Claim No. DEC 001/2025

IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

TECHTERYX LTD.

Claimant

and

(1) ARIA COMMODITIES DMCC

First Defendant/ First Respondent

(2) MATTHEW WILLIAM BRITTAIN

Second Respondent

(3) MASHREQ BANK PSC
(4) EMIRATES NBD BANK PJSC
(5) ABU DHABI ISLAMIC BANK PJSC

Defendants

and

(6) ARIA BIO INDUSTRIES FZE

Third Respondent

ORDER WITH REASONS OF H.E. JUSTICE MICHAEL BLACK

UPON the Order of H.E. Justice Michael Black KC dated 28 February 2025 (the "WFO") granting inter alia the following orders:

(1) a proprietary injunction prohibiting Aria Commodities DMCC ("Aria DMCC") from disposing of, dealing with, or diminishing cash or assets to the value of the sum of USD 456,000,000 transferred to Aria DMCC or the traceable proceeds thereof;

(2) a worldwide freezing injunction, prohibiting Aria DMCC from removing from Dubai any of its assets which are in Dubai up to the value of USD 456,000,000 or in any way disposing of, dealing with or diminishing the value of any of its assets whether in or outside Dubai up to the same value; and

(3) ancillary disclosure orders inter alia requiring Aria DMCC to inform the Applicant's legal representatives of (i) any onward dealings with any of the funds received from Legacy Trust Company and First Digital Trust Limited, including as to who was the ultimate beneficiary of such dealings; (ii) the current, value, location and details of all of the sums received including as to who is currently the ultimate beneficiary of such funds; and (iii) the current, value, location and details of any traceable proceeds including as to who is currently the ultimate beneficiary of such assets

AND UPON the Order of H.E. Justice Michael Black dated 7 August 2025 inter alia continuing the injunctions made under the WFO until further order of the Court

AND UPON the Order of H.E. Justice Michael Black dated 17 October 2025 (the "October Disclosure Order") in response to the Applicant's Application No. DEC-001-2025/12, directing Aria DMCC to remedy its non-compliance with the disclosure orders in paragraphs 14-16 of the WFO by inter alia (a) Mr Brittain swearing and submitting a further affidavit providing all of the information required by paragraph 14(2) of the WFO and (b) Aria DMCC, among other things, explaining the complete onward flow of moneys and their traceable proceeds from the payments out of the its bank accounts

AND UPON the Applicant's Application No. DEC-001-2025/18 dated 3 April 2026 seeking disclosure orders against the Respondent in support of the WFO (the "Disclosure Application")

AND UPON the Applicant taking reasonable steps pursuant to Rule 9.2(2) of the Rules of the DIFC Courts ("RDC") to serve the Disclosure Application on the Respondent by courier to its registered address (Plot No. 2M-11A, 2M-13A, 2M-13B, Hamriyah Free Zone (Phase 1), Sharjah, UAE) on 7 April 2026

AND UPON email correspondence from Al Tamimi & Company to the Respondent's Managing Director, David Andrew Gangell dated 7 April 2026 to his email address davidgangell@ymail.com enclosing the Application by way of service

AND UPON David Andrew Gangell making a witness statement dated 19 May 2026 in answer to the Disclosure Application, wherein he acknowledges service of the Disclosure Application being effected on the Respondent

AND UPON the Applicant's Application No. DEC-001-2025/26 dated 10 June 2026 seeking an order for the requirement of service of the Disclosure Application on the Respondent to be dispensed with insofar as necessary (the "Service Application")

AND UPON hearing Counsel for the Applicant and Counsel for the Respondent at a hearing held before H.E. Justice Michael Black on 21 July 2026 (the "Hearing")

IT IS HEREBY ORDERED THAT:

Service

1. Pursuant to RDC 9.34, the Court dispenses with the requirement to serve the Disclosure Application on the Respondent insofar as necessary.

2. Pursuant to RDC 9.31, the Claimant is permitted to serve the Respondent with the Service Application together with all supporting documents by email to the Respondent's legal representatives M&CO Legal at the following addresses:

mahmood@mandcolegal.com;
tonderai@mandcolegal.com;
ayesha@mandcolegal.com;
tariq@mandcolegal.com; and/or
aleefa@mandcolegal.com.

Such service when completed by email shall be deemed to be effective service of the Service Application on the Respondent.

Disclosure

3. The Respondent shall disclose in writing to the Applicant's legal representatives as soon as reasonably practicable and in any event within 14 calendar days of the service of the Order:

(a) the details of the bank accounts in the name of the Respondent that received any payments from Aria DMCC in the period from 1 June 2021 to the date of the Order; and

(b) the current balance of each of those bank accounts in the name of the Respondent.

4. The Respondent shall produce to the Applicant's legal representatives as soon as reasonably practicable and in any event within 14 calendar days of the service of the Order:

(a) Unredacted copies of the bank statements for all the Respondent's accounts that have at any time received payments from Aria DMCC for the period from 1 February 2021 to the date of the Order including without limitation:

(i) Abu Dhabi Islamic Bank accounts with numbers AE950500000000019010943 and AE680500000000019010944; and

(ii) Mashreqbank account with numbers 019000065360 and 019000065361; and

(b) Within 14 days of the receipt of the unredacted bank statement produced in accordance with paragraph 4(a), the Applicant may identify those transactions exceeding USD 100,000 in value in respect of which it requires the Respondent to produce unredacted copies of remittance advices recording or relating to the transfers, payments and withdrawals of any monies from the accounts and any other documentation evidencing or identifying the amount, the date, the payer (for deposits) / the payee (for withdrawals), the ultimate beneficiary and remittance details of such onward dealings. ARIA Bio shall comply with each such request within 14 days.

