

Strategies to Obtain Information in Offshore Jurisdictions

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B Baker
& Partners
Problem solved

Offshore Remedies - Jersey

- “If the Royal Court were to adopt the position that it was not willing to lend its aid to courts of other countries by temporarily freezing the assets of defendants sued in those other countries, that in my judgment would amount to a serious breach of the duty of comity which courts in different jurisdictions owe to each other. Not only so, but the consequence of such an attitude would be that Jersey would quickly become known as a safe haven for persons wishing to evade liabilities imposed on them by the courts to which they are subject. This is exactly the reputation which any financial centre strives to avoid and Jersey so far has avoided with success.”

Le Quesne, J.A,

Solvalub Limited v Match Investments Limited [1996 JLR 361]

Offshore Remedies - Jersey

- “... the point made by Advocate Baker that in a post judgment case, the use of the Island’s financial services to hide assets so as to defeat a judgment creditor is as a matter of policy something to be discouraged, is a strong one. The reality is that assets can be and are sometimes moved around the world with speed and secrecy, and the courts should endeavour to ensure judgment debtors cannot escape those judgments with impunity.”

W. J. Bailhache, Q.C., Deputy Bailiff

Dalemont v Senatorov and Others [2012] JRC 014

Norwich Pharmacal/ Banker's Trust Orders

- Same underlying principle – grant discovery necessary to prevent a denial of justice to the applicant
- New Media Holding Company LLC v Capita Fiduciary Group Limited 2010 JLR 272
 - The respondent is involved (even innocently) in the wrongdoing; and
 - The discovery is necessary to the applicant's case, i.e. that without discovery no cause of action could be sustained against the wrongdoer

Disclosure from Criminal Authorities

- Various Claimants v News Group Newspapers Ltd [2013] EWHC 2119 (Ch)
- Disclosure of police documents from phone hacking scandal
- Were police sufficiently involved in wrongdoing to come within the Norwich Pharmacal requirements?
- Yes – disclosure is possible

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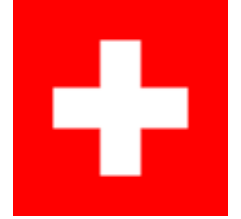
Switzerland



- Civil law jurisdiction
- No discovery procedure
- Blocking statute
- Criminal proceedings
- Mutual assistance in civil matters (The Hague Conventions)
- Precautionary taking of evidence (Swiss §1782?)

Switzerland

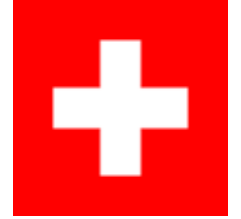
Criminal Proceedings



- Swiss jurisdiction
- Person harmed by a crime
- Right to participate as plaintiff

Switzerland

Criminal Proceedings



- Access to the investigation
- Right to request further investigative acts
- Right to participate in examination of witnesses
- Wide production orders

Switzerland

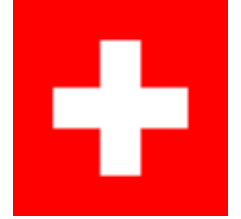
The Hague Conventions



- Switzerland party to:
 - The Hague Convention of 1954 on Civil Procedure (CLaH 1954).
 - The Hague Convention of 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters (CLaH 1970)
- CLaH 1954 also applies to letters of request sent by non State parties (Art. 11a §4 PILA)

Switzerland

The Hague Conventions

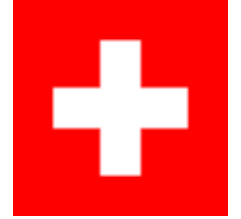


Evidence sought:

- precisely described
- direct and necessary link to the foreign proceedings

Switzerland

The Hague Conventions

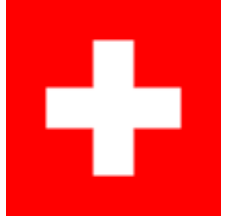


Secrecy:

- attorney-client privilege
- banking secrecy only protected if interest in keeping the secret outweighs the interest in finding the truth

Switzerland

Precautionary taking of evidence



Art. 158 CCP = 28 U.S. Code § 1782?

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