



**SURUHANJAYA SYARIKAT MALAYSIA
COMPANIES COMMISSION OF MALAYSIA**

RE: GUIDELINES FOR THE APPLICATION TO STRIKE-OFF A NAME OF A DEFUNCT COMPANY UNDER SECTION 308(1) OF THE COMPANIES ACT 1965 DURING MORATORIUM PERIOD (3 MARCH – 30 JUNE 2011)

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

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 the CA 1965.
3. The Minister of Domestic Trade Cooperatives and Consumerisms has, on 3 March 2011, announced the waiver on compound or penalties imposed on directors of defunct companies to enable them to apply to the Registrar to strike their defunct companies off the register.
4. In pursuance to the announcement, the Management of SSM has vide a Management meeting No. 4/2011 held on 10 March 2011, decided to relax the requirements for the application for striking off names of defunct companies under section 308(1) of the CA 1965.



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5. The effective date of the relaxation of the requirements for application takes effect from 3 March to 30 June 2011 (hereinafter referred to as "moratorium period").

WHO MAY APPLY?

6. The application may be made by either the director or shareholder of a defunct company by filling up the Statement of Declaration by Applicant as per "Appendix 1".

REQUIREMENTS FOR AN APPLICATION UNDER SECTION 308(1) DURING MORATORIUM PERIOD

7. The Registrar may exercise his discretion to strike off the name of defunct companies if he 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;



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- (d) The company is not involved in any impending legal proceedings within or outside Malaysia;
- (e) The company has no outstanding penalties or offer of compounds under the Companies Act 1965. The waiver on compound or penalties is only applicable to compound or penalties issued by SSM during the moratorium period i.e. from 3 March 2011 until 30 June 2011;
- (f) Companies with outstanding penalty or compound which was issued by SSM prior to the moratorium period may make a concurrent appeal to SSM for a waiver or reduction of penalty/compound by filling in the details in items (d) in Appendix 1.
- (g) The company is not a holding company; and
- (h) The company is not a "guarantor corporation".

APPLICATION BY SUBSIDIARY COMPANIES

8. The Registrar may also exercise his discretion to allow subsidiary companies to be struck off under section 308(1) provided that they have fulfilled the requirements under paragraph 7 above together with additional requirements as follows:

- (a) 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 signed by the

director of the holding company and be printed on the holding company's letterhead;

- (b) 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 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

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

10. 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.



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11. 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 SSM 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.

12. 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.

REGISTRAR OF COMPANIES
COMPANIES COMMISSION OF MALAYSIA
4 April 2011



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APPENDIX 1

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

..... 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
The company hereby applies/appeals to the Registrar of Companies for the penalty or compound to be * waived / reduced to RM

(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;



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(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
Explanation



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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 / LHDN (*if any*)
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



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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 :