

# GUIDE TO RESOLVING INSOLVENCY THE INSOLVENCY ORDER, 2016

THE REGISTRY OF COMPANIES AND BUSINESS NAMES  
MINISTRY OF FINANCE  
BRUNEI DARUSSALAM



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Brunei Darussalam has introduced the Insolvency Order, **2016** which is effective on **1<sup>st</sup> March 2016**. The Insolvency Order, **2016** is a new legislation which consolidates all provisions relating to insolvency under the Companies Act (Chapter **39**) and introduces in court reorganisation mechanisms.

It is intended to create a shift in insolvency culture, with a greater emphasis placed on company rescue and rehabilitation, and protection for all creditors and debtors. The Insolvency Order, **2016** covers corporate insolvency while the Bankruptcy Act (Chapter **67**) covers bankruptcy regime relating to individuals.

## WHAT IS INSOLVENCY?

### DEFINITION

A company is insolvent when it is generally unable to pay its debts as they fall due or that its liabilities exceed the value of its assets.

### TESTS FOR INSOLVENCY

There are two (**2**) principal tests for insolvency: the cash flow test and the balance sheet test. Under the cash flow test, a company is insolvent if it is unable to pay its debts as they fall due. Under the balance sheet test, a company is insolvent if its liabilities exceed its realizable assets.

A company is deemed unable to pay its debts if –

- A creditor to whom the company owes in a sum exceeding **\$10,000**, has demanded payment and the company has neglected to pay the debt;
- A company fails to satisfy execution or other process issued on a judgement, decree or order of any Court in favour of the company; or
- It is proved to the satisfaction of the Court that the company is unable to pay its debts.

\*Please refer to Section **100** of Insolvency Order, **2016**

## WHAT'S NEW IN THE INSOLVENCY ORDER?

### WHAT ARE SOME GOOD PRACTICES?

Insolvency law can create a predictable and enforceable framework for lending to companies in insolvency proceedings through provisions explicitly allowing post-commencement borrowing and providing some assurance of payment. Without such provisions, lenders are unlikely to make new funds available on acceptable terms— or indeed on any terms at all.



Fig. 1. Post commencement finance can be critical in helping a business go from insolvency to recovery.

Source: Doing Business **2016**: Measuring Regulatory Quality and efficiency

## WHAT'S NEW IN THE INSOLVENCY ORDER?



### INTRODUCTION OF A NEW CHAPTER ON COMPANY VOLUNTARY ARRANGEMENT

Voluntary arrangement under the Order may include:

- A composition in satisfaction of its debts;
- Restructuring of debts through restatements of assets and liabilities and agreement with creditors on maintaining payments;
- Reorganising the company by restructuring the ownership and management of the company to lead to better decision-making and execution; or
- Any other acts as may be necessary for the rehabilitation or rescue of the company.



### AMENDMENT TO PREFERENTIAL PAYMENTS

Amendment to the provision relating to preferential payments that shall be paid in priority to all other unsecured debts:

<b>First</b>	• The amount payable to any creditor for any unsecured credit granted by the creditor after the commencement of any insolvency proceedings
<b>Second</b>	• The costs and expenses of the winding up
<b>Third</b>	• All wages or salary
<b>Fourth</b>	• The amount due to employee as a retrenchment benefit or <i>ex gratia</i> payment
<b>Fifth</b>	• All amounts due in respect of contributors
<b>Sixth</b>	• All remuneration payable to any employee
<b>Seventh</b>	• The amount of all tax or rates assessed and due

\* Please refer to Section 147 of Insolvency Order, 2016

## WHAT'S NEW IN THE INSOLVENCY ORDER?

### INSOLVENCY PROCEDURES

INSOLVENCY PROCEDURES AVAILABLE UNDER THE INSOLVENCY ORDER, 2016 ARE:

- ✓ Company Voluntary Arrangement;
- ✓ Receivership;
- ✓ Judicial Management;
- ✓ Winding up by members or creditors (voluntary); and
- ✓ Winding up by the court (involuntary).

# INSOLVENCY PROCEDURES COMPANY VOLUNTARY ARRANGEMENT

What is a Company Voluntary Arrangement (CVA)?

A CVA is an arrangement by which a company in financial difficulties comes to a compromise or arrangement with its creditors about the basis on which it will repay its debts.

