4/1/2020

CCS Insights

Closing of Company incorporated under Companies Act 2016

See beyond the numbers

怎样关

Sdn Bhd

Closing Of Company

关掉在2016年公司法令下注册的[有限]公司
Closing of Company incorporated under Companies Act 2016

关公司

Closing of Company

- 庭令 By Court Order [S 370(2)(d)]
- 清盘 Winding Up
- 撤销 Strike Off [S 550]

关掉在2016年公司法令下注册的[有限]公司
Closing of Company incorporated under Companies Act 2016

清盘 Winding Up

- 自愿性 Voluntary [s 439]
  - 股东 Members
  - 债权人 Creditors
- 强制性 Compulsory [s 465]

撤销公司名字 v 公司清盘
Company Strike off v Company Liquidation

- Company strike off should not be confused with company liquidation (also known as winding up a company).
- Liquidation refers to the process of selling off company assets to pay off creditors, e.g. creditors' voluntary liquidation, compulsory liquidation or members' voluntary liquidation.
- Company strike off is essentially a way of formally shutting down a company and removing it from (or striking it off) the Registrar

撤销公司名字 v 公司清算
Company Strike off v Company Liquidation

- 撤销公司名字不应该与公司清算 [或者是清盘] 相混淆。
- 清算是指公司出售资产以偿还债权人的一个过程，例如：
  - 债权人自愿清算，
  - 强制清算，或
  - 股东自愿清算。
- 撤销公司名字实质上是正式关闭公司，并将它 [公司名字] 从注册局删除 [或剔除] 的一种方式

注册官有权利撤销公司的名字
Power of Registrar to strike off company

S 549. Notwithstanding any provision in this Act, the Registrar may strike a company off the register, if—

a) the company is not carrying on business or is not in operation [*To be discussed later*];

b) the company has contravened this Act;

c) 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

注册官有权利撤销公司的名字
Power of Registrar to strike off company

第549条文 - 尽管本法有其他的条规，但在以下的情况下，注册官可将公司从注册中除名：

a) 公司没有展开业务或没有运营 [*接下来所要讲解的*];

b) 公司违反了此法令；

c) 该公司在马来西亚被用于非法目的或任何与和平、福利、安全、公共利益、公共秩序，良好秩序或道德相违背的目的

注册官有权利撤销公司的名字
Power of Registrar to strike off company

d) in any case where the company is being wound up and the Registrar has reasonable cause to believe that—

I. no liquidator is acting;

II. the affairs of the company are fully wound up and for a period of six months the liquidator has been in default in lodging any return required to be made by him; or

III. the affairs of the company has been fully wound up under a 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.

注册官有权利撤销公司的名字
Power of Registrar to strike off company

d) 在任何情况下，如果公司正在清盘同时注册官有合理的理由相信—

I. 没有清盘人在行事；

II. 公司的事务已全部清盘，然而清算人没有在六个月的期限内，提呈他所要提供的报表；或

III. 公司的事务已完全由法庭清盘，同时

- 没有资产，或
- 虽然有资产但是不足以支付取得法庭解散庭令的费用

公司没有展开营运或没有营业

Company is not carrying on business or is not in operation

[Section 549(a)]

撤销公司的名字
To Strike Off The Name of a Company

- Section 550 of the Companies Act 2016 provides that the Registrar may strike a company off the register either on his own motion or upon an application by a director, member/shareholder or liquidator of the company.
- Through application, the Registrar may strike off a company on the ground that the company is not carrying on business or is not in operation [Section 549(a)].

撤销公司的名字
To Strike Off The Name of a Company

- 2016年公司法令第550条文阐明，公司委员会注册官可以自行，或在公司董事、股东或清盘师作出申请时，撤销有关公司在公司委员会的注册。

- 通过申请，注册官可以以公司没有展开营运或没有营业为由，撤销有关公司在公司委员会的注册[第549(a)条文]。

撤销公司的名字
To Strike Off The Name of a Company

- 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.

撤销公司的名字
To Strike Off The Name of a Company

- 在鉴定公司是否有展开营运或没有营业时，注册官可根据以下的情况达成其意见:

