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22 December 2003

COMPANIES REGISTRY EXTERNAL CIRCULAR NO. 3/2003

Withdrawal of Summonses issued by the Companies Registry for failure to file Annual Returns in breach of section 109 of the Companies Ordinance

Failure to file Annual Returns by companies within the prescribed time under the Companies Ordinance (the Ordinance) constitutes an offence under section 109(4) of the Ordinance.

2. It has been the practice of the Companies Registry to apply to the Magistrates Court for a withdrawal of a summons issued in respect of the above offence if the outstanding Annual Return has been filed with the Companies Registry prior to the hearing date.

3. Please note that, with effect from 7 January 2004, the Companies Registry will no longer request the Court to withdraw a summons where the company has filed the Annual Return prior to the hearing date. The presiding Magistrate will be asked to proceed with the case, consider the summons and make the appropriate order.

4. The change in practice is due to legal advice having been obtained to the effect that the filing of an Annual Return before the hearing date of a summons issued in respect of a breach of section 109(4) of the Ordinance does not exonerate the company of its breach for non-filing under section 109(4) of the Ordinance, but is a mitigating factor which will be taken into consideration by the Court in imposing a penalty.

5. Any enquiries concerning this Circular should be directed to Ms D Y Luk, Assistant Registry Manager (Customer Services) at telephone number 2867 4570.

G W E JONES
Registrar of Companies

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