

Injunction army

Linklaters' TOM LIDSTROM talks tactics in storming the global injunctions supermarket



WHEN I TELL PEOPLE THAT I HELP lead a global injunctions task force, they sometimes see some glamor in it. It's not, of course, about lawyers rappelling into the courtroom in ski masks. But, for litigators, injunctions – court orders compelling or restraining conduct – are about executing tactical responses to a clear and present danger. They're usually obtained under tremendous pressure, so timing and targeting are everything. They can crack open a case and achieve in days what would otherwise take years. They can also be vital defensive measures for protecting the status quo as part of wider legal maneuvers.

My team seeks or resists injunctions around the world. We're deployed when time is short, often in complex cross-border conflicts, frequently to target assets at the heart of a dispute so that litigants can obtain control over them, even if it's temporary.

Seeking injunctions requires careful choices. The first is whether to approach a state court or an arbitration tribunal. Parties subject to arbitration agreements can use emergency arbitrators whose sole purpose is to grant injunctive relief. But they will lack jurisdiction where third parties are involved. They tend to move in days rather than hours. And they usually insist on giving notice for

hearings, which may be unhelpful where assets in question are mobile or easily transferred (like cash) and the element of surprise is essential. So even in support of an existing arbitration, state courts may be the best option. But which courts and where?

Various courts exercise flexible jurisdictions for freezing assets around the world, providing a global supermarket for injunctive relief. Judges in London, New York and Hong Kong can order a person or company within their jurisdiction to freeze assets anywhere internationally. "Worldwide" freezing orders will frequently involve compulsory disclosure of assets and other helpful relief, like seizure or delivery of documents. So creativity in what you ask a court to order is key.

Dutch and American courts are known for granting quick and creative injunctive relief. Most common law jurisdictions allow injunctions to be promptly available and tailored to each case – especially where there's a whiff of fraud. Hong Kong judges will grant injunctions for arbitrations even if they're not seated in Hong Kong. Judges in some locations will even supplement injunctions by seizing passports to prevent travel and promote compliance. One English judge ordered shredded documents to be seized and reconstituted at the shredding party's expense. In cross-border disputes the savvy litigant may need multiple injunctions from different courts in different countries.

But injunctions can have very high stakes, redefining commercial relations and reputations for years to come. In most jurisdictions, injunction applications are heard in public – with allegations of unlawful or unethical behavior gaining widespread press coverage, especially if assets are frozen or transactions are blocked. Reputations can be destroyed overnight – as can relations between business partners or associates. Before pursuing any injunction, a party should weigh the potential impact on commercial goodwill, reputational profile and future business flows. Injunctions also incur monetary costs – legal fees are just part of the picture. Most courts insist on a bond, in the form of bank guarantees, to compensate an innocent defendant for the consequences of an unjustified injunction. Applicants must also be prepared to bare all and make full disclosure of sensitive commercial information. We have to look clients in the eye and ask them: are you willing and able to pay the price?

Tom Lidstrom spoke to **CHARLIE POTTER**, a Partner, and **HELEN SMITH**, a Director, in Brunswick's London office.

TOM LIDSTROM

A Disputes Resolution Partner at Linklaters, London, Tom Lidstrom is a senior member of the firm's Injunctions Task Force. From 2008 to 2012, he headed Linklaters' Asian arbitration practice in Hong Kong.

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