

INSOLVENCY ORDER, 2016

(S 1/2016)

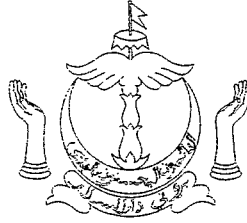
INSOLVENCY (INSOLVENCY PRACTITIONERS) RULES, 2018

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SCHEDULE – MINIMUM REQUIREMENTS OF RECORDS TO BE MAINTAINED



INSOLVENCY ORDER, 2016

(S 1/2016)

INSOLVENCY (INSOLVENCY PRACTITIONERS) RULES, 2018

In exercise of the power conferred by section 245 of the Insolvency Order, 2016, the Minister of Finance, with the approval of His Majesty the Sultan and Yang Di-Pertuan, hereby makes the following Rules –

Citation

1. These Rules may be cited as the Insolvency (Insolvency Practitioners) Rules, 2018.

Interpretation

2. (1) In these Rules –

“advisory work experience” means experience obtained in providing advice to the office holder in insolvency proceedings or anyone who is a party to, or whose interests are affected by, those proceedings;

“application” means an application made by an individual to the competent authority for authorisation under section 224 to act as an insolvency practitioner and “applicant” shall be construed accordingly;

“authorisation” means an authorisation to act as an insolvency practitioner granted under section 224;

“higher insolvency work experience” means engagement in work in relation to insolvency proceedings where the work involves the management or supervision of the conduct of those proceedings on behalf of the office holder acting in relation to them;

“insolvency practice” means the carrying on of the business of acting as an insolvency practitioner or in a corresponding capacity under the law of any country or territory outside Brunei Darussalam;

“insolvency practitioner” means a person who is authorised to act as an insolvency practitioner by virtue of –

(a) membership of a professional body recognised under section 222; or

(b) an authorisation granted by a competent authority under section 224;

“insolvency proceedings” means any proceedings in which an office holder acts under any provision of the Order or the corresponding provision of the law of any country or territory outside Brunei Darussalam;

“insolvency work experience” means engagement in work related to the administration of insolvency proceedings –

(a) as the office holder in those proceedings; or

(b) in the employment of a firm or body whose members or employees act as insolvency practitioners;

“insolvent” means a person in respect of whom an insolvency practitioner is acting;

“office holder” means a person who acts as an insolvency practitioner under the law of any country or territory outside Brunei Darussalam, and includes the official receiver acting as liquidator, provisional liquidator, trustee, interim receiver or nominee or supervisor of a voluntary arrangement;

“regulatory work experience” means experience of work relating to the rules of insolvency practitioners for or on behalf of a competent authority or a professional body recognised pursuant to section 222 or experience of work in connection with any function of the Minister under that section.

(2) In these Rules, a reference to the date of release or discharge of an insolvency practitioner includes –

(a) where the insolvency practitioner acts as nominee in relation to proposals for a voluntary arrangement under Part II of the Order, whichever is the earlier of the date on which –

- (i) the proposals are rejected by creditors;
- (ii) he is replaced as nominee by another insolvency practitioner; or
- (iii) the arrangement takes effect without him becoming supervisor in relation to it; and

(b) where an insolvency practitioner acts as supervisor of a voluntary arrangement, whichever is the earlier of the date on which –

- (i) the arrangement is completed or terminated; or
- (ii) the insolvency practitioner otherwise ceases to act as supervisor in relation to the arrangement.

Matters for determining whether applicant for authorisation is fit and proper person

3. The matters to be taken into account by a competent authority in deciding whether an individual is a fit and proper person to act as an insolvency practitioner for the purposes of section 224(2)(a) and (5)(a) shall include –

(a) whether the applicant has been convicted of any offence involving fraud or other dishonesty or violence;

(b) whether the applicant has contravened any provision of the Order or any rules made thereunder;

(c) whether the applicant has engaged in any practice in the course of carrying on any trade, profession or vocation or in the course of the discharge of any function relating to any office or employment appearing to be deceitful or oppressive or otherwise unfair or improper, whether unlawful or not, or which otherwise cast doubt on his probity or competence for discharging the duties of an insolvency practitioner;

(d) whether in respect of any insolvency practice carried on by the applicant at the date of or at any time prior to the making of the application, there were established adequate systems of control of the practice and adequate records relating to the practice, including accounting records, and whether such systems of control and records have been or were maintained on an adequate basis;

(e) whether the insolvency practice of the applicant is, has been or, where the applicant is not yet carrying on such a practice, will be, carried on with the independence, integrity and the professional skills appropriate to the range and scale of the practice and the proper performance of the duties of an insolvency practitioner and in accordance with generally accepted professional standards, practices and principles;

(f) whether the applicant, in any case where he has acted as an insolvency practitioner, has failed to disclose fully to such persons as might reasonably be expected to be affected thereby circumstances where there is or appears to be a conflict of interest between his so acting and any interest of his own, whether personal, financial or otherwise, without having received such consent as might be appropriate to his acting or continuing to act despite the existence of such circumstances.