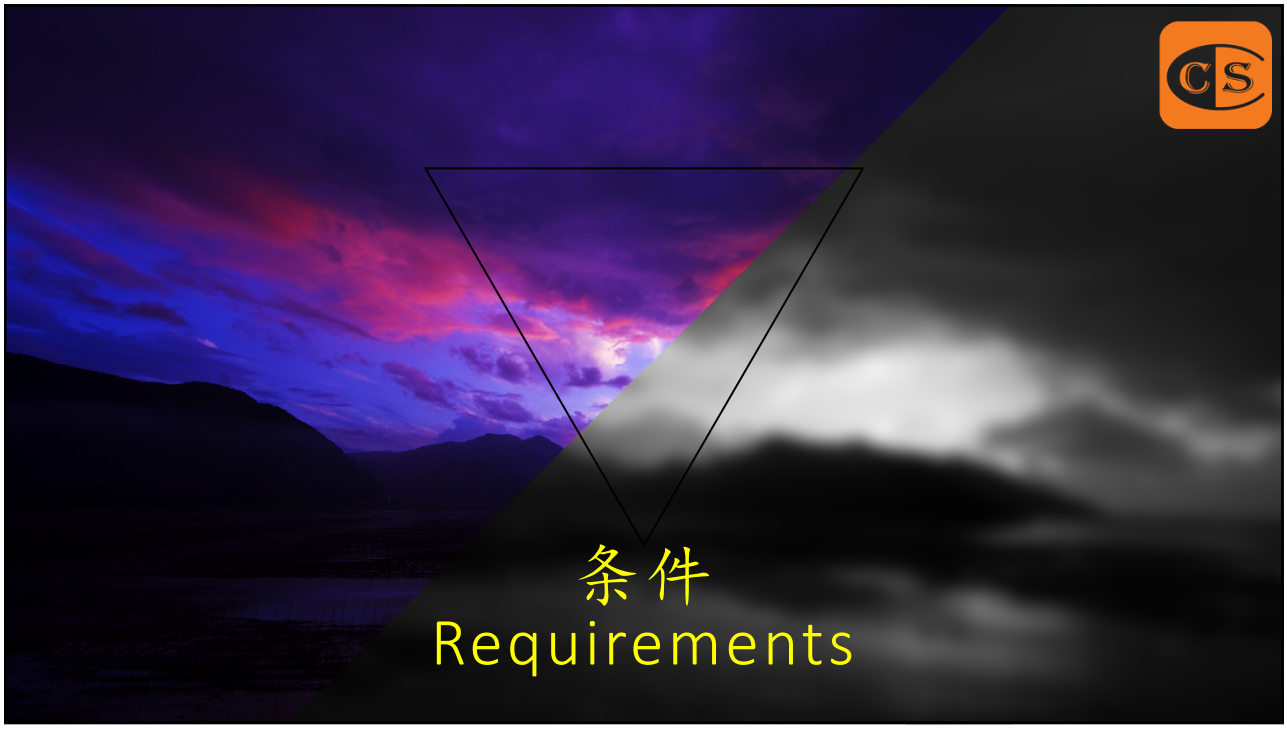
  a) 公司记录等资料；和

  b) 如果申请是公司的董事或股东是通过2016年公司法令第550条文作出，要求他行使其酌情的权利

什么时候你应该考虑撤销公司名字
When should you Strike Off Company in Malaysia?

- When you always feel that you have a heavy burden to continue maintain your company operations as you need to pay monthly secretary fees and other mandatory filing fees, such as annual returns fee, audit fee and also tax filings fee etc.

- 当你经常觉得需要每月支付秘书费，还有其他强制性费用，如：年度报表费、审计费以及税务费等，让自己在继续维持公司运营的背负着沉重的负担时。



根据2016年公司法令第550条文作出申请的条件
Requirements For Application Pursuant To S 550 CA 2016

1. 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
2. The company has no assets and liabilities at the time when the application is made
3. The company has no outstanding charges in the Register of Charges
4. The company has no outstanding penalties or offer of compounds under the CA 2016

根据2016年公司法令第550条文作出申请的条件
Requirements For Application Pursuant To S 550 CA 2016

1. 已经通过股东决议案，以公司没有展开业务或没有营业为理由，启动将公司名称从注册局中剔除的申请
2. 公司没有资产和负债
3. 公司在抵押登记册中没有还任何抵押还没有偿还
4. 公司并没有任何在2016年公司法令下的罚款或罚金

根据2016年公司法令第550条文作出申请的条件
Requirements For Application Pursuant To S 550 CA 2016

5. The company has no outstanding tax or other liabilities with any Government Department or Agency
6. The information of the company with the Registrar is up to date
7. The company is not involved in any legal proceeding within or outside Malaysia
8. The company has not made any return of capital to the shareholders

根据2016年公司法令第550条文作出申请的条件
Requirements For Application Pursuant To S 550 CA 2016

5. 公司没有拖欠内陆税收局任何税款，或在其他政府部门或代理机构有欠款没有清偿
6. 在公司委员会的信息是最新的
7. 该公司无论是在马来西亚境内或境外，都没有任何法律诉讼
8. 公司没有向股东作出资本回退 【如果有，就表示公司还有钱，就有能力通过清盘程序】

根据2016年公司法令第550条文作出申请的条件
Requirements For Application Pursuant To S 550 CA 2016

9. The company is not a holding company

10. The company is not a “Guarantor Corporation”

根据2016年公司法令第550条文作出申请的条件
Requirements For Application Pursuant To S 550 CA 2016

9. 有关公司不是一家控股公司

10. 有关公司也不是一家“担保人公司”

要如何开始进行撤销公司名字
How to Start with the Strike Off Process?

