IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2023] SGHC 293

Originating Application No 561 of 2023

Between

Chen Songlin Michael

… *Applicant*

And

Attorney-General

… *Respondent*

GROUNDS OF DECISION

[Companies — Directors — Disqualification — Disqualification from acting as director under s 155(1) Companies Act 1967 — Whether applicant should be granted permission to act as director — Section 155(1) of the Companies Act 1967 — Factors to be considered]

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Chen Songlin Michael
v
Attorney-General

[2023] SGHC 293

General Division of the High Court — Originating Application No 561 of 2023
Audrey Lim J
2 August 2023

16 October 2023

Audrey Lim J:

1 This was an application by Mr Chen Songlin ("Mr Chen") for permission to act as a director and/or to manage a company ("application for permission") pursuant to s 155(1) of the Companies Act 1967 (2020 Rev Ed) ("the CA"). I allowed the application. I now set out the grounds for my decision and in particular the considerations to be applied when determining an application for permission under s 155 of the CA.

Background

2 Mr Chen holds 80 per cent of the shares of Eri Organisation Pte Ltd ("Eri Organisation"), with the other 20 per cent held by his wife. Eri Organisation in turn wholly owns Eri Accounting Service Pte Ltd ("Eri Accounting") and Eri Secretarial Service Pte Ltd ("Eri Secretarial"). I will refer to all three entities collectively as "Eri". Essentially, Eri's business is in assisting its clients with

starting businesses and incorporating companies in Singapore, such as by providing corporate secretarial, accounting and resident nominee directorship services.[1]

3 On 21 October 2020, Mr Chen pleaded guilty to and was convicted of 13 offences under s 197 of the CA for the failure of nine companies (the "Nominee Companies") to lodge on time annual returns with the Registrar of Companies, and he was fined. The Nominee Companies were clients of Eri Organisation, which had provided nominee directorship services to these companies. Mr Chen served as a nominee director in each of the Nominee Companies.[2]

4 Pursuant to his conviction, Mr Chen was automatically disqualified from acting as a director in any company under s 155 of the CA for five years from 21 October 2020.[3] Hence, Mr Chen, who was then a director of each of the Eri entities, ceased to be so.

5 On 1 November 2021, pursuant to an application made under s 155 of the CA, the High Court (in HC/OS 785/2021 ("OS 785")) granted Mr Chen permission to act as a director and to manage each of the Eri entities. In arriving at its decision, the court considered "the points of mitigation, contrition and hardship" set out by Mr Chen. Pertinently, Mr Chen's wife, then the sole director of Eri, was no longer able to manage Eri due to her ill health.[4] Mr Chen

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1 Affidavit of Michael Chen in HC/OS 785/2021 ("OS 785 Chen's Affidavit") at [7]–[8] and [10].

2 OS 785 Chen's Affidavit at [12] and [14].

3 OS 785 Chen's Affidavit at p 29.

4 Minute Sheet dated 1 November 2021 in OS 785/2021; OS 785 Chen's Affidavit at [38]–[41].

had also attended training courses on regulatory compliance. The application was not opposed by the respondent (the Minister for Finance ("Minister"), represented by the Attorney-General).

6 In these proceedings, Mr Chen applied for permission to act as a director of and/or manage CEASY Tech Pte Ltd ("CEASY") pursuant to s 155 of the CA. Mr Chen is the majority shareholder of CEASY, which was incorporated in Singapore in October 2022.[5] The Minister did not object to the application. The parties also accepted that I could rely on the matters in OS 785 as I found that they were relevant in my consideration of the present application.

The applicable principles under s 155 of the CA

Applications for permission under ss 154(6) and 155A(3) of the CA

7 I first determined the applicable principles in an application for permission under s 155 of the CA, as there was no established framework in this regard unlike for applications for permission under s 154(6) (where a person has been disqualified from being a director essentially because he has been convicted of certain offences) or s 155A(3) (where a person has been disqualified from being a director of a company because the Registrar of Companies has struck off under s 344 within the preceding five years no less than three companies of which that person was a director). In my view, the considerations which the court has adopted for applications under ss 154(6) and 155A(3) and the rationale underlying the genesis of these considerations provide guidance as to the approach for similar applications under s 155.

