

規管任務

REGULATORY OPERATIONS

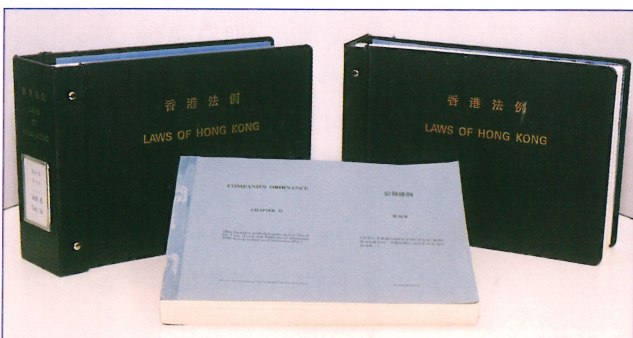
剔除公司名稱行動

《公司條例》第290A條自一九九三年七月制定後，本處已採取有系統的行動，將連續兩年或以上欠交周年申報表的公司名稱自登記冊中剔除。雖然這項剔除工作已於一九九七年十一月前完成了大部分，但一些較為複雜的個案則要延至一九九八至九九年度才可處理。在此項政策自一九九四年三月實施以來，截至一九九九年三月三十一日止，共有九萬六千四百九十一間公司被本處除名。此項剔除公司名稱行動已於一九九九年六月底完成。

根據《公司條例》第291條的規定，公司註冊處處長如有合理理由相信某公司並非是在營業或運作中，可酌情決定將該不營運公司的名稱自登記冊中剔除。不過，多年以來，成立及經營公司的人士均借用此條規定，「申請」將公司名稱剔除，而根據該規定的剔除公司名稱行動毋須收取費用。這個情況所造成的結果是，政府為私營機構免費提供公司撤銷註冊的服務，而實際上香港納稅人則津貼這些公司撤銷註冊，原先成立公司的人士卻毋須繳付分文。無論以何種標準來看，這都顯示此條條文正被普遍濫用。另外，此條條文所載述的公司註冊處處長權力是酌情性而非強制性的。由於剔除行動不會帶來收入，加上作為一個以營運基金形式運作的部門，本處必須優先向市民提供各種有時間性及收費的公共服務，因此，本處實無法優先處理這些要求剔除公司名稱的「申請」。

在一九九八至九九年度，本處收到大量由公司董事或成員提交的「申請」，要求本處將公司的名稱自登記冊中剔除，數目高達二萬六千五百一十八宗。截至一九九九年三月三十一日止，大約有五萬宗公司已遞交申請的個案仍未處理。

為了補救這個被濫用的情況，以及提供一個廉宜、有效率而簡單的解決辦法來替代清盤程序，本處在一九九八至九九年度着手草擬一套法定的撤銷註冊程序，容許不營運但有償債能力的私人公司向本處申請撤銷註冊。建議的法例修改已納入於一九九九年六月三十日制定的《1999年公司(修訂)條例》內。



《公司條例》— 本處運作上的重要法律依據
The statutory backbone of our operations —
the Companies Ordinance

STRIKING-OFF ACTION

Since the enactment of section 290A of the Companies Ordinance in July 1993, the Registry has taken systematic action to strike off companies for failing to submit annual returns for two or more consecutive years. Although the exercise to strike off such companies was largely completed by November 1997, some more complicated cases were dealt with only in 1998-99. Up to 31 March 1999, a total of 96,491 companies had been struck off since the commencement of the exercise in March 1994. This striking off action was completed at the end of June 1999.

Section 291 of the Companies Ordinance gives the Registrar of Companies a discretionary power to strike off a defunct company if he has reasonable cause to believe that it is not carrying on business or in operation. However, for very many years, the persons involved in the formation and running of companies have construed the provisions of this section to permit 'applications' for companies to be struck off. Furthermore, no fee is payable for a company to be struck off under section 291. The net effect of this situation is that the Government is providing a free corporate deregistration service to the private sector, and Hong Kong tax payers are effectively subsidizing the cost of deregistering these companies at no cost to the people who set up the companies in the first place. This is, by any standard, a gross abuse of these provisions. Furthermore, the power of the Registrar of Companies under this section is discretionary not mandatory. As striking off action does not generate any revenue and the Registry, given its status as a trading fund department, must give priority to the bulk of its public services which are time-sensitive and revenue generating, it is not possible for the Registry to give any priority to processing these 'applications' for striking-off action.

