



Ruj. Tuan:

Ruj Kami:

Tarikh : **11 January 2007**

Announcement on the Issuance of new Guidelines to Strike Off the Name of A Company

We refer to the above matter.

2. The Companies Commission of Malaysia (SSM) wishes to officially announce the issuance of new Guidelines on application to strike off the name of a company under Section 308 of the Companies Act 1965. The new Guidelines will be officially operational with effect from the 12 January 2007.

3. The issuance of the new Guidelines is intended to cater for applications to request the Registrar to invoke his power under Section 308 (1) and (3) of the Companies Act 1965 (please refer to the attached copy of the new Guidelines for requirements and procedural notes on the submission of an application).

4. The issuance of these new Guidelines will henceforth repeal the existing "*Garispanduan Mengenai Pembatalan Nama Syarikat Tidak Beroperasi Di Bawah Seksyen 308 Akta Syarikat 1965*" which was issued by the Registrar on 18 June 1998.

5. All applications made on or subsequent to 12 January 2007, must be in accordance with the requirements specified in the new Guidelines. SSM seeks the assistance of all our valued stakeholders to disseminate this information to their respective clients and members.

Your cooperation and support is greatly appreciated.

Thank you.

Yours faithfully,

(KHOO BENG CHIT)

Deputy Chief Executive Officer
for and on behalf of the Chief Executive Officer
Companies Commission of Malaysia



SURUHANJAYA SYARIKAT MALAYSIA
COMPANIES COMMISSION OF MALAYSIA

**GUIDELINES ON APPLICATION
TO STRIKE OFF THE NAME OF A COMPANY**

EFFECTIVE DATE : 12 January 2007

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GUIDELINES ON APPLICATION TO STRIKE OFF THE NAME OF A COMPANY

1. Introduction

Section 308 of the Companies Act 1965 provides a procedure for a company to be dissolved without having to undertake the formal process of winding up. It may be affected when the Registrar exercises his power under Section 308(1) to strike a defunct company off the register and under Section 308(3) where the Registrar strikes off a company that has been wound up.

2. Scope of Guidelines under Section 308 (1) of Companies Act 1965

2.1 Under this Section, the Registrar may exercise his discretionary power to strike the name of a defunct company off the register if he has reasonable cause to believe that:

- i) a company is not carrying on business; or
- ii) a company is not in operation.

2.2 In determining whether a company is not carrying on business or is not in operation, the Registrar may form his opinion based on the following:

- i) information in records of the company under the Registrar's custody; and
- ii) through application made to him by a director or a shareholder requesting him to exercise his discretionary power.

3. Requirements for an application pursuant to Section 308(1)

In proceeding with the exercise and in forming his opinion based on paragraph 2.2 above, the Registrar will have to be satisfied that the application fulfills the following requirements:

3.1 The directors must obtain the resolution of the shareholders for the initiation of the application to strike off the name of the company from the register on the basis that the company is not carrying on business or the company is not in operation

The resolution must be enclosed together with the application to reflect the consent of the majority shareholders in respect of the striking off application.

Where a director or shareholder is **untraceable** - The remaining director or the shareholder concerned may still submit an application for striking off provided the remaining director or shareholder concerned must have made attempts to trace the where about of the other directors or shareholders by writing to him at the residential address as stated in the Registrar's records or any other records. These attempts must be made by way of registered post. Where the notification from the postal agency is being relied on as proof, this should be submitted as an attachment to the application. Proof of any other modes of attempt (if any) must also be attached to the application.

3.2 The company has no assets and liabilities at the time when the application is made

The Registrar will examine the management accounts certified as true and correct by a Director. However, the Registrar reserves the right to require the applicant to submit audited financial statements.

If the company has not commenced operation, the applicant must inform the Registrar of the following:

- a) The company was incorporated on (date) and there has been no transaction since then; and
- b) The company has not opened a bank account or if there is an account, the latest bank statement is to be attached and to inform SSM about the closure of the account.

3.3 The company has no outstanding charges in the Register of Charges

In respect of charges, the applicant must ensure that the company has no outstanding charges in the Register of Charges kept at the Registrar of Companies.

3.4 The company has no outstanding penalties or offer of compounds under the Companies Act 1965

The company must ensure that all such liabilities are settled before an application for striking off is made.

3.5 The company has no outstanding tax or other liabilities with any government department or agency

Where a company has commenced operation, it must settle all outstanding tax and obtain a tax clearance prior to the filing of the application for striking off.

