



Chamber of Commerce  
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| <i>your</i><br><i>characteristic</i><br>00093220/PK<br>/ML | <i>our characteristic</i><br>62978772  | <i>date</i><br>Aug. 9, 2022     |
| <i>attachments</i><br>1report of<br>hearing<br>plea adv.   | <i>subject</i><br>Decision on objection<br><br>Linh Son Temple<br>Foundation | <i>e-mail</i><br>bezwaar@kvk.nl |
| incl.<br><br>appellant.                                    |  |                                 |

Following the submitted objection, the Chamber of Commerce (hereinafter: the Chamber) informs parties as follows.

### **The facts**

On March 29 and 30, 2022, the Chamber received declarations from Mr. N.H. Lam (hereinafter, Interested Party) to the Commercial Register to:

- deregister Mr. X. Do as a director effective March 29, 2022, and
- register Mr. B P. Nguyen as a director effective March 30, 2022.

On March 30 and 31, 2022, the Chamber decides to register the aforementioned statements and confirms the registration to those concerned.

On April 8, 2022, the Chamber received an objection from Mr. F O. Visser as authorized representative for Messrs. X. Do and T.H. Nguyen (hereinafter: appellants) against the decisions of March 30 and 31, 2022.

On April 26, 2022, the Chamber confirms the receipt of the objection by mail and by e-mail to appellants and to interested party.

On May 9, 2022, the Chamber received by email a response from Mr. mr. E. Doornbos as authorized representative interested party.

On May 9 and 10, 2022, the Chamber received e-mail responses from Mr. mr. P.F. Keuchenius as (new) appellants' authorized representative.

On May 10, 2022, the Chamber transmits by e-mail the above-mentioned responses dated May 9 and 10, 2022, from authorized representative of appellants to authorized representative of interested party.

On May 18 and 20, 2022, the Chamber received e-mail responses from appellants' authorized representative.

On May 23, 2022, the Chamber received by email a response from interested party's authorized representative, which was sent simultaneously to appellants' authorized representative.

On May 30, 2022, the Chamber invited appellants' authorized representative by email to a hearing.

On June 2, 2022, the Chamber received a response by email from appellants' authorized representative and also indicated that appellants wished to be heard.

On June 2, 2022, the Chamber forwards the aforementioned response of the same date by e-mail to interested party's authorized representative and invites them to a hearing.

On June 14, 2022, the Chamber receives by email a response from interested party's authorized representative and also indicates that interested party wishes to be heard.

A telephone hearing was held on July 28, 2022, the report of which is attached

#### **Decision of registration**

The Chamber decided to register the declarations on March 30 and 31, 2022, because the declarations came from an authorized person. The Chamber had no reason at the time of the declarations to doubt the correctness of the declarations and registered them in accordance with art. 4 and 5 Trade Register Order 2008.

#### **Admissibility**

The objection was filed within six weeks of publication of the decision and it also meets the other requirements set by the General Administrative Law Act (Article 6:5 Awb), so the objection is admissible.

#### **Objection grounds**

As grounds for objection appellants argue, in brief and as relevant here, the following:

- Messrs. X. Do and T.H. Nguyen, as two of the three board members of the foundation, object to the decisions of March 30 and 31, 2022.

- The background to Mr. N.H. Lam's action is that he disagrees with the leadership of Mr. X. Do. Apparently, this is how he is trying to gain control of the foundation.
- Mr. X. Do has not resigned from his board membership, nor is there any (legally valid) decision or other ground on the basis of which his board membership would have ended.
- The same applies to the appointment of the new director B.P. Nguyen.
- The board still consists of Messrs. X. Do, T.H. Nguyen and N.H. Lam. Mr. B.P. Nguyen has not been appointed as a director. Mr. N.H. Lam is not in a position to appoint a director even if Mr. X. Do had resigned. There is no board resolution.
- There is a dispute within the Foundation between Mr. X. Do and Mr. N.H. Lam.
- Mr. X. Do and Mr. T.H. Nguyen have not been informed of this change and do not agree to it.
- The changes violate Article 4.5f of the Articles of Association.
- The letter of resignation has not been signed by Mr. X. Do.
- A friendly request to restore or reverse the registration.

Interested party states in responses to the filed objection, in summary and to the extent relevant here, that:

- The foundation was established with a simple goal: to spread and educate Mahayana Buddhism.  
A temple was purchased for this purpose through (mainly) donations from fellow believers.
- It has been revealed to the interested party that Mr. X. Do allowed large sums of money to disappear from the foundation. This involves many tens of thousands of euros of donation money.
- Mr. X. Do was called to account for this and he indicated that resigning was the only way out for him.
- He verbally indicated hereby that Mr. N.H. Lam was to take care of the administrative action.
  - Mr. N.H. Lam deregistered Mr. X. Do as chairman and appointed Mr. B.P. Nguyen as the Foundation's new director. The latter to "bring the number of directors back up to the same level".
- After the departure of Mr. X. Do, Mr. T.H. Nguyen appointed Mr. Visser as the authorized representative of the board. This is contrary to article 6 paragraph 2 of the articles of association, which shows that the foundation can only be bound with the consent of two directors. Already for this reason the objection is not valid.
- Mr. N.H. Lam has indeed made two justifiable amendments. As far as Mr. X. Do is concerned, a director can resign at his own request. That is what Mr. X. Do has done.
- As for B.P. Nguyen, he was validly appointed to restore the number of directors.