(c) Copies of any agreements made between the Respondent and either or both of (i) Aria Commodity Finance Fund, and (ii) Aria DMCC, including the following agreements referred to in the second witness statement of David Gangell dated 19 May 2026:

(i) the "Supply Financing Support Agreement of 2021";

(ii) the "ACFF Facility Agreement of 2022";

(iii) the "Loan Agreement of 2023"; and

(iv) the "Co-Investment Infrastructure Agreements executed in 2024".

Use of information obtained

5. Except with the permission of the Court, the Applicant may only use the documents provided to it by the Respondent pursuant to the terms of this Order for the purposes of the Relevant Proceedings, as defined under paragraph 6 of the WFO (and as amended by the Orders of H.E. Justice Michael Black dated 17 October 2025 and 27 March 2026 or by subsequent order of the Court).

6. The parties shall have liberty to apply for the determination of any question or issue arising out of the operation of this Order.

Costs

7. All questions of costs are reserved with liberty to both parties to restore their applications following determination of the Committal Application and compliance with this Order.

Issued by:
Delvin Sumo
Assistant Registrar
Date of Issue: 28 July 2026
At: 11am

SCHEDULE OF REASONS

SCHEDULE OF REASONS

1. There are before me 2 applications by the Claimant/Applicant (**"Techteryx"**).

(1) Application No. DEC-001-2025/18 dated 3 April 2026 seeking an order against the Third Respondent, Aria Bio Industries FZE (**"ARIA Bio"**), to make Norwich *Pharmacal* and *Bankers* Trust orders and/or pursuant to Rule 25.1(10) and 28.51 of the Rules of the DIFC Courts (**"RDC"**), for an Order directing ARIA Bio to disclose certain information and documentation in support of the worldwide freezing injunction and proprietary injunction (**"WFO"**) granted by the Court against the First Defendant and Respondent (**"ARIA DMCC"**) (the **"Disclosure Application"**), namely:

(a) the details of the bank accounts in the name of the Respondent that received any payments from ARIA DMCC in the period from 1 February 2021 to the date of the Order and the current balance of each of those bank accounts in the name of the Respondent;

(b) unredacted copies of the bank statements for all the Respondent's accounts that have at any time received payments from ARIA DMCC for the period from 1 February 2021 to the date of the Order including without limitation:

(i) Abu Dhabi Islamic Bank accounts with numbers AE950500000000019010943 and AE680500000000019010944; and

(ii) Mashreqbank account with numbers 019000065360 and 019000065361;

(c) unredacted copies of remittance advices recording or relating to the transfers, payments and withdrawals of any monies from the accounts held by the Respondent that received payments from ARIA DMCC, and any other documentation evidencing or identifying the amount, the date, the payer (for deposits) / the payee (for withdrawals), the ultimate beneficiary and remittance details of such onward dealings.

(2) Application No. DEC-001-2025/26 dated 10 June 2026 seeking an order dispensing with the requirement to serve the Claimant's Application No. DEC-001- 2025/18 on ARIA Bio (the **"Service Application"**).

BACKGROUND

2. I granted the WFO pursuant to an Amended Judgment dated 17 October 2025 (the **"Amended Judgment"**) in support of Techteryx's claims against ARIA DMCC in the High Court of The Hong Kong Special Administrative Region Court of First Instance. The Hong Kong claims concern an alleged fraud in relation to the misappropriation of the reserves (the **"Reserves"**) backing a type of stablecoin, TrueCoin. Techteryx acquired certain assets from TrueCoin including TrueCoin's rights and interests in the Reserves. It is alleged that an amount of at least USD 456 million was fraudulently misappropriated and diverted directly to accounts of ARIA DMCC in Dubai by way of transfers which are referred to as the **"Six Remittances"**.

3. The Managing Director of ARIA DMCC is Mr Matthew William Brittain (**"Mr Brittain"**) and his wife was the sole shareholder. He admits that he is the ultimate beneficial owner of ARIA DMCC. He is also the CEO and Chief Investment Officer of a Cayman Fund, Aria Commodity Finance Fund (**"ARIA Fund"**/ **"the Fund"**) and the sole director and sole shareholder in ARIA Capital Management, a Cayman company, and the UBO and controller of ARIA Fund. ARIA Capital Management FZE (Dubai) is the investment manager of the Fund: Mr Brittain is the Chief Investment Officer of the Fund.

4. The investment advisors with control over the Reserves were supposed to have invested the Reserves in ARIA Fund but USD 456 million was in fact directly remitted to ARIA DMCC.

5. In the Amended Judgment I found that there are serious issues to be tried that ARIA DMCC holds the Six Remittances on constructive trust for Techteryx. I also found that on the evidence before me Mr Brittain is the UBO of both ARIA DMCC and the Fund, and the person who appears to have the day-to-day conduct of their affairs. It appears that assets are transferred between the two by him at will and without formality. He gives every appearance of being the controlling mind of both entities. I described his evidence as *"internally inconsistent, evasive and opaque"*.

