Form 6 and must generally state —

- (a) the nature and terms of the order sought;
- (b) the grounds on which the interim order is sought; and
- (c) the date, time and place of the hearing.

- 2.2 Unless the court directs or a rule or a practice direction provides otherwise, notice of the application must be given as soon as practicable after issue and in any event not less than 3 days before the hearing of the application.
- 2.3 An application for an interim order must be supported by evidence on affidavit unless the court otherwise orders.
- 2.4 The evidence must set out the facts on which the applicant relies for the order being sought against the respondent, including all material facts of which the court should be made aware.
- 2.5 An application for an interim order may be made without notice to the respondent in appropriate cases. Where an application is made without notice, the evidence filed in support must set out why notice was not given.

### **3. URGENT APPLICATIONS AND APPLICATIONS WITHOUT NOTICE**

- 3.1 These fall into two categories:  
(a) applications where a claim form has already been issued; and  
(b) applications where a claim form has not yet been issued,  
and, in both cases, where notice of the application has not been given to the respondent.
- 3.2 An application for an interim order is normally dealt with at a court hearing but in cases of extreme urgency may be dealt with on paper or by telephone or by other electronic means.
- 3.3 The applicant must attach to their application a certificate of urgency in the manner prescribed by rule 11.6(3) of the Civil Procedure Rules (Revised Edition) 2023.
- 3.4 The notice of application together with the evidence in support of the application and a draft order must be filed at least two hours before the hearing of the application. In appropriate cases, the court may permit a witness statement to be treated as evidence in support of the application.
- 3.5 Where the application is made before the claim has been issued, the applicant must undertake to issue a claim form immediately and in any event the court will give directions for the commencement of the claim.
- 3.6 An interim order made before the issue of a claim form should state in the title after the names of the applicant and respondent ‘the Claimant and Defendant in an Intended Action’.
- 3.7 Where possible, the claim form should be served with the interim order.

### **4. APPLICATION FOR INTERIM INJUNCTION**

- 4.1 The provisions of paragraphs 2 and 3 apply to an application for an interim injunction.
- 4.2 The evidence in support of an application for an interim injunction must set out —  
(a) the facts giving rise to the claim for injunctive relief and the precise terms of the interim injunctive relief being sought;

- (b) the facts being relied on as justifying the application being made ex parte, showing that an injunction is necessary and that the matter is urgent;
- (c) details of any notice given to the defendant or, if no notice was given, the reasons for giving not giving notice;
- (d) details of any answer asserted (or likely to be asserted) or any defences likely to be asserted by the respondent either to the substantive claim or to the interim relief; and
- (e) any facts known to the applicant which might lead the court to refuse to grant the relief.

4.3 An order for an interim injunction must set out clearly what the respondent must do or not do.

4.4 An order for an injunction made in the presence of all parties to be bound by it or made at a hearing of which they have had notice, may state that it is effective until final hearing or further order.

4.5 When the court makes an order for an injunction, it should consider whether to require an undertaking by the applicant to pay any damages sustained by a person other than the respondent, including another party to the proceedings or any other person who may suffer loss as a consequence of the order.

- 4.6 An order for an interim injunction, unless the court orders otherwise, must contain –
- (a) an undertaking by the applicant to the court to pay any damages which the respondent sustains which the court considers the applicant should pay;
  - (b) if the order is made without notice to any other party, an undertaking by the applicant to the court to serve on the respondent the notice of application, evidence in support and any order made as soon as practicable;
  - (c) if the order is made without notice to any other party, a return date for a further hearing at which the other party can be present; and
  - (d) if the order is made before issue of a claim, directions for the issuance of the claim.

4.7 A standard form of an interim injunction is annexed to this Practice Direction as Appendix I. This form may be modified as appropriate in any particular case.

## **5. APPLICATION FOR FREEZING ORDER**

5.1 The provisions of paragraphs 2, 3 and 4 (where appropriate) apply to an application for a freezing order.

5.2 In addition to the matters under paragraph 2.4, the evidence in support of an application for a freezing order must also—

- (a) depose to facts showing a good arguable case against the defendant,
- (b) identify specific assets, such as bank accounts, which the claimant wishes to be frozen; and
- (c) depose to facts from which the court can conclude that there is a risk of removal of those assets from the jurisdiction or dissipation by the defendant.

5.3 A standard form of a freezing order is annexed to this Practice Direction as Appendix II. This form may be modified as appropriate in any particular case.

