

BVI Norwich Pharmacal relief: an international problem now addressed by statute

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The BVI legislature has just brought into force a statute, the Eastern Caribbean Supreme Court (Virgin Islands) (Amendment) Act 2020, best known for restoring the Black Swan jurisdiction providing a fresh basis for the grant of interim relief in the BVI in support of substantive court proceedings elsewhere.

s3(5) of the Act is less well known and addresses uncertainties relating to the grant of Norwich Pharmacal relief in support of foreign proceedings. As reported in BVI Norwich Pharmacal relief: an international problem resolved this issue arose from two English decisions questioning the availability of Norwich Pharmacal relief for the purposes of overseas proceedings.

The BVI Commercial Court considered the problem in *K&S v Z&Z BVIHCM(COM) 2020/0016*, in which Wallbank J declined to follow the English decisions in a detailed judgment albeit on an ex parte application.

The BVI approach has now been put on a statutory footing by s3(5) of the Act, which provides:

"(5) Where the High Court or a judge thereof has the power at common law to make an order for the provision of documents and information, the High Court or a judge thereof may notwithstanding that

(a) proceedings may be, will be or have been commenced outside of the Territory; or

(b) a power to make such an order is available under the provisions of the Evidence

(Proceedings in Foreign Jurisdictions) Act, grant such an order."

The policy of the Act is therefore consistent with the policy of the Commercial Court in assisting foreign courts. The common law continues to be the basis of the jurisdiction to grant this relief,

save that the obstacles to the grant of the relief identified by the English courts are now removed by statute in the BVI.

Nicholas Burkill is the BVI office head of Dispute Resolution at Ogier. He appeared for the applicants in K&S and was a member of the committee that considered the draft Act prior to its submission to the Attorney-General.

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