6. I found that there was a good arguable case (as defined in *The Niedersachsen*) that the investment advisors and Mr Brittain were fully aware and in agreement to act together *"in fraud and to injure"* Techteryx. The finding of such an agreement would involve the question of Mr Brittain's knowledge as the directing mind of ARIA DMCC and whether in particular he was aware of the relevant circumstances or had knowledge which would indicate the facts to an honest and reasonable person or knowledge of circumstances which would put an honest and reasonable person on inquiry. It would also preclude ARIA DMCC from asserting that it was a bona fide purchaser for value without notice.

7. On 17 October 2025, I ordered Mr Brittain amongst other things to:

(1) explain the onward flow of moneys and their traceable proceeds in respect of the full amount of USD 456,000,000 (the **"DMCC Payments"**) from the payments out of ARIA DMCC's bank accounts to their current locations;

(2) provide supporting documentation showing the complete onward flow of all of the moneys and their traceable proceeds to their current locations;

(3) insofar as ARIA DMCC or Mr Brittain are unable to identify the current whereabouts and ultimate beneficiary of any of the DMCC Payments or their traceable proceeds, provide an explanation of why they are unable to do so, and explain to the best of their knowledge, who was the most recent ultimate beneficiary of any such assets; and

(4) identify any assets received by Mr Brittain, whether or not received or held in his own name and whether they are solely or jointly owned, from the DMCC Payments or their traceable proceeds. This includes any asset which he has or has had the power, directly or indirectly, to dispose of or deal with as if it were his own derived from the DMCC Payments or their traceable proceeds.

8. Techteryx contends that ARIA DMCC and Mr Brittain are in breach of these Orders and have brought proceedings for contempt.

9. ARIA Bio is a 100% subsidiary of ARIA DMCC and therefore ultimately beneficially owned by Mr Brittain. It is a company registered in the Hamriyah Free Zone, Sharjah, and according to its trading licence, it is engaged in multiple activities including the import, export and trading of bitumen and bituminous products. ARIA Bio is the owner and developer of port facilities, and a manufacturer and trader of bitumen and other petroleum products.

10. The evidence indicates that ARIA Bio received between USD 80 and 100 million of the Six Remittances. The evidence of Mr Brittain and David Andrew Gangell (the Managing Director of ARIA Bio), following a well-worn path in these proceedings, is inconsistent in terms of the amounts received by ARIA Bio derived from the Six Remittances, the sources and whether it was debt or equity. Further, Mr Gangell claims that monies have been loaned to ARIA Bio by ARIA Fund but declined to produce the relevant documents because of confidentiality restrictions. He produced an email to the professional directors of ARIA Fund requesting waiver of confidentiality but notably not to Mr Brittain in his capacity as the Managing Director and sole shareholder of ARIA Capital Management, the owner of the Fund and the Fund's Chief Investment Officer. Mr Gangell says that his request has been ignored.

11. Techteryx points out the absurdity of this position for three reasons: first, Mr Brittain is UBO of both the UAE and Cayman groups of companies; second, the only monies in the Fund belong to Techteryx; and third, Mr Gangell admits that the confidentiality provisions are expressly disapplied *"as required by law or by order of a court"*. Mr Peto KC, Counsel for Techteryx, goes further and contends that ARIA Bio is Mr Brittain's creature and is being used to obstruct justice.. Mr Peto describes Mr Gangell's claim that ARIA Bio has written to ARIA Fund asking for permission to disclose the documents as Mr Brittain talking to himself. In that he is wrong: by Mr Gangell's failure to address ARIA Bio's request to waive confidentiality in the loan documents to Mr Brittain, it is in fact Mr Brittain studiously avoiding talking to himself.

12. Mr Gangell also claims that documents with third parties are subject to confidentiality restrictions. He produced what he says is an *"example"* of such a term. Again, following another well-worn path in these proceedings, the "example" is a mere extract of a document. The actual document is not produced even in redacted form.

13. Mr Tannock, Counsel for ARIA Bio relied heavily on an offer made by ARIA Bio to indicate that the Disclosure Application was unnecessary. On 17 April 2026, ARIA Bio's lawyers responded, *"We do not anticipate that this request will be controversial"*. On 21 April 2026, they informed Techteryx's lawyers that, *"We are seeking instructions on whether our client is, in principle, willing and able to consent to the relief sought in your Application."* On 5 May 2026, ARIA Bio's lawyers replied in detail:

(1) They expressly reserved, ARIA Bio's rights in respect of the validity of service of the Application, the jurisdictional bases on which it is brought, the necessity, scope and proportionality of the relief sought, and any contention that their client has been *"mixed up"* in any wrongdoing of any party;

(2) ARIA Bio offered voluntary disclosure:

(a) **Category A - Account confirmation:** Within 21 calendar days of execution of the consent order, ARIA Bio will confirm in writing to the Claimant's legal representatives: (i) the existence of the four bank accounts identified in the Application (ADIB account numbers AE950500000000019010943 and AE680500000000019010944, and Mashreq account numbers 019000065360 and 019000065361, together the **"Identified Accounts"**). Where, in the course of producing the Use of Proceeds Schedule under Category B, ARIA Bio identifies any further account into which any receipt from ARIA DMCC was paid during the period covered by the Six Remittances and to which the Use of Proceeds Schedule refers, our client will identify that account in the Use of Proceeds Schedule itself;

(b) **Category B - Use of proceeds: schedule of capital deployment and working capital application:** Within 21 calendar days of execution of the consent order, our client will produce a structured schedule (the **"Use of Proceeds Schedule"**) covering the period from 1 June 2021 to 31 December 2023, showing, in respect of the receipts from Aria Commodities DMCC and their traceable proceeds:

Capital deployment - project by project, in respect of those projects to which receipts were applied: (i) the asset acquired or developed; (ii) the aggregate sums applied to the capital programme; (iii) the period of expenditure; and (iv) cross-references to supporting documentation.

