

Proactive Measures and Legal Remedies Against Corporate Document Forgery

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Introduction

Scams and theft are escalating at an alarming rate. Government statistics reveal a staggering 402% surge in deception cases over the past decade¹. Fraud poses risks not only to individuals and their personal assets but also to companies and businesses, which may face significant financial and operational consequences. For illustration, in a sophisticated deepfake scam, fraudsters used AI-generated voice and video to impersonate company executives, deceiving a Hong Kong employee of a UK engineering firm into transferring US\$ 25 million (equivalent to HK\$ 195 million) to a fraudulent account last year².

Recently, there has also been an increase in cases where scammers have maliciously falsified corporate documents to seize control of company-held properties and assets, hijack businesses, and/or otherwise unlawfully take control of companies. This article explores the rising threat of such fraud, examining how scammers manipulate corporate documents to hijack businesses or sabotage operations. More importantly, it outlines actionable strategies to protect your businesses' rights and legal remedies to recover assets lost to forgery, fraud, or scams.

How Fraudsters may Hijack your Companies

In Hong Kong, most businesses operate as companies limited by shares. Although shareholders are effectively owners of a company, the doctrine of separate legal entity dictates that shareholders and the company are distinct entities and the day-to-day control of a company is vested in the board of directors. In this regard, fraudsters may forge and file false corporate documents to illegally reconstitute a company's board of directors, effectively seizing control of its operations.

Under section 645 of the Companies Ordinance (Cap. 622) (the "**CO**"), when a director ceases to hold office in a company or when a person is appointed as a director of a company, the company has to notify the Registrar of Companies (the "**Registrar**") by filing a Form ND2A (Notice of Change of Company Secretary and Director (Appointment / Cessation)) ("**Form ND2A**") within 15 days after the cessation or appointment with the Registrar. However, it is pertinent to note that under section 62 of the CO, the Registrar does not have any statutory obligation or power to verify the truth of the information contained in a filed Form ND2A. This position is further reinforced by section 63 of the CO, which affords the Registrar immunity from civil liability in respect of such matters. Therefore, the statutory framework creates an evidentiary presumption in favor of registered documents without mandating substantive

¹ https://app7.legco.gov.hk/rpdb/en/uploads/2025/ISSH/ISSH06_2025_20250326_en.pdf

² <https://edition.cnn.com/2024/05/16/tech/arup-deepfake-scam-loss-hong-kong-intl-hnk/index.html>



verification, thereby establishing a potential avenue for fraudsters to effect unauthorized changes to corporate governance structures through the submission of falsified instruments.

Proactive Measures Against Corporate Hijackers

If you discover that your company has fallen victim to the above type of scam, consider the following actions:

(1) Report the Matter to the Police:

Forgery of documents is a serious criminal offense under section 71 of the Crimes Ordinance (Cap. 200). Police investigation and assistance are crucial for recovering or protecting your rights, and is often the first step to take in protecting your businesses. Prompt reporting is essential to maximize the prospects of asset recovery and the protection of corporate rights.

(2) File a Complaint with the Companies Registry (the “CR”):

You can in parallel file a complaint with the CR if you believe there has been a breach of the CO. The CR may investigate the matter by, among other things, raising requisitions or requesting support documents from the relevant parties (e.g. the presenter). Assistance from the CR may be pursued concurrently with criminal investigations by law enforcement authorities, thereby providing complementary avenues for redress, especially in terms of collecting inculpatory evidence against the scammers in support of further civil action.

(3) Apply to Rectify or Remove False Information on the Companies Register (“Register”):

Under section 42(1) of the CO, the Court may, upon application, order the Registrar to rectify or remove any information from the Register if it is satisfied that -

- (a) the information derives from anything that is invalid or ineffective, or has been done without the company’s authority; or
- (b) the information is factually inaccurate, or derives from anything that is factually inaccurate or forged.

Further conditions are imposed where removal of information from the Register is sought. Section 42(4) of the CO provides that the Court must not order the removal of any information from the Register unless it is satisfied that even if a document showing the rectification in question is registered, the continuing presence of the information on the Register will cause material damage to the company; and the company’s interest in removing the information outweighs the interest of other persons in the information continuing to appear on the Register.

It is worth noting that Hon Cheng J in *Noble Crest Limited v Chau Yuet Ching Brenda and Others [2023] HKCU 208* stated that the threshold for securing removal of inaccurate entries on the Register is not particularly stringent. Removal may be justified where there is a prospect of damage being caused to the company by the misinformation on the Register. For example, as provided by Hon Cheng J in his judgment, the continued presence of incorrect information may give rise to a real risk that third parties dealing with the company would question the identity of its shareholders and directors, creating confusion, uncertainty, and unnecessary time and cost being wasted on the part of the companies.



