



MALAYSIAN INSTITUTE  
OF ACCOUNTANTS  
ACCOUNTANTS: MANAGERS OF VALUE



IGN G1

# INSOLVENCY GUIDANCE NOTE

Minimum Standards of Practice for Insolvency Practitioners

November 2009

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## FOREWORD

This foreword has been approved by the Council of the Malaysian Institute of Accountants for publication. The Guidance Notes represent what constitutes good practice in stated areas of insolvency.

The Guidance Notes are issued with the view to harmonising the approach of members to questions of insolvency practice. However, the Institute recognises that there may be instances where the circumstances encountered by a practitioner render it inappropriate for the guidance given in a particular Note to be followed.

The Guidance Notes are prepared from the perspective of an insolvency practitioner operating under the laws of and practices in Malaysia. Nevertheless, the Notes are not intended as a definite interpretation of the law, and the Institute disclaims liability for any loss or penalty suffered, or claims sustained, by any member as a consequence of his following the procedures set out in the Guidance Notes.

The Guidance Notes do not form part of the Institute's By-Laws (On Professional Conduct and Ethics) [Revised 1 January 2007].

It is believed that the issuance of the notes will help to improve the quality of insolvency practices. They are not prescriptive in nature. The notes are for guidance only. However, in determining the acts of members in the performance of their respective duties, the Council may take into consideration the recommended practices as contain in these IGNs.

## EFFECTIVE DATE

These IGNs are effective for members to observe from the date of issuance and these are set out in each of the IGN proper.

## Introduction

1. An insolvency practitioner owes duties to the public, including those who retain or employ him, to the profession of which he is a member, to fellow practitioners and, where relevant, to his partners. In carrying out his duties, he should remember at all times the responsibility which has been placed upon him.
2. The practitioner should demonstrate that he has administered his practice in a manner such as to satisfy a reasonable person's view as to his proper conduct.
3. The practitioner owes certain duties which arise specifically from his appointment as an insolvency practitioner in accordance with the Companies Act 1965 and/or others which arise from his appointment by the Court.

## Definitions

4. Except where otherwise stated or indicated by the context in which they appear, the following terms have the respective meanings shown for the purposes of this Guidance Note:

**"Act"** means The Companies Act, 1965.

**"Books and Records"** means any registers, indices, minute books, books of account, documents, papers and any other record of information of any kind, including books within the meaning of Section 4 of the Act.

**"Court"** means the Courts in Malaysia.

**"Guidance Notes"** means the Insolvency Guidance Notes ("IGN") as approved by the Council of the Malaysian Institute of Accountants

**"Rule or Rules"** means the Companies (Winding-up) Rules 1972

**"SSM"** means Companies Commission of Malaysia and includes the Registrar of Companies designated under Section 7(1) of the Act.

## Practice Organisation

5. The organization of work within the office of each practitioner will vary and in part reflects the size of his practice as well as the size of the tasks with which he is required to deal. The practitioner should have policies, procedures and systems in place to ensure good and effective service. Broad outlines of what is expected from the practitioner are set out in the following paragraphs.

## Ethics

6. Before accepting any appointment, the practitioner should consider the implications of such an appointment, based on the relevant provisions in the Member's Handbook. Clear evidence of the matters considered and the conclusion reached should be recorded within the practitioner's papers.
7. The practitioner should ensure that the fundamental principle of objectivity created by conflicts of interest is not compromised.

## Resources

8. The practitioner should not accept appointment unless he is satisfied that he has sufficient resources to perform his duties. He should be able to demonstrate the thinking behind his allocation of resources to each aspect of the cases he administers.

The word "**resources**" include acquired expertise and ability to arrange external assistance, if necessary.

The practitioner should only delegate work to staff with the appropriate experience, competencies and qualification.

The practitioner must have sufficient expertise before accepting any insolvency appointment to ensure that the principle of professional competence and due care is not compromised.

## Knowledge and Experience

9. The practitioner has the continuing duty to ensure that his personnel keeps up to date with changes in legislation and good insolvency practice to ensure that a client receives competent professional services based on current developments in practice, legislation and techniques.

The practitioner and his staff should have access to all the relevant Acts, supporting Statutory Instruments, Insolvency Guidance Notes and suitable reference books.

## Joint Appointments

10. Practitioners are jointly and severally responsible to third parties for the actions of co-appointees. Where there is a joint appointment with a practitioner from another firm, the division of duties should be agreed at the commencement of the assignment and should be clearly recorded in an exchange of letters.

## Case Control

11. The practitioner should promote transparency in each case by maintaining adequate records for the methods by which each case is controlled and progressed through both commercial decisions and legal requirements.
12. The practitioner should maintain adequate records to show that the appropriate assessment and review have been carried out to satisfy the legal requirements of reporting both to the SSM and if applicable, the Court and relevant authorities and also identify assets to be realized and liabilities to be paid.
13. The practitioner should be able to demonstrate that he has a work organization which will control and ensure an adequate review of correspondence, other communications and transactions both within his own office and, if appropriate, at the separate location of a case.

## Funds

14. The practitioner should maintain each case as a separate entity with separate accounting, banking and cash control and timely investment procedures, although these may be within the overall office work organization procedure. No funds or assets of cases should be intermingled with those of the practitioner or with other cases. Where funds are received which are clearly the property of third parties, care should be taken to ensure that these are separately maintained.

## Remuneration

15. The practitioner should ensure that the appropriate authority has been obtained for the payment or part payment of his proper remuneration before he withdraws such funds from any case.
16. Remuneration and expenses incurred by the practitioner in the course of carrying out his work are to be paid out of the assets of the company.
17. Furthermore, the practitioner should be prepared to justify the amount of any remuneration received.

## Books and Records

18. As part of the accounting function, the practitioner should ensure that he is able to comply with all the requirements of his office, with particular regard to the maintenance and retention of Books and Records.

## Advice from Other Professionals

19. Where the practitioner's own knowledge and experience of matters outside the basic duties of an insolvency office holder is insufficient to deal with all professional and commercial aspects of his responsibilities, he should take advice from suitable qualified members of appropriate professions. The practitioner should retain details of the advice, evidenced in writing.
20. The practitioner should evaluate whether such reliance is warranted and factors such as reputation and expertise of such parties should be considered.
21. Payment to such parties should reflect the value of work undertaken.

## Insurance

22. The practitioner should obtain appropriate insurance cover in respect of the loss of insurable assets or risks relating to the affairs of the insolvency that the practitioner may reasonably anticipate. If not, he should be able to demonstrate clear reasons why such cover was not obtained.

## Guidance Notes

23. The Practitioner should pay due attention to Guidance Notes which will be issued from time to time by the Malaysian Institute of Accountants on the conduct of cases.

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