3.6 The information of the company with the Registrar is up to date

The particulars of directors of the company and any other information as the Registrar deems fit must be the same as in our records. If there are any differences or changes in respect of the information of the directors of the company, the company must first ensure that the Registrar's records are updated before an application for striking off is made.

(Applicant may check the records by getting a print-out from the nearest SSM office or through e-info service).

3.7 The company is not involved in any legal proceeding within or outside Malaysia

The company should not make any application for striking off if it is aware that there is an impending court action against it so as not to deprive others, who have initiated court action against the company, from proceeding with the court action.

3.8 The company has not made any return of capital to the shareholders

The right procedure for any return of capital to the shareholders should be through the process of winding up or capital reduction exercise or any scheme of arrangement or reconstruction exercise.

3.9 The company is not a holding company or a subsidiary of another corporate body

The duty lies on the holding company to take necessary steps to wind-up its subsidiary company.

3.10 The company is not a “Guarantor Corporation”

A “Guarantor Corporation” means a corporation that has guaranteed or has agreed to guarantee the repayment of any money received or to be received by any third party.

4. Scope of Guidelines under Section 308 (3) of Companies Act 1965

4.1 For the purpose of section 308 (3) of the Companies Act 1965, the Registrar may strike off a company that has been wound up where the Registrar has reasonable cause to believe that:

- (a) no liquidator is acting;
- (b) the affairs of the company are fully wound up and for a period of six (6) months the liquidator has been in default in lodging any return required to be made by him; or
- (c) the affairs of the company have been fully wound up under Section 217 of the Companies Act (Part X, Division 2) and there are no assets or the assets available are not sufficient to pay the costs of obtaining an order of the Court dissolving the company.

4.2 Instances Where No Liquidator Is Acting

The Registrar may exercise his discretion to strike off a wound up company if he has reasonable cause to believe that there is no liquidator is acting in the following circumstances:

- (a) The appointment of a liquidator is provided under the order of winding up. However, the appointed liquidator failed or refused to lodge the Notice of Appointment pursuant to Section 280 of the Companies Act 1965 with the Registrar;
- (b) Upon the death of the liquidator and no substitution;
- (c) The Liquidator has been appointed but he did not or failed or refused to carry out his duties as a liquidator;
- (d) Any other reasons that the Registrar may reasonably deem fit to exercise his discretion.

5. Requirements for an application pursuant to Section 308 (3)

Under sub-paragraphs (b) and (c) as referred to in paragraph 4.1 above i.e. where there is a liquidator acting, the Registrar may exercise his power on his own accord and may also consider invoking such power pursuant to applications initiated by the liquidator of the company. On application by the liquidator, the Registrar will have to be satisfied that the liquidator fulfills the following requirements:

5.1 The affairs of the company remain unchanged for a period of six (6) months or longer

The affairs of the company must remain unchanged for six (6) months or longer.

This is evidenced from the no change in the status of the affairs of the company as shown in Form 75 which has been lodged by the Liquidator every six (6) months after the order of winding up has been granted.

5.2 The affairs of the company have been fully wound up and there are no assets available

The company must have no tangible assets or the assets available in the company are not sufficient to pay the costs of obtaining an order of the Court to dissolve the company.

5.3 The company must not have any asset which needs to be administered by the Liquidator prior to the making of the application

The Liquidator must prepare a Statement by Liquidator (Appendix 3) stating that he had completed his assignment and that there is no asset under his control.

5.4 The company must not have any outstanding penalties or offer of compounds under the Companies Act 1965

The Liquidator must ensure that all liabilities involving the estate of the company have been fully settled prior to the lodgment of the application for striking off with the Registrar. This fact must be stated in his/her Statement.

5.5 All outstanding tax liabilities (if any) with the Inland Revenue Board incurred by the Liquidator in administering the company's estate must have be fully settled

The Liquidator must ensure that all such liabilities are settled before an application for striking off is made. This fact must be stated in his/her Statement.

5.6 All indebtedness to other Government departments and agencies incurred by the Liquidator in administering the company's estate must be fully settled

This indebtedness excludes liabilities incurred by the company before it is wound-up. The Liquidator must ensure that all such liabilities are settled before an application for striking off is made. This fact must be stated in his/her Statement.