## **6. APPLICATION FOR A SEARCH ORDER**

- 6.1 The provisions of paragraphs 2 and 3 apply to an application for a search order.
- 6.2 Where a search order is sought, the applicant must identify an independent legal practitioner who will be responsible for serving the search order on the respondent and supervising the execution of the order. The supervising legal practitioner must not be an employee or member of the applicant's legal practitioner's law firm.
- 6.3 Generally, the affidavit in support of an application for a search order must state —
- (a) the address of the premises on which the search order is to be executed and whether it is a residential or commercial address;
  - (b) the subject matter of the search order, including the probability that the subject matter can be found on the premises on which the search order is to be executed;
  - (c) the name, address and experience of the supervising legal practitioner under paragraph 6.2;
  - (d) the reasons for which a search order is being sought, including the probability that the relevant material would disappear if the order were not made; and
  - (e) where the subject matter is electronically stored information (ESI), the nature/description of the ESI including the probability that the subject matter can be found on an electronic device, or any connected computer data storage forms and devices.
- 6.4 A standard form of a search order is annexed to this Practice Direction as Appendix III. This form may be modified as appropriate in any particular case.
- 6.5 The search order must be served personally by the supervising legal practitioner, unless the court otherwise orders and must be accompanied by the evidence in support and any documents capable of being copied.
- 6.6 Confidential exhibits need not be served but they must be made available for inspection by the respondent in the presence of the applicant's legal practitioner while the order is carried out and afterwards be retained by the respondent's legal practitioner on their undertaking not to permit the respondent to —
- (a) view them or copies of them except in their presence; or
  - (b) make or take any note or record of them.
- 6.7 The supervising legal practitioner may only be accompanied to the premises on which the search order is to be executed by the persons mentioned in the search order.
- 6.8 The supervising legal practitioner must explain the terms and effect of the order to the respondent in plain language and advise them —
- (a) of their right to take legal advice and to apply to vary or discharge the order;
  - (b) that they may be entitled to avail themselves of —
    - (i) legal professional privilege; and
    - (ii) the privilege against self-incrimination.
- 6.9 A search order may only be served between 9.00 a.m. and 5.00 p.m. from Monday to Friday, excluding bank or public holidays unless the court otherwise orders.

6.10 In executing the search order —

- (a) no material shall be removed unless clearly covered by the terms of the order;
- (b) the premises must not be searched and no material shall be removed from them except in the presence of the respondent or a person who is a duly authorised representative of the respondent;
- (c) where copies of documents are sought, the documents should be retained for no more than 2 days before returning to the owner;
- (d) where material in dispute is removed pending trial, the applicant’s legal practitioner should place it in the custody of the respondent’s legal practitioner on their undertaking to retain it in safekeeping and to produce it to the court when required;
- (e) the supervising legal practitioner must make a list of all material removed from the premises and supply a copy of the list to the respondent;
- (f) no material shall be removed from the premises until the respondent has had reasonable time to check the list;
- (g) if any of the listed items exists only in computer readable form, the respondent must immediately give the applicant’s legal practitioner effective access to the computers, with all necessary passwords, biometric passcodes or encryption keys, to enable them to be searched, and cause the listed items to be printed out;
- (h) the applicant must take all reasonable steps to ensure that no damage is done to any electronic device;
- (i) the applicant and their representatives may not themselves search the respondent’s electronic devices unless they have sufficient expertise to do so without damaging the respondent’s electronic devices;
- (j) in relation to ESI, no ESI material shall be removed unless clearly covered by the terms of the order.

6.11 As soon as practicable after the execution of the search order, the supervising legal practitioner shall provide a report on the carrying out of the order to the applicant’s legal practitioner and as soon as the report is received the applicant’s legal practitioner shall —

- (a) serve a copy of it on the respondent; and
- (b) file a copy of it with the court.

6.12 Where the supervising legal practitioner is satisfied that full compliance with paragraphs 6.10 (f) and (g) above is impracticable, they may permit the search to proceed and items to be removed without compliance with the impracticable requirements.

**7. EFFECTIVE DATE**

This Practice Direction shall come into effect in a Member State or Territory on the 15<sup>th</sup> day of January, 2024.

**Dated the 15<sup>th</sup> day of December 2023**

**Sgd.**

**Dame Janice M. Pereira DBE, LL.D**

**Chief Justice**

**APPENDIX I  
INTERIM INJUNCTION**

**IN THE EASTERN CARIBBEAN SUPREME COURT**

**[NAME OF MEMBER STATE OR TERRITORY]**

**IN THE HIGH COURT OF JUSTICE**

**CLAIM No.**

**BETWEEN:**

**Claimant(s)/Applicant(s)**

**and**

**Defendant(s)/Respondent(s)**

**Before** [     ]

**Date** [     ]

**Entered** [     ]

[Name, address and reference of respondent]

**PENAL NOTICE**

**[NOTICE: IF YOU FAIL TO COMPLY WITH THE TERMS OF THIS ORDER, PROCEEDINGS MAY BE COMMENCED AGAINST YOU FOR CONTEMPT OF COURT AND YOU MAY BE LIABLE TO BE IMPRISONED.]**

**[NOTICE: IF YOU FAIL TO COMPLY WITH THE TERMS OF THIS ORDER, PROCEEDINGS MAY BE COMMENCED AGAINST YOU FOR CONTEMPT OF COURT.]**

Any other person who knows of this order and does anything which helps or permits the respondent to breach the terms of this order may also be held to be in contempt of Court and may be imprisoned, fined or have their assets seized.

