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Norwich Pharmacal Orders in the British Virgin Islands

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What is a Norwich Pharmacal Order?

Initially established in the English House of Lords decision in *Norwich Pharmacal v Commissioners of Customs and Excise*[1], a *Norwich Pharmacal* Order is a form of injunctive relief which compels an innocent third party who has been caught up in the wrongdoing which is the subject of the claim to provide disclosure. The jurisdiction to grant *Norwich Pharmacal* relief is well established in the BVI and in other common law jurisdictions.

Why may a Norwich Pharmacal Order be useful?

Norwich Pharmacal relief can be sought for various reasons, including:

- where a party knows that there has been wrongdoing but does not know the identity of the wrongdoer. However, they can identify a third party who is innocently involved in the matter and who has (or may have) this information;
- where a party is seeking information from an innocent third party caught up in the wrongdoing to allow it to plead its case against the wrongdoer to trace assets; or
- to bring proprietary claims.

It is established that *Norwich Pharmacal* relief can be made in support of actual or intended foreign proceedings.[2] *Norwich Pharmacal* relief may also be available post-judgment in aid of enforcement (where there is reasonable suspicion for believing that a disclosure defendant is mixed up in the wilful evasion of another's judgment debt) and to assist in securing compliance with freezing orders.[3] It is not a remedy of last resort.[4]

What is the test for obtaining a Norwich Pharmacal Order?

The authorities suggest that the test for granting *Norwich Pharmacal* relief is as follows:

- there must be wrongdoing;
- the respondent to the application must have become mixed up in the wrongdoing and the respondent should be likely to be able to provide the information sought; and
- if the above are satisfied, the Court will then consider the principle of necessity.[5]

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Applications for *Norwich Pharmacal* relief may in appropriate circumstances be made *ex parte* (without notice) to the respondents. This, of course, carries with it the duties that apply to such types of applications, including a duty of full and frank disclosure.

It is important to note that the usual rule is that the Applicant should bear the respondent's costs of complying with the order where this is granted.

Registered Agents as respondents to an application for a Norwich Pharmacal Order in the BVI

Registered Agents ("**RAs**") are commonly respondents to *Norwich Pharmacal* applications in the BVI. A company registered in the BVI must have a registered agent ("**RA**"), unless it is in liquidation.[6] It is the task of RAs generally to hold corporate documents which are not usually otherwise publicly available in the jurisdiction. This includes the register of members, the register of directors and KYC documents which, for example, may be useful to identify a company's ultimate beneficial owner.

If you require further information or advice on obtaining information about companies or the assets they hold in the BVI, please do not hesitate to get in touch with the key contacts.

[1] *Norwich Pharmacal v Commissioners of Customs and Excise [1974] UKHL 6*

[2] K&S *v Z&Z BVIHCM(COM) 16 of 2020*

[3] *UVW v XYZ BVIHC(COM)108 of 2016*

[4] *UVW v XYZ BVIHC(COM) 108 of 2016*

[5] By way of example, see the tests set out in *JSC BTA Bank v Fidelity Corporate Services Limited et al VIHCVAP 34 of 2010* and *A, B, C and D v E AXAHCVAP 1 of 2011*

[6] See section 91 of the BVI Business Companies Act, 2004

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