This sub-schedule will cover the projects to which the receipts and their traceable proceeds were applied. To the extent that any portion of the receipts was applied otherwise than to the capital programme described above, our ARIA Bio confirms that such application was within the ordinary course of business of the operating subsidiaries to which the capital was deployed, and was directed to the operating, financing, working-capital and establishment requirements of those subsidiaries in the ordinary conduct of their commercial activities. In respect of that wider application, our client will provide a summary description, at a level of generality consistent with the nature of the application, sufficient to enable the Claimant for the purposes of the Application to understand the broad allocation of receipts as between the capital programme and the ordinary-course operating, financing, working-capital and establishment requirements referred to above.

For the avoidance of doubt, this category may not extend to exhaustive transaction-level documentation of any of the matters comprised within that wider application.

The Use of Proceeds Schedule will be supported, project by project, by: (i) extracts from the Fixed Asset Register; (ii) construction contracts and material amendments; (iii) invoices supporting the entries in the Use of Proceeds Schedule; and (iv) any third-party valuations or surveys within our client's possession or control.

ARIA Bio will further produce, in respect of the Identified Accounts, the targeted transactional records evidencing the linkage between receipts from Aria DMCC and the corresponding outward payments to the projects, namely: (i) the entries showing each receipt from Aria DMCC during the period from 1 February 2021 to the date of the consent order; and (ii) the entries showing the corresponding outward payments to project counterparties identified in the Use of Proceeds Schedule. Entries unrelated to those receipts or payments will be redacted. A redaction key will be provided on a confidential basis to the Claimant's legal representatives and to any expert engaged for the purposes of the Application, sufficient to permit verification that redactions are limited to non-relevant entries.

(c) **Category C - Loan and novation documentation.**

Within the same 21-day period, ARIA Bio will produce: (i) the loan and facility agreements between our client and Aria DMCC; and (ii) details of the novation arrangements recording the transfer of the relevant loan positions, together with associated supporting documentation.

(d) **Category D - The two post-WFO transactions.**

Within the same 21-day period, ARIA Bio will produce a written confirmation, supported by transactional records, addressing the two transactions of USD 270,000 dated 18 March 2025 and USD 149,000 dated 3 April 2025 referenced at paragraphs 33 and 34 of the Eleventh Witness Statement of Rita Catherine Jaballah. The confirmation will identify the source, purpose and application of those funds.

(e) **Material excluded from the proposal:**

(i) raw unredacted bank statements of any account held by our client. The Use of Proceeds Schedule, supporting project documentation and targeted transactional records under Category B together provide the substantive disclosure that the Application is concerned to obtain. Wholesale unredacted statements would expose ARIA Bio's wider commercial counterparties such as suppliers, customers and operational counterparties unconnected with ARIA DMCC, the Six Remittances or these proceedings - in a manner that is neither necessary nor proportionate;

(ii) remittance advices for outward transfers other than those referable to the Use of Proceeds Schedule, the disclosure of which would be wholly disproportionate to the necessity test governing the Application; and

(iii) information concerning ARIA Bio's current trading relationships, customer base, or the portfolio positions or other affairs of ARIA Fund. None of that material is necessary to the Claimant's tracing enquiry.

(3) The offer was subject to conditions, including:

(a) a use restriction;

(b) written confidentiality undertakings, prior to production, from the Claimant's legal representatives, Kroll, and any other expert or professional adviser engaged for the purposes of the Application; and

(c) payment of ARIA Bio's reasonable costs of compliance and the Application.

14. Techteryx's lawyers rejected the proposal because it did not meet the key objectives of the Disclosure Application, specifically to be able to identify and trace the onward movement of the proceeds of the Remittances received by ARIA Bio.

15. I refer briefly to an issue that arose shortly before the hearing on Friday, 17 July 2026 concerning the contents of the hearing bundle. I consider that it was *"a storm in a teacup"*. It led to some minor unnecessary costs (correspondence) and had no substantive impact on the hearing.

THE SERVICE APPLICATION

16. ARIA Bio also took points on service and jurisdiction. I commented on the artificiality of those points coming from a party that had served 5 detailed witness statements over a period of two months. Mr Tannock wisely indicated in his written submissions and orally at the hearing that ARIA Bio does not oppose the Service Application subject to issues of costs.

THE DISCLOSURE APPLICATION

17. The differences between the parties on the applicable legal principles are ones of emphasis. Both parties refer to the English procedures *Norwich Pharmacal* and *Bankers Trust* orders. While they have been found of assistance in the interpretation of the powers of the DIFC Courts, the Courts' jurisdiction is to be found in DIFC laws and DIFC Court Rules ("RDC") and the application of that jurisdiction in the decisions of the DIFC Courts.