### **Objection considerations.**

In this objection procedure, the Chamber shall examine whether it has reasonable doubt, within the meaning of Article 5(2)(e) of the Trade Register Decree 2008, as to the correctness of the statement(s) made on March 29 and 30, 2022 respectively. If the Chamber has reasonable doubt as to the correctness of the declarations made, it may refuse the registrations.<sup>1</sup>

### **Role of the Chamber of Commerce**

The Chamber wishes to emphasize once again - as was done at the hearing - that this is an administrative (administrative law) proceeding, which only answers the question as to whether the Chamber should have been allowed to register the disputed decisions in the Commercial Register. The Chamber assesses this based on an assessment of the underlying civil facts, however the Chamber is not a civil judge and therefore does not determine what is or is not by right. The commercial register is not constitutive, it is not determinative, the factual assessment of the underlying civil facts therefore lies with the civil court. The Chamber administers the registry for the purpose of providing accurate information to third parties in good faith. That is the only interest it weighs. Moreover, the Chamber cannot dispose of underlying disputes and is not decisive therein either. That means that the Chamber does not adjudicate internal affairs within the Foundation (such as payments or loans made). Such issues are separate from the present objection proceedings and thus are not relevant in this case.

### **The reconsideration**

Regarding this objection procedure, the Chamber has come to the following reconsideration:

The deregistration of Mr. X. Do as a director is subject to the provisions of the articles of association (and the law). Article 4 paragraph 5 sub d of the articles of association (as included in the deed of incorporation) of the Foundation provides that a director loses his function by (among other things) his voluntary resignation.

The question upon us, therefore, is whether Mr. X. Do resigned voluntarily. It follows from case law that a resignation only has direct (internal and external) effect if the resignation expression is addressed to the legal entity and has reached it. Given the far-reaching legal consequences of such a unilateral expression of will, a clear moment of dismissal is required. The moment of dismissal must be determinable. Above all, the dismissal must be 'plain and clear'.<sup>2</sup>

In view of the documents submitted and what was raised orally at the hearing, the Court concludes that there is reasonable doubt as to the accuracy of the

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<sup>1</sup> See in that context, for example: ECLI:NL:CBB:2018:275 and ECLI:NL:CBB:2022.242.

<sup>2</sup> See for example the Supreme Court in the case of DRC/Kenmus, HR NJ1990, 452 (and later confirmed in HR 15-4-2005, NJ 2005/483. Bartelink v. Ciris),

current registration. The challenged statement and registration dated March 29, 2022, was made solely by the interested party, without co-signature of Mr. X. Do. Although a resignation, according to the articles of association, can in principle also be made by voluntarily resigning (by mutual consent), if that resignation is disputed, it is up to the one who asserts the resignation to prove the same. The documents submitted and, more specifically, the 12 statements submitted on the part of the interested party do not convince the Chamber. After all it follows that Mr. X. Do did not consent to his resignation. Nor can the moment of resignation be established.

The registration of Mr. B P. Nguyen as a new director as of March 30, 2022, also requires compliance with the provisions of the Articles of Association (and by law). Article 4(2) of the Foundation's Articles of Association (as included in the Certificate of Incorporation) provides that directors are appointed by the board. However, an appointment decision, or minutes from which it follows that an appointment of Mr. B.P. Nguyen has been placed on the agenda or otherwise discussed within the Foundation, is missing. Appointing or nominating a director to "bring the number of directors back up to standard" is not a legally valid ground for appointment. Finally, the Interested Party has not sufficiently substantiated why the new director should have been appointed in a legally valid manner.

#### **Decision**

In view of the above, the Court concludes that there is reasonable doubt as to the accuracy of the two statements. The objection is therefore founded. The registration will be amended accordingly.

#### **Appeal**

If an interested party disagrees with this decision, a reasoned appeal may be submitted in writing to the Trade and Industry Appeals Tribunal (CBb), Postbus 20021, 2500 EA The Hague, the Netherlands, within 6 weeks of the date of dispatch of this letter. Please note that this involves costs: approx. €365 if the appeal is lodged by a legal entity and approx. €184 if the appeal is lodged by a natural person.

Sincerely,

The Chamber of Commerce, on  
behalf of which:



**Ms. Mr. J.M. Veldman**

Legal Affairs Advisor

cc. lawyer appellant