



**SURUHANJAYA SYARIKAT MALAYSIA
COMPANIES COMMISSION OF MALAYSIA**

SSM'S POLICY GUIDELINES IN RESPECT OF AN APPLICATION FOR THE REGISTRAR OF COMPANIES TO ACT AS THE REPRESENTATIVE OF DISSOLVED COMPANY PURSUANT TO SECTION 309 OF THE COMPANIES ACT 1965 IN MATTERS INVOLVING IMMOVABLE PROPERTY

This policy guideline serves as a guidance to assist and facilitate applicants who wish to make applications for the Registrar of Companies ("**Registrar**") to act as the representative of dissolved company in certain events pursuant to section 309 of the Companies Act 1965 ("**CA 1965**").

THE POWER OF THE REGISTRAR TO ACT AS THE REPRESENTATIVE OF A DISSOLVED COMPANY

2. When a company is dissolved either by way of a winding up process or a striking off process, its legal existence comes to an end. Since a dissolved company lacks the capacity and is deemed to be incompetent to deal with any transaction or matter involving the dissolved company, there is a need to appoint a representative to act on behalf of the dissolved company to ensure completion of such dealing, transaction or matter.

3. Section 309 (1) of the CA 1965 confers the power onto the Registrar to represent the dissolved company in which the Registrar may do or cause to be done any purely administrative act which are not discretionary for the purpose of carrying out, completing or giving effect to any dealing, transaction or matter which the company if still existing would be legally or equitably bound.

(4) In carrying out the representative functions, section 309(2) of the CA 1965 allows the Registrar to either execute or sign any relevant instrument or document stating that he has done so in pursuance of this section, and the execution or signature shall have the same force, validity and effect as if the company if existing had duly executed such instrument or document.

CIRCUMSTANCES UNDER WHICH THE APPLICATIONS MAY BE MADE

(5) The Registrar may allow applications to be made under section 309 of the CA 1965 in the following instances:

- (i) where a company, prior to its dissolution, had entered into an agreement to sell its property to a purchaser. The purchaser has fully paid the purchase price according to the sale and purchase agreement but the instrument of transfer has yet to be executed by the company prior to its dissolution;
- (ii) where a company, prior to its dissolution, had entered into an agreement to sell its property and the purchaser has not fully paid up the purchase price according to the sale and purchase agreement. The purchaser now wishes to complete the transaction and pay the balance of the purchase price although the company has been dissolved. In this circumstance, the balance of purchase price will have to be paid to the Registrar by virtue of Section 310 of the CA 1965 before the Registrar could execute the instrument of transfer.
- (iii) where a company is the chargee and the chargor has fully paid up its loan to the company before the dissolution and the company failed to execute any instrument of discharge (Form 16N) or

- (iv) any other circumstances which the Registrar may deem fit to exercise his power under section 309 of the CA 1965.

APPLICATION PROCEDURES

6. An application to request the Registrar to invoke his power under section 309 may be made through a statutory declaration deposed by the applicant by stating substantial reasons for the application. The application must also be substantiated with the following documents:

- (i) certified true copy of the applicant NRIC;
- (ii) certified true copy of the sale and purchase agreement with the layout plan/plan of the property attached, Facilities Agreement, Property Purchase Agreement and Property Sale Agreement and any other related documents;
- (iii) the original proof or receipt showing that the purchase price has been fully paid;
- (iv) in a case where the purchase price has not been fully paid, the original proof or receipt showing the amount of money that had been partly paid to the dissolved company and that there is a balance of purchase price which is still outstanding;
- (v) certified true copy of the facility agreement/loan agreement, power of attorney (if any) and all related documents for purchasing the property from the company;
- (vi) certified true copy of an updated land search result from the relevant land office, deed of assignment, loan agreement cum assignment (LACA) and all related security documents for

purchasing the property in which the land title has yet to be issued;

- (vii) certified true copy of the issue document of title (IDT) for property in which the land title has been issued and/or together with the certified true copy of a charge instrument (in the event that the charge over the said property have been charged or presented for registration at the appropriate registering authority in favour of the financier);
- (viii) certified true copy of the State Authority consent for the sale, transfer and/or charge of the said property from the company to the purchaser (if necessary and stipulated in the title);
- (ix) Letter of indemnity addressed to the Registrar to the effect that the applicant undertakes to indemnify and shall at all times keep the Registrar safe and indemnified against and from all actions, suits, proceedings, loss, claims, demands, costs, expenses and penalties whatsoever which may arise against the Registrar in relation to the execution of the instrument of transfer for the property for and on behalf of the dissolved company and the applicant shall bear all costs and expenses incurred for the Registrar's consent to execute the said instrument of transfer.
- (x) original instrument of transfer for the Registrar's approval and if he is satisfied with the application, for his execution. The MOT shall state the name and company number of the dissolved company and shall contain a statement to the effect that:

"The Registrar is executing the Memorandum of Transfer (MOT) in his capacity as a representative of the dissolved company pursuant to section 309 of the CA 1965;"

- (xi) certified true copy of the latest quit rent and assessment bill to ensure that the property belongs to the dissolved company;
- (xii) latest corporate information in respect of the dissolved company from SSM; and
- (xiii) any other document which the Registrar may require to be furnished.

