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Training instead of prosecution for errant company directors

New approach aimed at educating first-time offenders; repeat offenders will be hit harder

By Chia Yan Min

Directors who fail to comply with their legal obligations now attend training sessions instead of being prosecuted for a first offence, but repeat offenders are hit far harder than in the past.

The Accounting and Corporate Regulatory Authority (Acra) is taking this more targeted approach to promote transparency between companies and stakeholders, while inculcating a culture of voluntary compliance among firms.

About 1,500 directors who breached the Companies Act have attended a training course - known as the Directors Compliance Programme - in lieu of prosecution. Most of them were directors of small and medium-sized enterprises (SMEs) who were unaware of their duties, Acra said.

The half-day training programme, which is targeted at first-time offenders, focuses on basic statutory obligations under the Companies Act.

It started last November and aims to train up to 9,000 directors over the April 2015 to March 2016 financial year.

On average, the sessions are run twice a month.

The most common breaches concern basic responsibilities such as holding an annual general meeting (AGM) every calendar year, presenting up-to-date financial statements at the AGM and the timely filing of annual returns.

About 10,000 summonses are issued against directors for non-compliance every year, about 40 per cent of which are for repeat offenders.

These breaches can lead to heavy penalties, with fines of up to \$10,000 or jail of up to two years.

Some company directors, particularly those in SMEs, are "in a hurry to start their businesses and do not seek to properly understand their duties and obligations", said Mr Willie Cheng, chairman of the Singapore Institute of Directors.

"They see corporate governance and compliance as a necessary evil - a waste of time and a business cost burden."

There are also common misconceptions among directors about their statutory obligations, said Mr Nicholas Ngoh, Acra's assistant director of legal services and prosecution, who oversees the Directors Compliance Programme.

He told The Straits Times that some inaccurately believe that "inactive" or "nominee" directors are not responsible for ensuring compliance with the law, or that dormant firms and those exempted from filing tax returns do not need to hold an AGM and lodge annual returns.

"These perceptions are incorrect as the law does not distinguish between inactive or nominee directors and active directors," he said.

Acra is also stepping up enforcement against persistently non-compliant directors, including raising composition amounts - the penalty paid in lieu of prosecution.

Previous composition amounts ranged from \$60 to \$350 per breach for not holding AGMs or filing annual returns, but these have risen to \$300 to \$900 for each breach this month.

Acra will seek high deterrent fines for individuals and companies prosecuted in court, it said.

It is also considering releasing information about companies' and directors' non-compliance and on the disqualification and debarment of directors to give the public more information.

Mr Cheng noted that businesses can benefit from good corporate governance and compliance with regulations. "A good compliance record can enhance a company's brand equity and helps to build the confidence of investors, bankers, suppliers, and other stakeholders in the enterprise," he said.

This is important for SMEs that want to grow into bigger companies, he added.

Mr Tan Jun Hong, director of Ascentis Search International, attended the Directors Compliance Programme in December last year after the company failed to hold its AGM and present timely financial statements.

"Being an SME and a small set-up, it never crossed my mind that such things really matter. We are too busy with chasing after the next sales call," said Mr Tan, who set up the business in 2010. "We always put our priorities on issues concerning overheads such as expenses, salaries, rental and profits."

The company rectified its offences in February.

"I now engage more closely with the secretariat company on the letters and documents that require my approval and signature, as I am now more aware of my roles and responsibilities," said Mr Tan.

"Nowadays, I mark on my calendar the dates of the AGM and (dates for filing) the annual returns."

REVENUE FOCUSED

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MR WILLIE CHENG, chairman of the Singapore Institute of Directors, on how some company directors do not seek to understand their duties and obligations



The Directors Compliance Programme, a half-day training programme targeted at first-time errant directors, focuses on basic statutory obligations under the Companies Act. PHOTO: ACCOUNTING AND CORPORATE REGULATORY AUTHORITY