18. Article 15 of Law No. (2) of 2025 *Concerning Dubai International Financial Centre Courts* (the **"Courts Law"**) provides:

"The DIFC Courts have jurisdiction to hear and determine applications for interim or precautionary measures related to the following:

1. Claims and applications that fall within the jurisdiction of the DIFC Courts.

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3. A claim for the disclosure of funds or assets owned by the defendant or applicant in applications and claims that fall within the jurisdiction of the DIFC Courts."

19. Article 24(D) provides:

"The DIFC Court has the power to make orders as to the conduct of any proceedings before the Court that it considers appropriate, including but not limited to:

1. orders prescribed by any legislation issued under the DIFC Laws;

2. injunctions, including orders to perform an act;

3. interim or interlocutory orders as stipulated in the DIFC Laws;

.

6. orders made for the proper administration of justice ."

20. Article 36(1)(i) of The Law of Damages and Remedies 2005 provides:

"The Court may grant the following interim remedies . an order for disclosure of documents or inspection of property against a non-party."

21. The RDC provide:

(1) RDC 25.1(10)

"The Court may grant the following interim remedies . an order for production of documents or inspection of property against a non-party."

(2) RDC 28.51

"An application for production of documents by a person who is not a party to the proceedings must under these Rules be supported by evidence."

(3) RDC 28.52

"The Court may make an order under this rule only where:

(1) the documents of which production is sought are likely to support the case of the applicant or adversely affect the case of one of the other parties to the proceedings; and

(2) production is necessary in order to dispose fairly of the claim or to save costs."

(4) RDC 28.53

"An order under Rule 28.51 must:

(1) specify the documents or the classes of documents which the respondent must produce; and

(2) require the respondent, when producing the documents, to specify any of the documents which the Court has ordered should be produced:

(a) which are no longer in his control; or

(b) in respect of which he claims a right or duty to withhold production."

(5) RDC 28.54

"Such an order may:

(1) require the respondent to indicate what has happened to any documents which are no longer in his control; and

(2) specify the time and place for production."

22. Earlier this year, in proceedings associated with the present case I observed:

"A Norwich Pharmacal Order is an order for the disclosure of information or documents against a non-party who has become "mixed up" in the wrongful conduct that infringed the claimant's rights. A Banker's Trust Order may be granted in exercise of the Court's power under Article 36 of the DIFC Law of Damages and Remedies, often against financial institutions holding information relating to assets that are in issue." (Techteryx Ltd v. IG Limited and Others [2025] DIFC DEC 001 (3 April 2026), [23])

23. *In Skatteforvaltningen (The Danish Customs And Tax Administration) v FFA Private Bank (Dubai) Limited* [2024] DIFC CFI 004, (25 July 2024), [16], H.E. Sir Jeremy Cooke stated:

> *"This statutory jurisdiction is therefore untrammelled by any other statutory restriction and the Court's discretion is not fettered apart from the need for any discretion to be exercised judicially. The principles of DIFC law and any relevant common law fall to be taken into account on the well-known cascading basis in determining how that discretion should be exercised but that is a far cry from being required to apply an English statutory scheme which has no application in the DIFC. This Court will therefore take into account the principles upon which Norwich Pharmacal/Bankers Trust orders are made in England and other common law courts and, as prior DIFC authorities show, will apply the relevant criteria from such cases, but there is no relevant restriction in the law of the DIFC requiring that no such orders should be made simply because there is a permissive basis in DIFC law for obtaining evidence by the method of letters of request. The Court's jurisdiction to make Norwich Pharmacal/Bankers Trust orders is not limited by any statute relating to the obtaining of evidence for foreign proceedings. The overriding objective for the Courts to deal with cases justly in RDC 1.7 requires the Courts to seek to give effect to it when exercising any power given to it by the Rules."*

24. In the present case, it is the *Norwich Pharmacal* Order that is relevant but as H.E. Sir Jeremy emphasizes one must bear in mind that the English authorities have developed in a different statutory environment to that of the DIFC.

25. ARIA Bio refers to the decision of H.E. Justice Roger Giles in *Emirates REIT (CEIC) PLC and Anor v Nasdaq Dubai Limited* [2020] CFI 054 (4 November 2020). In that case, His Excellency referred only to the English authorities. In particular he stated:

> *"2. The relief goes beyond providing the identity of the wrongdoer, and can extend to provision of information necessary for bringing a claim against the wrongdoer (sometimes referred to as the missing piece of the jigsaw); but it remains an exceptional power, and cannot be used as a fishing expedition to determine whether the applicant has a good case, or to gather evidence for the applicant's case (Ramilos Trading Ltd v Buyanovsky [2016] CLC 896 at [62]).*
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> .
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> *16. But where the point of the application is contemplated legal action, the strength of the possible cause of action may have particular importance amongst the factors to be weighed. Being an exceptional power, a Norwich Pharmacal order should not be made unless there is a real purpose to be served because it is shown that the contemplated legal action, aided by the information sought, has a sound basis, and its strength or weakness is then placed in the scales."*

26. *Lunars v Liuns and Others* [2022] DIFC CFI 042 (26 October 2022) is referred to by both parties. In that case, H.E. Justice Shamlan Al Sawalehi considered RDC 28.51 in the light of the *Nasdaq* Case and the English authorities:

