



GUIDELINES ON APPLICATION BY DIRECTORS OR MEMBERS TO STRIKE OFF THE NAME OF A COMPANY UNDER SECTION 550 OF THE COMPANIES ACT 2016

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

OBJECTIVES

1. This Guidelines serves as a guidance for members or directors of a company to apply for a striking off procedure pursuant to section 550 of the Companies Act 2016 (CA 2016).
2. This Guidelines is limited to the application to strike a company off the register under section 549 (a) of the CA 2016 when the company is not carrying on business or is not in operation.

SCOPE OF THE GUIDELINES

3. Under section 549(a) of the CA 2016, the Registrar may exercise his discretionary power to strike the name of a company off the Register if he has reasonable cause to believe that the company is not carrying on business or is not in operation.
4. In determining whether a company is not carrying on business or is not in operation, the Registrar may form his opinion based on the following:

- (a) information in records of the company under the Registrar's custody; and
- (b) through application made to him by a director or shareholder/member of a company under section 550 of CA 2016 requesting him to exercise his discretionary power.

REQUIREMENTS FOR AN APPLICATION PURSUANT TO SECTION 550 CA 2016

5. In proceeding with the exercise and forming his opinion based on paragraph 4, the Registrar must be satisfied that the application fulfils the following requirements:

- (a) The resolution of the shareholders have been passed for the initiation of the application to strike off the name of the company from the register on the basis that the company is not carrying on business or not in operation**

The resolution passed pursuant to section 290 of the CA 2016 must be enclosed together with the application to reflect the consent of the majority shareholders in respect of the striking off application.

If the requisite majority cannot be obtained due to shareholder(s) who is **untraceable**, the application may still be submitted to SSM provided that attempts have been made to trace the whereabouts of the shareholder(s) by writing to him at the residential address as stated in the Registrar's records or any other records. These attempts must be made by way of

registered post. Where the notification from the postal agency is being relied on as a proof, this 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.

(b) The company has no assets and liabilities at the time when the application is made

The management accounts of the company shall show that the company has no assets and liabilities. If the company's last audited financial statements lodged with the Registrar showed that the company has assets and liabilities, the applicant must submit documentary evidence to show that the assets have been disposed and that the liabilities have been settled or waived.

If the company has not commenced operation, the applicant must make the following declaration:

- (i) That there has no transaction since the company was incorporated; and
- (ii) That the company has not opened a bank account or if there is an account, that the account has been closed (the latest bank statement is to be attached).

(c) The company has no outstanding charges in the Register of Charges

In respect of charges, the applicant must ensure that the company has no outstanding charges in the Register of Charges kept with the Registrar.

(d) The company has no outstanding penalties or offer of compounds under the CA 2016

The company must ensure that all such liabilities are settled before an application for striking off is made.

(e) The company has no outstanding tax or other liabilities with any Government Department or Agency

Where a company has commenced operation, it must settle all outstanding tax and obtain a tax clearance prior to the filling of the application for striking off.

(f) The information of the company with the Registrar is up to date

The particulars of director(s) of the company and any other information as the Registrar deems fit must be the same as in the Registrar's records. If there are any differences or changes in respect of the information of the directors of the company, the company must first ensure that the Registrar's records are updated before an application for striking off is made. (Applicant may

check the records by getting a print-out from the e-Info service)

(g) The company is not involved in any legal proceeding within or outside Malaysia

The applicant should not make any application for striking off if it is aware that there is an impending court action against it so as not to deprive others, who have initiated court action against the company, from proceeding with the court action.

(h) The company has not made any return of capital to the shareholders

The company is prohibited to make any return of capital to the shareholders to enable it to apply for a striking off under section 550. If a company still have its capital, the company should proceed with the voluntary winding up process to formally cease its existence.

(i) The company is not a holding company

The holding company should commence a voluntary winding-up proceeding to dissolve the company.

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

A "Guarantor Corporation" means a corporation that has guaranteed or has agreed to guarantee the repayment of any money received or to be received by any third party.

APPLICATION BY SUBSIDIARY COMPANIES

6. The Registrar may also exercise his discretion to allow the name of dormant subsidiary companies to be struck off under Section 549 of CA 2016. Apart from complying with the requirements in paragraph 5 , the subsidiary companies must also fulfil the following requirements:

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

ADDITIONAL REQUIREMENTS FOR AN APPLICATION BY COMPANY LIMITED BY GUARANTEE

7. In the case of an application relating to a company limited by guarantee, in addition to the requirements set out in paragraph 5, the application must be accompanied with its latest audited financial statements.

APPLICATION PROCEDURE

8. For application under section 550 of CA 2016, the applicant must complete the Declaration-Application to Strike Off Company in Schedule B of the Practice Directive 1/2017 (Appendix 1) and ensure that all requirements as set out in the Checklist (Appendix 2) are complied with before submitting the application. Additionally, the applicant must also ensure that all boxes in the said Checklist are ticked and that all the necessary supporting documents are enclosed before submitting the application to the Registrar.

APPLICATION FEE

9. The completed application shall be submitted to the Registrar together with an application fee of RM100.00 (as per Item 27, Schedule of Fee (Regulation 8) in the Companies Regulations 2017).

WITHDRAWAL OF APPLICATION FOR STRIKING OFF

10. The applicant may withdraw the application for striking off within thirty (30) days from the date specified in the notice or publication of notification under section 551(1) by lodging a Notice of Withdrawal of Striking Off Application as per Schedule B of the Practice Directive 1/2017 (Appendix 3) to the Registrar indicating

the reasons for the withdrawal of the application , together with the necessary supporting documents, with a prescribed fee of RM500.00 (as per Item 29 Schedule of Fee (Regulation 8) in the Companies Regulations 2017).

OBJECTION TO STRIKING OFF APPLICATION

11. Any person may, together with a prescribed fee of RM300.00 (as per Item 28, Schedule of Fee (Regulation 8) in the Companies Regulations 2017), lodge with the Registrar a Notice of Intention To Object Striking Off Application as per Schedule B of the Practice Directive 1/2017 (Appendix 4), within 30 days from the date specified in the notice or publication of notification under section 551(1) on any of the grounds referred to in section 552(1), together with the necessary supporting documents, as follows :

- (a) that the company is still carrying on business or there is other reason for it to continue in existence;
- (b) that the company is a party to legal proceedings;
- (c) that the company is in receivership or liquidation; or both;
- (d) that the person is a creditor or a member or a person who has an undischarged claim against the company;
- (e) that the person believes that there exists, and intends to pursue, a right of action on behalf of the company under Division 6 of Part III; or
- (f) that, for any other reason; it would not be just and equitable to remove the company from the register.

12. If the Registrar receives any objection from any person following the notification issued under section 551(1), the Registrar

will not proceed with the application to strike off a company unless the Registrar is satisfied that:

- (a) the objection has been withdrawn;
- (b) any facts on which the objection is based are not, or are no longer correct; or
- (c) the objection is frivolous and vexatious.

GAZETTE NOTIFICATION

13. The striking off exercise is effected through the issuance of notice to the relevant parties and the publication of notification and gazette. On publication of the gazette pursuant to section 551(3) of the CA 2016, the company shall henceforth be dissolved.

REGISTRAR OF COMPANIES

COMPANIES COMMISSION OF MALAYSIA

9 JUNE 2017