



# GUIDANCE NOTE 18

## Substitutions and Rectifications

### ▪ Substitutions

Most documents lodged with the Registrar of Companies may be substituted, should an error be detected after the document has been filed at the Registry. No substitution can be made to a Return of Allotment or to any document relating to Charges or Mortgages.

We differentiate between a simple clerical error, which we allow to be corrected by substitution of the original document and a more serious error that needs to be corrected by rectification. It is a question of judgment whether an error can be dealt by way of substitution or rectification.

In order to substitute the incorrect documents, it is necessary to submit the following:-

#### 1. Letter of Substitution

This must be addressed to the Registrar of Companies requesting that the document previously filed be substituted by the one attached.

The letter should also describe the error, i.e. the reason for the substitution is that the Particulars of Directors previously filed refers to the appointment of Mr. John Smith as being 13 May 2014, when it should have been 6 April 2014.

#### 2. Amended Document

The duly corrected document must be identical in every way except for the correction described in the Letter of Substitution. The substituted document should be dated with the same date as the original document filed (except in the case where the dating of the original document was the error).

3. The prescribed fee of £17.50 for the letter of substitution and £17.50 for the document substituted **unless the document has a statutory fee prescribed in Schedule 24 of the Companies Act.**

Once the letter of substitution and amended document has been delivered, the Registry will: -

- (i) Identify the incorrect document with a Rubber Stamp stating: "This Document has been Substituted".
- (ii) File the letter of substitution together with the corrected document in the Company file.
- (iii) Amend the database accordingly; or
- (iv) Refuse to deal with the substitution and instruct that an application for rectification needs to be made.

## ▪ Rectifications

### **Rectification of Registers Regulations, 1994**

Under the above Regulations it is possible for a person to apply to the Registrar for Rectification of the Register in respect of an entry in a register that has been omitted, is incorrect or has been included in error – Reg. 4(1).

An application for Rectification shall be accompanied by:-

- i. A Statement in the form of an affidavit referring to:
  - 1. the applicant's interest in the matter
  - 2. the facts on which the application is based
  - 3. the relief sought
- ii. A resolution of the company approving the rectification sought
- iii. The prescribed fee of £50.00

The Registrar may, in his discretion, require that notice of the said application be given to a person who appears to the Registrar to be concerned or to have an interest; or may require that the application be published in the Gazette.

An application for Rectification may also be made by a person other than the person in respect of whom the entry has been omitted, is incorrect or has been included in error: Reg. 4(5). Such person will be required to deliver to the Registrar the Application for Rectification and the statement of interest together with the prescribed fee of £58.50. The applicant will also be required by the Registrar to give notice of the application to the person in respect of which rectification in the register is sought, (including the statement of interest, the facts on which the application is based and the relief sought) and to any other persons as the Registrar may specify Reg. 4(6).

The Registrar will take into account any representations made within the period of 30 days as per Reg. 6(1) and 6(2) in deciding whether or not to exercise his discretion to rectify under Reg. 7(1), or in his discretion may refuse to consider the application and require that the person by whom the application was made apply to the Supreme Court for an order for rectification under Reg.8.

As a result of a decision under Reg. 7(1) or an order following an application to court under Reg. 8 the Registrar shall rectify under Reg. 7(2) and the rectification shall take effect under Reg. 9.

The register of charges shall not be subject to rectification under the Regulations (see schedule of Regulations).

The Registrar may also initiate the rectification procedure himself under Reg. 5.

The Registrar has discretion as to whether to allow a rectification and in his discretion may also refuse to consider an application and require the applicant to apply to the Supreme Court for an order for rectification. If there is a dispute between parties the Registrar will invariably require that an application be made to court

In exercising his discretion the Registrar shall consider each case on its merits but will normally apply certain guidelines:

1. The application is more likely to succeed if what is sought is to add to the record rather than to remove information: for example, adding a director whose name was omitted in error rather than removing an officer from the record of the company.
2. An application will often be made because the record of the Registrar does not conform with the Register of members kept by the company under section 144 of the Companies Act. It should be borne in mind that the Registrar has no power to rectify the Register of Members and the directors of a company may only rectify the register of members without an application to the court if there is no dispute, and the circumstances are such that the court would order rectification, but ordinarily the protection of a court order is essential to any rectification for the removal of the name of a registered holder of shares.

In all cases where there is doubt as to the power of the directors to amend the Register of Members, the applicant should apply to the court rather than to the Registrar of Companies. Consideration should also be given to the fact that an Annual Return is based on the Register of Members and an error in the Annual Return will normally indicate to the Registrar that the error also exists on the Register of Members unless he is satisfied otherwise.

3. Time is also an issue when applying for rectification. If the error or omission was recent the Registrar is more likely to grant the application. The Registrar will not usually grant an application to alter the record of shareholdings or directors after a period of two years has lapsed and normally an application to court will be necessary.

It is useful at this stage to remember that the Privy Council in 2004 on an appeal from the Court of Appeal from the Bahamas (Privy Council appeal No 39 of 2003) decided as follows:-

“The register of shareholders of the company is neither compiled nor kept by the Registrar of Companies, who is a public officer in charge of the public registry, and whose responsibility under the Companies Act includes the registration of companies. The Registrar General is not empowered by law to decide whose name should be entered on the register of shareholders of any company.

It is the Registrar’s function to receive annual statements made by companies under section 58 of the Companies Act 1992, and to make them available for public inspection. But the accuracy of the information depends on the officer of the company who submits the statement.”

- **Guidance only**

This Circular is intended for general guidance only. Companies House (Gibraltar) Limited does not assume legal responsibility for the accuracy of any particular statement. In the case of a specific problem we recommend that you seek professional advice.

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