



GUIDELINES NO. 1/2015: GUIDELINES FOR THE APPLICATION TO STRIKE-OFF THE NAMES OF DEFUNCT COMPANIES INCORPORATED BETWEEN THE YEAR OF 2010 TO 2014 UNDER SECTION 308(1) OF THE COMPANIES ACT 1965 DURING THE INCENTIVE PERIOD (1 APRIL 2015 – 30 SEPTEMBER 2015)

This guideline serves to inform the procedures and requirements for the application to strike off names of defunct companies incorporated between the year of 2010 to 2014 under section 308(1) of the Companies Act 1965 (CA 1965) during the incentive period.

BACKGROUND

2. The Companies Commission of Malaysia (SSM) has on 11 January 2007 and 30 June 2012 issued a set of guidelines for the application to strike off the names of companies pursuant to section 308 of the CA 1965.

3. Notwithstanding, SSM has decided to ease the requirements for the application for striking off names under section 308(1) of the CA 1965 to facilitate the application to strike-off the names of defunct companies which were incorporated between the year of 2010 to 2014 from the Registry.

4. The effective date of the easing of the requirements for application takes effect from 1 April 2015 to 30 September 2015 (after this is known as 'incentive period').

5. Applicant who applies to strike-off the name of dormant company (s) during the incentive period is not required to submit the management account and companies' resolution.

6. Company(s) with outstanding penalties or compounds issued prior to the incentive period will only be required to pay:

- (a) a fixed amount of RM100.00 for each compound notice issued to the company; and
- (b) a fixed amount of RM100.00 for each compound notice issued to each director of the company.

WHO MAY APPLY?

7. The application may be made by either the director or shareholder of a dormant company which was incorporated between the year of 2010 to 2014 by filling up the Statement of Declaration by Applicant as per "Appendix 1".

REQUIREMENTS FOR APPLICATION UNDER SECTION 308(1) OF THE CA 1965 DURING THE INCENTIVE PERIOD

8. The Registrar may exercise his discretion to strike off the name of defunct company(s) which was incorporated between the year of 2010 to 2014 if the Registrar is satisfied that the application fulfills the following requirements:

- (a) The company has no assets and liabilities at the time the application is made;
- (b) The company has no outstanding tax or other liabilities with any government department or agency;
- (c) The company has no outstanding charges in the Register of Charges;
- (d) The company is not involved in any impending legal proceedings within or outside Malaysia;
- (e) The company has not made any return of capital to the shareholders;
- (f) The company is not a holding company; and
- (g) The company is not a "guarantor corporation".

9. In cases of company(s) with outstanding penalties or compounds issued by SSM prior to the commencement of this incentive period, a concurrent appeal to SSM for a reduction of penalty/compound may be made by filling in the details in items (d) in Appendix 1 and by writing to the Compliance Division of SSM for the appeal process.

APPLICATION BY SUBSIDIARY COMPANIES

10. The Registrar may also exercise his discretion to allow the names of dormant subsidiary companies to be struck off under section 308(1) of the CA 1965 provided that they have fulfilled the requirements under paragraph 6 above together with additional requirements as follows:

- (a) in case of a wholly-owned subsidiary, a letter of consent from the holding company is required to be attached with the application. This letter of consent must be signed by the director of the holding company and be printed on the holding company's letterhead;
- (b) in case where the company is co-owned by other shareholders, letters of consent from all shareholders are required to be attached to the application. The letters of consent must be signed, dated and bear the signature of the shareholders. Where any of the shareholders is a company, the letter of consent must be signed by the director and printed on the company's letterhead; and
- (c) the holding and subsidiary company must declare that it is not subject to or involved in any investigation or prosecution by any authority to the best knowledge of the director/shareholder signing the application for striking-off or the director(s)/shareholder(s) signing the consent letter.

APPLICATION PROCEDURES

11. The application form (as per **Appendix -1**) shall be submitted by the applicant at any of SSM offices nationwide together with the payment of RM120.00 as a processing fee. The fee is non-refundable irregardless of the result of the application.

12. The applicant may withdraw the striking off application within three (3) months from the date of the publication of the *Gazette* pursuant to section 308(2) of the CA 1965 by writing to the Registrar indicating reasons for the withdrawal of the application together with a processing fee of RM120.00.

