



## **GUIDELINES FOR THE ADJUDICATION OF PROOF OF DEBTS UNDER SECTION 369B OF THE COMPANIES ACT 2016 AND OTHER RELATED MATTERS**

This guideline is issued pursuant to section 20C of the Companies Commission of Malaysia Act 2001 [*Act 614*].

### **OBJECTIVES**

2. This guideline serves as a guide relating to the adjudication of proof of debts pursuant to section 369B of the Companies Act 2016 [*Act 777*] ('the Act') and other related matters.

### **Role of Chairperson**

3. Where a meeting has been ordered by the Court pursuant to subsection 366(1) of the Act for the purpose of approving a compromise or arrangement, the chairperson has a statutory duty in adjudicating the proof of debts. The adjudication of proof of debts is a critical step to ensure that the creditors' rights to participate in the meeting is protected.

4. Subsection 366(1) of the Act specifies that the chairperson of the meeting shall be either be—

- (a) an insolvency practitioner who has been appointed under subsection 367(3) of the Act; or

- (b) a person elected by the majority in value of the creditors or class of creditors or members or class of members, if no insolvency practitioner has been appointed under subsection 367(3).

5. For the purposes of this Guidelines, the chairperson refers to any person who will be occupying the position of the chairperson in the meeting to be held pursuant to section 366(1) of the Act.

### **Proof of debt**

6. A notice to convene a meeting to be held pursuant to subsection 366(1) of the Act which is sent to the creditors must be accompanied with a proof of debt form ('PODF'). The creditors must deposit the PODF at the address stated in the notice of the meeting together with the details and supporting information of the debts in the manner specified in Annexure 1 of this Guidelines within the period stated in the notice, or in the manner and time to be determined by the chairperson.

7. The Chairperson may at any time call for any additional information or documents to be produced in such manner as he deems fit to substantiate the proof of debt submitted by the creditor.

8. The creditor shall bear the costs of proving his debt.

### **List of creditors**

9. The chairperson of the meeting must, not later than seven days after the expiry of the period as stated in paragraph 369B(1)(b) of the Act, send a copy of the list of creditors to every creditor who has filed a proof of debts with the company for the purpose of voting in the meeting.

10. The list of creditors must set out the name of every creditor and include the following particulars in respect of each creditor:

- (a) the address of the creditor as stated in the proof of debt;
- (b) the amount claimed under the proof of debt; and
- (c) a brief description of the nature of the claim under the proof of debt.

### **Inspection of proof of debt**

11. The creditor who has filed a proof of debt is entitled to inspect all or any part of a proof of debt filed by any creditor except the part of the other creditor's proof that contains information that is subjected to any obligation as to secrecy, or to any other restriction upon the disclosure of information, imposed by any written law, rule of law, contract or rule of professional conduct, or by any person or authority under any written law.

12. If a creditor ('requesting creditor') wishes to inspect the proof of debt filed by another creditor ('affected creditor') for the purposes of voting at the same meeting, he must not later than twenty-one days before the meeting—

- (a) send the request in writing to the chairperson; and
- (b) send a written notice of the request to the company and the affected creditor.

13. The affected creditor must, not later than seven days after the receipt of the written notice stated in paragraph 12(b), —

- (a) send a written notice to the chairperson stating—

(i) whether he objects to the inspection of the proof of debt in question or any part of the proof of debt, and if so, the basis for the objection or any part of the debt to which the objection relates; and

(b) send a written notice of the objection to the company and the requesting creditor if the affected creditor objects to the inspection of the proof of debt or any part of the proof of debt.

14. Upon the expiry of the period of seven days stated in paragraph 13 where the affected creditor neglected to respond to the satisfaction of the chairperson, the chairperson must comply with the request of the requesting creditor pertaining to the inspection of the proof of debt.

15. A requesting creditor who wishes to inspect a proof of debt for which an objection to the inspection has been made may, not later than seven days after the receipt of the written notice of the objection stated in paragraph 12(b)—

(a) send a written request to the affected creditor to nominate a mutually agreed person to be appointed as the independent assessor and state the dispute that the independent assessor, if appointed, is to adjudicate; or

(b) make an application to the Court for the appointment of an independent assessor under paragraph 369B(9)(b) of the Act.