5.7 The Liquidator or the company must not be involved in any legal proceeding whether inside or outside Malaysia

The Liquidator and/or the company must ensure that there is/are no impending court action(s) against the liquidator and/or the company. This fact must be stated in his/her Statement.

6. Application Procedure

6.1 For application under Section 308 (1), the applicant must ensure that all requirements as set out in the checklist (as per Appendix 2) are complied with before submitting the application. Additionally, the applicant must also ensure that all boxes in the said checklist are ticked and that all the necessary supporting documents are enclosed before submitting the application to the Registrar.

6.2 For application under Section 308 (3), the applicant must ensure that it must be accompanied with a Statement by Liquidator (as per Appendix 3).

7. Application Fee

The completed application either under paragraph 6.1 or 6.2 shall be submitted to the Registrar together with an application fee of RM120.00 (refer to Item 33 of the Second Schedule in the Companies Act 1965).

8. Withdrawal of application for Striking Off

The applicant may withdraw the application for striking off at any time before dissolution takes effect by writing to the Registrar indicating the reasons for the withdrawal of the application together with a fee of RM120.00.

9. Gazette Notification

In both the above exercises under sub-sections 308 (1) and (3), the striking off exercise is effected through the issuance of letters and notices to the relevant parties and the publication of the relevant Gazette. On publication of the Gazette pursuant to Section 308 (4), the company shall henceforth be dissolved.

The aforesaid Guidelines will come into effect on the 12 January 2007.

Companies Commission of Malaysia
12 January 2006

(APPENDIX 1)

**STATEMENT BY APPLICANT
APPLICATION TO STRIKE OFF COMPANIES
(Section 308(1) of the Companies Act 1965)**

I,(I/C No.)of (Address) hereby state as follows :

- a. I am a director of Bhd.
(Company Number :);
- b. The company has not commenced business since incorporation/is not carrying on business or is not in operation since.....;
- c. The company has no intention to * commence/carry on its business or operation in the future;
- d. The company has no assets and liabilities including outstanding charges in the Register of Charges;
- e. The company has insufficient funds to pay for winding up expenses;
- f. The company has no outstanding penalties or offer of compounds under the Companies Act 1965;
- g. The company has no outstanding tax or other liabilities and is not indebted to any government department/agency;
- h. The company has not made any return of capital to the shareholders;

- i. The information of the company with the Registrar as shown in the “print-out” is up to date;
- j. The company is not involved in any legal proceeding within or outside Malaysia;
- k. The company is not a holding company or a subsidiary of other corporate body;
- l. The company is not a “Guarantor Corporation”;
- m. The Statutory Record of the company is available for inspection at the registered office at
.....
.....

I, the undersigned hereby confirm that all the above statements are true and correct.

Date :

.....

Signature of Applicant

*Strike out whichever is inapplicable

(APPENDIX 2)

CHECKLIST FOR ENCLOSURES

Company Name :

Company Number :

Please tick to ensure items required are duly enclosed

1. Application Fees of RM 120.00
2. Covering Letter- stating reasons to support application
3. Statement by Applicant
4. Resolution of majority shareholders OR if director/s OR shareholder/s is/are **untraceable**, proof of attempts to trace the whereabouts of such directors or shareholders
5. Management Accounts or Audited Financial Statements (if so requested)
6. Waiver letters from creditors/tax clearance (if applicable)

APPLICANT'S SIGNATURE :

(NAME)

DATE :

(APPENDIX 3)

Company No.

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**STATEMENT BY LIQUIDATOR
APPLICATION TO STRIKE OFF COMPANIES**

(Section 308(3) of the Companies Act 1965)

[*XYZ Sdn. Bhd. in liquidation*]

I, [*ABC*, I/C No.....of (address)], being the Liquidator of [*XYZ Sdn. Bhd. in liquidation*] appointed by the shareholders at the EGM held on / *High Court at [*town / city] on, hereby state as follows :

1. That the affairs of the company have remain unchanged for a period of six (6) months or longer;
2. That the affairs of the company have been fully wound up and there are no assets available;
3. That the company has no outstanding penalties or offer of compounds under the Companies Act 1965;
4. That the company has no outstanding tax or other liabilities and is not indebted to any government department/agency;
5. That there is no legal proceeding whether within or outside Malaysia against me/the company;

I, the undersigned confirm the accuracy of all the above statements.

Date :

Signature of Liquidator

* *Strike out whichever is inapplicable*