**UPON HEARING [     ]**

**UPON READING [     ]**

## **THIS ORDER**

1. This is an Interim Injunction made against [ ] (“the respondent”) on [ ] by The Honourable Justice [ ] on the application of [ ] (“the applicant”). The Judge has read the Affidavit(s) listed in Schedule A and accepted the undertakings set out in Schedule B at the end of this Order.
2. This order was made at a hearing without notice to the respondent. The respondent has a right to apply to the court to vary or discharge the order.
3. There will be a further hearing in respect of this order on [ ] with a time estimate of [ ] minutes (“the Return Date”).
4. If there is more than one respondent—
  - (a) unless otherwise stated, references in this order to “the respondent” mean both or all of them; and
  - (b) this order is effective against any respondent on whom it is served or who is given notice of it.
5. Until the return date or further order of this court, the respondent [is restrained and an injunction is hereby granted restraining them, whether by themselves, their servants or agents, or howsoever otherwise from.....].

## **OR**

Pending the return date or further order of this court, the respondent shall [ ].

6. The costs of this application are reserved to the Judge hearing the application on the return date.

## **VARIATION OR DISCHARGE OF THIS ORDER**

7. Anyone served with or notified of this order may apply to the court to vary or discharge this order (or so much of it as affects that person), but they must first inform the applicant’s legal practitioner. If any evidence is to be relied upon in support of the application, the substance of it must be communicated in writing to the applicant’s legal practitioner in advance.

## **INTERPRETATION OF THIS ORDER**

8. A respondent who is an individual who is ordered not to do something must not do it themselves or in any other way. They must not do it through others acting on their behalf or on their instructions or with their encouragement.
9. A respondent who is not an individual who is ordered not to do something must not do it itself or by its directors, officers, partners, employees or agents or in any other way.

## **COMMUNICATIONS WITH THE COURT**

All communications to the court about this order should be sent to [insert email address of the relevant court office] quoting the claim number.

The court office is situated at [ ]. The offices are open between [ ] a.m. and [ ] p.m. Monday to Friday, excluding bank or public holidays. The telephone number is [ ].

**BY THE COURT**

.....

**REGISTRAR**

**SCHEDULE A—AFFIDAVITS**

The applicant relied on the following affidavits –

[name]                      [number of affidavit]                      [date sworn]                      [filed on behalf of]

**SCHEDULE B – UNDERTAKINGS GIVEN TO THE COURT BY THE APPLICANT**

- (1) If the court later finds that this order has caused loss to the respondent and decides that the respondent should be compensated for that loss, the applicant will comply with any order the court may make.
- (2) As soon as practicable the applicant will issue and serve a claim form [in the form of the draft produced to the court] [claiming the appropriate relief].
- (3) The applicant will [swear and file an affidavit] [cause an affidavit to be sworn and filed] [substantially in the terms of the draft affidavit produced to the court] [confirming the substance of what was said to the court by the applicant’s legal practitioner].
- (4) The applicant will serve upon the respondent [together with this order] [as soon as practicable]—
  - (a) copies of the affidavits and exhibits containing the evidence relied upon by the applicant, and any other documents provided to the Court on the making of the application;
  - (b) the claim form; and
  - (c) a notice of application for continuation of the order.
- (5) Anyone notified of this order will be given a copy of it by the applicant’s legal practitioner.

**NAME AND ADDRESS OF APPLICANT’S LEGAL PRACTITIONER**

The applicant’s legal practitioner is –

[Name, address, reference, and telephone numbers both in and out of office hours and e-mail address]

**APPENDIX II**  
**FREEZING ORDER**

Important Note: A freezing order is an exceptional order, and applicants are reminded of their duty of full and frank disclosure to the court. Failure to comply with that duty may lead to the discharge of the order with all attendant consequences.