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5 Affidavit of Michael Chen in OA 561/2023 ("OA 561 Chen's Affidavit") at [12].

8 I began with the court's approach pertaining to applications for permission under s 154(6) of the CA, arising from a disqualification to act as a director or to take part in the management of a company. This disqualification is triggered by a director's personal wrongdoing. In particular, in relation to an automatic disqualification under s 154(1), the wrongdoing may take the form of conviction for an offence involving fraud or dishonesty if punishable with imprisonment for three months or more, or conviction for an offence under Part 12 of the Securities and Futures Act 2001 (2020 Rev Ed) ("the SFA"). It may also take the form of being subject to the imposition of civil penalties under s 232 of the SFA, which is also based on having to prove all the elements of a criminal offence under the SFA. In that sense, the imposition of such a civil penalty is based on criminal wrongdoing by the director which has been the subject of judicial determination: *Re Haeusler, Thomas* [2021] 4 SLR 1407 ("*Re Haeusler*") at [108]–[109]. As observed in *Ong Chow Hong (alias Ong Chaw Ping) v Public Prosecutor and another appeal* [2011] 3 SLR 1093 ("*Ong Chow Hong*") at [20], the rationale behind s 154(1) of the CA ought to be that the individual's fraudulent or dishonest conduct is *prima facie* evidence of his suitability of being a director, thereby justifying an automatic restraint.

9 The automatic disqualification under s 154(1) thus carries a predominantly *protective* function. It protects the public (and the company) from individuals who are deemed unsuitable to be directors because they do not possess the appropriate standards of commercial morality to be trusted in the management of corporate affairs: *Attorney General v Chong Soon Choy Derrick and others* [1983–1984] SLR(R) 530 ("*Derrick Chong*") at [29]. As elaborated by V K Rajah JA in *Ong Chow Hong* (at [20]–[23]), s 154 is concerned with protecting the public from the risk of harm posed by the specific director (who is the subject of the disqualification) and also the wider need to protect the

public from the risk of harm by all errant directors through an uncompromising reaffirmation of the expected exemplary standards of corporate governance.

10 In deciding whether to exercise its discretion under s 154(6) of the CA, the court in *Huang Sheng Chang and others v Attorney-General* [1983–1984] SLR(R) 182 ("*Huang Sheng Chang*") at [38] set out the following five factors which the court ought to consider (and which were accepted by the appellate court in *Derrick Chong* at [31]):

> (a) the nature of the offence of which the applicant has been convicted;
>
> (b) the nature of the applicant's involvement;
>
> (c) the applicant's general character;
>
> (d) the structure and the nature of the business of each of the companies which the applicant seeks the leave of the court to become a director of or to take part in the management of; and
>
> (e) the interests of the general public, the shareholders, the creditors and the employees of these companies and the risks to the public and to those persons should the applicant be permitted to be a director of those companies or to take part in their management.

In *Re Haeusler* (at [116]), the court explained that the above factors seek to balance the applicant's interest in being permitted to resume economically productive activity and the company's interest in gaining access to his skills and experience, against the regulatory interest in protecting the company, its stakeholders and the general public from the *prima facie* risk of harm which the

applicant poses to them all by reason of the judicial determination of personal criminal wrongdoing against him.

11 I turn to s 155A of the CA. Section 155A disqualifies a person from being a director or from being involved in the management of any company if he had been a director of three or more companies which have been struck off the register under s 344(4) read with s 344(1) of the CA within a period of five years. Given that various circumstances which do not even amount to breaches of the CA can justify a striking off under s 344 (see reg 89B of the Companies Regulations (1990 Rev Ed) read with ss 344(1) and 344(1A) of the CA), a disqualification under s 155A of the CA may arise without any wrongdoing whatsoever (criminal or otherwise). On that basis, the court in *Re Haeusler* held at [76], [81] and [111] that the provision was designed to *deter* directors of defunct companies from allowing such companies to remain on the register and leaving it to the Registrar to strike them off, rather than to protect the public from a director who has been judicially determined to have engaged in wrongdoing.