Under **Section 8** of the **Insolvency Order, 2016**, Company Voluntary Arrangement may include —

- a composition in satisfaction of its debts;
- restructuring of debts through restatements of assets and liabilities and agreement with creditors on maintaining payments;
- reorganising the company by restructuring the ownership and management of the company to lead to better decision making and execution; or
- any other acts as may be necessary for the rehabilitation or rescue of the company.

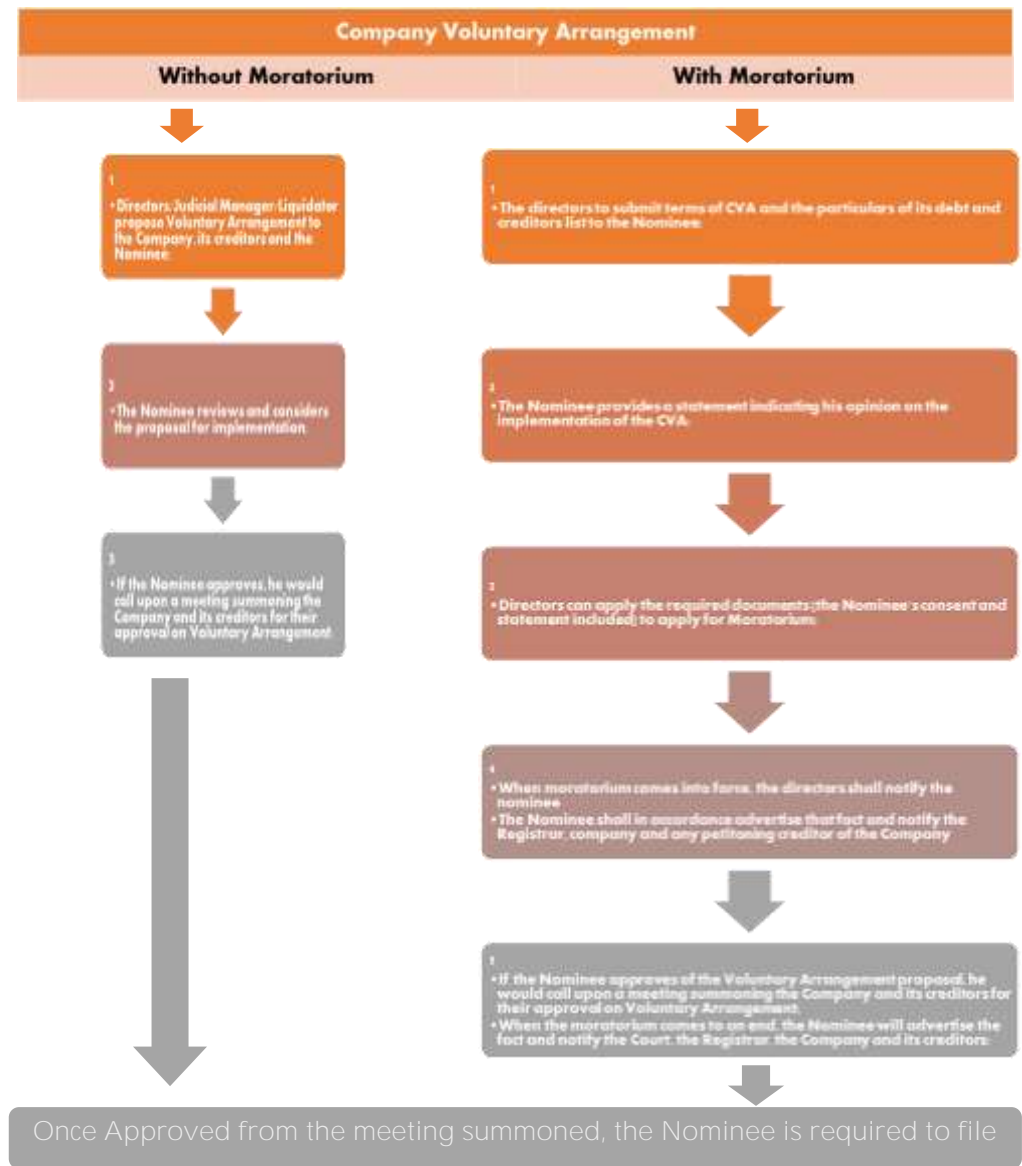
What is a Moratorium?

