



MALAYSIAN INSTITUTE
OF ACCOUNTANTS
ACCOUNTANTS: MANAGERS OF VALUE



IGN G4

INSOLVENCY GUIDANCE NOTE

The Handling of Funds in a Liquidation Administration

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 Insolvency Guidance Note on The Handling of Funds in Formal Insolvency Appointments provides guidance for the use of Members in connection with formal insolvency appointments and administrations under the Act and other statutory legislation.

Definitions

2. 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.

“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.

“Member” means a person who is registered in accordance with the Accountants Act 1967 as a public accountant, registered accountant or licensed accountant. Where a Member is in public practice, this definition would include the practice entity and the partners and personnel of the entity.

“MIA” means The Malaysian Institute of Accountants.

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

“Section” means the section or sections under the Act unless otherwise stated.

Handling of Funds

3. Within ten calendar days of receiving money, the Liquidator shall deposit the money into the company’s liquidation bank account, in accordance with Section 238.
4. Liquidator should ensure that records are maintained to identify the funds (including any interest earned thereon) and other assets of each case for which they have responsibility as Liquidator. Such funds and assets must be maintained separately from those of the Liquidator or his firm. Funds should be held in a bank account(s) which meets the following criteria to ensure that these principles are adhered to:

- a. the Liquidator is not entitled to combine the company's liquidation bank account(s) with any other account or exercise any right to set off the money in the account with any other account of the Liquidator or his firm;
 - b. interest payable on the money in the company's liquidation bank account(s) must be credited to that account(s); and
 - c. the bank must describe the company's liquidation bank account(s) in its records to make it clear that the money in the account does not belong to the Liquidator or his firm.
5. Where the Liquidator has been appointed to a number of companies within a group, the Liquidator should take cognisance of the separate legal entity of each company. Accordingly, a separate bank account should be maintained for each of those companies.
 6. Where funds are received by cheque, payable to the Liquidator or his firm, such cheques may be cleared through an account maintained in the name of the Liquidator or his firm. Such accounts should be operated on a trust basis and should be maintained separately from the Liquidator's office accounts. Funds paid into such accounts should be paid out to the company's liquidation bank account to which they relate as soon as possible.
 7. Monies coming into the hands of Liquidator which are the property of individuals or companies for which they are acting otherwise than in the capacity of Liquidator must be held in an account operated on trust principles.
 8. Cash balances in excess of the amount, in which the COI or the Liquidator opines to be sufficient for the needs of the current assignment, are to be invested in securities issued by the Government of Malaysia or placed in interest-bearing accounts with any banks (Section 285).
 9. Liquidator's attention is drawn to Section 286 of the Act whereby monies remained unclaimed / unpaid shall be paid to the Official Receiver together with Form 76.
 10. Members' attention is drawn to the Anti-Money Laundering guidance issued by MIA for the Members of the Institute.

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