- Shareholders Resolution – all shareholders must agree to the striking off application.
- Application Forms
- Management accounts/audited report – showing the company has no assets and liabilities.

- 股东决议– 所有股东必须同意撤销公司名字的申请。
- 申请表格
- 管理账户/审计报告 - 显示公司没有资产和负债

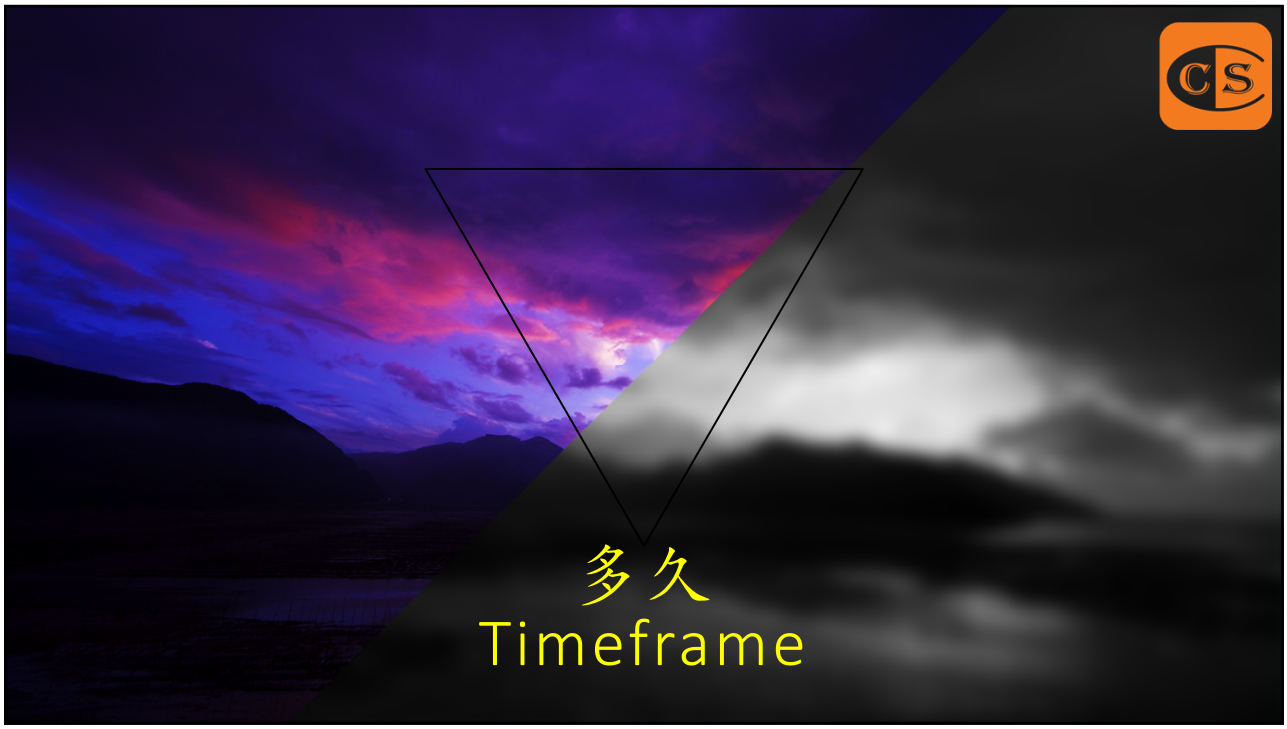
费用
Fees

总共需要多少钱
How much is the cost?

Application fee to SSM is RM100

支付给公司委员会的申请费用是100令吉

- Cost may vary depending on the amount of work involved by the Company Secretary.
- So check with your Company Secretary!
- 费用会因公司秘书所涉及的工作量而不一样。
- 因此，建议你向你的公司秘书联系与查询。



撤销公司名字一般需要多久时间
How Long Does it Take To Strike Off a Company?

- During the process of striking off:
  - Usually, SSM will ask for latest audited report and the management accounts.
  -
  - Sometimes, SSM may accept management accounts without assets or liabilities.
- If SSM accepts the submissions, the striking off process takes around 1 to 5 months.

撤销公司名字一般需要多久时间
How Long Does it Take To Strike Off a Company?

- 在撤销公司名字过程中：
  - 通常，公司委员会 [SSM] 会要求提供最新的审计报告以及管理帐户。
  - 但是有时，公司委员会 [SSM] 可能会接受没有资产或负债的管理帐户。
- 如果公司委员会 [SSM] 接受提交，整个过程大约需要1到5个月。

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