During 1998-99, the Registry received a massive influx of 26,518 'applications' from directors/members of companies to strike their companies off the register. As at 31 March 1999, there were about 50,000 outstanding cases of companies which had applied for striking-off.

In order to remedy this undesirable situation, and provide a cheap, efficient and simple alternative to winding-up, work commenced in 1998-99 to draft a statutory deregistration procedure which would allow defunct solvent private companies to apply to the Registry for deregistration. The proposed legislative changes have been included in the Companies (Amendment) Ordinance 1999 which was enacted on 30 June 1999.

檢控

一九九八年四月，本處加強檢控政策，以增加公司遵從《公司條例》第 109 條規定遞交周年申報表的比率。

自檢控行動開展至一九九九年三月底，本處向沒有履行這項法定責任的公司及董事發出約共十六萬三千封警告信。這個計劃推行後，遞交周年申報表的公司數目有顯著的增加。在一九九七至九八年度的上半年內，即本處還未有宣布加強檢控政策前，大約有百分之七十二的公司於法定期限內遞交周年申報表，而在一九九八至九九年度，此比率則上升至百分之七十八。

在一九九八至九九年度，本處向沒有履行《公司條例》規定的法定責任的公司及董事發出總共三百零一張傳票。



此小冊子有助公司董事瞭解《公司條例》內關於遞交表格的一般規定
A pamphlet to assist company directors understand the basic filing requirements under the Companies Ordinance

制定法例

於一九九九年六月三十日制定的《1999年公司(修訂)條例》包括以下一些就《公司條例》作出的重要修訂——

- 引入法定程序，將不營運但有償債能力的私人公司撤銷註冊；
- 引入有關條文，讓屬於集團重整或正與其他公司合併的公司，在某特定範圍下以正常合併形式製備帳目。被收購公司或集團的資產及負債會以其先前的帳面價值列載於綜合財務報表內，而合併前後的所有利潤亦會繼續以綜合計算的方式處理；及
- 廢除《公司條例》第 158 及 333 條內有關上市公司申報其董事擔任其他董事職務的規定。隨着本處擴充資料庫的工作完成，加上公司註冊處聯線公眾查冊系統即將推出，這項資料能以較現行的申報程序更快捷及方便的方式被檢索出來。

PROSECUTIONS

In April 1998, the Registry expanded its prosecution policy in order to improve the compliance rate for companies filing their annual returns under section 109 of the Companies Ordinance.

Since the commencement of prosecution action, by the end of March 1999, a total of about 163,000 warning letters had been issued to companies and directors in default of their statutory filing obligations. As a consequence of this programme, there has been a significant increase in the number of companies filing their annual returns. In the first half of 1997-98 before the expanded prosecution policy was announced, about 72% of companies filed their annual returns within the statutory time limit whereas in 1998-99, this rose to 78%.

During the year 1998-99, a total of 301 summonses were issued against companies and their directors for failure to comply with their obligations under the Companies Ordinance.

LEGISLATION

The Companies (Amendment) Ordinance 1999, which was enacted on 30 June 1999, contains a number of important amendments to the Companies Ordinance, including the following —

- The introduction of a statutory procedure to deregister defunct solvent private companies;
- The introduction of provisions to enable companies, which are part of a group reorganisation or which are in the process of merging with other companies, subject to certain criteria, to prepare their accounts as though they had always been combined. The consolidated financial statements will continue to carry the assets and liabilities of the acquired company or group at their previous book values and all profits before and after the merger will continue to be consolidated; and
- The repeal of provisions in sections 158 and 333 of the Companies Ordinance requiring listed companies to report the other directorships of their directors. With the completion of the expansion of the Registry's database and the forthcoming implementation of the Companies Registry On-line Public Search System, this information can be made available in a more efficient and convenient way than through the current reporting procedure.