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Q&A on ancillary relief in the English courts

1) What ancillary relief can the English courts grant against a defendant?

The English courts have the power to grant a wide range of measures in support of domestic and, in some instances, foreign proceedings (including arbitrations). Some of the key measures in its arsenal include:

(i) interim injunctions, including ‘worldwide freezing orders’;

(ii) orders for the appointment of a receiver over a defendant’s assets;

(iii) orders for the detention, custody, preservation, inspection or sale of relevant property;

(iv) search orders, which require a defendant to grant the claimant’s representatives access to its premises for the purpose of preserving evidence; and

(v) orders for the payment of income from relevant property until a claim is decided.

2) What is a ‘worldwide freezing order’?

A worldwide freezing order (‘WFO’) does what it says

on the tin. It ‘freezes’ a defendant’s assets, whether inside or outside of the English jurisdiction, such that the defendant is restrained from removing or dealing with its assets, whether tangible or intangible. Although it does not provide security or priority over assets, a WFO prevents the defendant from disposing of assets to ensure that there will be enough assets for enforcing a judgment down the line.

WFOs are usually sought on an ex parte basis (i.e. without notice to the defendant), in order to prevent the defendant dissipating its assets in anticipation of the order. This means, however, that the applicant has an



onerous duty of 'full and frank disclosure' to the court, such that, as part of the application, it has to draw the court's attention to all material facts, including facts which may weigh against granting the WFO.

Often described as a 'nuclear weapon' in the English court's arsenal, WFOs are most effective when combined with an asset disclosure order, which requires a defendant to, by way of a sworn affidavit, disclose the location, value and details of its assets (usually over a certain value) worldwide and within a limited time period.

WFOs are not, however, only an English phenomenon. They can be obtained in the Cayman Islands, the British Virgin Islands (BVI), Cyprus, Hong Kong, Singapore, Guernsey, Jersey, Bermuda, Abu Dhabi Global Market (ADGM), and the Dubai

International Financial Centre (DIFC), with broadly similar requirements and procedures.

3) What are the consequences of breaching a WFO?

Aside from being very disruptive, the power of WFOs lies in the potential consequences for breaching such orders. In particular, any failure to comply with a WFO, including to accurately and completely disclose the location, value and details of a defendant's assets, may lead to a party being held to be in contempt of court.



WFOs are most effective when combined with an asset disclosure order

If a party is found in contempt, it can be subject to: (i) fines; (ii) de-barring orders, preventing it from defending the substantive claims brought against it; and (iii) imprisonment of the defendant or its directors for up to two years.

4) Are WFOs really 'worldwide' in practice?

If evidence were to come to light that a party has breached the terms of a WFO or an associated asset disclosure order, the order can be enforced against the party in England by commencing contempt proceedings, even if the breach occurred in respect of assets located abroad.

However, WFOs are not automatically enforceable in foreign courts. Rather, claimants must obtain the court's permission to do so and, in any event, it will likely be necessary to get the order formally recognised in the foreign jurisdiction where enforcement is sought. While the respondent and its officers are bound by a WFO, this step is necessary to bind third parties (such as banks, trustees) with a presence only in a foreign jurisdiction.





An applicant should seek appropriate advice from local counsel as early as possible.

Of course, some jurisdictions may not recognise WFOs, and the local courts may decline to enforce them. This is largely a matter of local law or treaties signed between the local jurisdiction and the United Kingdom. An applicant should therefore carefully consider jurisdictions in which enforcement may be necessary, and seek appropriate advice from local counsel as early as possible.

5) Do the English courts have the power to grant ancillary relief against third parties?

In addition to their power to grant interim relief against defendants, the English courts also have a broad discretion to grant interim relief against third parties, including quia timet relief before a cause of action has crystallised.

One of the most common types of relief sought against third parties is a Norwich Pharmacal order ('NPO'), established following the House of Lords' decision in *Norwich Pharmacal v Commissioners of Customs and*

Excise [1974] UKHL 6. An NPO is a form of disclosure order, which can be obtained against a third party which a claimant knows was involved in certain wrongdoing (even if innocently), and in order to obtain information that will enable the claimant to plead its case against the actual wrongdoer or, for instance, trace its assets.

A claimant may also in certain cases consider applying for a Bankers Trust order (named after the seminal Court of Appeal case in *Banker Trust Co v Shapira* [1980] 1WLR 1274 CA). Although such orders are arguably an example of the courts exercising their Norwich Pharmacal jurisdiction, they are usually seen as a different type of relief and are usually sought against banks or other financial entities which may hold or have handled funds or assets which are alleged to have been misappropriated or stolen. If the order is granted, it requires the third party to disclose details of accounts held by the defendant with that third party.

Whilst such orders are not granted lightly, they are a very effective tool in enabling victims of fraud to recover misappropriated assets, particularly as they can be sought on an *ex parte* (i.e. without notice) basis.

