

**MEMORANDUM TO THE  
TAX ANALYSIS DIVISION,  
MINISTRY OF FINANCE**

**ON**

**LIQUIDATORS' LICENSING  
FRAMEWORK**



**MALAYSIAN INSTITUTE OF ACCOUNTANTS**

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## **BACKGROUND**

This Memorandum seeks to address the often raised issue of the requirement, currently imposed under section 8(3) of the Companies Act 1965, of being an approved company auditor (that is to say, having an audit licence for at least one year) before an application for a liquidator's licence can be made.

The Institute has received many requests from its members, some with considerable number of years' experience in liquidation and insolvency practice, who are unable, under the current provisions, to apply to be approved liquidators, to highlight this difficulty to the Ministry of Finance, as the licensing authority, and to suggest amendments to the current provisions of the Companies Act, 1965 where possible.

It is submitted that the current requirement for the issuance of a liquidator's licence is too restrictive and does not address the issue of potential mismatch of skills and/or lack of experience and exposure to insolvency and liquidation work that the present applicants face.

In brief, the Institute's proposals are:

1. That section 8(3) of the Act be amended to dispense with the requirement of having an audit licence before an application for a liquidator's licence can be made. Instead, it is proposed that section 8(3) allows any person who is registered under the Accountants Act, 1967 as a Chartered Accountant (Malaysia) to apply to be an Approved Liquidator; and
2. That a minimum requirement of five years relevant insolvency experience in a recognised firm be set when considering the experience and capacity of the person applying for a liquidator's licence. The said applicant must be a member of the Malaysian Institute of Accountants (MIA).

The two proposals are discussed in greater detail below.

## **A. PROPOSED AMENDMENTS TO SECTION 8(3) OF THE ACT**

### **Comparative Study**

1. The Institute, in its research into this area, had undertaken a brief comparative study of what requirements are currently being imposed in some other comparable jurisdictions in the issuance of liquidators' licences.
2. The study reveals that countries such as United Kingdom and Australia generally allow other professionals such as solicitors and persons possessing any other suitable qualifications and experience to hold a liquidator's licence. Singapore also very recently liberalised its requirements in respect of liquidators. In particular, the requirement of having an audit licence before one can apply to be an Approved Liquidator has now been removed.

### **Singapore**

3. Under the new section 9(1) of the Companies (Amendment) Act 2004 which came into force on 1 April 2004, the Minister may, by order published in the Gazette, declare any specified class of persons as approved liquidators. Section 9(2) of the Act further provides that any person who does not fall within that specified class may apply to the Minister to be approved as a liquidator, and the Minister if satisfied as to the experience and capacity of the applicant may, on payment of the prescribed fee, approve such person as a liquidator.
4. Prior to the recent amendments, the Singapore situation was substantially similar to ours, in that it required a person to be an approved company auditor before he/she can apply to be an Approved Liquidator. That requirement was repealed and replaced by the new requirements above.

5. Previously, an applicant for a liquidator's licence must also be a member of the Public Accountants Board (PAB) and the Institute of Certified Public Accountants of Singapore (ICPAS), but this is no longer the case with the introduction of the new section 9 above. An approved liquidator is now defined as a person who falls within a class of persons declared as approved liquidators under section 9(1) or a person who has been approved under section 9(2) as a liquidator and whose approval has not been revoked.

### United Kingdom

6. In the United Kingdom, a person who renders services as a liquidator is referred to as an "insolvency practitioner" under the Insolvency Act, 1986. Section 390(2) of the Insolvency Act, 1986 provides that:

*" A person is not qualified to act as an insolvency practitioner at any time unless at that time -*

*(a) he is authorised so to act by virtue of membership of a professional body recognised under section 391 below, being permitted so to act by or under the rules of that body, or*

*(b) he holds an authorisation by a competent authority under section 393.*

7. Section 391(1) of the Insolvency Act gives authority to the Secretary of State for Trade and Industry to declare a body to be a recognised professional body. Under section 391(2), a body may be recognised if it regulates the practice of a profession, maintains and enforces rules for securing its members to act as insolvency practitioners and also ensures that their members are *'fit and proper persons so to act'* and *'meet acceptable requirements as to the education and practical training and experience'*.

