

Case Summary (2)

Re : Intelligence Link Ltd. (“the Company”)

HCMP 1435/2013

Date of Judgment : 28 October 2013

1. This is an application by the Company for relief under section 122 of the Companies Ordinance, Cap. 32. (“**the Ordinance**”).
2. Sections 122 (1) and (2) of the Ordinance require directors of a company to lay profit and loss account and balance sheet before a company at its annual general meetings.

Background

3. No accounts had been laid before the Company at its annual general meetings since its incorporation in 1994 until 2013, contrary to sections 122(1), (1A) and (2) of the Ordinance.
4. Apart from receiving dividend income from its operating subsidiaries in mainland China and bank interests, the Company had not engaged in any active business since its incorporation. The dividend income and bank interest did not attract tax in Hong Kong. Although the Company had not prepared its accounts, its main PRC subsidiary had prepared audited accounts and provided the same annually to the Company’s shareholders.
5. It was alleged that the Company’s directors had no legal or company management background. The Company had engaged the same secretarial company for a substantial period of time, which never advised the directors of the need to table accounts before the Company at its annual general meetings. As the Company did not engage in any business activities, the directors were under the impression that it was not necessary to lay accounts before the Company at its annual general meetings.
6. The default was uncovered by a due diligence exercise undertaken for a potential listing in Hong Kong. The directors had thereafter caused audited accounts for the past years to be laid at an annual general meeting held in July 2013. The Company

had indicated that if the proposed listing was successful, it would appoint new directors with relevant training and company secretary.

The legal principles

7. The court restated the following factors to which the court would have regard when deciding whether or not to exercise its discretion under section 122(1B) :-
 - (a) whether the shareholders were conversant with the financial position of the company and were not prejudiced by the non-compliance;
 - (b) whether the default was inadvertent; and
 - (c) whether the court was satisfied that the company would comply with its statutory obligations in the future.

The decision

8. The court, having regard to the evidence in this case, was satisfied that the contraventions had been inadvertent and that adequate steps had been taken to ensure future compliance with the relevant statutory requirements. The application was granted.
9. The court has also pointed out that the directors of a company have a duty to acquaint themselves with their responsibilities and duties as directors.
10. The court has also stressed that applicants for the relief have a duty to assist the court by ensuring that all necessary evidence is adduced.

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