12 In *Kardachi, Jason Aleksander v Attorney-General* [2020] 2 SLR 1190 ("*Kardachi*"), the Court of Appeal held (at [70]–[72]) that whether the court should exercise its discretion (to permit an applicant to act as a director or to take part in the management of a company) will depend on a holistic assessment of the following considerations, namely: (a) the applicant's capacity for compliance with the regulatory requirements of the legislation in the future; and (b) any exculpatory reasons for the applicant's failure to wind up or procure the striking off of the companies which were struck off by the Registrar. However, the court stated that these factors were not exhaustive. It was also of the provisional view that the applicant should provide some details about the specific company for which permission is being sought and explain why it was

necessary for him to be a director of it. In this regard the court considered the fourth and fifth factors in *Huang Sheng Chang* (see [10(d)] and [10(e)] above) might also be relevant (see *Kardachi* at [73] and [77]). It further stated that the court would be more inclined to grant leave if the applicant depends on the relevant company for his livelihood, although this would not be determinative of the application (at [78]). In *Re Haeusler* at [127] and [133], Coomaraswamy J further held that another relevant factor is the period for which the applicant has served his disqualification but disagreed that the factors in *Huang Sheng Chang* were directly relevant to an application for permission under s 155A.

13 It was clear that the different factors which the court will take into consideration in the exercise of its discretion under ss 154(6) and 155A(3) flow from the objective of the respective provisions or, in other words, the specific mischief sought to be addressed. The framing of a principled approach towards applications for permission under s 155 should similarly begin with the identification of the statutory objective behind the provision.

Application for permission under s 155 of the CA

14 Section 155(1) of the CA provides that a person is liable for an offence if, without permission of the court, he acts as a director or promoter, or otherwise takes part in the management, of a company: (a) where he has been "persistently in default" of relevant requirements under the CA; and (b) within five years after he has last been adjudged guilty of any offence or has had made against him an order under s 13 or s 399 pertaining to such relevant requirements. A "relevant requirement" is defined as any requirement under the CA which essentially involves the delivery of documents or the giving of notice of a matter to the Registrar of Companies (s 155(2) of the CA). In substance, s 155 imposes an automatic disqualification on a person for persistent defaults in

relation to relevant requirements under the CA, for a period of five years following his last conviction or order under s 13 or s 399 of the CA. That a person has been "persistently in default" may be conclusively proved by showing that he has been adjudged guilty of three or more offences in relation to the relevant requirements or has had three or more orders made against him under s 13 or s 399 of the CA (s 155(3) of the CA).

15 In my view, the statutory objective of s 155 is predominantly *protective* in nature.

16 At the time of the provision's enactment in 1984, there was a growing incidence of directors of active companies who would, in their bid to evade accountability and deprive shareholders their statutory right to be informed of how their funds and the affairs of the company have been managed, intentionally omit to hold annual general meetings and file annual returns. Directors of companies which were facing financial difficulties were also failing to file annual returns, choosing instead to resign and abandon these companies: Andrew Hicks, "Disqualification of Directors for Persistent Default in Filing Documents – Section 155, Companies Act" (1985) 27 Malaya Law Review 329 at 330. As at 1982, over 23 per cent of active companies failed to file their annual returns for one or more years: Tan Boon Teik, "Duties of Directors under the Companies (Amendment) Act 1984" (1985) 11(1) Securities Industry Review 1 at 4.

17 As stakeholders can only obtain information on the performance and financial position of the companies from the audited accounts and the directors' report, such defaults in holding annual general meetings or in filing the annual returns naturally prejudiced the interests of these individuals. It is by way of such disclosure that the law protects the interests of investors, shareholders,

creditors and all others concerned with the company: Report of the Select Committee on the Companies (Amendment) Bill (Bill No 9/86) (Parl. 5 of 1987) at B-136. Section 155 of the CA was thus intended to protect the public, shareholders, creditors and other stakeholders from errant directors by preventing them from being involved in the management of any company for a period of five years if they have been found in persistent default of the relevant requirements of the CA.