8. The members of the recognised professional bodies as listed below are currently authorised to act as Insolvency Practitioners under the 1986 Act:
- (a) Association of Chartered Certified Accountants;
  - (b) Insolvency Practitioners' Association;
  - (c) Institute of Chartered Accountants in England and Wales;
  - (d) Institute of Chartered Accountants in Ireland;
  - (e) Institute of Chartered Accountants of Scotland;
  - (f) Law Society; and
  - (g) Law Society of Scotland.
9. Thus, there is no requirement in the United Kingdom for a person to be an approved auditor before he/she could become an Insolvency Practitioner. All that is required is that one has to be a member of any one of the recognised bodies as set out above in order to be authorised to act as Insolvency Practitioners.

#### Australia

10. In Australia, accountants are not generally subjected to any licensing requirements. Any person whether or not qualified in any way, may describe themselves as accountants and generally provide accountancy services, save for some exceptions. These exceptions include the provision of auditing services to companies and certain other institutions, the preparation of income tax returns for individuals, companies and other entities, providing advice on investments and dealing in investments.

11. The licensing requirements for company auditors, liquidators, investment advisors etc. are contained in the Corporations Act 2001. Applicants for a liquidator's licence must apply to the Australian Securities and Investments Commission (ASIC) for registration as a liquidator. ASIC does not require a person applying to be registered as a liquidator with ASIC to be first registered as an auditor with them.
  
12. The requirements for the granting of an application for registration as a liquidator are stipulated in section 1282(2) of the Corporations Act 2001 which states that ASIC will grant the application:

*(a) if the applicant -*

- (i) is a member of the Institute of Chartered Accountants in Australia, the Australian Society of Certified Practising Accountants or any other prescribed body; or*
  
- (ii) holds a degree, diploma or certificate from a prescribed university or another prescribed institution in Australia and has passed examinations in such subjects, under whatever name, as the appropriate authority of the university or other institution certifies ASIC to represent a course of study in accountancy of not less than 3 years duration and in commercial law (including company law) of not less than 2 years duration; or*
  
- (iii) has other qualifications and experience that, in the opinion of ASIC, are equivalent to the qualifications mentioned in subparagraph (i) and (ii); and*

- (b) *ASIC is satisfied as to the experience of the applicant in connection with the winding up of bodies corporate; and*
- (c) *ASIC is satisfied that the applicant is capable of performing the duties of a liquidator and is otherwise a fit and proper person to be registered as a liquidator;*
- but otherwise ASIC must refuse the application.*

### Labuan

13. In the case of Labuan, section 12 of the Offshore Companies Act, 1990 provides that the Registrar may approve any person to be an approved liquidator. There is no requirement for such a person to be an approved company auditor.

### **The Institute's recommendations**

14. The Institute submits that to enable its members who have sufficient number of years' experience in liquidation or insolvency work to apply to become Approved Liquidators, it is proposed that section 8(3) of the Act be amended as follows:

*“Any ~~approved company auditor~~ person who is registered under the Accountants Act, 1967 as a Chartered Accountant (Malaysia) may apply to the Minister charged with the responsibility for finance to be approved as a liquidator for the purposes of this Act, and the Minister if satisfied as to the experience and capacity of the applicant, may on payment of the prescribed fee approve such person as a liquidator for the purposes of this Act.”*

15. It is to be noted that the proposed amendment above seeks to confine the persons eligible to apply to be Approved Liquidators to only chartered accountants registered in Malaysia and not to open it to other professionals, as has been the case in certain other jurisdictions earlier mentioned. This is because chartered accountants by virtue of their training and experience, understand the needs and entitlements of an insolvent company's creditors, employees, shareholders and other parties, and are therefore sufficiently equipped to perform the duties of a liquidator, including achieving the realisation of the assets of the company to best match those entitlements.

## **B. SUGGESTED CRITERIA OF EXPERIENCE**

1. In addition to the Institute's proposal in paragraph 14 above, it is also recommended that when considering the experience and capacity of a person applying for a liquidator's licence, a requirement of at least five years relevant insolvency experience in a recognised firm be set. The said applicant must also be a member of the Malaysian Institute of Accountants (MIA).
2. Such a requirement would be more relevant to an application for a liquidator's licence, and is submitted to be also the ideal time frame within which a person can acquire the necessary experience and exposure in insolvency work so as to make him/her a good and capable liquidator.
3. This suggested requirement would replace the existing criteria that a liquidator's licence be issued to only approved company auditors, who in actual fact are assessed on their level of audit (as opposed to insolvency/liquidation) experience.