



## **REINSTATING COMPLIANCE DEREGISTERED COMPANIES**

As the recent round of ASIC's compliance-related company deregistrations starts to hit home, we are handling significantly increased levels of client interest in this area.

You may be aware that it has been ASIC's practice (since the inclusion of Section 601AH of the Corporations Act 2001), to exercise its discretion to reinstate a company's registration, where a company has been deregistered by ASIC for failure to lodge annual returns (pre 2002) or for a failure to pay the annual review fee.

In October 2005, ASIC had a change of heart and a policy direction has now been proposed to the effect that ASIC will no longer administratively reinstate a company's registration unless the company was deregistered for failing to lodge annual returns or ASIC made an administrative error in the deregistration. This now means that if your company has been deregistered for non-payment of annual review fees, it will be necessary to make an application to court for an order that the company should be reinstated.

We are receiving mixed signals from ASIC as to the final position on this policy direction, however, what is clear is that, in practice, ASIC staff are not accepting reinstatement applications unless they fall into the narrow band mentioned above.

Therefore, any person wanting to reinstate a company deregistered by ASIC will need to satisfy a court that the registration should be restored. We expect that this will involve a more onerous burden of proof than has been previously required and a considerably greater cost in terms of both time and money.

ACIS may still be able to assist, however. Our procedure on such issues is now to verify the position regarding individual companies with ASIC before any action is taken. This will identify those cases which fit the ASIC criteria and, hence, we will be able to make application for administrative reinstatement. Keep in mind, however, that ASIC retains a discretion as to whether or not to approve the reinstatement. This has always been the case, but we suspect that they will decide against such applications more often in the current climate.

In instances where ASIC have indicated that an administrative reinstatement application will not be accepted, we are happy to have our solicitors, redchip lawyers, provide a quotation for the process of a court application.

Should you have any queries with respect to this matter, please call us on 1-800-773-477.