



MALAYSIAN INSTITUTE
OF ACCOUNTANTS
ACCOUNTANTS: MANAGERS OF VALUE



IGN G5

INSOLVENCY GUIDANCE NOTE

Preparation of Statement of Receipts and Payments by
Insolvency Practitioners

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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. This Guidance Note deals with the preparation and filing of Statement of Receipts and Payments by Insolvency Practitioners involved in the liquidation and receivership assignments.

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

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

“Form or Forms” means the forms prescribed by the Companies Regulations, 1966 and the Rules

“Liquidator” means a person or persons appointed pursuant to Sections 227, 228, 258(1) or 261(1) of the Companies Act and includes the Official Receiver when acting as the Liquidator of a corporation.

“Receiver” means Receiver, Manager or Receiver and Manager as the case may be and whether appointed by the Court or any other instrument and whether appointed over specific assets or substantial or whole of the assets of the subject company.

“Regulations” means the Companies Regulations 1966

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

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

“SSM” means Companies Commission of Malaysia and includes the Registrar of Companies designated under Section 7(1) of the Act

General Guidance

3. Every Receiver is required to account for the receipts and payments on a six monthly basis to SSM.
4. Every Liquidator is required to account for the receipts and payments on a six monthly basis to SSM and the Official Receiver, and in the case of an insurance company, to Bank Negara Malaysia as well.

5. The prescribed Form 63 for Receivership and Form 75 for Liquidation are set out in the Second Schedule of the Regulations. Section 3(2) of the Regulations provides that strict compliance with the prescribed forms is not necessary, and substantial compliance is sufficient.
6. Rule 3(1) provides that prescribed forms of the like character, with such variations as circumstances may require, may be used.
7. If more than one Receiver or Liquidator is appointed to act jointly, the prescribed forms shall be executed jointly by all the Receivers or Liquidators. If more than one Receiver or Liquidator is appointed to act jointly and severally, the prescribed forms may be executed by any one of the Receivers or Liquidators.
8. The Receiver or Liquidator must ensure that the information provided in the prescribed forms are accurate and reflect a true position of the affairs of the company.
9. Section 190 (1) Act sets out the following:-

Every Receiver or Manager of the property of a company or of the property within Malaysia of any other corporation shall:-

- a. within one month after the expiration of the period of six months from the date of his appointment and of every subsequent period of six months and within one month after he ceases to act as Receiver or Manager, lodge with SSM a detailed account in the prescribed form showing:-
 - (i) his receipts and payments during each period of six months, or where he ceases to act as Receiver or Manager, during the period from the end of the period to which the last preceding account related or from the date of his appointment, as the case may be, up to the date of his so ceasing;
 - (ii) the aggregate amount of those receipts and payments during all preceding periods since his appointment; and
 - (iii) where he has been appointed pursuant to the powers contained in any instrument, the amount owing under that instrument at the time of his appointment, in the case of the first account, and at the expiration of every six months after his appointment and, where he has ceased to act as Receiver or Manager at the date of his so ceasing, and his estimate of the total value of all assets of the company or other corporations which are subject to that instrument; and
 - b. before lodging the account, verify by affidavit all accounts and statements referred to therein.
10. The disclosure of such information is to be made on the prescribed Form 63 - "Account of Receipts and Payments by Receiver or Manager."

11. Every Liquidator shall, within one month after the expiration of the period of six months from the date of his appointment and of every subsequent period of six months and in any case within one month after he ceases to act as Liquidator and forthwith after obtaining an order of release lodge with SSM and the Official Receiver in the prescribed form and verified by statutory declaration an account of his receipts and payments and a statement of the position in the winding-up.

Penalty: One thousand ringgit. Default penalty.

[Section 281(1)]

12. The disclosure of such information is to be made on the prescribed Form 75 - Liquidator's Account of Receipts and Payment and Statement of the Position in the Winding-up.
13. For members' and creditors' voluntary liquidation, the Liquidator shall continue to lodge the Form 75 up to the date of dissolution, which is three months from the date of lodging the Return by Liquidator Relating to Final Meeting with SSM.

Receiver or Manager - Preparation of Form 63

14. The title heading for the name of the Company and Notes 1 to 4 of Form 63 are self-explanatory descriptions of name, address, title and dates.

Receipts and Payments (Note 5)

15. The Receiver has to ensure that all receipts and payments for the period reported have been recorded correctly and with appropriate details.
16. For this purpose, it would be good practice for the Receiver to check the bank reconciliation for the latest period prior to the preparation of Form 63 and to account for all receipts or payments made between the date of the bank reconciliation and the reporting date of the Form 63.
17. It would be good practice for the Receiver to make an early request to the bank to send the bank statement(s) within a week of the reporting date to ensure a timely preparation and lodging of the Form 63.

Aggregate Receipts and Payments (Notes 6 & 7)

18. This requires disclosure of the aggregate amounts of receipts and payments during all preceding periods by the Receiver since his appointment.
19. Other than where the first Form 63 is being lodged, the amounts under Notes 6 and 7 must agree with the amounts previously reported. Any adjustment to the previous totals reported must be highlighted and explained in the period covered by the Statement.

20. The difference between the total receipts and total payments as shown in Note 5 net should be represented by actual funds available (e.g. balance in current account, fixed deposit, etc).

An illustration showing the completion of Notes 5, 6 and 7 in the Form 63 is given in Appendix 1.

Amount Owning under the Instrument (Note 8)

21. It would be good practice to obtain written confirmations from the relevant lenders as to the amounts owing under the instruments as at the reporting date of the Form 63.

Estimated Value of Assets (Note 9)

22. It is good practice to review the value of the assets each time the statement is prepared to ensure it reflects the current estimated realisable value.
23. It is important that the Receiver be objective in his estimates of the value of the assets. It would be preferable to base the value on an independent professional valuation of assets, if available, and to indicate the date of valuation.
24. In the absence of any valuation, the Receiver may use prudent estimates so as not to overstate the value of the assets. The values stated therein should reflect the values to the best knowledge of the Receiver to be realisable. For purposes of clarity, the Receiver may consider stating the basis on which the value was arrived.
25. It may be necessary to consider including a note on whether the estimated value of all assets of the company subject to the instrument(s) had been arrived at after taking into account the cost of realisation and preferential payments as defined in Section 191 read in conjunction with Section 292 of the Act.
26. In instances where there are assets not currently in the hands of the Receiver e.g. assets held by a bailor, assets to which title is being contested etc. the Receiver may wish to disclose the value of such assets separately, i.e. this value should be excluded from the estimated value of all assets of the company subject to the instrument(s).

Liquidator - Preparation of Form 75

27. For the preparation of Form 75, "the date of commencement of winding-up" shall be the date the special resolution was passed for voluntary liquidation. For Court liquidation, "the date of the winding-up order" shall be the appropriate date.

Account of Receipts and Payments

28. The Liquidator has to ensure that all receipts and payments for the period reported have been recorded in detail and correctly.

29. For this purpose, it would be good practice for the Liquidator to check the bank reconciliation for the latest period prior to the preparation of Form 75 and extend to account for all receipts and payments made between the date of the bank reconciliation and the reporting date of the Form 75.
30. It would be a good practice for the Liquidator to request for the bank statement(s) within a week of the reporting date to ensure a timely preparation and lodging of the Form 75.
31. This account requires disclosure of cumulative amounts of receipts and payments received/made by the Liquidator since his appointment.

An illustration for filing up receipts and payments for Form 75 is given in Appendix 2.

32. If the Liquidator has invested any surplus funds, full details of the investments made and of the realisation of the investments, are to be given in a separate statement to be attached to the Form 75. Any profit or loss on realisation must appear in the tabulated account of receipts and payments as a notional receipt or payment as the case may be, with a reference to the particular investment.

[Section 285]

Particulars of Rates of Dividends and Dates Declared

33. This section requires the disclosure of the rate and date of dividends declared during the current reporting period and the alphabetical listing of creditors, their claims and whether the dividends have been paid or remained unclaimed at the reporting date.

Particulars of Dates and Rate per Share of Return of Surplus Assets Payable to Contributories

34. This section requires similar disclosures as that for dividends. Surplus is payable only after the unsecured creditors are satisfied in full.
35. Any unclaimed dividends which have remained unclaimed for more than six months from the date when the dividends became payable, the Liquidator shall forthwith remit the unclaimed dividends to the Official Receiver.

[Section 286(1)]

Statement of the Position in the Winding-up

The amount of the estimated assets and liabilities at the date of the commencement of the winding-up

36. The first part of this section sets out the assets of the Company, after deducting amount charged to secured creditors and debenture holders.
37. The second part sets out the liabilities i.e. amounts payable to the various categories of creditors, namely secured creditors, debenture holders, and unsecured creditors.

38. The position of assets and liabilities shown is as at the date of commencement of winding-up. This information would be static during the whole period of liquidation.

The total amount of the capital paid-up at the date of commencement of the winding-up

39. This section requires the total paid-up capital of the company as at the date of commencement of winding-up. Where applicable, it is good practice to provide details of different classes of paid up capital including capital paid up in cash and capital issued as paid up otherwise than for cash.

The general description and estimated value of outstanding assets (if any)

40. This section requires a list and estimated values of all the assets of the Company that has yet to be realised or would become available for distribution to the creditors or contributories, including cash.

Total amount of unsecured debts in respect of which proofs have been admitted

41. This section requires disclosure of the total amount of debts due to unsecured creditors whose proofs of debts have been admitted by the Liquidator.

Estimated amount of debts or claims remaining for proof

42. This section requires disclosure of an estimated amount of debts that the Liquidator has not adjudicated and admitted. This can arise from:
- a. Claims submitted but sufficient proof has not been furnished; and
 - b. Liabilities disclosed under the Statement of Affairs for which claims have not been submitted.
43. In a company winding-up where the directors or officers have not filed the Company's Statement of Affairs with the Liquidator, the information required for completion of paragraphs 40 to 46 is therefore not available. Hence, if the Liquidator has taken all reasonable steps to obtain the Statement of Affairs and yet failed, he may disclose the fact in this section.

Details of any arrangement whereby assets of the company have been disposed off by the liquidators for a consideration other than cash

44. Under this section, the Liquidator is required to disclose assets disposed of which did not attract a cash consideration. In such instances, the Liquidator would have to disclose the reason for such a disposal and the value of consideration that the assets were disposed for.

The causes which delay the termination of the winding-up

45. This section requires disclosure of the reasons that protract the completion of the winding-up.

The period within which the winding-up may probably be completed

46. This section requires disclosure of the estimated time that the Liquidator opines to complete the assignment. The liquidator may state the completion of the liquidation is dependent on the conclusion of pending legal cases, claim disputes, tax clearance, etc.

Statutory Declaration Verifying Liquidator's Account and Statement

47. This statutory declaration would have to be executed by the Liquidator and attested by the Commissioner for Oaths. If there are no receipts and payments during the current reporting period, the words in italics should be struck out.

Other Matters in Relation to Filing of Statement of Receipts and Payments

Multiple Appointments in cases of Receivership

48. In the case of a Receiver being appointed by more than one Debenture Holder over the same Company, the Receiver would have to lodge separate Forms 63 for each appointment.

Direct Payments to Third Parties

49. In the event of certain payments allowed to be made directly to third parties and do not flow through the hands of the Receiver or Liquidator, it is good practice for the Receiver or Liquidator to record these transactions as receipts and payments of the receivership or liquidation as if it had been made via the hands of the Receiver or Liquidator.
50. Some examples of such receipts and payments are: -
- a. where part of the purchase price is paid by the purchaser directly to the chargee to redeem the titles (of) the assets disposed of by the Receiver or Liquidator.
 - b. where part of the purchase price held by a solicitor, as stakeholder, is released to third parties, e.g. to the Director General of Inland Revenue for Real Property Gains Tax purpose.
 - c. where financier of the receivership or liquidation makes payments directly in respect of receivership or liquidation costs e.g. insurance premium and quit rent.
 - d. for purposes of clarity, it would be good practice to account for such payments and receipts transactions separately from the receipts and payments made by the Receiver or Liquidator. It is suggested that separate schedules be used for this purpose.

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Form 63 for the First period

5. The statement of receipts and payments during that period is as follows:

Receipts			Payments		
Date	From Whom	Amount	Date	To Whom	Amount
	Bank A Berhad -Balance from closure of existing bank account	RM 2,000.00		Bank B Berhad - Cheque book	RM 10.00
	Debenture Holder- -Advances	8,000.00		C Insurance Bhd - Premium	3,000.00
				D Advertising Bhd - Advertisement charges	800.00
	Total Amount	10,000.00		Total Amount	3,810.00

6. The aggregate amount of receipts during all preceding periods since appointment is Nil

7. The aggregate amount of payments during all preceding periods since appointment is Nil

Form 63 for the Second period

5. The statement of receipts and payments during that period is as follows:

Receipts			Payments		
Date	From Whom	Amount	Date	To Whom	Amount
	TNB - deposits refund	RM 500.00		SSM - filing charges	RM 200.00
	E Debtor Bhd - debt payment	1,500.00		R&M -professional fees	2,000.00
				L & Co -legal fees & expenses	1,500.00
	Total Amount	2,000.00		Total Amount	3,700.00

6. The aggregate amount of receipts during all preceding periods since appointment is RM10,000.00

7. The aggregate amount of payments during all preceding periods since appointment is RM3,810.00

Form 63 for the Third period

5. The statement of receipts and payments during that period is as follows:

Receipts			Payments		
Date	From Whom	Amount	Date	To Whom	Amount
	F Buyer Bhd -sale of computer	RM 800.00		SSM -filing charges	RM 300.00
				R&M -professional fees	2,000.00
	Total Amount	800.00		Total Amount	2,300.00

6. The aggregate amount of receipts during all preceding periods since appointment is RM12,000.00

7. The aggregate amount of payments during all preceding periods since appointment is RM7,510.00

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Form 75

		Receipts				Payments	
Date	Of Whom Received	Nature of Receipts	Amount	Date	To Whom Paid	Nature of Payments	Amount
			RM				RM
		Brought forward	5,000.00			Brought forward	1,000.00
	G Sdn Bhd-debt payment		4,000.00		H Sdn Bhd-security charges		2,000.00
	Carried forward		9,000.00		Carried forward		3,000.00

Total receipts 9,000.00
 Total payments 3,000.00
 Balance 6,000.00

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