**IN THE EASTERN CARIBBEAN SUPREME COURT**

**[NAME OF MEMBER STATE OR TERRITORY]**

**IN THE HIGH COURT OF JUSTICE**

**CLAIM No.**

**BETWEEN**

**Claimant(s)/Applicant(s)**

**and**

**Defendant(s)/Respondent(s)**

**Before** [     ]

**Date** [     ]

**Entered** [     ]

[Name, address and reference of respondent]

**PENAL NOTICE**

**[NOTICE: IF YOU FAIL TO COMPLY WITH THE TERMS OF THIS ORDER, PROCEEDINGS MAY BE COMMENCED AGAINST YOU FOR CONTEMPT OF COURT AND YOU MAY BE LIABLE TO BE IMPRISONED.]**

**[NOTICE: IF YOU FAIL TO COMPLY WITH THE TERMS OF THIS ORDER, PROCEEDINGS MAY BE COMMENCED AGAINST YOU FOR CONTEMPT OF COURT.]**

Any other person who knows of this order and does anything which helps or permits the respondent to breach the terms of this order may also be held to be in contempt of Court and may be imprisoned, fined or have their assets seized.

**UPON HEARING [ ]**

**AND UPON READING [ ]**

**THIS ORDER**

1. This is a Freezing Order made against [ ] (“the respondent”) on [ ] by The Honourable Justice [ ] on the application of [ ] (“the applicant”). The Judge read the Affidavits listed in Schedule A and accepted the undertakings set out in Schedule B at the end of this Order.
2. This order was made at a hearing without notice to the respondent. The respondent has a right to apply to the Court to vary or discharge the order.
3. There will be a further hearing in respect of this order on [ ] with a time estimate of [ ] minutes (“the Return Date”<sup>11</sup>).
4. If there is more than one respondent—
  - (a) unless otherwise stated, references in this order to “the respondent” mean both or all of them; and
  - (b) this order is effective against any respondent on whom it is served or who is given notice of it.

**FREEZING ORDER**

[For freezing order limited to assets in [ ]]

5. Until after the Return Date or further order of the Court, the respondent must not remove from [ ] or in any way dispose of, deal with or diminish the value of any of its or their assets which are in [ ] up to the value of \$

[For worldwide freezing order]

5. Until the return date or further order of the Court, the respondent must not –
  - (a) remove from [ ] any of their assets which are in [ ] up to the value of \$ ; or

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<sup>1</sup> Within 28 days after the freezing order was granted.

(b) in any way dispose of, deal with or diminish the value of any of their assets whether they are in or outside [ ] up to the same value.

[For either form of freezing order]

6. Paragraph 5 applies to all the respondent's assets whether or not they are in their possession or own name, whether they are solely or jointly owned [and whether the respondent is interested in them legally, beneficially or otherwise].<sup>2</sup> For the purpose of this order the respondent's assets include any asset which they have the power, directly or indirectly, to dispose of or deal with as if it were their own. The respondent is to be regarded as having such power if a third party holds or controls the asset in accordance with their direct or indirect instructions.

7. This prohibition includes the following assets in particular –

- (a) the property known as [title/address] or the net sale money after payment of any mortgages if it has been sold;
- (b) the property and assets of the respondent's business<sup>3</sup> [known as [name]] [carried on at [address]] or the sale money if any of them have been sold;
- (c) any money in the account numbered [account number] at [title/address]; and
- (d) any interest under any trust or similar entity including any interest which can arise by virtue of the exercise of any power of appointment, discretion or otherwise howsoever.

[For freezing order limited to assets in [ ]]

8. If the total value free of charges or other securities ("unencumbered value") of the respondent's assets in [ ] exceeds \$ , the respondent may remove any of those assets from [ ] or may dispose of or deal with them so long as the total unencumbered value of its or their assets still in [ ] remains above \$

[For worldwide freezing order]

8. (1) If the total value free of charges or other securities ("unencumbered value") of the respondent's assets in [ ] exceeds \$ , the respondent may remove any of those assets from [ ] or may dispose of or deal with them so long as the total unencumbered value of the respondent's assets still in [ ] remains above \$ .
- (2) If the total unencumbered value of the respondent's assets in [ ] does not exceed \$ , the respondent must not remove any of those assets from [ ] and

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<sup>2</sup> Whether this wider wording should be included in relation to the Order and/or the provision of information will be considered on a case by case basis.

<sup>3</sup> This sub-paragraph is designed for the business that is the business of the respondent itself or themselves but carried on under a trading or business name. It is not designed for the business of a company with separate legal personality that is owned by a respondent, and where the respondent's property and assets comprise their interest in the company rather than the property and assets of the company.

must not dispose of or deal with any of them. If the respondent has other assets outside [ ], they may dispose of or deal with those assets outside [ ] so long as the total unencumbered value of all its or their assets whether in or outside [ ] remains above \$ .

