



公 司 註 冊 處
COMPANIES REGISTRY

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29 May 2017

BY FAX

Mr Anthony CHU
Clerk to Public Accounts Committee
Legislative Council
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Mr CHU,

**Public Accounts Committee
Consideration of Chapter 1 of the Director of Audit Report No. 68
Government's support and monitoring of charities**

As requested in your letter of 22 May 2017, I append below the information required –

- (a) (i) When defaulting cases are identified during compliance checks carried out by the Companies Registry (“CR”), the CR will issue notices-to-file to the companies concerned requesting rectification of the default within a specified period. If the non-compliance continues, we will consider instituting prosecution and / or strike-off actions against the company concerned. In general, from our experience, most of the guarantee companies which are in default of filing obligations claim that they do not have sufficient resources and/or manpower to prepare their annual financial statements on a timely basis, which in turn leads to delays in the filing of annual returns to the CR.

Actions taken against the 21 cases mentioned in paragraph 4.9 of the Audit Report and the latest progress are as follows –

| Actions taken by CR | Number of cases |
|--|------------------------|
| Already struck off from the Companies Register | 2 |
| Prosecuted and strike-off actions in progress | 12 |
| Strike-off actions in progress | 5 |
| Prosecution action in progress | 1 |
| Follow-up actions pending results of legal proceedings involving the Company | 1 |
| | 21 |

- (ii) The CR conducts compliance checks, including annual checks and weekly checks, to identify companies limited by guarantee which do not comply with the filing requirements of annual returns.

As referred to in paragraph 4.9(a) of the Audit Report, we are enhancing the system for conducting compliance checks. As the requirement for the filing of annual returns by companies limited by guarantee has been streamlined under the present Companies Ordinance (Cap 622) (details in item (c) below), this enables the CR to enhance its system by tracking the due date for the delivery of annual return by individual companies so as to take more timely follow-up actions.

- (iii) Notices-to-file have been issued to the two companies in April 2017. As the annual returns remain outstanding, CR has reviewed the position and would commence strike-off actions against the two companies.

As explained in item (a)(ii) above, CR is enhancing its system for conducting compliance checks, under which similar incidents would not occur again. Meanwhile, we have also reviewed our internal process to ensure proper identification of non-compliance cases.

- (b) All the 126 companies mentioned in paragraph 4.10 and Table 6 of the Audit Report had delivered the outstanding annual returns for registration, among which 38 companies delivered the outstanding annual returns after the CR had issued compliance notices; while 16 companies complied with the filing requirements after the CR had instituted prosecution actions against them (including the case where the annual return was filed late for 229 days). Another 72 companies had delivered annual returns for registration after the due date for submission without

being prompted by a notice-to-file, so the CR considered that no further action was required.

(c) The new measures and requirements on companies limited by guarantee under the present Companies Ordinance are:

(i) A company limited by guarantee must in respect of every financial year deliver an annual return together with certified copies of its financial statements for registration. The requirement to deliver certified copies of financial statements applies to all guarantee companies and was introduced to enhance transparency of company information.

(ii) The requirements for filing annual returns have been streamlined. A company limited by guarantee must in respect of every financial year deliver an annual return together with certified copies of its financial statements for registration within 42 days after the company's return date. The return date is 9 months after the end of the company's accounting reference period. Thus, the due date for the delivery of an annual return is determined with reference to a company's accounting reference date, which is more predictable when compared with the case under the old Companies Ordinance. Under the Old Companies Ordinance, the due date for the delivery of an annual return is determined with reference to the date of annual general meeting of the company concerned which may vary every year. This enables the CR to enhance our monitoring on compliance.

(iii) An escalating scale of annual registration fees in the case of late filing of annual returns was introduced under the present Companies Ordinance to encourage timely compliance.

To promote compliance with the filing requirements under the Companies Ordinance, the CR will continue with our educational and promotional efforts. These include maintaining a thematic section on "Compliance" on our website which provides information on the obligation of a company and its officers, publication of posters, information pamphlets and circular letters, etc.

Last but not least, we would like to reiterate that our enforcement policy is premised on all of the companies on the Companies Register. Bearing in mind that the Companies Ordinance does not have a separate category of companies which are charities, it is important to strike a reasonable balance between enforcement actions taken against charities which are incorporated as companies and other companies on the Companies Register.

Thank you for your attention.

Yours sincerely,



(Ms Angelina MOK)
for Registrar of Companies

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Director of Lands (Fax no. 2525 4960)
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