Requirements as to education etc.: applicants who have never previously been authorised to act as insolvency practitioners

4. (1) The requirements as to education, practical training and experience for the purposes of section 224(2)(b) in relation to an applicant who has never previously been authorised to act as an insolvency practitioner (whether by virtue of membership of a professional body recognised under section 222 or by virtue of an authorisation granted by a competent authority under section 224) shall be as set out in this rule.

(2) An applicant must, at the date of the making of his application, have acquired, or been awarded, professional or vocational qualifications which indicate that the applicant has the knowledge and competence to act as an insolvency practitioner.

(3) An applicant must have held office as an office holder for more than 2 years immediately preceding the date on which he made his application for authorisation.

(4) Where in order to satisfy the requirement set out in subrule (3) an applicant relies on appointment as an office holder or the acquisition of insolvency work experience or higher insolvency work experience in relation to cases under the laws of a country or territory outside Brunei Darussalam, he shall demonstrate that he has more than the period of 2 years of insolvency work experience in cases under the law of Brunei Darussalam acquired immediately prior to the date of the making of his application.

(5) In ascertaining whether an applicant meets the requirement of subrule (3) –

(a) no account shall be taken of any case where –

- (i) he was appointed to the office of receiver (or to a corresponding office under the law of a country or territory outside Brunei Darussalam) by or on behalf of a creditor who at the time of the appointment was an associate of the applicant; or
- (ii) in a members' voluntary winding up or in a corresponding procedure under the laws of a country or territory outside Brunei Darussalam, he was appointed liquidator at a general meeting where his associates were entitled to exercise or control the exercise of one-third or more of the voting power at that general meeting;

(b) where the applicant has been an office holder in relation to –

- (i) two or more companies which were associates at the time of appointment; or
- (ii) two or more individuals who were carrying on business in partnership with each other at the time of appointment,

he shall be treated as having held office in only one case in respect of all offices held in relation to the companies which were associates or in respect of all offices held in relation to the individuals who were in partnership, as the case may be.

(6) An applicant must have a good command of the English or Malay language.

Requirements as to education etc.: applicants previously authorised to act as insolvency practitioners

5. (1) The requirements as to education, practical training and experience for the purposes of section 224(2)(b) in relation to an applicant who has at any time been authorised to act as an insolvency practitioner (whether by virtue of membership of a professional body recognised under section 222 or by virtue of an authorisation granted by a competent authority under section 224) shall be as set out in this rule.

(2) The applicant shall satisfy the requirements set out in rule 4(3) and (4) or have acquired within the period of 2 years preceding the date of the making of his application of any combination of the following types of experience –

- (a) experience as an office holder;
- (b) higher insolvency work experience;
- (c) regulatory work experience; or
- (d) advisory work experience.

Returns by insolvency practitioners authorised by Minister

6. (1) Every holder of an authorisation granted by the Minister shall make a return to the Minister in respect of each period of 12 months ending on 31st December during the whole or any part of which he held an authorisation granted by the Minister, containing the following information –

- (a) the number of cases in respect of whom the holder of the authorisation has acted as an insolvency practitioner during the period;
- (b) in respect of each case where the holder of the authorisation has acted as an insolvency practitioner –

- (i) the name of the person in respect of whom the insolvency practitioner is acting;
- (ii) the date of the appointment of the holder of the authorisation;
- (iii) the type of insolvency proceedings involved; and
- (iv) the number of hours worked in relation to the case by the holder of the authorisation and any person assigned to assist him in the case.

(2) Every return required to be submitted pursuant to this rule shall be submitted within one month of the end of the period to which it relates.

(3) The Minister may, at any time, request the holder of an authorisation to provide any information relating to any matter of the kind referred to in subrule (1) and any such request shall be complied with by the holder of the authorisation within one month of its receipt or such longer period as the Minister may allow.

Records to be maintained by insolvency practitioners

7. (1) In respect of each case in which he acts, an insolvency practitioner shall maintain records containing at least the information specified in the Schedule as is applicable to the case.

(2) Where at any time the records referred to in subrule (1) do not contain all the information referred to in the Schedule as is applicable to the case, the insolvency practitioner shall forthwith make such changes to the records as are necessary to ensure that the records contains all such information.

(3) Each record maintained pursuant to subrule (1) shall be capable of being produced by the insolvency practitioner separately from any other record.

(4) Any record created in relation to a case pursuant to this rule shall be preserved by the insolvency practitioner until whichever is the later of –

(a) the sixth anniversary of the date of the grant to the insolvency practitioner of his release or discharge in that case; or

(b) the sixth anniversary of the date on which any security maintained in that case expires or otherwise ceases to have effect.

