



GUIDELINES ON APPLICATION BY LIQUIDATOR TO STRIKE OFF THE NAME OF A COMPANY UNDER SECTION 550 OF THE COMPANIES ACT 2016 WHICH IS BEING WOUND UP

1. This Guidelines serve 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 549(d) of the Companies Act 2016 (CA 2016) or under any corresponding previous written law.

BACKGROUND

2. Section 549(d) of the CA 2016 vests the discretionary power onto the Registrar to strike the name of a company which is being wound up off the register 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 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.

**APPLICATION UNDER SECTION 549(d)(i) OF THE CA 2016 –
WHERE NO LIQUIDATOR IS ACTING**

3. 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) upon the death or resignation of the liquidator and the absence of any substitution after one (1) year upon the death or resignation of the earlier appointed liquidator;
 - (b) where the whereabouts of the liquidator appointed earlier is unknown for more than one (1) year upon his appointment;
 - (c) upon the 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 513 of the CA 2016 for more than six (6) months upon his appointment;
 - (d) upon the 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) where the liquidator ceases to act for a period of more than one (1) year at any time during his appointment;
- or

- (f) upon 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 3(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. These 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. Additional proof of any other modes of attempt (if any) must also be attached to the application.
- Applications pursuant to circumstances falling under paragraph 3 to the Registrar 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 the part of the applicant where such application may be made under the ambit of paragraph 3(f).

Who may apply?

4. In a case where no liquidator is acting for a company that is wound up voluntarily, 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

5. Apart from satisfying any one of the circumstances referred to in paragraph 3, the shareholder applying for striking off must satisfy the following:

- (a) the appointed liquidator has failed to lodge a Liquidator's Account of Receipts and Payments and Statements of the Position in the Winding Up under section 514 of the CA 2016 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 this application;
- (d) the company must not have any outstanding penalties or offers of compound under the CA 2016, CA 1965 or under any corresponding previous written law;
- (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 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.

These 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. Additional 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

6. Apart from satisfying any one of the circumstances referred to in paragraph 3, the shareholders applying for striking off must satisfy the following criteria:

- (a) the appointed liquidator has failed to lodge a Liquidator's Account of Receipts and Payments and Statements of the Position in the Winding Up under section 514 of the CA 2016 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 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. These 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. Additional 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 UNDER SECTION 549(d)(ii) OF THE CA 2016
– 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**

7. 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 a Return by Liquidator Relating to Final Meeting under section 459 of the CA 2016.

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

Who may apply?

9. The application may be made by the shareholders or liquidators 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 has been wound up by way of members' voluntary winding up

10. 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 459(1) of the CA 2016 but the liquidator, for whatever reason, has defaulted in lodging with the Registrar a Return by Liquidator Relating to Final Meeting under section 459 of the CA 2016 together with a copy of the Liquidator's Account Of Receipts and Payments and Statements of the Position in the Winding Up pursuant to section 459(3) of the CA 2016 for more than 6 months after the final meeting;
- (c) the company must not have any outstanding penalties or offers of compound under the CA 2016, CA 1965 or under any corresponding previous written law; and
- (d) 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 shareholders if the company has been wound up by way of creditors' voluntary winding up

11. 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 459(1) of the CA 2016 but the liquidator, for whatever reason, has defaulted in lodging with the Registrar a Return of the Holding of the Final Meeting under section 459 of the CA 2016 together with a copy of the Liquidator's Account Of Receipts and Payments and Statements of the Position in the Winding Up pursuant to section 459(3) of the CA 2016 for 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

12. 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 459(1) of the CA 2016;
- (c) the shareholders of the company must consent to the filing of the striking off application;

- (d) the company must lodge the latest Liquidator's Account of Receipts and Payments and Statements of the Position in the Winding Up under section 514 of the CA 2016 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 the CA 2016, CA 1965 or under any corresponding previous written law;
- (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

13. 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 459 of the CA 2016;
- (d) the company must lodge the latest Liquidator's Account of Receipts and Payments and Statements of the Position in the Winding Up under section 514 of the CA 2016 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 the CA 2016, CA 1965 or under any corresponding previous written law.

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

**APPLICATION UNDER SECTION 549(d)(iii) OF THE CA 2016
– WHERE THE AFFAIRS OF A COMPANY ARE FULLY WOUND
UP BY THE COURT AND THERE IS INSUFFICIENT FUND TO
OBTAIN FOR A DISSOLUTION ORDER**

14. Under section 549(d)(iii) of the CA 2016, 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's order to dissolve the company. An application under

section 549(d)(iii) of the CA 2016 can only be made where a company has been wound up pursuant to a Court's Order.

Who may apply?

15. 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 549(d)(iii) of the CA 2016.

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

16. In making an application to the Registrar to strike off the name of a company under section 549(d)(iii) of the CA 2016, 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 Liquidator's Account of Receipts and Payments and Statements of the Position in the Winding Up under section 514 of the CA 2016 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 the CA 2016, CA 1965 or under any corresponding previous written law.

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

APPLICATION PROCEDURES

17. The Forms (as per Appendixes 1-3) shall be submitted by the shareholder or liquidator, as the case may be together with a payment of RM100.00 to:

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

18. The applicant may withdraw the striking off application within 60 days from the date of notice/notification issued under section 551(1) of the CA 2016 by writing to the Registrar indicating the reasons for the withdrawal of the application together with a fee of RM500.00.

19. Any person may file an objection to the striking-off process against a company before the expiration of sixty (60) days from the date of the notice/notification issued under section 551(1) of the CA 2016. The objection together with the supporting documents substantiating the claims shall be submitted in writing to the Registrar with a processing fee of RM300.00.

20. Upon publication of the Gazette pursuant to section 551(3) of the CA 2016, the name of the company shall henceforth be struck off.

21. The issuance of this guidelines shall not extinguish the right of the Registrar to initiate enforcement proceeding against the liquidator who has defaulted in the lodgement of the Return by Liquidator Relating to Final Meeting under section 459 and Liquidator's Account of Receipts and Payments and Statements of the Position in the Winding Up under section 514 within the stipulated time under the CA 2016.

22. Liquidators and shareholders applying for the striking off process under section 549(d) of the CA 2016 are required to notify the Official Receiver (OR) forthwith of the status of the company upon the dissolution of the company pursuant to section 551(3) of the CA 2016. 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

4 July 2018