



**SURUHANJAYA SYARIKAT MALAYSIA  
COMPANIES COMMISSION OF MALAYSIA**

**COMPANIES ACT 1965: PRACTICE NOTE NO. 6/2010**

**RE: GUIDELINES FOR THE APPLICATION TO STRIKE OFF  
A COMPANY WHICH IS BEING WOUND-UP**

1. This Practice Note serves to inform on the procedures and requirements for the application to strike off the names of companies which are being wound up in furtherance to the circumstances enumerated under section 308(3) of the Companies Act 1965 (CA 1965).

**BACKGROUND**

2. The Companies Commission of Malaysia (SSM) has on 11 January 2007 issued a set of guidelines for the application to strike off the name of a company pursuant to section 308 of CA 1965 (Guidelines). The Guidelines which came into effect on 12 January 2007, have set out the procedures and requirements for the application to strike off for:

- (a) companies which are not carrying on business or is not in operation pursuant to section 308(1) of the CA 1965; and
- (b) companies which are being wound up pursuant to section 308(3) of the CA 1965.

3. This Practice Note **repeals** the procedures and requirements set out earlier in the Guidelines for the purpose of paragraph 2(b) above.

### **THE DYNAMICS OF SECTION 308(3) OF CA 1965**

4. Section 308(3) of CA 1965 vests the discretionary power onto the Registrar to strike off the name of a company which is being wound up if he 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 pursuant to a compulsory winding-up by the Court under Division 2 of Part X of CA 1965 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.

The subsequent processes in relation to an application under section 308(3) shall be as per section 308(2) and 308(4) of CA 1965.

**GUIDELINES FOR AN APPLICATION UNDER SECTION 308(3)(a) OF CA 1965 – WHERE NO LIQUIDATOR IS ACTING**

5. The Registrar may exercise his discretion to strike off a company undergoing voluntary winding-up if he has reasonable cause to believe that no liquidator is acting for such company under the following circumstances:

- (a) death or resignation of the liquidator and the absence of any substitution after one (1) year upon the death or resignation of such liquidator;
- (b) the whereabouts of the liquidator appointed is unknown for more than one (1) year upon his appointment;
- (c) failure or refusal on part of the liquidator appointed to lodge his notice of appointment with the Registrar and the Official Receiver in accordance with section 280 of CA 1965 for more than six (6) months upon his appointment;
- (d) failure or refusal on part of the liquidator to carry out his duties as a liquidator for more than six (6) months upon his appointment;
- (e) the liquidator ceases to act for a period of more than one (1) year at any time during his appointment; or
- (f) the Registrar in the exercise of his discretion is of the view that no liquidator is acting for such company undergoing the winding-up for any reason whatsoever.

**NOTES:**

- Where the whereabouts of the liquidator is unknown as per paragraph 5(b), the shareholder must provide proof that he/she has made attempts to trace the whereabouts of such liquidator by writing to the address stated in the Registrar's records or any other records available. Attempts must be made by way of registered post. Where the notification from the postal agency is being relied on as proof, it 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.
- Applications pursuant to circumstances falling under paragraph 5 to may be made upon unanimous consent from all the shareholders.
- For other circumstances linked with the absence of liquidator acting for the company, the burden of proof to satisfy the Registrar that such company can be struck-off is on part of the applicant where such application may be made under the ambit of paragraph 5(f).

**Who may apply?**

6. The application may be made by the shareholders of a company which is being wound up either by way of members' or creditors' voluntary winding-up.

**Application by shareholders of a company which is being wound up by way of members' voluntary winding up**

7. Apart from satisfying any one of the circumstances referred to in paragraph 5, the shareholder applying for striking off must satisfy the following:

- (a) the liquidator has failed to lodge Form 75 for more than one (1) year;
- (b) the company has no sufficient funds to cover for the costs of appointment of a new liquidator and to proceed with the process of voluntary winding up;
- (c) the shareholder has obtained the consent of the other shareholders to file the application;
- (d) the company must not have any outstanding penalties or offers of compound under CA 1965;
- (e) the company must not have any outstanding liabilities with the Inland Revenue Board (IRB) and any other Government department or agencies; and
- (f) the company must not be involved in any legal proceeding whether inside or outside Malaysia.