## **PROVISION OF INFORMATION**

9. (1) Unless paragraph (2) applies, the respondent must [within [ ] hours/days] of service of this order] and to the best of their ability inform the applicant's legal practitioner of all their assets [in [ ] [worldwide] [exceeding \$ in value<sup>4</sup>] whether in their own name or not and whether solely or jointly owned, giving the value, location and details of all such assets.<sup>4</sup>
- (2) If the provision of any of this information is likely to incriminate the respondent, they may be entitled to refuse to provide it, but is recommended to take legal advice before refusing to provide the information. Wrongful refusal to provide the information is contempt of Court and may render the respondent liable to be imprisoned, fined or have its or their assets seized.
10. Within [ ] working days after being served with this order, the respondent must swear and serve on the applicant's legal practitioner an affidavit setting out the above information.<sup>5</sup>

## **EXCEPTIONS TO THIS ORDER**

11. (1) This order does not prohibit the respondent from spending \$ a week towards their ordinary living expenses and also \$ [or a reasonable sum] on legal advice and representation. [But before spending any money the respondent must tell the applicant's legal practitioner where the money is to come from<sup>2</sup>.]
- (2) This order does not prohibit the respondent from dealing with or disposing of any of their assets in the ordinary and proper course of business, [but before doing so the respondent must tell the applicant's legal practitioner<sup>3</sup>.]
- (3) The respondent may agree with the applicant's legal practitioner that the above spending limits should be increased or that this order should be varied in any other respect, but any agreement must be in writing.
- (4) The order will cease to have effect if the respondent –
- (a) provides security by paying the sum of \$ into court, to be held to the order of the court; or
  - (b) makes provision for security in that sum by another method agreed with the applicant's legal practitioner.

## **COSTS**

12. The costs of this application are reserved to the Judge hearing the application on the return date.

## **VARIATION OR DISCHARGE OF THIS ORDER**

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<sup>4</sup> Careful consideration must be given to inserting a realistic lower limit below which value assets need not be disclosed.

<sup>5</sup> Careful consideration should be given to ensuring that this period is realistic having regard to the nature and volume of information that may be involved. It is not acceptable to invite the Court to impose unrealistic time limits, and costs orders may be made where this results in the party subject to the order having to bring the matter before a judge.

13. Anyone served with or notified of this order may apply to the court to vary or discharge this order (or so much of it as affects that person), but they must first inform the applicant's legal practitioners. If any evidence is to be relied upon in support of the application, the substance of it must be communicated in writing to the applicant's legal practitioners in advance.

#### **INTERPRETATION OF THIS ORDER**

14. A respondent who is an individual who is ordered not to do something must not do it themselves or in any other way. They must not do it through others acting on their behalf or on their instructions or with their encouragement.
15. A respondent who is not an individual who is ordered not to do something must not do it itself or by its directors, officers, partners, employees or agents or in any other way.

#### **PARTIES OTHER THAN THE APPLICANT AND RESPONDENT**

16. (1) Consideration should also be given to amalgamating paragraphs 9 and 10 of the draft Order, so as to require only one disclosure exercise, verified by Affidavit.
- (2) The proviso requiring advance notice should only be included where really necessary. It is not to be included otherwise.
- (3) The proviso requiring advance notice should only be included where really necessary. It is not to be included otherwise.

#### **EFFECT OF THIS ORDER**

17. It is a contempt of Court for any person notified of this order knowingly to assist in or permit a breach of this order. Any person doing so may be imprisoned, fined or have their assets seized.

#### **SET OFF BY BANKS**

18. This freezing order does not prevent any bank from exercising any right of set off it may have in respect of any facility which it gave to the respondent before it was notified of this order.

#### **WITHDRAWALS BY THE RESPONDENT**

19. No bank need enquire as to the application or proposed application of any money withdrawn by the respondent if the withdrawal appears to be permitted by this order.

[For worldwide freezing order]

#### **PERSONS OUTSIDE [            ]**

20. (1) Except as provided in paragraph (2) below, the terms of this order do not affect or concern anyone outside the jurisdiction of this court.
- (2) The terms of this order will affect the following persons in a country or state outside the jurisdiction of this court –