Further, where the Court makes an order to rectify or remove misinformation on the Register which was filed by a person who was not duly authorized by the board of directors of a company, the Court has power to make an Order for Costs against that individual (*Cao Zhushen v Registrar of Companies* [2018] HKCU 820, [2018] HKCFI 59).

For more practical tips against fraudsters, you may also review our firm's earlier article on the "Letter of No Consent" Regime [here](#).

Criminal & Civil Recourse Against Corporate Hijacking

As detailed above, malicious individuals may gain control over your businesses by forging corporate documents and lodging them with the CR. Once the board of directors of your company is hijacked by fraudsters, those individuals may then enter into transactions in the name of the company with third parties, channeling the company's assets out of the company's control and reach.

Money Laundering:

From a criminal perspective, other than forgery of documents as aforementioned, this may also be punishable under section 25 of the Organized and Serious Crimes Ordinance (Cap. 455) (the "OSCO"), namely the offence of "dealing with property known or believed to represent proceeds of an indictable offence", commonly known as money laundering. It is pertinent to note that the Prosecution may apply for restraint and confiscation orders available under the OSCO to seize the proceeds resulting from fraud, providing relief to victim companies.

On the other hand, from a civil perspective, it is essential to consider your potential legal remedies to recover those proceeds. Such legal actions are commonly constructed as claims based on unjust enrichment and/or constructive trust.

Unjust enrichment:

This doctrine prevents a party from retaining funds or assets as they will be unfairly benefitting at the expense of another. For a claim of unjust enrichment to succeed, the following elements must be demonstrated to the Court, as detailed by the Hong Kong Court of Final Appeal in the landmark case of *Shanghai Tongji Science & Technology Industrial Co Ltd v Casil Clearing Ltd* (2004) 7 HKCFAR 79, [2004] 2 HKLRD 548, [2004] HKCU 380 (CFA):

- (1) The Defendant has been enriched;
- (2) The enrichment was at the Plaintiff's expense;
- (3) The enrichment was unjust; and
- (4) There is no applicable defense.

Constructive trust:

The general concept of constructive trust is that the recipients of funds or assets derived from fraud are considered to be constructive trustees holding such funds or assets for the rightful owner, even in the absence of a formal trust agreement or relationship. For example, the Court in *Michael Chen Kang Huang v Peter Lit Ma* [2009] 6 HKC 191 (CFI) held that a fraudster in a financial scheme holds the property received on constructive trust for the victim.



(i) Knowing Receipt

The doctrine of constructive trust is also invoked where such fraud-derived funds or assets pass down through third parties (e.g. the accessories of the original fraudster), which is often the case in complex frauds and scams. For example, a person may be held as a constructive trustee where he knowingly receives such properties pursuant to the doctrine of knowing receipt under the umbrella of constructive trust. The elements of knowing receipt are set out by the Court of Appeal in the case of *Akai Holdings Ltd (In Liq) v Kasikorn Bank PCL - [2010] 3 HKC 153* as follows:

- (1) A disposal of the plaintiff's assets in breach of fiduciary duty;
- (2) Beneficial receipt by the defendant of assets which were traceable as representing the assets of the plaintiff; and
- (3) Knowledge on the part of the defendant that the assets received were traceable to a breach of fiduciary duty.

(ii) Dishonest Assistance

Similarly, a person who knowingly assisted in a dishonest and fraudulent design may also be considered to be a constructive trustee pursuant to the doctrine of dishonest assistance, also under the umbrella of constructive trust. The elements of dishonest assistance are set out in *South China Media Ltd And Others v Kwok, Yee Ning and Others - [2018] HKCU 580* as follows:

- (1) Breach of trust or fiduciary duty by someone other than the defendant;
- (2) The defendants' assistance;
- (3) Dishonesty; and
- (4) Resulting loss.

Concluding Remarks

With the rise in digital transactions and the use of artificial intelligence in commerce, fraudulent activities including scams and forgeries have become increasingly prevalent with the forgery of company documents representing merely the tip of an iceberg. Recovering misappropriated proceeds from forgery, fraud, or scams and attempting civil recovery involves complex legal procedures.

At Fairbairn Catley Low & Kong, we offer tailored legal advice to help you navigate these processes effectively.



Contributor



Eugene H. K. Cheng

Partner

+852 2532 5453

 echeng@fclklaw.com.hk

This article has also received valuable contributions from our trainee solicitor, Ray Tsui.

Practice Area

Litigation, Arbitration & Dispute Resolution

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