



# Hong Kong court grants first reported Norwich Pharmacal order in aid of execution

---

27 October 2022

Unsurprisingly, claimants want to be able to enforce their judgments, especially when the underlying proceedings have been hard-fought and (therefore) expensive. A fear of being unable to do so, for instance because assets available for execution cannot be identified, will usually be a significant strategic disincentive to investing in an otherwise perfectly viable claim.

The recent decision of the Hong Kong Court of First instance in *A v. R1 & R2* [2022] HKCFI 3012 addresses this issue, and appears to be the first reported decision in Hong Kong which grants a post-judgment *Norwich Pharmacal* order to enable a judgment creditor (“C”) to identify general assets of a judgment debtor (“D”) for purposes of execution.

In this case, C applied for a *Norwich Pharmacal* order against two unnamed Hong Kong banks seeking the production of documents relating to account(s) that D may have maintained with them. The factual background can be summarised as follows:

1. C commenced proceedings in Country X alleging that D had misappropriated its assets, and in due course obtained a monetary judgment against D;
2. C submitted that there was evidence suggesting that D had engaged in a scheme to defeat execution of the judgment, including opening bank accounts in Country Y shortly before the trial of the Country X action, and shortly after D failed in an appeal in a related action in Country Z;
3. Shortly after the Country Y accounts were opened, D closed one of its bank accounts in Country X (which at one point had held substantial sums);
4. C conducted asset searches all over the world and discovered that funds had been transferred out of two bank accounts in Hong Kong (one of which was later closed) to D’s overseas bank accounts;
5. These transfers out of the Hong Kong accounts however took place two years before C even commenced the Country X action, and C asserted no proprietary claim over the funds in question.

In arriving at its decision, the Hong Kong court:

1. cited the case of *NML Capital Ltd v Chapman Freeborn Holdings Ltd & Ors* [2013] 1 CLC 969: in that case the English Court of Appeal (1) left open the question of whether Norwich Pharmacal orders are available post-judgment, (2) but nonetheless stated, obiter, that if they were then they will only be available in very particular and restricted circumstances, that it could not be enough merely to trade with the judgment debtor, and that

*“... it seems to be unlikely that the jurisdiction could be triggered short of involvement in something which in itself and necessarily amounts to ... ‘wilful evasion’ by the judgment debtor”, adding that “[n]on-satisfaction of a judgment debt is not wilful evasion of it”;*

2. noted that the transfers out of D’s two Hong Kong bank accounts took place in around the same six month period when D opened the Country Y bank accounts and closed the Country X bank account;

3. drew the inference that the banks

*“... were involved in [D]’s scheme in the sense that they may have unwittingly been used to effect transfers in and out of Hong Kong as part and parcel of [D]’s plan to confuse and obfuscate ...” and that “... it would be harsh to require specific evidence that directly pinpoints how [the banks] were involved in the plan”;*

4. noted that the “wrongdoing” element typically required in a *Norwich Pharmacal* application can be demonstrated by removal or transfer of assets to insulate them from execution in satisfaction of a judgment debt;
5. took the view that the disclosure order will at least likely yield substantial benefit to C (by allowing it to further investigate and to take further steps to enforce the judgment), which far outweighs any potential detriment to the banks (who did not object to the application).

In circumstances where D’s dealings with the Hong Kong banks occurred two years before the Country X proceedings even began, this appears to be a robust decision. The succinct judgment does not, however, reveal all the evidence considered by the court, such that it was able to conclude that the banks were involved in “wilful evasion” by D.

Nonetheless it seems likely that claimants will welcome this decision. Post-judgment *Norwich Pharmacal* orders are likely to be a powerful tool for identifying and locating assets against which money judgments can be enforced, and their potential availability may offer some degree of reassurance to claimants who might be tempted to give up otherwise promising claims due to uncertainties over whether there will be assets available for execution.

## CONTACTS



**Charles Allen**  
Partner, Hong Kong  
+852 9305 1311  
[charles.allen@rpc.com.hk](mailto:charles.allen@rpc.com.hk)



**Stan Cheung**  
Senior Associate, Hong Kong  
+852 2216 7103  
[stan.cheung@rpc.com.hk](mailto:stan.cheung@rpc.com.hk)

A version of this article was originally published in the Litigation Newsletter of the *International Law Office* – [www.internationallawoffice.com](http://www.internationallawoffice.com).

This article is intended to give general information only. It is not a complete statement of the law. It is not intended to be relied upon or to be a substitute for legal advice in relation to particular circumstances.

## Notes

1. The Hong Kong judgment incorrectly uses the word “invasion” instead of “evasion”.