

## CHAPTER 38

**SAFEGUARDING TRUST PROPERTY FROM  
BREACH OF TRUST****3. STOP NOTICES****Trusts created to facilitate an unlawful and fraudulent ulterior purpose**

- 38-06** NOTE 9. Companies Act 2006, s.126 came into force on October 1, 2009: see Companies Act 2006 (Commencement No 8, Transitional Provisions and Savings) Order 2008 (SI 2008/2860).

**4. INJUNCTIONS****Interim injunctions to preserve trust property**

- 38-09** NOTE 29. FOR THE REFERENCE TO *Civil Procedure* (2007), Vol.1, CPR, Pt 25, especially 25.1.9 *et seq.*, SUBSTITUTE *Civil Procedure* (2011), Vol.1, CPR, Pt 25, especially at 25.1.9 *et seq.*

NOTE 36. FOR THE REFERENCE TO *Civil Procedure* (2007), Vol.1, 25.7.24, SUBSTITUTE *Civil Procedure* (2011), Vol.1, 25.1.25 to 25.1.25.10 and Vol.2, 15-1 *et seq.*

*Irremediable damage need not be threatened*

- 38-11** NOTE 40. ADD: See *Walbrook Trustees (Jersey) Ltd v Fattal* [2009] EWHC 1446 (Ch); [2010] 1 All E.R. (Comm.) 526 (affd [2010] EWCA Civ 408; [2011] 1 All E.R. (Comm) 647), for a case where an interim injunction restraining a disposal of property rights by trustees was granted and discharged before trial.

## SAFEGUARDING TRUST PROPERTY FROM BREACH OF TRUST

**5. COMPULSORY PAYMENT INTO COURT****After order for account and for payment of sums to be found due**

- 38–22** DELETE SECOND AND THIRD SENTENCES OF THE TEXT AND REPLACE WITH: It is, however, clear that such a case falls within Civil Procedure Rules, Part 25, rule 25.7(1)(b) as a case where the claimant has obtained judgment against the defendant for a sum of money to be assessed. As soon as an order has been obtained for both an account and for payment of any amount to be found due on taking it, the court can order the defendant to make an interim payment.<sup>79</sup>

NOTE 81. FOR THE REFERENCE TO *Civil Procedure* (2007), Vol.1, 25.7.24, SUBSTITUTE *Civil Procedure* (2011), Vol.2, 15–118.

NOTE 83. FOR THE REFERENCE TO *Civil Procedure* (2007), Vol.1, 25.7.19, SUBSTITUTE *Civil Procedure* (2011), Vol.2, 15–107.

NOTE 85. FOR THE REFERENCE TO *Civil Procedure* (2007), Vol.1, 25.6.1–8 and 25–7.1–29, SUBSTITUTE *Civil Procedure* (2011), Vol.1, 25.6.1–8 and 25.7.1 and Vol.2, 15–94 *et seq.*

**6. SUMMARY ORDERS FOR ACCOUNTS****Summary judgment**

- 38–24** NOTE 87. Supreme Court Act 1981 is renamed Senior Courts Act 1981 from October 1, 2009, see Constitutional Reform Act 2005, Sch.11, para.1 and Constitutional Reform Act 2005 (Commencement No.11) Order 2009 (SI 2009/1604).

**Procedure**

- 38–27** NOTE 97. DELETE THE FIRST SENTENCE AND REPLACE BY: CPR, Practice Direction, Pt 40A—Accounts & Inquiries, para.1.1.

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<sup>79</sup> *Pfizer Incorporate v Mills* [2010] All E.R. (D) 96 (May).

## SAFEGUARDING TRUST PROPERTY FROM BREACH OF TRUST

**7. APPOINTMENT OF A RECEIVER****Appointment where trust estate unprotected**

**38–30** AFTER THE TEXT TO N.14 ADD:

- (6) where it would have been difficult to release funds from the trust structure, the trustee was out of pocket and without funds with which to conduct necessary but speculative and contentious litigation, and where there was no practical likelihood of another licensed entity being willing to take on the trusteeship.<sup>14a</sup>

**38–31** AT THE END OF THE FINAL SENTENCE ADD: or, following the appointment of such a representative, in relation to the estate of the deceased person.<sup>16a</sup>

**Court reluctant to appoint a receiver**

**38–32** NOTE 17. ADD: For a recent, unsuccessful, application to appoint a receiver over trust assets, see *Walbrook Trustees (Jersey) Ltd v Fattal* [2009] EWHC 1446 (Ch); [2010] 1 All E.R. (Comm) 526 at [70]–[100] (no appeal on this point—see [2010] EWCA Civ 408; [2011] 1 All E.R. (Comm) 647 at [18]).

**Appointment where trustee guilty of misconduct or insolvent**

**38–34** NOTE 26. DELETE THE WORDING AFTER THE LAST SEMI-COLON AND REPLACE BY: *Yunghanns v Candoora No. 19 Pty Ltd (No. 2)* [2000] VSC 300; (2000–01) 3 I.T.E.L.R. 154 at [64]–[95], especially at [84]; *Martyniuk v King* [2000] VSC 319, especially at [14].

**38–35** NOTE 35. *Yunghanns v Candoora No. 19 Pty Ltd (No. 2)* [2000] VSC 300 is also reported at (2000–01) 3 I.T.E.L.R. 154.

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<sup>14a</sup> *Re IMK Family Trust* [2008] JRC 136; (2008–09) 11 I.T.E.L.R. 580 at [100], [102] and [106]; affd [2008] JCA 196; [2008] J.L.R. 430 at [130].

<sup>16a</sup> *Wang Mei Na v Tang Mu Lien* [2011] HKCFI 54.