18 The view that the disqualification of persons for persistently breaching the relevant requirements is predominantly protective in nature has also been endorsed by the courts in the United Kingdom ("UK"). Under s 3 of the Company Directors Disqualification Act 1986 (c 46) (UK) ("CDDA"), the court can make a disqualification order against a person who has been in persistent default of the statutory provisions (*ie*, those requiring him to file, deliver or send any returns, accounts or documents to the Registrar of Companies or to notify it of any relevant matter). Persistent default under the CDDA can be conclusively proved by showing that the person has had three convictions or orders made against him in relation to those provisions within the span of five years: ss 3(2) and 3(3) of the CDDA. The CDDA replaced the old disqualification regime in the UK companies' legislation (see *Ong Chow Hong* at [14]). In *Secretary for Trade and Industry v Swan and others* [2003] EWHC 1780 (Ch) at [9], the court held that the purpose of the disqualification is to protect the public.

19 The statutory objective underlying s 155 is similar to that of s 154 of the CA. Section 154(1) disqualifies individuals on the basis that their wrongdoing has provided *prima facie* evidence that they are unsuitable to be involved in the management of a company's affairs (see [8] above). Likewise, a disqualification under s 155 is premised on persistent defaults (*ie*, breaches) of relevant

requirements under the CA. Such persistent defaults would justify a disqualification of a director under s 155(1) because of the need to protect the public from an individual who is rightly deemed unsuitable to be involved in the management of an *active* company. This is unlike a disqualification under s 155A(1) of the CA, which may occur without *any* wrongdoing whatsoever (*Re Haeusler* at [110]) and is triggered by the Registrar having struck off (three or more) *defunct* companies of which the individual had been a director.

20 In the above regard, that the statutory objective behind s 155 is protective is not inconsistent with the court's observation in *Re Haeusler* at [112] regarding the risk which a director who fails to file annual returns poses to the public:

> A director who is disqualified because he permitted an inaccurate disclosure … or because he engaged in insider trading … poses an obvious risk to the public. A director who has failed to file a company's annual returns may pose a risk to the coherence of the register and undoubtedly imposes an administrative burden on the Registrar. But he poses no risk to the public from which the public ought to be protected.

These observations were made in the context of a disqualification under s 155A of the CA that is precipitated by the striking off of companies (of which the disqualified person is a director) under s 344, because they were in the Registrar's view *defunct* for having failed to file annual returns. I therefore did not take the court in *Re Haeusler* to be making the broader point that directors of *active* companies who commit similar wrongs pose no risk to the public.

21 Having considered the cases on ss 154 and 155A, I turn to the factors for an application for permission under s 155. I considered some of the factors in *Huang Sheng Chang* to be relevant. The disqualification in both ss 154 and 155 are premised on an individual's wrongdoing and the objectives of both sections are protective in nature. Additionally, I considered the factors

pertaining to s 155A to also be applicable. Although ss 154 and 155A are designed to achieve predominantly different statutory objectives, the Court of Appeal in *Kardachi* recognised that some factors relevant to an application for permission under s 154(6) might nevertheless be relevant to an application under s 155A(3). It thus acknowledged that the factors for an application under s 155A(3) were not necessarily distinct from those under s 154(6). Hence, I accepted that the factors pertaining to an application under s 155A(3) should be regarded in an application under s 155. Whilst a disqualification under s 155A is premised on the Registrar striking off companies which he believes to be defunct, one premise for his belief can be that the company has failed to file its annual returns (the "underlying act"). This underlying act, which is an offence under s 197 of the CA, is also a premise for disqualification under s 155.