16. The chairperson shall provide the proof of debt for inspection by the requesting creditor where —

- (a) in a case the affected creditor does not respond to his satisfaction under paragraph 13, as soon as practicable after the expiry of that period; or
- (b) in a case the affected creditor objects to the inspection of the proof of debt and an independent assessor is appointed to adjudicate the dispute, as soon as practicable after the receipt of the written notice stated in paragraph 24(b) informing that the independent assessor has allowed the inspection.

17. The chairperson shall determine the manner and procedures to be adopted in providing for the inspection of proof of debt.

18. A creditor shall not submit more than one request to inspect the same proof of debt.

### **Adjudication of proof of debt**

19. The chairperson of a meeting shall, at least twenty eight days before the meeting—

- (a) complete the adjudication of all proofs of debt filed by creditors for the purposes of voting at the meeting; and
- (b) send the results of the adjudicated proof of debt in writing to every eligible creditor who has filed a proof of debt for the purposes of voting at the meeting.

20. The results of the adjudication stated in paragraph 19(b) shall list—

- (a) every creditor who has filed a proof of debt for the purposes of voting at the meeting;

- (b) the amount claimed under the proof of debt; and
- (c) the amount, if any, of the proof of debt admitted, and the amount, if any, rejected, by the chairperson.

21. If the company or any eligible creditor who has filed a proof of debt for the purposes of voting at the meeting objects to the results of the adjudication of any proof of debt by the chairperson ('the opposing party'), the opposing party may seek the agreement for the appointment of an independent assessor not later than fourteen days before the meeting —

- (a) by sending a written request to—
  - (i) the company, unless the opposing party is the company;
  - (ii) the chairperson; and
  - (iii) the creditor whose proof of debt will be affected by the decision of the independent assessor, unless the opposing party is that creditor;or
- (b) by making an application to the Court for the appointment of an independent assessor under paragraph 369B(9)(b) of the Act.

22. In relation to paragraph 21(a), the written request shall include the nomination of a person to be appointed as the independent assessor and state the dispute that the independent assessor, if appointed, is to adjudicate.

### **Independent assessor**

23. Upon the appointment of an independent assessor under subsection 369B(9) of the Act, the chairperson shall as soon as practicable provide the

relevant proof of debt and any relevant documents to the independent assessor.

24. Subsequently, not later than seven days after being provided with the relevant proof of debt, the independent assessor shall,—

- (a) make a decision on the dispute; and
- (b) send a written notice of the decision, together with the reasons for the decision, to the chairperson, the company and any creditor who is a party to the dispute.

25. In a situation after receiving the written notice of the decision from the independent assessor, where a creditor, the company or the chairperson disagrees with any decision of the independent assessor, they may file a notice of disagreement in the manner specified in Annexure 2 of this Guidelines stating the reasons for the disagreement regarding the decision to the Court not less than seven days before the Hearing of the application under subsection 366(4).

26. The independent assessor shall be entitled to receive a remuneration which shall be —

- (a) fixed by -
  - (i) the agreement of all the parties to the dispute to be adjudicated by the independent assessor, where the independent assessor is appointed by the agreement of those parties; or
  - (ii) the Court, where the independent assessor is appointed by the Court; and

- (b) borne by the requesting creditor stated in paragraph 15 or the opposing party stated in paragraph 21, as the case may be, unless the Court orders otherwise.

### **Updated list of creditors**

27. Prior to the meeting being held on such a date, the chairperson of the meeting shall provide an updated list of creditors to every eligible creditor whose proof of debt is admitted for the purposes of voting at the meeting and who is present, whether in person or by proxy, at the venue of the meeting.

28. The updated list of creditors shall be in writing and shall be given to the creditors either—

- (a) in hard copy;
- (b) in electronic form; or
- (c) partly in hard copy and partly in electronic form.

29. The updated list of creditors shall include the following:

- (a) a list of every creditor who has filed a proof of debt for the purposes of the meeting, the amount claimed under each proof of debt, and the amount, if any, admitted and the amount, if any, rejected on each proof of debt; and
- (b) any differences in the results of the adjudication of any proof of debt as compared with the results of the adjudication stated in paragraph 20 sent by the chairperson.