**NOTES:**

- Where the whereabouts of the shareholder is unknown, the liquidator must provide proof that he/she has made attempts to trace the whereabouts of such shareholder by writing to the address stated in the Register of Members or any other records available. Attempts must be made by way of registered post. Where the notification from the postal agency is being relied on as proof, it 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.

The form of application shall be as per **Appendix 1**.

**Application by shareholders of a company which is being wound up by way of creditors' voluntary winding up**

8. Apart from satisfying any one of the circumstances referred to in paragraph 5, the shareholders applying for striking off must satisfy the following criteria:

- (a) the appointed liquidator has failed to lodge the statutory form 75 for more than one (1) year;
- (b) the company must not be involved in any legal proceeding whether inside or outside Malaysia; and
- (c) the shareholder has obtained the consent of all creditors to file this application.

**NOTES:**

- Where the whereabouts of the creditor is unknown, the shareholder must provide proof that he/she has made attempts to trace the whereabouts of such creditor by writing to the address stated in the company's records or any other records available. Attempts must be made by way of registered post. Where the notification from the postal agency is being relied on as proof, it 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.

The form of application shall be as per **Appendix 1**.

**GUIDELINES FOR AN APPLICATION UNDER SECTION 308(3)(b) OF CA 1965 – WHERE THE AFFAIRS OF A COMPANY ARE FULLY WOUND UP AND FOR A PERIOD OF SIX MONTHS THE LIQUIDATOR HAS FAILED TO LODGE ANY RETURN**

9. The Registrar may exercise his discretion to strike off a company where he has reasonable cause to believe that the

affairs of the company are fully wound up and for a period of six (6) months the liquidator has failed to lodge Form 69 (Return by Liquidator Relating to Final Meeting).

10. This circumstance is only applicable to a wound up company by way of voluntary winding up only.

### **Who may apply?**

11. The application may be made by the shareholders or liquidators of a company which has been wound up either by way of members' or creditors' voluntary winding up.

### **Application by shareholders of a company which has been wound up by way of members' voluntary winding up**

12. The shareholders making the application for striking off must ensure that the company has fulfilled the following:

- (a) the affairs of the company have been fully wound up;
- (b) the company has conducted its final meeting pursuant to section 272(1) of CA 1965 but the liquidator, for whatever reason, has defaulted in lodging with the Registrar a return of the holding of the final meeting (Form 69) together with a copy of the account pursuant to section 272(3) of CA 1965 for more than 6 months after the final meeting;
- (c) the company must not have any outstanding penalties or offers of compound under CA 1965; and

- (d) the company must not be involved in any legal proceeding whether inside or outside Malaysia.

The form shall be as per **Appendix 2**.

**Application by shareholders if the company has been wound up by way of creditors' voluntary winding up**

13. The shareholders making the application for striking off must ensure that the company has fulfilled the following:

- (a) the affairs of the company have been fully wound up;
- (b) the company has conducted its final meeting pursuant to section 272(1) of CA 1965 but the liquidator, for whatever reason, has defaulted in lodging with the Registrar a return of the holding of the final meeting in Form 69 together with a copy of the account pursuant to section 272(3) of CA 1965 more than 6 months after the final meeting; and
- (c) the company must not be involved in any legal proceeding whether inside or outside Malaysia.

The Form of application shall be as per **Appendix 2**.

**Application by a liquidator if the company has been wound up by way of members' voluntary winding up**

14. The liquidator making the application for striking off must ensure the following:

- (a) the affairs of the company have been fully wound up;
- (b) the company has no fund or if fund is available, such fund is insufficient to pay for the costs of holding the final meeting under section 272 of CA 1965;
- (c) the members of the company must consent to the filing of the striking off application;
- (d) the company must lodge the latest Form 75 to enable the Registrar to form his opinion of paragraph (a) above;
- (e) the liquidator (in his capacity as the liquidator of the company) must not have any outstanding penalties or offers of compound under CA 1965;
- (f) the company and the liquidator (in his capacity as the liquidator of the company) must not be involved in any legal proceeding whether inside or outside Malaysia; and
- (g) the company must not have any outstanding liabilities with the IRB and any other Government department or agencies;

The form of application shall be as per **Appendix 2**.

