

Beyond the Freezing Order: Post-Injunction Enforcement in Hong Kong

Author: Edward LIU Lori Ng Jenny Wong, Winnie Lui

Introduction

Obtaining an injunction is often treated as the decisive moment in urgent commercial dispute resolution. In practice, however, the grant of an injunction is frequently only the beginning. A freezing order (which is still known as a “Mareva injunction” in Hong Kong), a proprietary injunction or a disclosure order may appear powerful on paper, but its real value depends on whether it can be enforced effectively against a respondent who is evasive, obstructive or determined to move assets beyond reach. In Hong Kong dispute resolution, that problem is especially acute in fraud, asset tracing and cross-border commercial disputes, where dissipation risk is immediate and delay may substantially reduce the claimant’s prospects of recovery.

The effectiveness of an injunction depends not only on whether it is granted, but on whether it can be enforced. In Hong Kong, post-injunction enforcement commonly involves a combination of measures falling into four broad categories: information-gathering measures, coercive sanctions, procedural restrictions, and asset-control mechanisms. This article focuses on some of the principal tools used in practice, including: (i) disclosure orders, (ii) third-party disclosure orders, (iii) committal proceedings, (iv) Hadkinson orders, (v) unless orders and (vi) receivership. These remedies demonstrate that post-injunction enforcement is practical, flexible and cumulative. These remedies are not exhaustive, nor do they operate in isolation. The court may combine them where necessary to ensure that its orders have real operative effect.

Disclosure Orders: Making the Injunction Practically Effective Introduction

The first and, in many cases, the most important post-injunction tool is the disclosure order. A freezing order restrains dealings with assets, but it does not itself reveal where those assets are, how they have been moved, or whether they remain traceable. Without disclosure, a freezing order may be difficult to police and of limited practical utility. For that reason, under standard Hong Kong practice, a Mareva injunction is commonly accompanied by an ancillary disclosure obligation (see standard form freezing order under Practice Direction 11.2). Historically, the courts often treated those as analytically distinct remedies contained in the same order.

The distinction between a conventional Mareva order and a disclosure order becomes especially important once one considers the difference between personal claims and proprietary claims. If the claimant’s case is based only on personal rights, such as a claim for damages for breach of contract or misrepresentation, the practical purpose of disclosure is to identify assets against which a future judgment may be enforced. If, however, the claimant asserts beneficial ownership of specific assets or funds, the inquiry becomes more exacting. In that situation, disclosure is not simply about showing what the respondent owns; it is directed to tracing the route by which the disputed asset has moved, identifying substitute assets, and determining whether a proprietary remedy remains viable. The decisive question is often whether traceability still exists. If the funds can still be followed into substituted property, such as shares or real estate, a proprietary strategy may remain available. If they have merely been spent and disappeared, then only personal relief and freezing protection may remain.

The significance of ancillary disclosure is strongly borne out by the authorities. In *Kot See For v Chan Leong Hang* [2021] HKCFI 498, the Court dealt with a disclosure order requiring the defendant to identify his dealings with the sums in question, the whereabouts of their traceable proceeds, and his assets above a specified threshold, all to be confirmed by affidavit. The case illustrates that disclosure is not peripheral to the freezing order; it is often the practical mechanism by which the claimant is able to monitor compliance and pursue further preservation steps. That point was reinforced in the later decision in *Kot See For v Chan Leong Hang* [2021] HKCFI 1305, where the Court

observed that ancillary disclosure orders are commonly made at the same time as, or after, a Mareva or proprietary injunction precisely because, without disclosure, the plaintiff's efforts to trace assets and enforce the freezing aspect of the order may be frustrated.

The practical lesson is clear. At the drafting stage, the disclosure obligation must be framed with precision. It should define what information is required, by when, in what form, and whether verification by affidavit is necessary. If those matters are left vague, later enforcement becomes materially more difficult.

Third-Party Disclosure Orders: Following the Money Beyond the Respondent

If disclosure by the respondent is the first layer of post-injunction enforcement, third-party disclosure is often the second. In commercial fraud litigation, the respondent's own disclosure may be partial, misleading or simply false. Relevant information may instead be held by banks, nominees, counterparties, intermediaries or other innocent third parties who have become mixed up in the movement of funds. It is for that reason that third-party disclosure frequently becomes indispensable in tracing exercises.