## **Sending of notices and other documents**

30. Unless otherwise stated in the Guideline, every written notice or request or other information in writing required or authorised to be sent or given by any person ('the sender') to the other person ('the recipient') under any requirement of this Guidelines may be sent or given to the recipient—

- (a) by sending the notice or request or other information in writing to the recipient by registered post addressed to the recipient at the last known address of the recipient;
- (b) by sending an electronic communication of the notice or request or other information to the last electronic mail address of the recipient given to the sender, if such mode of sending the notice or request or other information was previously agreed in writing between the sender and the recipient; or
- (c) by sending the notice or request or other information to the last facsimile transmission number of the recipient given to the sender or by other similar means of communication, if such mode of sending the notice or request or other information was previously agreed in writing between the sender and the recipient.

31. Unless the contrary is proven, in cases where any written notice or request or other information in writing required or authorised to be sent or given by a sender to a recipient under this Guidelines is sent—

- (a) by registered post, the notice or request or other information is deemed to have been duly received by the recipient seven (7) days after the day that it was posted;

- (b) by electronic communication to an electronic mail address, the notice or request or other information is presumed to have been duly sent by the sender and received by the recipient at the time the electronic communication enters the information system for that electronic mail address; or
- (c) by facsimile transmission to a facsimile transmission number, the notice or request or other information is presumed to have been duly sent by the sender and received by the recipient on the day of the transmission, subject to the receipt on the sending facsimile machine of a notification, by electronic or other means, of a successful transmission to the facsimile machine for that facsimile transmission number.

**REGISTRAR OF COMPANIES**

**COMPANIES COMMISSION OF MALAYSIA**

**1 April 2024**

[Paragraph 6]

PROOF OF DEBT

(CREDITORS (\*SECURED/UNSECURED))

Name of Company:

Company No.

1. Particulars of creditor claiming debt:

Name of creditor:

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\*I.C. No./Passport No./Company No./Identifications:

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\*Address of registered office (company)/business address (other than company) (*Please see note (a)*):

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Telephone No.:

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Fax No.:

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E-mail:

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Creditor's Reference No. (*Please see note (b)*):

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2. Particulars of debt:

<b>Date debt incurred</b>	<b>Details of debt <i>(Please see note (c))</i></b>	<b>Currency</b>	<b>Amount (RM)</b>

(Please use attachment if insufficient space)

Total amount of debt claimed *(in figures)*: \_\_\_\_\_

Total amount of debt claimed *(in words)*: \_\_\_\_\_

3. Security held:

*(Please indicate "NIL" if no securities are held by creditor)*

Brief description and value of securities held:

\_\_\_\_\_

4. Declaration:

\*I/We declare that to the best of \*my/our knowledge and belief, the company owes the amount to me/us as claimed and specified in item

2.

Sworn at \_\_\_\_\_  
In the State of \_\_\_\_\_ (Creditor)  
This \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

Name of creditor: \_\_\_\_\_  
I.C. No.: \_\_\_\_\_  
\*Address of registered office  
(company)/business address (other than  
company):

Before me  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Commissioner for Oaths

\*Delete whichever not applicable.

**Notes:**

- (a) *Please inform the company of any change in address.*
- (b) *Please indicate the reference number that will be quoted in future correspondence with the company.*
- (c) *Please attach copies of documents substantiating the debt claimed. The onus of proof is upon the creditor to prove the debt.*

[Subsection 369B(11), Subsection 369B (12) & Paragraph 25]

NOTICE OF DISAGREEMENT

(Title of Court)

In the matter of the ..... Company,  
Sendirian Berhad/Berhad; In the matter of Subsection 369B(11) ; and in the  
matter of the Companies Act 2016.

PURSUANT to Decision of the Independent Assessor dated the ..... day of  
....., of 20..... I, .....,  
the \* Creditor/Company/Chairperson, of the above-named company, hereby  
disagreed with the above mentioned decision on the following reason/s:

.....  
..... (insert description of the  
disagreement).

Notice of this disagreement has been filed on

Dated this ..... day of ....., 20.....

.....  
\* Creditor/Company/Chairperson

To: \*Company/Creditor

(Address)

.....  
.....  
.....

\*Delete whichever not applicable.