

Insights

RECTIFICATION AND REMOVAL OF INCORRECT INFORMATION ON THE COMPANIES REGISTER

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SUMMARY

The Companies Register (“the **Register**”) is the repository of the records of Hong Kong companies, and is maintained by the Companies Registrar.

In general terms, the records within the Register are available for public search.

But, what is the position if the Register records incorrect information, which is filed without the company’s authority? What legal recourses are available to the company?

A recent HK case [*Light Shine Ltd v Cheung Ho Lai Lily and Others* \(\[2021\] HKCFI 3750, HCMP 884/2021, 15 December 2021\)](#) sheds light on the mechanism for the rectification or removal of incorrect information on the Register.

BRIEF FACTS

The Plaintiff was a HK limited company. At material times, the Plaintiff carried on a business of investing in the real properties market.

On 21 January 2019, five forms (the “**Disputed Forms**”) were filed in the Registrar, and the Plaintiff asserted that this filing was done without the Plaintiff’s knowledge. The effects of these forms were:-

- a. All incumbent directors ceased to act as the Plaintiff’s directors.
- b. The incumbent company secretary ceased to act as the Plaintiff’s company secretary.
- c. The 1st Defendant was appointed as the Plaintiff’s sole director.
- d. The 2nd Defendant was appointed as the Plaintiff’s company secretary.

The Plaintiff applied to the Court for an order that the Disputed Forms be declared null and void, and removed from the Register, or alternatively, that the information in the Register be rectified to reflect the annulment and/or removal of the Disputed Forms.

ISSUES

The main two issues before the Court were:-

1. Were the Disputed Forms false and/or filed without the authority of the Plaintiff?
2. Should the Disputed Forms be removed or rectified?

RECTIFICATION OF THE DISPUTED FORMS UNDER SECTION 42(1) OF THE COMPANIES ORDINANCE

Section 42(1) of the Companies Ordinance (Cap. 622) (the "**Ordinance**") reads as follows:-

"(1) The Court may, on application by any person, by order direct the Registrar to rectify any information on the Companies Register or to remove any information from it if the Court is satisfied that—

- a. *the information derives from anything that—*
 - i. *is invalid or ineffective; or*
 - ii. *has been done without the company's authority; or*
- b. *the information—*
 - i. *is factually inaccurate; or*
 - ii. *derives from anything that is factually inaccurate or forged."*

In the present case, the Court was satisfied that the Plaintiff's application met the requirements under section 42(1) of the Ordinance for the following reasons:-

1. It was the Plaintiff's case that neither it nor its directors or company secretary had had any contact, connection, or dealing with the 1st and 2nd
2. The Plaintiff adduced evidence that it had never appointed the 1st Defendant as its director or the 2nd Defendant as its company secretary, and that the Plaintiff's incumbent directors and company secretary had never resigned.
3. In the circumstances, the Court was of the view that the Plaintiff had established at least a prima facie case that the signatures and company chops on the Disputed Forms were

forgeries.

4. Upon discovery of the Disputed Forms, the Plaintiff immediately reported the matter to the Police and also lodged a complaint with the Companies Registry.
5. The evidence filed by the Plaintiff had not been challenged in these proceedings.

REMOVAL OF THE DISPUTED FORMS UNDER SECTION 42(4) OF THE ORDINANCE

Section 42(4) of the Companies Ordinance (Cap. 622) (the “**Ordinance**”) reads as follows:-

“(4) The Court must not order the removal of any information from the Companies Register under subsection (1) unless it is satisfied that—

- a. *even if a document showing the rectification in question is registered, the continuing presence of the information on the Companies Register will cause material damage to the company; and*
- b. *the company’s interest in removing the information outweighs the interest of other persons in the information continuing to appear on the Companies Register.”*

In Harrison Ltd v The Registrar of Companies and Anor [2020] HKCFI 3112, the Court set out the following principles on removal of information from the Register:-

