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Overriding the original Register of Members held abroad: BVI Commercial Court confirms its power to reconstitute a Register of Members

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In the recent case of *Wanda Fong Jerriit and others v International Holdings Ltd and others*¹, the BVI Commercial Court has confirmed that the Court has the jurisdiction to appoint the company's registered agent to reconstitute the register of members and for that reconstituted register to stand as the register of members of the company going forwards. This was notwithstanding that the original register was kept outside of the BVI and continued to be in existence. This is a powerful remedy which is likely to see considerable use in the coming years.

Section 41(1) of the *BVI Business Companies Act 2004* (the "BCA") requires a BVI company to keep a register of members containing certain specified information including the name of the members and their shareholdings in the company. Pursuant to section 42 of the BCA, the register of members is prima facie evidence of matters stated therein. The register of members is an important document regarding a person's legal title to the shares in a BVI company.

Section 96(1) of the BCA requires a BVI company to keep its register of members or a copy at the office of its registered agent (which is required to be located in the BVI). Many companies elect to keep the register of members outside of the BVI and to have the register maintained by a person outside of the jurisdiction of the Court.

It has been well established that under section 43 of the BCA, the Court has power to order rectification of the register of members upon application by a member of the company, or

any person who is aggrieved by any omission, inaccuracy or delay in respect of the information in the register. Accordingly, in *Wanda*, Justice Adrian Jack (Ag.) made an order in 2019 requiring the register of members of Meridian International Holdings Ltd to be rectified to reflect the claimants as registered members.² The register was kept by a Hong Kong law firm. Despite the order, the Hong Kong law firm refused to rectify the register. Had the register been kept in the BVI, the Court would have had the means to secure compliance of the order. However, the register was kept out of the Court's territorial jurisdictional reach. Accordingly the claimants applied to the Court for an order directing the registered agent, who is within the jurisdiction of the Court, to draw up a new register to replace the original register kept in Hong Kong.

Justice Adrian Jack (Ag.) held that the Court has the power to make the orders sought by the claimants, by reason that (i) without such power, the aggrieved shareholder would have no effective remedy and the Court would have no means of ensuring that its orders are carried into effect, which could not have been the intention of the legislature in enacting section 43 of the BCA; further or alternatively (ii) section 25 of the *Supreme Court Act* gives the Court the power to nominate any person to execute any conveyance, contract or other document where an order directing a person to execute such conveyance, contract or document has not been complied with due to refusal or neglect, which is broad enough to enable the Court to make the orders sought.

¹ BVIHCM 135 of 2019, 4 June 2020.

² *Wanda Fong Jerriit and others v Meridian International Holdings Ltd and others*, BVIHCM 135 of 2019, 4 December 2019.

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This decision establishes that the BVI Court has extensive powers to secure compliance with its orders for rectification of a register of members. It also gives shareholders of BVI companies comfort that their rights to have their names entered on the register could not be defeated by means of holding the register outside of the BVI or by reason of a failure to cooperate in updating the register.



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