In Hong Kong, third-party disclosure may be sought on a number of bases, depending on the nature of the information sought and the role of the third party. These include the statutory routes under section 42 of the High Court Ordinance (Cap. 4) and, in the case of bank records, section 21 of the Evidence Ordinance (Cap. 8), as well as the common law Norwich Pharmacal jurisdiction. The conceptual bases differ, but the practical aim is much the same. The applicant seeks information that will identify the path of the funds and the persons through whom they have passed. In practical terms, the material sought may include bank statements, balances, cheque records, transaction instructions, communications, and evidence of nominee arrangements. These are not merely evidential details. In many cases, they are what enable the claimant to decide whether to seek further freezing relief, proprietary relief, joinder of additional defendants, or mirror orders in another jurisdiction.

That said, the available routes are not interchangeable in scope. In *Hamish Scott Murphy v Yoko Ishibashi* [2026] HKCFI 2300, the Court held that section 21 of the Evidence Ordinance could not be used in a non-proprietary Mareva case to obtain broad bank disclosure from a third party merely to police the injunction, absent evidence of abuse or non-compliance. In this case, only a narrow order for production of the balance in the frozen account as at the date of the injunction was permitted for the limited purpose of assessing whether the proceedings were worth continuing.

At the same time, third-party disclosure is not a routine administrative step. The court will pay close attention to privacy, confidentiality and proportionality. The applicant must be able to show that the information sought is properly directed to an identifiable issue, rather than constituting an impermissible fishing expedition. It is also well established that third parties such as banks are entitled to a reasonable time to comply and that the applicant is ordinarily expected to bear the costs of compliance in the first instance. A further practical consideration lies in the implied undertaking restricting collateral use of disclosed documents. In major fraud matters with an international dimension, the applicant may wish to deploy the material before foreign courts or enforcement agencies. If that possibility exists, it should be confronted expressly at the application stage rather than left to later argument.

Committal Proceedings: Coercion at a High Price

Committal proceedings remain the classic coercive response to breach of an injunction or associated disclosure order. Their force lies in the fact that they expose the respondent to penal consequences, including imprisonment. Few enforcement tools carry the same immediate gravity. Yet committal is also among the most exacting and difficult of the available remedies, and in practice it is not always the most effective first

response from a commercial perspective.

The threshold for committal is high. The applicant must establish that the respondent knew of the order, had the capacity to comply with it, and intentionally failed to do so. The standard of proof is the criminal standard. That position is confirmed by *Kot See For* [2021] HKCFI 498, where the Court held that an allegation of civil contempt must be proved strictly and beyond reasonable doubt. The case is also important because it shows the court's readiness, where the evidence justifies it, to proceed to committal and to issue a warrant. The later penalty decision in *Kot See For* [2021] HKCFI 1305 further underscores the seriousness with which the courts approach this jurisdiction. There the Court stated that, in the case of breach of an injunction order, the starting and primary penalty is imprisonment, ordinarily measured in months, and that a fine is inappropriate where the contempt has not been purged.

Those authorities make clear that non-compliance with disclosure obligations is not treated as a minor procedural failing. It is regarded as conduct which frustrates the court's ability to police its own orders and therefore undermines the administration of justice. Even so, committal has obvious drawbacks. It is evidentially demanding, procedurally burdensome, and often expensive. It may require leave, careful service formalities, and a contested hearing with oral evidence. If the respondent is outside the jurisdiction, enforcement becomes even more problematic. Moreover, committal does not itself solve the practical problem of locating or preserving assets. It is a coercive weapon, not an asset-control mechanism. For that reason, while it remains essential in the enforcement armoury, it is often most effective when used in conjunction with other measures rather than as a standalone strategy.

Hadkinson Orders: Restricting the Contemnor from the Court's Process

A Hadkinson order offers a different form of pressure. Instead of punishing the respondent directly, it restricts the respondent's ability to seek relief from the court while remaining in continuing contempt. In practical terms, the court may refuse to hear an application by the non-compliant party, such as an application to discharge the injunction, until the contempt has been purged or the underlying order complied with. The power is not penal in the criminal sense. It is an exercise of case management and judicial discretion designed to protect the integrity of the court's process.

The governing principles were summarised in *CWG v MH* [2014] 4 HKLRD 141, which identified a series of questions relevant to whether such an order should be made. These include whether the respondent is in contempt, whether the contempt impedes the course of justice, whether there is some other effective means of securing compliance, whether the contempt is wilful and continuing, and whether the conditions proposed are proportionate. More recent case law has moved away from treating the earlier formulation as rigidly cumulative, thereby leaving the court with a more flexible and discretionary approach. That development is consistent with the nature of the jurisdiction. A Hadkinson order is intensely fact-sensitive. Its legitimacy depends on the connection between the contempt and the fair administration of justice in the proceedings.