> *"63. I now turn to the NPO relief sought by the Claimant. The three conditions to be satisfied for the Court to exercise the relief are: (1) wrong must have been carried out, or arguably carried out, by an ultimate wrongdoer; (2) there must be the need for an order to enable action to be brought against the ultimate wrongdoer; and (3) the person against whom the order is sought must (a) be mixed up in so as to have facilitated the wrong doing; and (b) be able or likely to be able to provide the information necessary to enable the ultimate wrongdoer to be sued. Those conditions were set out by Lightman J, in Mitsui & Co Ltd v Nexen Petroleum UK Ltd [2005] EWHC 625.*
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> *64. When these conditions are satisfied, it remains for the Court to consider the circumstances in order to assess whether the interest of justice requires the relief.*
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> .
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> *67. I am of the view that orders such as the NPO or a banker's trust order [sic] are very intrusive into what would otherwise be confidential customer information and the primary requirement in granting a NPO relief is based on whether such relief is necessary and proportionate, the degree of necessity and proportionality for the NPO or a banker's trust order relief involves a higher threshold in contrast to a pre-action disclosure relief.*
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> .
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> *69. As part of the Claimant submissions where they alluded to the fact that the DIFC Court has a discretion to grant the release of the requested documents by general equitable formula, relying on CFI-054-2020 of Nasdaq Dubai Limited which is not the case. In that authority, Justice Roger Giles demonstrated in his decision that, "a Norwich Pharmacal order should not be made unless there is a real purpose to be served, because it is shown that the contemplated legal action, aided by the information sought, has a sound basis." At para [16] [sic]."*

27. ARIA Bio submits that the threshold for a Norwich Pharmacal order requires:

(1) a good arguable case of wrongdoing by an ultimate wrongdoer;

(2) a respondent who is mixed up in that alleged wrongdoing;

(3) the order must be necessary to enable an action to be brought against the alleged wrongdoer;

(4) the respondent must be able or be likely to be able to provide information necessary to enable the ultimate wrongdoer to be pursued: *Mitsui & Co, Limited v Nexen Petroleum UK Ltd* [2005] EWHC 625 (Ch) per Lightman, J at [21(iii)], see also *Tooley v Times Media Ltd* [2026] EWHC 675 (KB) per Mrs Justice Steyn at [56]). In Norwich Pharmacal itself, the Court further guards against the jurisdiction being used to enable a claimant *"to fish for information of any cause of action he may have"*: Lord Cross of Chelsea at 199G.

Once these threshold requirements are met, the Court will consider, in its discretion, whether the disclosure sought is reasonable and proportionate in all of the circumstances, bearing in mind the exceptional nature of the jurisdiction.

28. I am happy to accept ARIA Bio's summary. It captures the essence of the discretion identified by H.E. Justice Al Sawalehi in reliance on the *Mitsui* Case. I find reference to the *Nasdaq* Case less helpful in the present circumstances. First, H.E. Justice Giles was dealing with a case where proceedings had not yet been commenced. Secondly, he was not persuaded of the strength of the applicants' cases. Here I have already held that Techteryx possesses a good arguable case against ARIA DMCC. Thirdly, the application was against Nasdaq Dubai an independent third party who in the words of Lord Reid in *Norwich Pharmacal Co v Customs and Excise Commissioners* [1974] AC 133 cited by Justice Giles at the top of his judgment *"if through no fault of his own a person gets mixed up in the tortious acts of others so as to facilitate their wrong-doing he may incur no personal liability but he comes under a duty to assist the person who has been wronged"*. In the present case, I am far from persuaded that ARIA Bio has become involved in the alleged wrongdoing of ARIA DMCC through no fault of its own given that all roads lead back to Mr Brittain. As Mr Peto indicated the possibility of proceedings directly against ARIA Bio, it would be inappropriate for me to say more.

29. Turning to the application of the criteria identified by ARIA Bio:

(1) The good arguable case criterion has been found by me to have been satisfied;

(2) There can be no issue but that ARIA Bio is mixed up in ARIA DMCC's alleged wrongdoing - there is no issue that it has been the recipient of at least USD 80 million of funds arguably impressed with a constructive trust in favour of Techteryx;

(3) Proceedings are already underway and criterion (3) therefore merges into (4);

(4) Techteryx contends that to date it has not been possible for it to obtain all of the information the subject matter of the disclosure orders made against ARIA DMCC and Mr Brittain. Given the pending committal proceedings, it is not appropriate for me to express any view on that contention. For present purposes, I need only be satisfied that it is likely that ARIA Bio is in possession of documents that are likely to support the case of the applicant (RDC 28.52). I am of the view that is the case.

30. I must also be satisfied under RDC 28.52 that production is necessary in order to dispose fairly of the claim or to save costs. I am so satisfied. Techteryx has been trying to obtain evidence as to the fate of the Six Remittances since March 2025 and, assuming compliance with the Order I am about to make, the document to be disclosed by ARIA Bio should reveal what has become of at least USD 80-100 million of the USD 456 million.

31. As to discretion, I will address proportionality in the context of the competing forms of Order, but I will say something about the exceptionality of the relief. I accept that reference to the exceptional nature of the relief and the admonition against *"fishing"* were fully justified in the facts of *Nasdaq* and *Lunars*. In the former, as already noted, the Respondent was an independent institution and the Court considered the applicant's claims against the alleged wrongdoers to be weak. The latter was an attempt to obtain pre-action disclosure whilst arbitration proceedings were already on foot and H.E. Justice Al Sawalehi held this precluded him from exercising the powers vested under RDC 28.48 and RDC 28.51. In any event, he considered that the documents sought from this Court would inevitably arise in the arbitration proceedings.