7. For any application under paragraph 5(iii), the applicant is not required to furnish information in paragraph 6(x). However, the applicant is required to furnish the additional information as follows:

- (i) original copy of the discharge of charge form for property with title (Form 16N) or Receipt and Reassignment (R&R) for property without title for the Registrar's approval and if satisfied, for execution. The discharge instrument or the R&R shall state the name and company number of the dissolved company and shall contain a statement to the effect that:

"the Registrar is executing the discharge instrument or the R&R in his capacity as a representative of the dissolved company pursuant to section 309 of the CA 1965;" and

- (ii) any other documents which the Registrar may require to be furnished.

8. The statutory declaration together with the supporting documents under paragraphs 6 and 7 and the application fee of RM200 pursuant to Item 24 of the Second Schedule of the CA 1965 shall be submitted for processing to:

The Director
Registration Services Division (Asset Management Unit)
Suruhanjaya Syarikat Malaysia
Level 19, MenaraSSM@Sentral
No. 7, Jalan Stesen Sentral 5, KL Sentral
50623 Kuala Lumpur.

9. Once the Registrar has approved the application, the applicant is required to pay to the Registrar the sum of RM500 for every act done by the Registrar (e.g. the act of executing the MOT or discharge of form or any other relevant forms) in carrying out his function as a representative of the dissolved company pursuant to Item 25 of the Second Schedule of the CA 1965.

REGISTRAR OF COMPANIES
COMPANIES COMMISSION OF MALAYSIA
22 /9/2011

LETTER OF INDEMNITY

The Registrar of Companies
Malaysia

Dear Sir,

Re: Application Under Section 309 Companies Act 1965 To Execute A Memorandum Of Transfer On Behalf Of A Dissolved Company

Applicants :

Company :

Property :

In consideration for you agreeing at our request to execute the Memorandum of Transfer (MOT) of the above said title on behalf of the now dissolved company, company name (co number), as the registered owner of the property in favour of myself/ourselves, I/we name and ic number hereby agree and undertake to indemnify you against:

- (a) all actions, suits, claims or demands, proceedings, losses, damages, compensation, cost (including legal cost), charges and expenses whatsoever to which the Registrar shall or may be or become liable in respect of or arising out of acts done by the Registrar in the performance of this Memorandum of Transfer;
- (b) any amount cost of interest accrued arising from the full purchase price under the Sale and Purchase agreement dated In which case it shall be paid by the Applicant in the event of any demand made, which in no way shall the Registrar be liable to pay; and
- (c) any other matters deemed appropriate and reasonable.

We acknowledge that you are executing the said Memorandum of Transfer in strict reliance on the documents provided by us, and are not presumed to have any other knowledge in relation to any matters beyond that contained in the said documents.

Dated this:.....

.....
Applicant Name
(IC Number)

.....
Applicant Name
(IC Number)

*Witnessed by:

.....

Name:

NRIC:

*A Commissioner For Oath

Borang 14A

PINDAHMILIK TANAH, BAHAGIAN ATAU PAJAKAN

(Setem hendaklah dilekatkan - atau pembayaran cukai diperakui - dalam ruang ini)

UNTUK KEGUNAAN PEJABAT PENDAFTARAN

Ingatan pendaftaran dibuat dalam Dokumen/Dokumen-
dokumen Hakmilik Daftar yang dijadualkan di bawah
ini mulai dari pukul pada.....
haribulan, 200.....
T.M. Pendaftar/Pentadbir Tanah
Negeri/Daerah

Fail mengenai –
.....
Jilid.....
Folio.....
Perserahan No. –
.....

Kami,

~~*tuanpunya *tanah/bahagian yang tak dipecahkan atas tanah -
*penerima pajak/penerima pajak kecil dalam *pajakan/pajakan kecil-~~

yang diperihalkan dalam Jadual di bawah ini:

*(a) Sebagai balasan jumlah wang sebanyak **RM** sahaja yang
dengan ini saya/kami mengaku telah terima;

(b) Sebagai balasan -
.....
.....
.....
.....

Di sini
nyatakan
balasan (jika
lain daripada
wang) dan
daripada siapa
datangnya.

(c) Dengan tiada apa-apa balasan

Dengan ini memindahkan kepada penerima pindahan yang tersebut namanya di bawah ini, segala
hakmilik atau kepentingan sebagaimana yang ada pada saya/kami.

Bertarikh pada.....haribulan.....20

Ditandatangani oleh Pendaftar Syarikat
wakil bagi syarikat XXXXXXXX Sdn Bhd (bubar)
menurut Seksyen 309 Akta Syarikat 1965.

.....
Tandatangan (atau lain-lain cara penyempurnaan)
Oleh atau bagi pihak pemindah