



MALAYSIAN INSTITUTE
OF ACCOUNTANTS
ACCOUNTANTS: MANAGERS OF VALUE



IGN G3

INSOLVENCY GUIDANCE NOTE

Remuneration of Insolvency Office Holders

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. The practitioner is entitled to receive remuneration in respect of work performed in an engagement.
2. The practitioner is entitled to withdraw funds from the engagement once appropriate approval has been obtained for the payment or part payment of his remuneration.

Definitions

3. 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.

“COI” means the Committee of Inspection.

“Court” means the Court in Malaysia.

“Guidance Note” means the Insolvency Guidance Note (“IGN”) as approved by the Council of the Malaysian Institute of Accountants.

“Liquidator” means liquidator or liquidators appointed under creditors’ voluntary winding-up and court winding-up and includes the Official Receiver when acting as the liquidator of a corporation.

“Receiver” means a Receiver or a Receiver and Manager of any part or all of a company's property and undertakings appointed under any instrument, and includes a Receiver or a Receiver and Manager appointed by the Court.

“Rule or Rules” means the Companies (Winding-up) Rules 1972.

“Section” means the Section or Sections of the Act.

Liquidation Engagements

Court Winding-up

4. A provisional Liquidator other than the Official Receiver shall be entitled to receive such salary or remuneration by way of percentage or otherwise as is determined by the Court.
5. In a winding –up by the Court, a Liquidator other than the Official Receiver shall be entitled to receive such salary or remuneration by way of percentage or otherwise as is determined:-

- a. by agreement between the Liquidator and the COI, if any;
 - b. failing such agreement or where there is no COI, by way of a creditors' resolution passed by a majority of not less than three-fourths in value and one-half in number at a meeting of creditors convened by the Liquidator; or
 - c. failing either of the above, by the Court.
[Section 232]
6. If there is no COI, the liquidator's remuneration shall, unless the Court shall otherwise order, be based on the scale fees and percentages for the time being payable on realizations and distributions set under Table C of the Rules. This Rule shall only apply to a liquidator appointed by the Court.
- [Rule 142]

Creditors' Voluntary Winding-up

7. The COI, or if there is no such COI, the creditors may fix the remuneration of the Liquidator.
[Section 261(3)]
8. Notwithstanding the above, in the event of any disagreement with respect to the Liquidator's remuneration, any member or creditor or the Official Receiver or the Liquidator, as the case may be, shall apply to the Court for a review of the Liquidator's remuneration. The Liquidator shall provide sufficient and clear justification on his remuneration.

Receivership Engagements

9. For Court-appointed engagements, the remuneration of the Receiver is fixed by the Court and the Receiver has a lien for his costs and remuneration over the assets which are subject to the receivership¹.
10. For privately-appointed engagements, the determination of the Receiver's remuneration is based on the contractual arrangement between the parties. The Receiver should agree the terms of the engagement, the basis on which the remuneration is charged and the services covered by such remuneration.

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¹ Mellor v. Mellor [1992] 1 WLR 517; [1993] BCC 513