Its practical attraction is obvious. Compared with committal, a Hadkinson order is procedurally simpler and avoids the full penal framework. It directly affects what many respondents value most: their ability to be heard. The authorities illustrate that utility in the commercial sphere. In *Hwang Joon Sang & Anor v Golden Electronics Inc. & Ors* [2021] HKCFI 1973, the court did not hear an application to discharge injunction and disclosure orders until the disclosure obligations had been complied with. More recent authority also shows the continued relevance of the jurisdiction in the arbitration context, such as *Ruschemalliance LLC v Linde GmbH* [2026] HKCA 763. Whether in a fraud case or a broader commercial dispute, the message is the same: a party who remains in wilful and continuing contempt may find that the court is unwilling to entertain further applications at that party's behest.

Unless Orders: A Commercially Potent Alternative

If Hadkinson orders operate by withholding access to the court, unless orders exert pressure by attaching immediate procedural consequences to non-compliance. They require the respondent to comply with a specified obligation by a specified time, failing which a stated sanction follows. In post-injunction litigation, the sanction may include striking out a defence, debarring a party from advancing substantive arguments, or dismissing an application. Their particular strength lies in their clarity. The respondent is presented with a binary choice: comply and retain the right to litigate, or refuse and lose it.

That is why unless orders have become especially significant in modern practice. They often succeed where committal is too slow, too cumbersome or too uncertain to provide effective commercial leverage. They are conceptually distinct from Hadkinson relief. A Hadkinson order restricts audience while contempt continues; an unless order gives the defaulting party a final opportunity to comply, backed by an expressly defined procedural sanction.

Unless orders have recently been applied with increasing frequency in injunction contexts, particularly where respondents have failed to repatriate assets, provide proper disclosure, or comply with related costs orders. For example, in *Beijing Songxianghu v Kitty Kam* [2025] HKCA 1134, the Court of Appeal is noted as having upheld an order that the defendant's defence would be struck out unless Singapore assets were transferred back to Hong Kong. In *China Evergrande Group (in liquidation) v Hui Ka Yan* [2025] 3 HKLRD 66, repeated failures to comply with costs and disclosure obligations were said to have led to unless relief. Whatever the factual differences between those cases, they point in the same direction. The courts are willing, where necessary, to use their case management powers to force a commercially meaningful decision on the non-compliant party.

That said, unless orders are not automatic. Their legitimacy depends on proportionality and fairness. The court will consider the gravity of the breach, the seriousness of the proposed consequence, and whether less severe measures would suffice. Nor is breach of an unless order always the end of the matter. A party who has failed to comply may still apply for relief from sanctions, but must ordinarily provide a good explanation for the default and satisfy the court that it is just in all the circumstances to relieve against the consequence that has taken effect. In deciding whether to grant such relief, the court will typically pay close attention to the reason for the breach, whether the default was intentional or persistent, the promptness of the application, the degree of prejudice caused, and the need to uphold procedural discipline and the efficient administration of justice. Where a respondent is deliberately obstructive and is attempting to enjoy the benefits of litigation while ignoring its obligations, the unless order may be the most effective practical response available.

Receivership: From Restraint to Control

Where a freezing order is insufficient because the respondent cannot be trusted to comply, the court may move beyond restraint and appoint a receiver. This is among the most powerful tools available after an injunction has been granted. Rather than merely directing the respondent not to deal with the asset, a receivership order places the asset, income stream or property interest under the control of an independent officer of the court. The purpose may be preservation, management, collection of income, prevention of further dissipation, or facilitation of enforcement.

The importance of receivership in the Hong Kong enforcement landscape is well illustrated by *Barclay Pharmaceuticals Ltd v Antoine Mekni and others* [2018] HKCFI 436. In that case, an existing Mareva injunction had already been obtained, but the plaintiff sought a receivership order to mirror and complement an English receivership order. The court accepted that there was strong prima facie evidence that the defendants had been complicit in breaches of the injunctive orders and that the assets were being dissipated or were at serious risk of dissipation. The application was treated as urgent, and the court was prepared to move from negative restraint to positive control. The decision demonstrates that receivership is not merely a remedy of last resort. In an appropriate case, it may be the only realistic means of ensuring that

assets remain intact.

The jurisdiction is, however, exceptional. In *Macau First Universal International Ltd v Ding Xiaohong* (CACV 193/2011), the Court of Appeal emphasised that the appointment of receivers is a remedy of last resort, justified only where, notwithstanding the protection already afforded by existing undertakings or other interim measures, there remains a sufficient danger of loss or dissipation such that lesser relief is inadequate. That insistence on necessity reflects the intrusive character of the remedy. A receivership order does not merely restrain conduct; it displaces control.

