



**COMPANIES COMMISSION OF MALAYSIA ACT 2001:
CIRCULAR NO. 1/2017**

**POWER OF REGISTRAR TO STRIKE OFF A BUSINESS ENTITY FOR A
PARTICULAR REASON**

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

OBJECTIVE

This Circular serves to clarify the power of the Registrar of the Companies Commission of Malaysia (SSM) to strike off a business entity regulated by SSM which had been found to be misusing the business by employing foreigners without the relevant permit or allowing its registered business to be conducted by foreigners.

BACKGROUND

2. Generally, the policy relating to the employment of foreigners in Malaysia is aimed to fill the labor shortage in certain sectors corresponding with the government intention. However, there are few business entities that took the opportunity to reap profits by employing workers who do not have a permit or not a permit that is allowed for the sector.

Unfortunately, there are business entities which allow foreigners to do business with a registration certificate legally registered at SSM.

3. Even though local authorities such as Kuala Lumpur City Hall (DBKL) and the Immigration Department are often assertive in their enforcement action in order to control the influx of foreigners in business but this issue has now been deemed a threat to national security, especially on the economic aspect. Furthermore, the enforcement of legal provisions under the purview of SSM is limited to complaints received by SSM from time to time and depending on the enforcement operation and monitoring of license inspection regularly scheduled.

4. In fact, if a business conducted by foreigners are not curbed and allowed to run rampant it would certainly become a threat to the economic security and national interest.

SSM'S FUNCTION TO REGULATE BUSINESS ENTITIES

5. SSM as a body that regulate 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.

6. 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(b) in the case of the Companies Act 1965 [Act 125] (repealed by Companies Act 2016 [Act 777]), a company, ;

(c) in the case of the Limited Liability Partnerships Act 2012 [Act 743], a limited liability partnership or a foreign limited liability partnership;’.

7. 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 business entity has employed foreigners without the relevant permit or has allowed its registered to be conducted by foreigners.

PROVISIONS OF THE LAW UNDER THE PURVIEW SSM TO CONTROL AND CURB BUSINESS ENTITIES FROM EMPLOYING FOREIGNERS WITHOUT THE RELEVANT PERMIT OR ALLOWING ITS REGISTERED BUSINESSES TO BE CONDUCTED BY FOREIGNERS

8. The power of the laws administered by SSM which are applicable to control and curb business entities conducted by foreigners in certain circumstances are as follows:

(i) Companies Act 2016

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(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.

There is also a direction from the Minister of Trade and Industry in 1988 that does not allow any foreigner to register their business in Malaysia unless they hold a permanent resident status. Until now this administrative direction has been adopted as a policy by the SSM. Implementation through the use of forms for business registration (Form A - Business Registration and Form B - Registration Changes of owners) clearly states that only the Malaysian citizenship status of a citizen or permanent resident is allowed to register a business.

(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.

9. Based on the available legal framework, SSM will take the appropriate action on business entities that employ foreigners without the relevant permit or allow its registered business to be conducted by foreigners. In controlling and curbing the monopoly of businesses conducted by foreigners, 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

10. Therefore, based on the provisions stated in paragraph 8, SSM will take firm action to strike off or cancel a business entity if SSM is satisfied that the business entity is being used for the purposes which is prejudicial and inappropriate to the economic security and national interest.

CHIEF EXECUTIVE OFFICER

COMPANIES COMMISSION OF MALAYSIA

10 JULY 2017