

# Luther.

## Stepped up enforcement actions for AGM and AR breaches

Singapore News

The Accounting and Corporate Regulatory Authority (ACRA) has stepped up its enforcement actions for breaching the statutory requirements to hold an Annual General Meeting (AGM) and to file the Annual Return (AR) under the Companies Act (CA) as of 2<sup>nd</sup> November respectively 1<sup>st</sup> December 2015. Furthermore ACRA announced to set up further enforcement actions in 2016.

The recent changes of the enforcement actions as well as the further steps for 2016 will be outlined in the following overview.<sup>1</sup>

## 1. Statutory Requirements

A director of a company incorporated under the Companies Act has to comply with a number of statutory obligations under the Companies Act. The following are the three most common statutory obligations that are often breached by companies and/or their directors for which ACRA will take enforcement action:

| Companies Act Section | Statutory Requirements   | Breach by                 |
|-----------------------|--|---------------------------|
| Section 175           | A company must hold its AGM every calendar year and not more than 15 months from the previous AGM. If the company is newly incorporated, it has to hold its AGM within 18 months from its date of incorporation. | Both company and director |
| Section 197(4)        | After a company has held its AGM, it has to file the Annual Return within 1 month online via Bizfile, ACRA's online filing and information retrieval system.   | Both company and director |
| Section 201(1)        | For listed companies, the financial statements laid at the AGM must not be more than 4 months old. For non-listed companies, the financial statements laid at the AGM must not be more than 6 months old.        | Director                  |

A breach of the statutory obligations in Sec. 175 and 197(4) can lead to a fine up to \$ 5,000 plus a default penalty for both

the company and the director. A director who breaches the obligation in Sec. 201 (1) may even face a fine up to \$10,000 or imprisonment up to two years. Though companies and directors that breach these statutory obligations may be offered an opportunity to pay a composition sum instead of facing prosecution.

## 2. Enforcement action for non-compliance

ACRA has tightened up its enforcement actions for non-compliance which includes the increase of composition sums.

Up to the 30<sup>th</sup> November 2015 the ACRA measured its late filing penalties by the length of default, ranging from \$60 from defaults less than 30 days up to \$350 for defaults for more than a year. Effective since 1<sup>st</sup> December 2015, the penalty for late filing is \$300 regardless of the length of the default. This is an increase for any delays less than a year – the fine for a default less than a month even quintupled.

|  | Enforcement Actions          |                           |
|--|------------------------------|---------------------------|
|  | applicable up to 30 Nov 2015 | effective from 1 Dec 2015 |
| Late filing penalty*                           | ranging from \$60 to \$350   | \$300                     |
| Composition sum for breaches of s175 and s201* | ranging from \$60 to \$350   | \$300                     |

\* payable at the time of filing.

Furthermore ACRA implemented a 3-Tier Composition system. Since 2<sup>nd</sup> November, the amount offered for composition depends on the stage of prosecution. For example, any director who breaches the statutory obligations may be offered an opportunity to pay a composition sum of \$300 per breach instead of facing prosecution.

If a director seeks to compound his breach (or breaches) after a summons has been issued, ACRA may consider allowing him to compound by offering a composition sum of \$600 per breach or ACRA may refuse to allow him to compound.

If the director seeks to compound after he has failed to turn up in court to answer to his summons and the Court has issued a warrant for his arrest, ACRA may consider allowing him to compound by paying a composition sum of \$900 per breach or refuse to allow him to compound.

<sup>1</sup> All information is based on the official ACRA publications available under the ACRA Homepage [www.acra.gov.sg](http://www.acra.gov.sg).

|                                | Enforcement Actions                       |   |
|--------------------------------|---|---|
|                                | applicable up to<br>1 Nov 2015            | effective from<br>2 Nov 2015              |
| Before summons is issued       |   | Offer of composition* of \$300 per breach |
| After summons is issued        | Offer of composition* of \$350 per breach | Offer of composition* of \$600 per breach |
| If Warrant of Arrest is issued | Offer of composition* of \$350 per breach | Offer of composition* of \$900 per breach |

\* upon discretion of ACRA

ACRA will only consider prosecuting the directors in Court if:

- (a) they fail to register and attend the Directors Compliance Programme (DCP) when ACRA write to them to offer them a chance to attend the DCP (only first time offenders are eligible); or
- (b) if they fail to compound (when offered a chance to compound); or
- (c) if ACRA is not prepared to let the Directors compound due to the facts of the case.

Please keep in mind, that ACRA has the discretion not to offer composition and to take enforcement action against all or any of the company's officers.

### 3. Other new enforcement actions to be implemented in 2016

ACRA also announced to implement new enforcement actions in 2016, which are the disqualification of directors and the debarment of director or company secretary.

In 2016, ACRA will introduce a new enforcement power whereby a director who has at least 3 of his companies struck off within a period of 5 years will be disqualified from acting as director, or to take part in the management of any company for a period of 5 years commencing after the date on which the third company is struck off. For the avoidance of doubt, the striking off of the three companies relates only to striking off initiated by the Registrar and does not include voluntary applications for striking off.

Furthermore, a director or company secretary who is in default of a relevant requirement in the CA for a continuous period of 3 months or more may face a debarment order from the Registrar preventing him from taking on new appointments as director or company secretary of other companies.

We hope that the above information is useful to you. Should you have any questions or require further clarification, please do not hesitate to contact us.



**Thi Thuy Trang Phan, LL.M.**  
 Lawyer, Partner  
 Luther LLP  
 Singapore  
 Phone +65 6408 8000  
[trang.phan@luther-lawfirm.com](mailto:trang.phan@luther-lawfirm.com)

#### Imprint

Luther Rechtsanwaltsgesellschaft mbH, Anna-Schneider-Steig 22, 50678 Cologne, Phone +49 221 9937 0, Fax +49 221 9937 110, [contact@luther-lawfirm.com](mailto:contact@luther-lawfirm.com)

*Editor:* Birgitta von Dresky, Lawyer, Partner, Luther LLP, 4 Battery Road, Bank of China Building, #25-01, 049908 Singapore, Phone +65 6408 8008, Fax +65 6408 8001, [Birgitta.von.Dresky@luther-lawfirm.com](mailto:Birgitta.von.Dresky@luther-lawfirm.com)

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