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## Overriding the original Register of Members held abroad: BVI Commercial Court confirms its power to reconstitute a Register of Members / 取替保存在英属维尔京群岛以外的股东名册原本：英属维尔京群岛商业法院确定法院有权力重建股东名册

Service area 服务范围 / Dispute Resolution and Litigation 争议解决与诉讼

Legal jurisdictions 司法管辖 / British Virgin Islands, Hong Kong 英属维尔京群岛, 香港

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In the recent case of *Wanda Fong Jerrit and others v International Holdings Ltd and others*<sup>1</sup>, 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.<sup>2</sup> 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

<sup>1</sup> BVIHCM 135 of 2019, 4 June 2020.

<sup>2</sup> *Wanda Fong Jerrit and others v Meridian International Holdings Ltd and others*, BVIHCM 135 of 2019, 4 December 2019.

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*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.

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.

英属维尔京群岛(“BVI”)商业法院在最近的Wanda Fong Jerrit and others v International Holdings Ltd and others<sup>1</sup>案件中确认了法院有权任命公司的注册代理人重建股东名册, 并以该重建后的名册为此后的公司股东名册, 即使股东名册原本保存在BVI以外。这会是将来被经常使用的一种有力法律保护。

《BVI商业公司法》(以下简称“BCA”)第41(1)条说明BVI公司必须保存一份包含股东名字和持股数量等信息的股东名册。根据BCA第42条, 股东名册是有关股东和股份资料的初步证明。股东名册也是证明股东在BVI公司股份法定所有权的重要文件。

根据BCA第96(1)条要求, BVI公司必须在其位于BVI的注册代理办事处保存股东名册的原本或副本。许多公司选择将股东名册保存在BVI以外的地方, 并由BVI法院管辖范围外的机构来保存该名册。

根据BCA第43条的规定, 法院有权应股东或在因登记股东名册时有遗漏、不准确或延迟而利益受损的任何人的申请, 下令更正股东名册。在Wanda案件中, 法官Adrian Jack (Ag.) 于2019年下令要求Meridian International Holdings Ltd在股东名册加上原告人的持股资料<sup>2</sup>。该名册由一家香港律师事务所保存。尽管有法院命令, 该香港律所仍拒绝更正股东名册。如果股东名册保存在BVI, 法院就能以多种方法确保公司遵守法院命令。但由于该名册不在法院的管辖范围之内, 原告人向法院申请, 寻求法院命令指定在法院管辖范围内的注册代理人拟订新的股东名册, 以取代在香港的名册原本。

法官Adrian Jack (Ag.) 认为, 法院有权下达原告人所寻的命令, 原因是 (i) 如果法院没有这种权力, 利益受损的股东将无法获得补偿, 法院无法确保其命令能得以执行, BCA第42条的立法意图也无法实现; (ii) 《最高法院法》第25条规定, 若由于拒绝或疏忽行为导致涉及执行财产让与、合同或其他文件的法院命令未能完成, 法院有权任命其他任何人执行该命令。

此项决定确立了BVI法院有权力确保更正股东名册的命令能得以执行, 也确保BVI公司的股东拥有将其持股信息准确登记在股东名册上的权利, 不会因名册保管在BVI以外的地方, 或是因维持名册的人拒绝配合更新名册而受到影响。

有关更多信息或讨论具体情况, 请以以下方式与作者联系。

<sup>1</sup> BVIHCM 135 of 2019, 2020年6月4日

<sup>2</sup> Wanda Fong Jerrit and others v Meridian International Holdings Ltd and others, BVIHCM 135 of 2019, 2019年12月4日



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