At the same time, modern authority shows that the threshold can be met where a freezing regime proves incapable of effective supervision. In *China Evergrande Group (in liquidation) v Hui Ka Yan* [2025] HKCFI 4327, the Court of First Instance held that the defendant's total failure to comply with an ancillary disclosure order meant that the Mareva injunction could not be effectively policed. In those circumstances, and treating receivership as a last resort, the court appointed receivers on the basis that this was necessary to preserve the status quo and make the injunction effective. The case illustrates the practical logic of the remedy: where passive restraint depends on disclosure and cooperation, and those conditions are absent, active control may become the only realistic means of preserving assets.

Its practical advantages are obvious. A receiver can do what an injunction alone cannot. The receiver can take possession, manage the asset, collect income, and reduce the opportunity for covert diversion. This is particularly important where the asset is an operating business, a shareholding, an income-producing property, or some other form of value that requires active supervision. Of course, the remedy is intrusive and costly, and it must be justified by the inadequacy of lesser measures. But once the court is satisfied that passive restraint will not work, receivership offers a direct means of preserving value and safeguarding enforcement.

Layered Enforcement and Cross-Border Reality

One of the most important themes is that post-injunction enforcement is rarely confined to one remedy. The court is willing to layer remedies where necessary, and modern practice reflects that reality. The District Court's decision in *Stephen Anthony Soyka v Hang Xu Trading Co Ltd* [2023] HKDC 957 is a good example. There, even though a garnishee order nisi had already been obtained, the court granted a post-judgment Mareva injunction because there remained a real risk of dissipation and no assurance that the garnishee process would yield effective recovery in time. The decision is significant because it rejects any rigid distinction between orthodox execution and freezing relief. If the commercial facts show that the judgment remains at risk, the court may combine the available mechanisms.

The same pragmatic approach appears in *La Dolce Vita Fine Dining Group Holdings Ltd v Zhang Lan and another* [2020] HKCFI 622 and *Galsworthy Ltd v Liu Por Appointed To Represent The Estate Of Liu Cheng Chan, Deceased and others* [2020] HKCFI 334. In *La Dolce Vita*, the refusal to comply with disclosure orders was treated as serious because the information was uniquely within the respondent's knowledge and necessary for policing the injunction. In *Galsworthy*, the court recognised the practical limits of relying on contempt alone, observing that contempt might be "cold comfort" if the proceeds had disappeared in the meantime. These cases demonstrate, in different ways, the cross-border dimension of enforcement. The court emphasised that it must be possible to police the injunction, and that may require the order to be registrable or enforceable in a foreign jurisdiction, together with permission from the Hong Kong court to take those steps abroad.

That insight is of real importance in contemporary Hong Kong practice. In many commercial cases, the assets, intermediaries and substitute proceeds are not confined to Hong Kong. A freezing order drafted solely with domestic enforcement in mind may therefore be inadequate. If foreign registration, mirror relief, or overseas use of disclosed material may be needed, those possibilities should be anticipated from the outset. Otherwise, by the time a breach

occurs, the claimant may find that it has an order but no practical way to make it effective across borders.

Conclusion

Hong Kong possesses a sophisticated and flexible post-injunction enforcement regime. Disclosure orders make injunctions workable in practice by revealing the asset position. Third-party disclosure extends that process beyond the respondent and enables the tracing of fund flows through banks and intermediaries. Committal proceedings remain a powerful response to deliberate breach, but they are exacting and often slow. Hadkinson orders and unless orders may therefore provide more effective leverage where the respondent wishes to continue litigating while remaining in contempt. Receivership, in turn, offers the court a means of moving beyond passive restraint and into active control where the circumstances demand it. None of these remedies should be viewed in isolation. The modern approach is cumulative, strategic and highly fact-sensitive.

The practical lesson is that an injunction should always be drafted and pursued with enforcement in mind. The question is not merely whether the court can be persuaded to grant interim relief. It is whether, if the respondent resists the next day, the claimant will have the tools to compel disclosure, block procedural manoeuvring, preserve assets and, if necessary, wrest control away from the wrongdoer. That is what gives the injunction real force. In Hong Kong dispute resolution, the value of an injunction lies not merely in obtaining it, but in ensuring that it can be effectively enforced.



刘洋 (Edward Liu)

合伙人

edwardliu@haiwen-law.com



扫描二维码
查阅律师简历



吴华佳 (Lori Ng)

资深顾问

loring@haiwen-law.com



扫描二维码
查阅律师简历



黄祎祺 (Jenny Wong)

高级律师

jennywong@haiwen-law.com



雷卫颐 (Winnie Lui)

winnielui@haiwen-law.com

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