13. Any person may file an objection to the striking-off process against a company before the expiration of three (3) months from the date of the notice issued under section 308(2) of the CA 1965. The objection together with the cause paper substantiating the claims must be submitted to SSM together with a processing fee of RM120.00. The claimant shall observe all requirements and procedures for filing an objection as stated in *Practice Note No. 5 of 2009* issued by the Registrar on 21 July 2009.

14. The striking off exercise under section 308(1) of the CA 1965 is effected through the issuance of notice to relevant parties and the publication of the *Gazette*. Upon publication of the *Gazette* pursuant to section 308(4) of the CA 1965, the name of the company shall henceforth be struck off.

REGISTRAR OF COMPANIES

COMPANIES COMMISSION OF MALAYSIA

31 MARCH 2015

Company No:
Date of incorporation:

STATEMENT OF DECLARATION BY APPLICANT

Application to Strike Off from the Register the Name of Company that is Not Carrying On Business or is Not In Operation

(Section 308(1) of the Companies Act 1965)

I, (NRIC No :.....) of residential address at on behalf of the other directors/shareholders hereby state the following:

(a) I am a director/ *shareholder of
(name of company and its' incorporation number)

#As a shareholder of the company, I have endeavoured to the best of my ability to contact the other shareholders but to no avail.
..... *(name of the company)*

(b) The Company has *not carried on business / has not been in operation since The company has no intention to commence its operation/carry on its business in the future;

(c) The company does not have any assets or liabilities including any outstanding charges in the Register of Charges kept at the office of the Registrar of Companies;

(d) The company * has no outstanding penalty or compound / has outstanding penalty or compound pursuant to the Companies Act 1965;

(e) The company has no outstanding tax or any other liabilities and is not indebted to the government/ the government departments/agencies in Malaysia;

(f) The information of the company with the Registrar as shown in the attached "print-out" from the Register is true and is up to-date;

(g) The company is not involved in any impending legal proceedings, whether from within or outside Malaysia;

(h) The company is not a holding company;

(i) The company is a subsidiary of (state the name of the holding company and its incorporation number)

#The company must attach the letter of consent from its holding company if it is a wholly-owned subsidiary of a holding company or the letter of consent from all other shareholders if it is co-owned by other shareholders;

(j) The company is not a "Guarantor Corporation";

#The company must attach sufficient proof or evidence to show that it is no longer a "Guarantor Corporation" to enable it to apply for striking off;

I, the undersigned hereby confirm that **all** the information stated above is true and correct.

Date:

.....

Signature of Applicant

Lodged by:
Name:
Address:
Tel no: Mobile no:
Fax no: E-mail:.....

* Delete whichever is not applicable
* Please type the application form
* The Registrar reserves the right to require the applicant to submit a management account or audited financial statements.
Explanation

CHECKLIST

Company Name :

Company Registration Number:

Please tick to ensure all documents have been submitted

1. Cover letter
2. Statement of Declaration by Applicant
3. Application fee of RM120.00
4. SSM's computer "Print-Out" containing the detailed information of the company. This information can be obtained from the "e-Info" services
5. Waiver letter from creditors/directors and LHDN
6. Applications by subsidiary companies must be supported with the following documents:
 - (i) in the case of a wholly-owned subsidiary, a letter of consent from the holding company is required to be attached with the application. This letter of consent must be printed on the holding's company letterhead and must be signed by the director of the holding company;

or
 - (ii) in the case where the company is co-owned by other shareholders, letters of consent from all shareholders are required to be attached to the application. The letter of consent must be signed dated and must bear the signature of the shareholders. If any of the shareholders is a company, the letter of consent must be signed by the director and printed on the company's letterhead; and

(iii) the director/shareholder of the subsidiary company signing this Statement of Declaration by Applicant and the director of the holding company signing the letter of consent under item (i) and the shareholder(s) signing the letter of consent under item (ii) must declare that the company is not subject to or involved in any investigation or prosecution by any authority to the best knowledge of the director/shareholders signing the application for striking off or the director /shareholder signing the consent letter.

Signature of Applicant:
(Name)

Date: