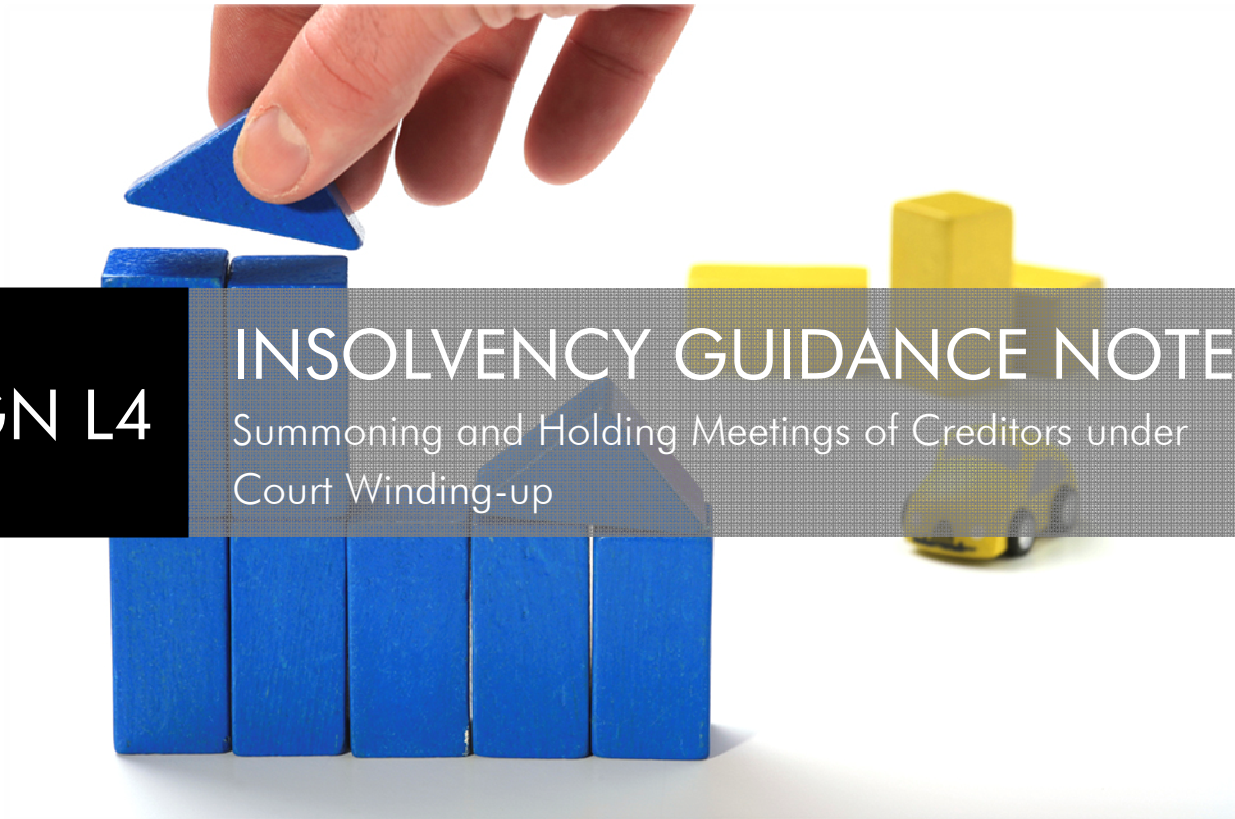




MALAYSIAN INSTITUTE
OF ACCOUNTANTS
ACCOUNTANTS: MANAGERS OF VALUE



IGN L4

INSOLVENCY GUIDANCE NOTE

Summoning and Holding Meetings of Creditors under
Court Winding-up

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. This Guidance Note is issued for the use of members in connection with liquidations of companies registered in Malaysia under the provisions of the Companies Act, 1965.
2. This Guidance Note focuses on the procedure for summoning and holding meetings of creditors in respect of the General Meetings of Creditors and Contributories in relation to Winding Up by the Court.
3. Reference is to be made to Insolvency Guidance Note 4 (Procedure for Winding Up an Insolvent Company Voluntarily) for details in relation to such procedures for Creditors' Voluntary Winding Up.

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.

"COI" means the Committee of Inspection.

"Court" means the Courts in Malaysia.

"Liquidator" means liquidator or liquidators appointed under court winding-up and includes the Official Receiver when acting as the liquidator of a corporation.

"Meeting" means the meeting of creditors.

"Official Receiver" has the meaning attributed to it in the Act.

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

"Section" means the section of the Companies Act.

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

Convening Meetings of Creditors

5. Liquidator may, from time to time, call for Meetings to ascertain the wishes of the creditors in all matters relating to the companies' winding up (Rule 112).

6. There may be circumstances where the Court may direct that Meetings be held to ascertain the wishes of the creditors. In such instances, the Court may appoint a chairman for such Meeting and direct how the Meeting should be held and conducted.

[Section 289(1)]

7. If there is no Liquidator appointed, the Official Receiver shall summon the Meeting to determine whether or not an application is to be made to the Court for appointing a Liquidator in the place of the Official Receiver.

[Section 227(2)]

Venue and Time

8. The date and time for the Meeting should be fixed with the convenience of the majority of the creditors being taken into consideration (Rule 116). The venue chosen should be adequate to accommodate those who are likely to attend the Meeting as well as having regard to the geographical location of the creditors.

Notice of Meeting

9. The Liquidator may by notice in Form 67 summon, hold and conduct Meeting to ascertain the wishes of the creditors in all matters relating to the winding up (Rule 112).
10. The Act provides that the notices of the Meeting should be sent not less than 7 clear days (meaning days which do not include the day of the notice and the day of the Meeting) before the date of the Meeting. However, to meet the time constraints that creditors may have, it is advisable to ensure all notices of the Meeting are dispatched at least 14 days before the day on which the Meeting is to be held.
11. The Liquidator shall summon all Meetings by giving notice of time and place in the Gazette and in 1 or more local newspapers. Advertisement of the notice should be at least 7 days before the date of the Meeting (Rule 114).

Quorum

12. A Meeting (except for the election of a chairman, the proving of debts and the adjournment of the Meeting) shall not proceed unless there are at least three creditors who are entitled to vote are present at the Meeting, or if the number of creditors is less than three, all creditors entitled to vote must be present (Rule 123(1)).
13. If within 30 minutes from the time appointed for the Meeting, a quorum of creditors is not present or represented, the Meeting should be adjourned to the same day in the following week at the same time and place or to such other day as the chairman may appoint not being less

than seven or more than twenty-one days (Rule 123(2)). The Liquidator should inform the creditors of the adjourned Meeting.

14. If within 30 minutes from the time appointed for the adjourned Meeting, a quorum of creditors is not present or represented, the adjourned Meeting shall not be further adjourned and notice of termination of Meeting in Form 71 shall be made (Rule 123(3)).

Proxies

15. The forms of proxy should conform to those of either Form 73 or Form 74, as the case may be, and every written part shall be in the handwriting of the person giving the proxy or of any manager or the clerk or other person in his regular employment or of a commissioner for oaths (Rule 132).
16. These forms should be sent together with the notice summoning the Meeting (Rule 133).
17. No name or description of the Liquidator or any other person should be printed or inserted in the proxy forms to be sent out (Rule 133).
18. The time for lodging of proxies should be as close to the time of the Meeting as practicable. A proxy shall be lodged with the Liquidator or if there is no Liquidator appointed, with the person named in the notice convening the Meeting not later than 12.00 pm of the day before the Meeting or adjourned Meeting at which it is to be used (Rule 139(2)).
19. A proxy which is lodged out of time or incorrectly completed in a material way will be invalid. There is the requirement for the proxy to be signed by the principal or by a person authorized by him, in which case the nature of the authority must be stated. A proxy which is unsigned or which does not explain the authority under which it is signed will be invalid. However, a proxy should not be rejected simply because of a minor error in its completion provided that:
 - a. the correct form has been used; and
 - b. the identity of the creditor and the proxy holder, the nature of the proxy holder's authority and any instructions given to the proxy holder are clear.
20. Faxed or PDF copies of proxy should not be treated as invalid solely on that basis. If transmitted within the time period for submission, such proxies which are otherwise in proper form, may be accepted if the original copies are produced for verification on the day of the Meeting.
21. There is no requirement for proxies which are considered invalid to be returned to the creditors who have lodged them.
22. The proxies and proof of debts (including rejected ones) which have been validly lodged can be inspected either immediately before or during the Meeting by any person other than the

disinterested third parties. It is advisable for the Liquidator or the chairman to inspect the proxies at least 30 minutes before the Meeting to ascertain and confirm their validity for purposes of the Meeting.

Attendance at the Meeting

23. Creditors and their authorized representatives are entitled to attend the Meeting.
24. The chairman of the Meeting should be advised that he must decide whether to allow any third parties, such as shareholders or the press to attend, after taking into consideration the views of the creditors present.

Committee of Inspection

25. The Liquidator may by himself and must, if requested by any creditor, summon Meeting for the purpose of determining whether or not the creditors require the appointment of a COI to act with the Liquidator, and if so who are to be members of the COI.
26. The COI shall consist of creditors and contributories or persons holding :
 - a. general powers of attorney from creditors or contributories; or
 - b. special authorities from creditors or contributories authorizing the persons named therein to act on such a COI,appointed by the meetings of creditors and contributories in such proportions as are agreed or in case of differences as shall be determined by the Court.
[Section 242(1)]
27. It is advisable to elect eligible persons to form the COI at the first Meeting and if it is agreed, the Meeting should be advised of the voting procedure which will be followed.
28. The COI may act by a majority of the members present at the meeting but cannot act unless a majority of the COI is present. The continuing members of the COI if not less than 2 may act notwithstanding any vacancy in the COI.
29. Certain powers of the Liquidator can only be exercised with the consent of either the Court or the COI. Creditors may also summon meetings of creditors to make their views known to the Liquidator, and the Liquidator is to have regard to their views.
30. The Liquidator shall have regard to any directions given by resolution of the creditors at any general meeting or by the COI in the administration and distribution of the assets of the

Company, and any directions given by the creditors shall in case of conflict override any directions given by the COI.

Submission of Claims

31. Creditors may submit statements of claims at any time before the voting at the Meeting. A statement of claim which has been submitted should be verified against the records of the company and should be validly accepted for voting purposes provided that it identifies:
- a. the creditor; and
 - b. the amount claimed by the creditor with sufficient clarity.

The amount for which the statement of claim is admitted for voting purposes should be endorsed on the form which has been submitted.

Information to be provided to the Meeting

32. Copies of the directors' sworn Statement of Affairs shall be laid before the Meeting. This Statement of Affairs will usually include a list of the major creditors and the amounts owing to them. The Statements of Affairs will show the book values of the company's assets with the directors' estimated realizable values in a winding up. Sufficient copies of the list of creditors should be available to facilitate its inspection by those attending the Meeting.
33. The following information should be provided during the Meeting :
- a. a brief report on the company's relevant trading history which should include:
 - i. names of current board members and company secretary;
 - ii. names of major shareholders together with details of their shareholdings;
 - iii. directors' reasons for the failure of the company;
 - iv. the names and professional qualifications of any valuers whose valuations have been relied upon for the basis or bases of valuation; and
 - v. such other information considered necessary to give the creditors a proper appreciation of the company's affairs;
 - b. if the company is also in receivership, the Meeting should be provided with a report, if available, on the conduct of the receivership to date, including a summary of the receiver's receipts and payments; and

- c. an explanation of the contents of the Statements of Affairs, if available.

Conduct of the Meeting

- 34. All creditors and their representatives attending the Meeting are required to sign an attendance list. The list should be made available for inspection to anyone attending the Meeting. In addition, any creditor or creditor's representative wishing to speak, ask questions, or make a nomination, should be asked to identify himself and the creditor he represents.
- 35. Creditors and their representatives should be given the opportunity to ask questions. However, there are circumstances where the chairman may be advised to refuse a question put to him if, for example:
 - a. the questioner refuses to give the name of the creditor he represents and his own name or that of his firm; or
 - b. the questioner does not claim to be or to represent a creditor;or, the chairman may decline to answer if, for example:
 - a. the answer could prejudice the outcome of the liquidation or the creditors' interests;
 - b. the answer could be construed as slanderous if subsequently proved incorrect, or
 - c. the answer requires the disclosure of information which may be protected by contract or by rule of law.
- 36. The chairman should be advised to state the grounds on which he refuses to allow a question or to answer a question. Creditors are entitled to information for the company's failure. However, it is not appropriate for a detailed investigation of the company's affairs to be undertaken at the Meeting.
- 37. Resolutions shall be deemed to be passed when a majority in number and value of creditors has voted in favour of the resolution (Rule 119).
- 38. Voting papers should be made available for inspection by any creditor or the creditor's representative whose claim has been admitted for voting purposes, at any time during the Meeting or during normal business hours on the day following the Meeting.
- 39. The admission or rejection of claims for voting purposes is the responsibility of the chairman of the Meeting. In most instances, it is expected that prior to the Meeting, the chairman will mark on each proof of debt form or statement of claim the amount for which it is admitted. Once the Meeting is closed, minutes should be prepared setting out details of the decisions reached, and for such minutes to be signed by the chairman. The duly signed minutes should be kept together with other winding up records and papers of the company (Rule 130).

Report to Creditors pursuant to the Meeting

40. A report of the proceedings at the Meeting should be circulated at the next Meeting. The report on the Meeting should include the name and address of the Liquidator and the names of the creditors or their representatives appointed to the COI. It is not necessary to supply a detailed report on all that has transpired at the Meeting but matters of particular relevance should be stated. Creditors should also be asked to bring to the Liquidator's attention any matters of which they consider he should be aware of.

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