## **SCHEDULE B – UNDERTAKINGS GIVEN TO THE COURT BY THE APPLICANT**

- (1) If the court later finds that this order has caused loss to the respondent and decides that the respondent should be compensated for that loss, the applicant will comply with any order the court may make.
- (2) As soon as practicable the applicant will issue and serve a claim form [in the form of the draft produced to the court] [claiming the appropriate relief].
- (3) The applicant will [swear and file an affidavit] [cause an affidavit to be sworn and filed] [substantially in the terms of the draft affidavit produced to the court] [confirming the substance of what was said to the court by the applicant’s legal practitioner].
- (4) The applicant will serve upon the respondent [together with this order] [as soon as practicable]—
  - i. copies of the affidavits and exhibits containing the evidence relied upon by the applicant, and any other documents provided to the court on the making of the application;
  - ii. the claim form; and
  - iii. a notice of application for continuation of the order.
- (5) Anyone notified of this order will be given a copy of it by the applicant’s legal practitioner.]
- (6) The applicant will pay the reasonable costs of anyone other than the respondent which 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 and if the court later finds that this order has caused such person loss, and decides that such person should be compensated for that loss, the applicant will comply with any order the court may make.
- (7) If this order ceases to have effect (for example, if the respondent provides security or the applicant does not provide a bank guarantee as provided for above) the applicant will immediately take all reasonable steps to inform in writing anyone to whom they have given notice of this order, or who they have reasonable grounds for supposing may act upon this order, that it has ceased to have effect.
- (8) The applicant will not without the 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 in any other jurisdiction, other than this claim.]
- (9) The applicant will not without the permission of the court seek to enforce this order in any country outside [ ] [or seek an order of a similar nature including orders conferring a charge or other security against the respondent or the respondent’s assets.]<sup>6</sup>

### **NAME AND ADDRESS OF APPLICANT’S LEGAL PRACTITIONER**

The applicant’s legal practitioner is –

[Name, address, reference, telephone numbers, both in and out of office hours and e-mail]

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<sup>6</sup> Unless the court directs otherwise this paragraph should be included in Orders for worldwide freezing orders.

**APPENDIX III**

**SEARCH ORDER**

**IN THE EASTERN CARIBBEAN SUPREME COURT**

**[NAME OF MEMBER STATE OR TERRITORY]**

**IN THE HIGH COURT OF JUSTICE**

**CLAIM No.**

**BETWEEN**

**Claimant(s)/Applicant(s)**

**and**

**Defendant(s)/Respondent(s)**

**Before** [ ]

**Date** [ ]

**Entered** [ ]

[Name, address and reference of respondent]

**PENAL NOTICE**

**[NOTICE: IF YOU FAIL TO COMPLY WITH THE TERMS OF THIS ORDER, PROCEEDINGS MAY BE COMMENCED AGAINST YOU FOR CONTEMPT OF COURT AND YOU MAY BE LIABLE TO BE IMPRISONED.]**

**[NOTICE: IF YOU FAIL TO COMPLY WITH THE TERMS OF THIS ORDER, PROCEEDINGS MAY BE COMMENCED AGAINST YOU FOR CONTEMPT OF COURT]**

Any other person who knows of this order and does anything which helps or permits the respondent to breach the terms of this order may also be held to be in contempt of Court and may be imprisoned.

**UPON HEARING [ ]**

## AND UPON READING [ ]

### THIS ORDER

1. This is a Search Order made against [ ] ('the respondent') on [ ] by The Hon. Justice [ ] on the application of [ ] ('the applicant'). The Judge read the Affidavits listed in Schedule F and accepted the undertakings set out in Schedules C, D and E at the end of this order.
2. This order was made at a hearing without notice to the respondent. The respondent has a right to apply to the court to vary or discharge the order.
3. There will be a further hearing in respect of this order on [ ] ('the return date').
4. If there is more than one respondent –
  - (a) unless otherwise stated, references in this order to 'the respondent' mean both or all of them; and
  - (b) this order is effective against any respondent on whom it is served or who is given notice of it.
5. This order must be complied with –
  - (a) by the respondent;
  - (b) where the respondent is not an individual, by any director, officer, partner or responsible person of the respondent; and
  - (c) if the respondent is an individual, by any responsible person.

### THE SEARCH

6. The respondent must permit the following persons —
  - (a) [ ] ('the Supervising Legal Practitioner');
  - (b) [ ], a legal practitioner in the firm of [ ], the applicant's legal practitioner; and
  - (c) up to [ ] other persons<sup>9</sup>being [their identity or capacity] accompanying them, (together 'the search party'),

to enter the premises mentioned in Schedule A to this order and any other premises of the respondent disclosed below and any vehicles under the respondent's control on or around the premises ('the premises') so that they can search for, inspect, photograph or photocopy, and deliver into the safekeeping of the applicant's legal practitioner all the documents, articles and any other material listed in Schedule B to this order ('the listed items').

7. Having permitted the search party to enter the premises, the respondent must allow the search party to remain on the premises until the search is complete. In the event that it becomes necessary for any of those persons to leave the premises before the search is

complete, the respondent must allow them to re-enter the premises immediately upon their seeking re-entry on the same or the following day in order to complete the search.