22 As such, I am of the view that the court may consider the following factors in determining an application for permission under s 155 of the CA:

(a) the applicant's capacity for compliance with the relevant requirements under the CA in the future;

(b) any mitigating circumstances for the applicant's failure to comply with the relevant requirements;

(c) the structure and nature of the business of the company which the applicant seeks permission of the court to become a director of or to take part in the management of;

(d) the interests of the general public, shareholders, creditors and other stakeholders of the relevant company and whether these interests will be prejudiced if the applicant is permitted to be a director of the company or to take part in its management; and

(e) whether it is necessary for the applicant to be granted permission.

23 I add that the above factors are non-exhaustive and not every factor may be of equal importance in every case. The court should therefore consider the matter holistically. At the end of the day, the applicant's interest in resuming economically productive activity and the company's interest in gaining access to his skills and experience must be balanced against the regulatory interest in protecting the company, its stakeholders and the general public from the *prima facie* risk of harm which the applicant poses to them by reason of persistent breaches of the relevant requirements of the CA.

My decision

24 I was satisfied, on a holistic assessment of the factors above, that Mr Chen should be granted permission to be a director or take part in the management of CEASY.

Capacity for compliance in the future

25 I accepted that an applicant's capacity for compliance with the relevant requirements in the future was a necessary but insufficient requirement for permission to be granted under s 155(1) of the CA: see *Kardachi* at [98]. Such capacity for compliance is indicative of the reduced risk which the applicant poses to a company and its stakeholders in the event he is allowed to partake in the company's management.

26 An individual's capacity for compliance in the past (as demonstrated by the circumstances leading to his disqualification and his compliance in relation to other companies which are not the subject of his persistent default under s 155) and in the present (as demonstrated in his conduct during the period of

his disqualification) provides a good indication of his capacity for compliance in the future.

27 In the present case, the circumstances leading up to Mr Chen's disqualification did not, on their face, reflect a high capacity for compliance. Mr Chen was a director (albeit a nominee director) of the Nominee Companies that failed to file their annual returns. This resulted in 13 charges being brought against him. However, I accepted that there were mitigating circumstances, as will be elaborated upon at [30] below. As for the Eri entities, they have always been compliant with the regulatory requirements under the CA including the filing of annual returns prior to Mr Chen's disqualification in October 2020.[6] Further, Mr Chen attended courses on compliance and corporate secretarial practice in 2021, prior to his application for permission made in OS 785. Whilst he has not attended any further courses for the present application, the Eri entities (as well as their clients) have been compliant with their filing obligations under the CA since Mr Chen was granted permission to act as a director of Eri in November 2021.[7] As Mr Chen explained, he oversaw the implementation of systems to monitor deadlines for Eri's clients to file annual returns and other submissions required under the CA.[8]

28 I thus found (and the Minister agreed) that Mr Chen had sufficiently demonstrated his capacity for compliance, with the relevant requirements, in the future.

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6 OS 785 Chen's Affidavit at [35]; Respondent's Written Submissions in OS 785 ("OS 785 RWS") at [14].

7 OA 561 Chen's Affidavit at [7(3)(d)] and pp 21–22; Respondent's Written Submissions in OA 561 ("OA 561 RWS") at s/n 1 at [13].

8 OS 785 Chen's Affidavit at [23].

Mitigating circumstances

29 The court will also consider whether there are mitigating circumstances behind the applicant's disqualification under s 155(1). Such reasons may include the fact that the incidents leading to the disqualification were caused by circumstances beyond the applicant's control and occurred despite his best efforts. If such reasons exist, they provide a strong indication that the protective objective of s 155 of the CA will less likely be circumvented in the future by granting the applicant permission to be involved in a company's management.

30 I found there to be some mitigating circumstances which led to Mr Chen's disqualification as a director. According to Mr Chen, when he realised that the Nominee Companies had not filed their annual returns on time, Eri Secretarial sent to them and the other directors reminders urging them to remedy the non-compliance as soon as possible. However, no responses were received and Mr Chen was unable to contact the foreign directors and shareholders of those companies. Eri was also unable to strike off these companies from the register despite Mr Chen's efforts because of various difficulties, such as the restriction of Mr Chen's access to these companies' accounts by ACRA.[9] Mr Chen should have been more diligent in ensuring that the returns of the Nominee Companies were filed on time (a fact which he acknowledged), as he was nevertheless a director of the Nominee Companies.[10] However, I accepted that he had taken some steps in the form of attempts to meet the relevant deadlines and that the unresponsiveness of the foreign directors and shareholders of those companies contributed to the contraventions of the relevant requirements.

