



**COMPANIES COMMISSION OF MALAYSIA ACT 2001:
CIRCULAR NO. 1/2018**

**RESTRICTION ON BUSINESS ENTITIES RELATING TO THE DEMOCRATIC
PEOPLE'S REPUBLIC OF KOREA: POWER OF REGISTRAR TO REFUSE
OR STRIKE OFF THE RELATED BUSINESS ENTITIES**

This Circular is issued pursuant to section 20C of the Companies Commission of Malaysia Act 2001.

OBJECTIVE

2. This Circular serves to clarify the power of the Registrar of the Companies Commission of Malaysia (SSM) to refuse the registration or incorporation; or to strike off any business entity which had been found to threaten the safety and security of the country.

BACKGROUND

3. On 5 August 2017, the United Nations Security Council (UN) had passed Resolution 2371 in relation to the Democratic People's Republic of Korea (DPRK) following the launch of a ballistic missile test between the continents. The

resolution contained legally binding sanctions measures on all UN member states to be fully implemented and enforced solely.

4. The purpose of the resolution is to pressure the DPRK to stop its nuclear program and its ballistic ammunition in order to safeguard international peace and security.

5. This Resolution 2371 constitutes an additional sanction on previous UN resolutions including the prohibition on establishing a joint venture between United Nations members with restricted countries.

6. As such, the Companies Commission of Malaysia (SSM) as an agency relating to the registration and incorporation of business entities is responsible for ensuring that national policies in the implementation of the provisions of the United Nations Security Council Resolutions the restriction measures against the DPRK are achieved.

SSM'S ACTIONS IN SUPPORT OF COUNTRIES WHICH ENFORCE THE RESOLUTIONS OF UN SECURITY COUNCIL

7. In accordance with the restrictions imposed on the DPRK, an individual or business entity must observe the following matters relating to the laws regulated by SSM:

(a) that the incorporation or registration of new business entities owned by DPRK or its representatives or DPRK's people is prohibited;

(b) that the increase in shareholding or equity in any existing business entity owned by the DPRK or its representative or DPRK is prohibited.

8. In this regard, SSM also emphasised that SSM stakeholders, especially the company secretaries, to take immediate action by reporting immediately if there is an application for registration of new DPRK business entities or transactions involving DPRK as well as individuals and entities suspected of being involved with blacklisted DPRK in the SSM system.

PROVISIONS OF THE LAW UNDER THE PURVIEW OF SSM TO CONTROL AND CURB BUSINESS ENTITIES FOUND TO THREATEN THE NATIONAL AND INTERNATIONAL SAFETY AND SECURITY

9. SSM as a statutory body that regulates business entities has a role to ensure that the provisions of the law specified in the First Schedule to the Companies Commission of Malaysia Act 2001 (CCMA) are complied with by business entities.

10. A business entity is defined under section 2 of the CCMA as follows:

“business entity” means–

- (a) in the case of the Registration of Businesses Act 1956 [Act 197], any sole proprietorship or partnership;
- (b) in the case of the Companies Act 1965 [Act 125] (repealed by Companies Act 2016 [Act 777]), a company, corporation or foreign company;
- (c) in the case of the Limited Liability Partnerships Act 2012 [Act 743], a limited liability partnership or a foreign limited liability partnership;’.

11. Therefore, a business entity that does not comply with the provisions of the law under the purview of the SSM may be taken legal action against it, especially if it appears that the business entity is found to threaten the national and international safety and security.

12. The power of the laws administered by SSM which are applicable to control and curb business entities related to DPRK are as follows:

(i) Companies Act 2016

Section 16 of the Companies Act 2016 provides that the Registrar shall refuse to register the application of a proposed company which is likely to be used for an unlawful purpose or for purposes that may affect Malaysia's public order, morality or security.

Section 465(1)(k) and (2) of the Companies Act 2016 provides that the Court may direct the winding up of a company to the Registrar if the company is used for an unlawful purpose or any purpose affecting and unsuitable for peace, welfare, security, public order, good circumstances or moral principles in Malaysia.

In addition, section 545(1)(c)(iv) of the Companies Act 2016 provides that the Registrar may wind up company used for an unlawful purpose or any purpose affecting or contrary to peace, welfare, security, public interest, public order, order or morality in Malaysia.

Furthermore, section 549(c) of the Companies Act 2016 states that the Registrar may strike a company off, if the company is being used for unlawful purposes or any purpose prejudicial to or incompatible with peace, welfare, security, public interest, public order, good order or morality in Malaysia.

(ii) Registration of Businesses Act 1956

Section 5C(1) of the Registration of Businesses Act 1956, the Registrar shall refuse to register any business if the Registrar is satisfied that the business is likely to be used for unlawful purposes or any purpose prejudicial to or incompatible with the security of the Federation, public order or morality.

Section 5C(2) of the Registration of Businesses Act 1956 provides that where a business has been registered, the Registrar shall revoke its registration if the Registrar is satisfied that the business is being used for unlawful purposes or any purpose prejudicial or incompatible with the security of the Federation, public order or morality.

(iii) Limited Liability Partnership Act 2012

Section 51(1)(c) of the Limited Liability Partnership Act 2012 (LLPA) provides the power of the Registrar to strike off a limited liability partnership from the register if the Registrar has reason to believe that it is prejudicial to the national interest for the limited liability partnership to remain on the register.

13. Based on the available legal framework, SSM will take the appropriate action on business entities related to DPRK by restraining and not allowing any new business to be registered or curbing the development of existing business entities. In controlling and curbing business entities related to DPRK, SSM may strike off or cancel the registration of the entity, whichever is applicable, if the owner of the business entity is found to have breached the law as provided in the provisions mentioned above.

CONCLUSION

14. Therefore, based on the provisions stated in paragraph 12, SSM will take firm action to strike off or cancel a business entity which is related to DPRK from the register if SSM is satisfied that the business entity is being used for the illegal purposes or being used for purposes which are prejudicial and inappropriate to the economic security and national interest.

**CHIEF EXECUTIVE OFFICER
COMPANIES COMMISSION OF MALAYSIA
2 April 2018**