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## An effective enforcement system for striking off companies

The Ministry of Finance and Economy in a press release announced that His Majesty The Sultan of Brunei Darussalam has consented for the introduction of the Companies Act (Amendment) Order, 2018 (“the Order”) and Companies (Striking Off) Rules, 2018 (“the Rules”). The Order and Rules amends the Companies Act (Chapter 39) (“the Act”) in Brunei Darussalam and came into effect on 13 September 2018.

### Companies Act (Amendment) Order, 2018 (“the Order”)

The Order is introduced with the aim to further strengthen and support the provisions of the Act in ensuring a more effective enforcement system for striking off companies from the Register. The key highlights of the Order include:

#### Power of Registrar to strike a defunct company off the Register

The Order introduces a new Part VIA to the Act in relation to striking off. Section 287A(1) of the Act states that where the Registrar has reasonable cause to believe that a company has not started to carry on business or begin operations, he may send a letter to the company stating to that effect. If the company fails to show cause to the contrary within 30 days from the date of the letter, a notice shall be published in the Gazette with a view to strike the name of the company off the register. In determining whether there is reasonable ground to believe that a company is not carrying on business, the Registrar may prescribe conditions for the company to show that they are in operation.

In the event where the Registrar fails to receive an answer within the prescribed date, he may publish in the Gazette and send to the company by registered post, a notice stating that, unless cause is shown to the contrary, after the expiration of three months from the date of the notice, the name of the company will be struck off the register and the company dissolved. Notice of dissolution of the company will be published in the Gazette and at the date of the publication, the company shall be dissolved but the liability, if any, of every officer and member of the company shall continue and be enforced as if the company had not been dissolved. The Court still maintains the power to wind up a company which has been struck off the register.

Where any person is dissatisfied with the striking off of the company, they can apply to the court, within 15 years, for the name of the company to be restored to the register. They must satisfy the court that at the time of the striking off, the company was carrying on business or in operation; or otherwise that it is just that the name of the company be restored to the register.

Where the court has made an order to restore the name of the company and it is lodged with the Registrar, the company is deemed to have continued in existence as if its name had not been struck off. The court may order such directions and provision as they deem just in order to place the company and all other persons in the same positions as nearly as may be as if the name of the company had not been struck off.

With regards to service of notices, in the event where the company is in liquidation, the notice to be sent to the liquidator may be addressed to the liquidator at his last known place of business. For letters or notices sent to a company, it:

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- a. may be addressed to the company as its registered office; or
  - b. if no office has been registered, may be addressed to the care of some officer of the company; or
  - c. if there is no officer of the company whose name and address are known to the Registrar, may be sent to each of the persons who subscribed to the memorandum of the company addressed to him at the address mentioned in the memorandum.

Where the Registrar believes that the company is not carrying on business or is not in operation, as he may determine, the Registrar shall send the particulars of the company to the Collector of Income Tax appointed under the Income Tax Act (Chapter 35) and the Tabung Amanah Pekerja Board Order, 2016 (S 1/2016).

#### Striking off on application by company

Section 287(B) of the Act allows companies themselves to apply to the Registrar to strike the company's name off the register on such grounds and subject to such conditions as may be prescribed. An application shall be made on the company's behalf by its directors or by a majority of them.

#### Companies (Striking off) Rules, 2018 ("the Rules")

The enforcement system of striking off companies is strengthened further through the introduction of the Rules which came into force simultaneously with the Order. The key highlights of the Rules include:

#### Striking off on application by company

Under the Rules, the Registrar may strike the name of a company off the register on application by the company on the following grounds:

- a. the company has not begun operations or has ceased to operate;
- b. the company is not a party to any ongoing or pending proceedings (whether civil or criminal) before a court, whether in Brunei Darussalam or elsewhere;
- c. the company has no assets or contingent assets and no liability or contingent liability; and
- d. the company is not subject to any ongoing disciplinary proceedings or pending regulatory action.

In this rule "disciplinary proceedings" means any proceedings that may be taken by a professional body under written law against a member of a profession for professional misconduct. "Profession" means a profession which is under the professional conduct by members of the profession. "Regulator" means statutory body or authority conferred with supervisory or regulatory functions under a statute. "Regulatory action" means any action that may be taken against a company by a regulator for the breach of any condition of licence, registration, permit, permission, approval, consent or any other authorisation granted to the company under any law.

#### Prescribed period to show cause under section 287B(4)(b)

For the purposes of section 287B(4)(b), a person has 60 days after the date of notice of intention to strike the name of a company off the register to show cause why the Registrar should not exercise the power to strike the name of the company off the register.

In sub rule (1), the reference to the date of notice of intention to strike the name of a company off the register means the date on which of Registrar's intention exercise the power to strike the name of a company off the register is first published in the Gazette under section 287B(4).



### Form of notice of objection under section 278D(2)

For the purposes of section 287D(2), the form of a notice of objection to the striking off of the name of the a company from the register is the form referred to in section 319A or such other form as the Registrar thinks appropriate.

### Considerations in deciding to allow objections to striking off

For the purposes of section 287D(3)(b), in deciding whether to allow an objection to the striking off of a company's name from the register, the Registrar must take into account the reasons together with any supporting documents or information submitted to the Registrar for the objection.

### Conditions for restoration of company name to the register

For the purposes of section 287E(1) an application to the Registrar to restore the name of the company which was struck off to the register under section 287A may only be made if all the following conditions are satisfied:

- a. The company was at the time of striking off carrying on a business or was in operation where the property of the company is vested in the Official Receiver under section 159(1) of the Insolvency Order, 2016 (S 1/2016).
- b. The Official receiver has consented in writing to the restoration of the name of the company to the register.
- c. The company has lodged or has given an undertaking acceptable to the Registrar to the lodge, all documents relating to the company necessary to bring the Registrar's records up to date.
- d. The company has paid or caused to be paid or has given an undertaking acceptable to the Registrar to pay or cause to be paid any outstanding fee or penalty under the Insolvency Order, 2016 (S 1/2016) that was payable by the company, its former directors or both at the time of striking off.

In subrule (1), "time of striking off" means that time at which the name of the company was struck off the register under section 287A.

The amendments have made it easier for parties to remove their company from the list of Registry at ROC and also enables the ROC to provide information to the Income Tax department and the Ministry of Finance on companies which had been dormant and inactive for tax purposes.

If you have any questions or require further information, you may contact [Rozaiman Abdul Rahman](#) or the ZICO Law partner you usually deal with.

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