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9 OS 785 Chen's Affidavit at [16]–[19].

10 OS 785 Chen's Affidavit at [21].

Structure and nature of company for which applicant is seeking permission

31 Next, the structure of a company (*ie*, its shareholding structure and management hierarchy) as well as its nature (*ie*, whether it is a public or private company) are relevant considerations for an application for permission under s 155. The former sheds light on the possible safeguards which the company may have in place to prevent breaches of the relevant requirements from occurring. The latter informs the court on whether there are more onerous disclosure obligations which will need to be fulfilled by (or which may otherwise involve) the applicant as a director (see, *eg*, s 197(1)(*a*) of the CA).

32 CEASY is an exempt private company limited by shares. It has three directors: Ms Bao Zehua, Ms Zhang Shuhui and Mr Chen Hao Rong. These three persons, along with Mr Chen, are also shareholders of the company. Pertinently, Ms Bao was made a director of Eri Accounting and Ms Zhang was made a director of Eri Secretarial.[11]

33 As a private company, CEASY would not be subject to the heightened standards of disclosure to which public companies are subject. That said, Mr Chen appeared to be wielding significant influence over the management of CEASY. Not only were the appointments of two of CEASY's three directors to the Eri entities caused by Mr Chen, but Mr Chen also holds a controlling stake as the majority shareholder of CEASY.[12] As such (as the Minister submitted), given that Mr Chen can already indirectly influence the management of CEASY, granting the application (to allow Mr Chen to be a director or take part in the management of CEASY) would allow Mr Chen to be held directly accountable for any breaches of the CA by CEASY. This is not to say that in

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11 OA 561 Chen's Affidavit at p 28; OS 785 Chen's Affidavit at [26] and [31].

12 OA 561 Chen's Affidavit at p 29.

every case where an applicant shareholder (particularly a majority shareholder) potentially wields indirect influence or control over a company, that this will tilt the balance in favour of granting permission. This is but one factor to be considered.

Interests of stakeholders

34 Further, I assessed there to be a low risk to the interests of the general public, the company (CEASY), its shareholders and other stakeholders should Mr Chen be permitted to act as a director or take part in the management of CEASY. This is also given that Mr Chen has, as I had found, sufficiently demonstrated his capacity for compliance with the relevant requirements in the future. This was accepted by the Minister.[13]

Necessity for applicant to be involved in management of the company

35 Finally, Mr Chen submitted that it was necessary to be involved in CEASY's management because his disqualification had prevented CEASY from successfully applying for a bank account.[14] He claimed the bank had informed him that there was a "problem with one of the directors or shareholders". But Mr Chen did not adduce any correspondence with the bank to show that his disqualification had affected CEASY's application for a bank account. He also did not explain why CEASY, which presently has three directors, could not set up a bank account. Hence, this factor did not assist Mr Chen.

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13 OA 561 RWS at s/n 5 at [13].

14 OA 561 Chen's Affidavit at [13].

Conclusion

36 Having assessed the factors holistically, I was of the view that Mr Chen should be allowed to be a director or partake in the management of CEASY. Apart from his inability to show that being a director of CEASY was strictly necessary, the other factors largely pointed in favour of such permission being given. His application for permission was also not opposed by the Minister. In this regard, the Minister also pointed out that Mr Chen had, by the time of filing this application, served more than two years and seven months of his five-year disqualification period.[15]

37 Accordingly, I granted Mr Chen permission to act as a director and/or to take part in the management of CEASY.

Audrey Lim J
Judge of the High Court

Chen Kok Siang Joseph (Joseph Chen & Co) for the applicant;
Olivia Low Pei Sze and Au Wei Hoe (Attorney-General's Chambers)
for the respondent.

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15 OA 561 RWS at s/n 7 at [13].