Notification of whereabouts of records

8. The insolvency practitioner shall notify the persons referred to in rule 9(1)(a) and (b) of the place where the records required to be maintained under these Rules are so maintained and the place (if different) where they may be inspected pursuant to rule 9.

Inspection of records

9. (1) Any record maintained by an insolvency practitioner pursuant to these Rules shall, on the giving of reasonable notice, be made available by him for inspection by –

(a) any professional body recognised under section 222 of which he is a member and the rules of membership of which entitle him to act as an insolvency practitioner;

(b) any competent authority by whom the insolvency practitioner is authorised to act pursuant to section 224; and

(c) the Minister.

(2) Any person who is entitled to inspect any record pursuant to subrule (1) shall also be entitled to take a copy of those records.

Inspection of practice records

10. (1) This rule applies to any relevant record which is held by –

(a) the holder of an authorisation to act as an insolvency practitioner granted by the Minister pursuant to section 224;

(b) his employer or former employer; or

(c) any firm or other body of which he is or was a member or partner.

(2) In this rule, “relevant record” means any record which relates to any case where the holder of the authorisation mentioned in subrule (1) has acted as an insolvency practitioner and which –

(a) records receipts and payments made in relation to, or in connection with, that case;

(b) records time spent on that case by the holder of the authorisation or any person assigned to assist the holder;

(c) relates to any business carried on in the case by or at the direction of the holder of the authorisation; or

(d) otherwise relates to the management of that case.

(3) The Minister may, on the giving of reasonable notice to their holder, inspect and take copies of any record to which this rule applies.

Persons jointly to act as insolvency practitioners

11. Where two or more persons are appointed jointly to act as insolvency practitioners in relation to any person, the provisions of these Rules apply to each of them individually.

Fee payable under section 223

12. Every application made to a competent authority pursuant to section 223 for authorisation to act as an insolvency practitioner shall be accompanied by a fee of \$100.

SCHEDULE

(rule 7)

MINIMUM REQUIREMENTS OF RECORDS TO BE MAINTAINED

Details of insolvency practitioner acting in case

1. The name of the insolvency practitioner acting in the case.
2. The identifying number or reference issued to the insolvency practitioner by a competent authority or any professional body recognised under section 222.
3. The principal business address of the insolvency practitioner.
4. The name of –
 - (a) any body by virtue of whose rules the insolvency practitioner is entitled to practice; or
 - (b) any competent authority by whom the insolvency practitioner is authorised.

Details of insolvent

5. The name of the person in respect of whom the insolvency practitioner is acting.
6. The type of the insolvency proceedings.

Progress of administration

7. As regards the progress of the administration of the case, the following details if applicable –
 - (a) the date of commencement of the proceedings;
 - (b) the date of appointment of the insolvency practitioner;
 - (c) the date on which the appointment was notified to the Registrar.

Matters relating to remuneration

8. As regards the remuneration of the insolvency practitioner –
- (a) the basis on which the remuneration of the insolvency practitioner is to be calculated; and
 - (b) the date and content of any resolution of creditors in relation to the remuneration of the insolvency practitioner.

Meetings (other than any final meeting of creditors)

9. The dates of –
- (a) the meeting of members;
 - (b) the date of first meeting of creditors –
 - (i) in liquidation; or
 - (ii) to consider a voluntary arrangement proposal;
 - (c) the date of the statutory meeting in sequestration; and
 - (d) the dates and purposes of any subsequent meeting.

Vacation of office etc.

10. The following details regarding the completion of the case –
- (a) the date of the final notice to, or meeting of, creditors;
 - (b) the date that the insolvency practitioner vacates office; and
 - (c) the date of release or discharge of the insolvency practitioner.

Distributions to creditors etc.

11. As regards distributions –
- (a) in relation to each payment to preferential or preferred creditors –
 - (i) the name of the person to whom the payment was made;
 - (ii) the date of the payment;
 - (iii) the amount of the payment;
 - (b) in relation to each payment to unsecured creditors –
 - (i) the name of the person to whom the payment was made;
 - (ii) the date of the payment;
 - (iii) the amount of the payment; and

- (c) in relation to each return of capital –
- (i) the name of the person to whom the return of capital was made;
 - (ii) the date of the payment; and
 - (iii) the amount of capital returned or the value of any assets returned.

Statutory returns

12. As regards any returns or accounts to be made to the Minister or Registrar –
- (a) as regards each interim return or abstract of receipts and payments –
 - (i) the date the return or abstract is due;
 - (ii) the date on which the return is filed; and
 - (b) as regards any final return or abstract of receipts and payments –
 - (i) the date that the return or abstract is due; and
 - (ii) the date on which the return is filed.

Time recording

13. Records of the amount of time spent on the case by the insolvency practitioner and any person assigned to assist in the administration of the case.

Made this 9th day of Muharram 1440 1439 Hijriah corresponding
to the 19th day of September 2018.