**Application by a liquidator if the company has been wound up by way of creditors' voluntary winding up**

15. The liquidator making the application for striking off must ensure the following:

- (a) the affairs of the company have been fully wound up;

- (b) the creditors of the company must consent to the filing of the striking off application;
- (c) the company has no fund or if fund is available, such fund is insufficient to pay for the costs of holding the final meeting under section 272 of CA 1965;
- (d) the company must lodge the latest Form 75 to enable the Registrar to form his opinion of paragraph (a) above;
- (e) the company and the liquidator (in his capacity as the liquidator of the company) must not be involved in any legal proceeding whether inside or outside Malaysia; and
- (f) the liquidator (in his capacity as the liquidator of the company) must not have any outstanding penalties or offers of compound under CA 1965.

The form of application shall be as per **Appendix 2**.

**GUIDELINES FOR AN APPLICATION UNDER SECTION 308(3)(c) OF THE CA 1965 – WHERE THE AFFAIRS OF A COMPANY ARE FULLY WOUND UP BY THE COURT AND THERE IS INSUFFICIENT FUND TO OBTAIN FOR A DISSOLUTION ORDER**

16. Under section 308(3)(c) of CA 1965, the Registrar may exercise his discretion to strike off a wound up company if he has reasonable cause to believe that the affairs of the company have been fully wound up by the court and there are no assets or the assets available are not sufficient to pay for the costs of obtaining a Court order to dissolve the company. An application under

section 308(3)(c) of CA 1965 can only be made where a company has been wound up pursuant to a Court order.

### **Who may apply?**

17. A liquidator of a company which has been wound up by the Court may apply to the Registrar for such company to be struck off under section 308(3)(c) of CA 1965.

### **Application by liquidator of a company which has been wound up by the court**

18. In making an application to the Registrar to strike off the name of a company under section 308(3)(c) of CA 1965, the liquidator must ensure that the company has fulfilled the following criteria:

- (a) the affairs of the company have been fully wound up;
- (b) the company must lodge the latest Form 75 to enable the Registrar to form his opinion of paragraph (a) above;
- (c) the liquidator and the company (in his capacity as the liquidator of the company) must not be involved in any legal proceedings whether inside or outside Malaysia; and
- (d) the liquidator (in his capacity as the liquidator of the company) must not have any outstanding penalties or offers of compound under CA 1965.

The form of application is as per **Appendix 3**.

## **APPLICATION PROCEDURES**

19. The forms (as per **Appendixes 1-3**) shall be submitted by the shareholder or liquidator, as the case may be, together with the payment of RM120.00 as a processing fee to:

The Director  
Registration Services Division  
Menara SSM@Sentral  
No. 7, Jalan Stesen Sentral 5  
Kuala Lumpur Sentral  
50470 Kuala Lumpur.

20. 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 CA 1965 by writing to the Registrar indicating the reasons for the withdrawal of the application together with a processing fee of RM120.00.

21. 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 CA 1965. The objection together with the cause paper substantiating the claims shall be submitted in writing to the relevant Division together with a processing fee of RM120.00. The claimant shall observe all the requirements and procedures for filing an objection as stated in *Practice Note No. 5 of 2009* issued by the Registrar of Companies on 21 July 2009.

22. The Official Receiver (OR) acting in his capacity as a liquidator of a company is not required to pay the processing fee of RM120.00 when making or withdrawing from or objecting to the application under section 308(3) of CA 1965.

23. The striking off exercise under section 308(3) of CA 1965 is effected through the issuance of notice to the relevant parties and the publication of the *Gazette*. Upon publication of the *Gazette* pursuant to section 308(4) of CA 1965, the name of the company shall henceforth be struck off.

24. The issuance of this Practice Note shall not extinguish the right of the Registrar to initiate enforcement proceeding against the liquidator who has defaulted in the lodgement of Forms 69 and 75 within the stipulated time under CA 1965.

25. Liquidators and shareholders applying for the striking off process under section 308(3) of CA 1965 are required to notify the OR forthwith of the status of the company upon the dissolution of the company pursuant to section 308(4) of CA 1965. The form of notification is as per **Appendix 4**. This requirement is to enable the OR to update his records in respect of the company.

**REGISTRAR OF COMPANIES**

**COMPANIES COMMISSION OF MALAYSIA**

**11 January 2010**