## **RESTRICTIONS ON SEARCH**

8. This order may not be carried out at the same time as a police search warrant.
9. Before the respondent allows anybody onto the premises to carry out this order, they are entitled to have the supervising legal practitioner explain to them what it means in plain language.
10. The respondent is entitled to seek legal advice and to ask the court to vary or discharge this order. Whilst doing so, they may ask the supervising legal practitioner to delay starting the search for up to 2 hours on such other longer period as the supervising legal practitioner may permit. However, the respondent must –
  - (a) comply with the terms of paragraph 27 below;
  - (b) not disturb or remove any listed items; and
  - (c) permit the supervising legal practitioner to enter, but not start to search.
11. (1) Before permitting entry to the premises by any person other than the supervising legal practitioner, the respondent may, for a short time (not to exceed two hours, unless the supervising legal practitioner agrees to a longer period) –
  - (a) gather together any documents they believe may be incriminating or privileged; and
  - (b) hand them to the supervising legal practitioner for them to assess whether they are incriminating or privileged as claimed.
  - (2) If the supervising legal practitioner decides that the respondent is entitled to withhold production of any of the documents on the ground that they are privileged or incriminating, they will exclude them from the search, record them in a list for inclusion in their report and return them to the respondent.
  - (3) If the supervising legal practitioner believes that the respondent may be entitled to withhold production of the whole or any part of a document on the ground that it or part of it may be privileged or incriminating, or if the respondent claims to be entitled to withhold production on those grounds, the supervising legal practitioner will exclude it from the search and retain it in their possession pending further order of the court.
12. If the respondent wishes to take legal advice and gather documents as permitted, they must first inform the supervising legal practitioner and keep them informed of the steps being taken.

13. No item may be removed from the premises until a list of the items to be removed has been prepared, and a copy of the list has been supplied to the respondent, and they have been given a reasonable opportunity to check the list.
14. The premises must not be searched, and items must not be removed from them, except in the presence of the respondent.
15. If the supervising legal practitioner is satisfied that full compliance with paragraphs 13 or 14 is not practicable, they may permit the search to proceed and items to be removed without fully complying with them.

### **DELIVERY UP OF ARTICLES OR DOCUMENTS**

16. The respondent must immediately hand over to the applicant's legal practitioner any of the listed items, which are in their possession or under their control, save for any electronic device or hard disk integral to any electronic device. Any items the subject of a dispute as to whether they are listed items must immediately be handed over to the supervising legal practitioner for safe keeping pending resolution of the dispute or further order of the court.
17. The respondent must immediately give the search party effective access to the electronic devices on the premises, with all necessary passwords, biometric passcodes and encryption keys to enable the electronic devices to be searched. If they contain any listed items, the respondent must cause the listed items to be displayed so that they can be retrieved and copied. The respondent must provide the applicant's legal practitioner with copies of all listed items contained in the electronic devices. All reasonable steps shall be taken by the applicant and the applicant's legal practitioner to ensure that no damage is done to any electronic device or data. The applicant and their representatives may not themselves search the respondent's electronic devices unless they have sufficient expertise to do so without damaging the respondent's electronic devices.

### **PROVISION OF INFORMATION**

18. The respondent must immediately inform the applicant's legal practitioner (in the presence of the supervising legal practitioner) so far as they are aware –
  - (a) where all the listed items are;
  - (b) the name and address of everyone who has supplied them, or offered to supply them, with listed items;
  - (c) the name and address of everyone to whom they have supplied, or offered to supply, listed items; and
  - (d) full details of the dates and quantities of every such supply and offer.
19. Within [ ] working days after being served with this order the respondent must swear and serve an affidavit setting out the above information.

## **PROHIBITED ACTS**

20. Except for the purpose of obtaining legal advice, the respondent must not directly or indirectly inform anyone of these proceedings or of the contents of this order, or warn anyone that proceedings have been or may be brought against them by the applicant until 4:30 p.m. on the return date or further order of the court.
21. Until 4:30 p.m. on the return date the respondent must not destroy, tamper with, cancel or part with possession, power, custody or control of the listed items otherwise than in accordance with the terms of this order.
22.  
[Insert any negative injunctions.]
23.  
[Insert any further order]

## **COSTS**

24. The costs of this application are reserved to the judge hearing the application on the return date.

## **RESTRICTIONS ON SERVICE**

25. This order may only be served between [ ] a.m./p.m. and [ ] a.m./p.m. [and on a weekday], excluding bank and public holidays.
26. This order must be served by the supervising legal practitioner, and paragraph 6 of the order must be carried out in their presence and under their supervision.

## **VARIATION AND DISCHARGE OF THIS ORDER**

27. Anyone served with or notified of this order may apply to the court to vary or discharge this order (or so much of it as affects that person), but they must first inform the applicant's legal practitioner. If any evidence is to be relied upon in support of the application, the substance of it must be communicated in writing to the applicant's legal practitioner in advance.

## **INTERPRETATION OF THIS ORDER**

28. Any requirement that something shall be done to or in the presence of the respondent means –  
(a) if there is more than one respondent, to or in the presence of any one of them; and

(b) if a respondent is not an individual, to or in the presence of a director, officer, partner or responsible person.

29. A respondent who is an individual who is ordered not to do something must not do it themselves or in any other way. They must not do it through others acting on their behalf or on their instructions or with their encouragement.

30. A respondent who is not an individual who is ordered not to do something must not do it itself or by its directors, officers, partners, employees or agents or in any other way.

## **COMMUNICATIONS WITH THE COURT**

All communications to the court about this order should be sent to [insert email address of the relevant court office] quoting the claim number.

The court office is situated at [ ]. The offices are open between [ ] a.m. and [ ] p.m. Monday to Friday, excluding bank or public holidays. The telephone number is [ ].

**BY THE COURT**

.....

**REGISTRAR**

## **SCHEDULE A**

**THE PREMISES**

## **SCHEDULE B**

**THE LISTED ITEMS**

## **SCHEDULE C**

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

- (1) If the court later finds that this order or carrying it out has caused loss to the respondent, and decides that the respondent should be compensated for that loss, the applicant will comply with any order the court may make. Further if the carrying out of this order has been in breach of the terms of this order or otherwise in a manner inconsistent with the

applicant's legal practitioner's duties as officers of the court, the applicant will comply with any order for damages the court may make.

- (2) As soon as practicable the applicant will issue a claim form [in the form of the draft produced to the court] [claiming the appropriate relief].
- (3) The applicant will [swear and file an affidavit] [cause an affidavit to be sworn and filed] [substantially in the terms of the draft affidavit produced to the court] [confirming the substance of what was said to the court by the applicant's legal practitioner].
- (4) The applicant will not, without the permission of the court, use any information or documents obtained as a result of carrying out this order nor inform anyone else of these proceedings except for the purposes of these proceedings (including adding further respondents) or commencing civil proceedings in relation to the same or related subject matter to these proceedings until after the return date.
- (5) [The applicant will maintain pending further order the sum of \$ [ ] in an account controlled by the applicant's legal practitioner.]
- (6) [The applicant will insure the items removed from the premises.]

#### **SCHEDULE D**

#### **UNDERTAKINGS GIVEN BY THE APPLICANT'S LEGAL PRACTITIONER**

- (1) The applicant's legal practitioner will provide to the supervising legal practitioner for service on the respondent –
  - (a) a copy of this order;
  - (b) the claim form (with defendant's response pack) or, if not issued, the draft produced to the court;
  - (c) an application for hearing on the return date;
  - (d) copies of the affidavits and exhibits capable of being copied containing the evidence relied upon by the applicant;
  - (e) a note of any allegation of fact made orally to the court where such allegation is not contained in the affidavits or draft affidavits read by the judge; and
  - (f) a copy of the skeleton argument produced to the court by the applicant/applicant's legal practitioner.
- (2) The applicant's legal practitioner will answer at once to the best of their ability any question as to whether a particular item is a listed item.
- (3) Subject as provided below the applicant's legal practitioner will retain in their own safe keeping all items obtained as a result of this order until the court directs otherwise.

- (4) The applicant’s legal practitioner will return the originals of all documents obtained as a result of this order (except original documents which belong to the applicant) as soon as possible and in any event within [two] working days of their removal.

## **SCHEDULE E**

### **UNDERTAKINGS GIVEN BY THE SUPERVISING LEGAL PRACTITIONER**

- (1) The supervising legal practitioner will use their best endeavours to serve this order upon the respondent and at the same time to serve upon the respondent the other documents required to be served and referred to in paragraph (1) of Schedule D.
- (2) The supervising legal practitioner will offer to explain to the person served with the order its meaning and effect fairly and in everyday language, and to inform them of their right to take legal advice (including an explanation that the respondent may be entitled to avail themselves of the privilege against self-incrimination and legal professional privilege) and to apply to vary or discharge this order as mentioned in paragraph 27 above.
- (3) The supervising legal practitioner will retain in the safe keeping of their firm all items retained by them as a result of this order until the court directs otherwise.
- (4) Unless and until the court otherwise orders, or unless otherwise necessary to comply with any duty to the court pursuant to this order, the supervising legal practitioner shall not disclose to any person any information relating to those items, and shall keep the existence of such items confidential.
- (5) Within [72] hours of completion of the search the supervising legal practitioner will make and provide to the applicant's legal practitioner, the respondent or their legal practitioner and to the judge who made this order (for the purposes of the court file) a written report on the carrying out of the order.

## **SCHEDULE F**

### **AFFIDAVITS**

The applicant relied on the following affidavits —

[name] [number of affidavit] [date sworn] [filed on behalf of]

### **NAME AND ADDRESS OF APPLICANT’S LEGAL PRACTITIONER**

The applicant’s legal practitioner is –

[Name, address, reference, fax and telephone numbers both in and out of office hours.]