1. Section 42(4) of the Ordinance prescribes and restricts the Court’s power to exercise the removal of information from the Register. Removal may be ordered only if (a) the Plaintiff shows that rectification is insufficient because the continuing presence of the incorrect information will cause material damage to the company, and (b) the company’s interest in removing the information outweighs the interests of other persons in having the information continue to appear on the Register.
2. The fact that the information is incorrect, or relates to an invalid or ineffective transaction, or has been filed without proper authority of the company, or that a document is a nullity or is one that never should have been registered, is not in itself a sufficient reason for removing it as opposed to rectifying it. Indeed, the structure of section 42 suggests that even forged documents should not necessarily be removed unless the conditions in subsection (4) are established.
3. The extra hurdles imposed by subsection (4) show a clear legislative intention that where there is factually incorrect information on the Register, the preferred method is rectification, rather than removal.
4. Nevertheless, the threshold for subsection (4) is “fairly low”. The Court is entitled to consider a wide range of factors in determining whether any damage would be caused to the

company if the impugned record persists, including misuse of forged documents and the portrayal of a harmful impression to current and other potential business partners or lenders. It may be sufficient to show that the continued presence of such records will impede the normal operation of the company.

5. Section 42(8) provides that "*If the Court makes an order under this section, the person who made the application must deliver an office copy of the order to the Registrar for registration*", so that the basis of the rectification or removal ought to be apparent from an inspection of the record.

In *Re China Nice Education Research Publishing Investment and Management Co Ltd*, the Court added that, in order to prove that the Disputed Forms would cause material damage to the Plaintiff, it must be shown that their continued existence would result in a real risk of material damage to the Plaintiff even if rectifications were made. Nevertheless, no removal order under section 42(4) could be made where the alleged harm was purely hypothetical, unrealistic, or inconsequential. It is unlikely that a mere impression of confusion (without more) would result in any material harm to the company.

The Court held that the Plaintiff had satisfied and fulfilled the requirements under section 42(4) of the Ordinance for the following reasons:-

1. The Plaintiff adduced evidence that the Disputed Forms were created and filed with a fraudulent intent to apply for a mortgage loan. However, the Court acknowledged that such evidence, per se, was not sufficient.
2. The continuing presence of the Disputed Forms on the Register might cause the public to associate the Plaintiff (or its operations) with the 1st Defendant and/or the 2nd Defendant, and affect adversely the Plaintiff's credit rating by banks, leading to some adverse impact on the existing credit facilities. The Court also recognised a risk that the registration of rectified documents may not satisfy the Bank or other financing institutions that the issues arising from the Disputed Forms have been fully resolved.
3. If the Disputed Forms were not removed, the contents thereof would give rise to questions of identity of the directors who would be authorised to sign documents on behalf of the Plaintiff. This was a particularly important consideration because the Plaintiff was an investor in real properties. After the Disputed Forms were filed, the Plaintiff mortgaged its two properties to a bank and purchased other properties. The continued existence of the Disputed Forms on the Register might dampen future transactions involving these properties.
4. Moreover, if the Plaintiff decided to sell any of its properties, a potential title problem would arise as requisitions would almost certainly be made relating to the identity of the directors who would be capable of validly executing the documents for the intended transfer.

5. In the circumstances, the Court took the view that the Plaintiff's interest in removing the Disputed Forms outweighed the interests of other persons in the information being preserved on the Register.

CONCLUSION

The Court ordered the Disputed Forms be declared null and void and be removed from the Register.

BCLP COMMENTS

Companies are reminded to check, periodically, the accuracy of their information that is filed with and available on the Register. If the Register contains incorrect or misleading information, companies should take appropriate and prompt steps to cause rectification or removal of such incorrect or misleading information.

RELATED CAPABILITIES

- Real Estate
- Real Estate Disputes
- Litigation & Dispute Resolution

MEET THE TEAM



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