32. The present case is closer to the *Skatteforvaltningen* Case where H.E. Justice Cooke continued at [16]:

> *"Where international fraud is concerned, it behoves this Court to assist the courts of friendly foreign nations in doing justice and, for that purpose, on the application of an alleged victim of such wrongdoing, to enable the foreign Court to have before it the maximum information available for it to make its own determination. There are no conflicting policy requirements of the kind which operate in England by reference to the statutory framework for providing evidence to be used in foreign proceedings."*

33. Thus, where credible allegations of international fraud are involved, whether the substantive claim is before this Court or another international court or tribunal, and in particular where the application is made against a party arguably linked to the alleged wrongdoer, considerations of the exceptional and intrusive nature of the order and suggestions that the applicant is fishing to gather evidence for the its case (which is any event would appear to be the object of the order contemplate by RDC 28.52(1)) will weigh less heavily in the Court's discretion than the necessity to dispose fairly of the claim.

34. As to the forms of competing Order, I find ARIA Bio's proposed Order unworkable and unsatisfactory. It proposes an elaborate procedure that denies Techteryx access to the basic and simple information contained in the unredacted bank statements. The proposed procedure contains no safeguards in that it allows no independent monitoring of the accuracy of the documents offered. ARIA Bio refuses to disclose its dealings with ARIA Fund arguably involving funds derived from the Six Remittances. The refusal is based an assertion of confidentiality that is groundless (see paragraph 11 above).

35. Of somewhat more substance are the points made in relation to ARIA Bio's dealings with third parties. The evidence does seem to indicate that ARIA Bio is a genuine and fairly substantial trading entity. It is claimed that there are confidentiality agreements with its customers. This could be true but it is not established by the evidence supplied (see paragraph 12 above). I will not therefore impose the written confidentiality undertakings demanded by ARIA Bio as condition of its offer.

36. Of more substance appears to be the contention that considerable work would be necessary to produce unredacted copies of remittance advices recording or relating to the transfers, payments and withdrawals of any monies from the accounts held by the Respondent that received payments from ARIA DMCC, and any other documentation evidencing or identifying the amount, the date, the payer (for deposits) / the payee (for withdrawals), the ultimate beneficiary and remittance details of such onward dealings. Notwithstanding that Techteryx modified its request to exclude amounts under USD 100,000 and ARIA Bio accepts that this will reduce the workload, I do accept that it may still be a substantial task that will inevitably capture irrelevant information.

37. During argument, I floated the idea that there should be a two-stage process. First, ARIA Bio should disclose the unredacted bank statements

and then Techteryx should identify the specific transactions in respect of which it requires copies of remittance advices. Subject to ARIA Bio's overarching submissions and the detailed procedure suggested by Mr Peto, the proposal found favour with Counsel.

38. Techteryx's draft modified Order appears in the hearing bundle at page 13. I make the following comments:

(1) The recital *"**AND UPON** Aria DMCC and Mr Brittain failing to comply fully with the October Disclosure Order including by failing to explain the current whereabouts of moneys paid to the Respondent and failing to produce all relevant payment records in respect of payments made to the Respondent"* must be deleted as it prejudges the outcome of the Committal Proceeding;

(2) I will make the Orders at paragraphs 1 and 2 regarding the Service Application;

(3) The word *"confirm"* in paragraph 3 should be deleted and the word "disclose" substituted;

(4) It appears to be common ground that the date of 1 February 2021 in paragraph 3(a) should be deleted and 1 June 2021 substituted;

(5) I will direct disclosure of unredacted bank statements of all accounts that have any times received payments from ARIA DMCC for the period from 1 June 2021 to date including but not limited to the two identified accounts.

(6) Sub-paragraph 4(b) will be deleted and the following substituted:

> *"Within 14 days of the receipt of the unredacted bank statement produced in accordance with paragraph 4(a), the Applicant may identify those transactions exceeding USD 100,000 in value in respect of which it requires the Respondent to produce unredacted copies of remittance advices recording or relating to the transfers, payments and withdrawals of any monies from the accounts and any other documentation evidencing or identifying the amount, the date, the payer (for deposits) / the payee (for withdrawals), the ultimate beneficiary and remittance details of such onward dealings. ARIA Bio shall comply with each such request within 14 days."*

(7) The Order shall include paragraphs 5 and 7.

(8) There shall be a further sub-heading **"Costs"**. I will address costs below.

COSTS

39. It is common ground that the usual costs order is that absent exceptional circumstances, innocent third parties who are the subject of a *Norwich Pharmacal* or *Bankers* Trust order (likewise the DIFC equivalents) are entitled to their costs of compliance. Helpful guidance is given in the English Court of Appeal case, *Gorbachev v. Guriev* [2023] EWCA Civ 327, [27]:

> *". The principles are that:*
> *(1) it is reasonable for an innocent third party to seek to protect private information by resisting a court order;*
> *(2) as between an innocent claimant and an innocent third party it is more unjust for the third party to bear the costs than the claimant, because it is the claimant who is invoking the legal process to obtain a benefit, and the fact that the benefit is one to which he is legally entitled is not enough to justify an innocent third party having to be out of pocket;*
> *(3) in general the costs should be recovered from the wrongdoer, not the innocent third party, which the third party has no means to achieve;*
> *(4) the principle does not treat a third party as entitled to do no more than adopt a neutral position before it is at risk of having to bear or pay the costs of resisting the application; active opposition, albeit unsuccessful, is not of itself unreasonable behaviour or sufficient to deprive the third party of the benefit of the general principle that the applicant should pay its costs;*
> *(5) if it is reasonable for the third party to resist disclosure, it is entitled to decide on what basis to do so, and with what evidence, without losing its costs protection, provided that it does take an unreasonable course which unnecessarily increases the costs;*
> *(6) there may be cases which require a different order but that will not usually be the case (a) where the third party had a genuine doubt whether the applicant was entitled to disclosure; or (b) where the third party was under a legal obligation not to disclose; or (c) where the legal position was not clear; or (d) where the third party could be subject to legal proceedings or might suffer damage if it gave voluntary disclosure; or (e) where disclosure would or might infringe a legitimate interest of another."*

40. The foregoing is predicated on the respondent being *"innocent"* and not taking an unreasonable course which unnecessarily increases the costs.

41. Mr Peto cited JSC *BTA Bank v. Ablyazov* [2014] EWHC 2019 (Comm), [79] - [82], per Flaux J (as he then was):

> *"79. I agree with Mr Smith QC that that paragraph of the judgment in Totalise is not intended to circumscribe the circumstances in which the court may decide to depart from the normal Order for costs in a Norwich Pharmacal case to those where the crime or tort is established at a criminal or civil trial. The question is whether at the time when the court is considering the appropriate order as to costs (which may well be after compliance or purported compliance with a Norwich Pharmacal Order as in the present case) on the material before the court, the court can be satisfied that the respondent has supported or is implicated in the wrongdoing or has sought to obstruct justice.*
>
> *80. That that is the correct approach seems to me to be borne out by two matters. First, as the second paragraph in the speech of Lord Reid in Norwich Pharmacal itself which I quoted at [71] above contemplates, there may well be cases where at the time of the application or after purported compliance, the Court can see for itself that the respondent is sufficiently implicated to be under a liability to the claimant, even though the claimant has no intention of suing him. It would surely be most peculiar if the Court could not, in such a situation, depart from the normal Order in relation to costs of compliance or purported compliance, unless and until the liability had been established at trial, given that by definition, since the claimant has no intention of suing the respondent, there*

will be no trial.

81. That also seems to me to be an answer to Mr Machell QC's point that, where the claimant suspects that the Norwich Pharmacal respondent is knowingly involved in the wrongdoing of the defendant, he has a choice either to proceed only by way of a Norwich Pharmacal Order or to join the respondent as a defendant and, if he chooses the former approach, he should still have to pay the costs of compliance. As I see it, implicit in Lord Reid's speech is that in such a case the claimant does not have to make a choice of that kind. He can seek a Norwich Pharmacal Order and invite the court to depart from the normal Order as to costs which the court will do if it is just and appropriate to do so.

82. This leads on to the second matter which supports the conclusion that it is not only where the claimant establishes at a trial that the Norwich Pharmacal respondent was implicated in the defendant's wrongdoing, that it is appropriate to depart from the normal Order in relation to costs. This is the "sliding scale" of discretion as to the appropriate Order for costs where the Court decides to depart from the normal Order. As the Court of Appeal in Totalise recognise at [31], the Court may order the respondent to pay his own costs or, where appropriate, the claimant's costs and there are of course gradations in between, such as an Order that the respondent pay some of the claimant's costs or recover only some of his own costs. If it were really the case that the Court could only conclude that the Norwich Pharmacal respondent was implicated in the wrongdoing after a trial of that issue, it is difficult to see what other Order for costs would be appropriate if the liability of the respondent was established at trial than that he should have to pay his own and the claimant's costs of compliance with the Norwich Pharmacal Order."

42. Techteryx submits that ARIA Bio is the wholly-owned subsidiary of ARIA DMCC, and Mr Brittain is the ultimate beneficial owner of both entities. It is one of the series of ARIA companies wholly owned and controlled by Mr Brittain to which the proceeds of the Six Remittances were dissipated, and in respect of which Mr Brittain has not adequately explained what happened to the monies transferred to these entities, and where the money is now. Given that Mr Brittain is the ultimate owner and controller of both entities, it follows that there is at least a serious issue to be tried that ARIA Bio knowingly received the proceeds of the Six Remittances paid in breach of trust.

43. Techteryx says that this application has been necessitated by ARIA DMCC's and Mr Brittain's non-compliance with the WFO and the October Order to disclose what has happened to the money transferred to ARIA Bio. It would not be just and appropriate to require Techteryx to pay the costs of ARIA Bio to provide information and documentation, which its parent company and ultimate beneficial owner and controller should have already provided under existing Court orders. Accordingly, ARIA Bio should be ordered to pay Techteryx's costs, and it should meet its own costs of complying with any order made in response to the Disclosure Application.

44. In the light of the forthcoming Committal Application, I consider that I should reserve all questions of costs until I have determined that application and ARIA Bio has had an opportunity to comply with this Order.

45. Accordingly, the sub-heading of *"Costs"*, the Order shall read, *"All questions of costs are reserved with liberty to both parties to restore their applications following determination of the Committal Application and compliance with this Order"*.