Moratorium acts a protection for the company to reorganize its assets prior to the commencement of the CVA. The directors of the company may also apply for a moratorium if they intend to make a proposal for a voluntary arrangement.

A proposal for voluntary arrangement to the company and to its creditors can made by either:

- the Board of Directors (if it is not in judicial management or being wound up);
- the Judicial Manager (if the company is in judicial management); or
- the Liquidator (if the company is being wound up).

# INSOLVENCY PROCEDURES COMPANY VOLUNTARY ARRANGEMENT



# INSOLVENCY PROCEDURE RECEIVERSHIP

A company may be placed under receivership, if a receiver is appointed to enforce a charge for the benefit of holders of debentures of the company. Receivership is initiated by a holder of a floating charge, usually a bank.

Who is a receiver?

A receiver is a person who is appointed to collect, protect and receive property and income from property. A receiver may be appointed in respect of a company encompassing its entire business and undertaking, or in respect of a particular asset or assets of the company.

The Court however, may appoint the liquidator as a receiver on **behalf of the debenture holders or other of the Company's creditors** if the Company is being wound up by the Court.

Receiver is **NOT THE SAME** as the official receiver.

A receiver shall not be qualified to be appointed and act as receiver of a company—

- ⇒ A corporation;
- ⇒ An undischarged bankrupt;
- ⇒ A mortgagee of any property of the company, auditor, secretary or employee of the company or of any corporation; or
- ⇒ Any person who is neither an approved liquidator nor the Official Receiver cannot be an appointed receiver.

Please refer to section 20 of Insolvency Order, 2016

# INSOLVENCY PROCEDURE JUDICIAL MANAGEMENT

If a company, or its creditor(s), considers that the company is/will be unable to pay its debts and there is a reasonable probability of rehabilitating company, instead of resorting to a winding up, the Court may upon an application, order that the company be placed under judicial management and judicial manager will be appointed.

Judicial Manager takes over running of company and management is displaced. The Judicial Manager is also responsible for managing business and property of company.

## EFFECT OF JUDICIAL MANAGEMENT

- ◆ No resolution shall be passed or order made for the winding up of the company;
- ◆ No receiver and manager shall be appointed;
- ◆ No steps shall be taken to enforce any charge on or security **over the company's property or to repossess any goods in the company's possession; and**
- ◆ No other proceedings and no execution or other legal process shall be commenced or continued and no distress may be levied against the company or its property.

Please refer to section 34 and section 35 of Insolvency Order, 2016

# INSOLVENCY PROCEDURE WINDING UP

Liquidation is the process of winding up the affairs of a company **before dissolution and can be used in solvent (Members' Voluntary Winding Up) and insolvent (Creditors' Voluntary Winding Up or Winding Up by Court) situations.**

There are two (2) types of liquidations:

- i. Voluntary  
**(Members' Voluntary Winding Up and Creditors' Voluntary Winding Up)**
- ii. Compulsory  
(Winding Up by Court)

A liquidator is appointed to take control of the company and to realise its assets, distributing the realisations to satisfy the liabilities of the company to its creditors

- The Liquidator is unlikely to become involved in training the business and has limited powers to do so. The liquidator will instead sell assets for the best possible price and where possible pay a distribution to creditors, after costs.
- A Liquidator cannot deal with assets covered by a fixed **charge holder, without the fixed charge holder's consent.**
- The Liquidator in an insolvent liquidation will be responsible **for investigating directors' conduct and prior transactions.**
- In a Winding up by Court process, all dispositions of the **company's property following the presentation of a winding up petition** are void.

# INSOLVENCY PROCEDURE **MEMBERS' VOLUNTARY WINDING UP**

A company may decide to wind up its affairs voluntarily if the directors believe that the company will be able to pay its debts, in full, within **12** months from the commencement of the winding up. The company will appoint one or more liquidators, to wind up its affairs of the company and distributing its assets.

Companies may decide to wind up its affairs voluntarily if:

- a) When the period (if any) fixed for the duration of the company by the articles expires, or the event (if any) occurs, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring it be wound up voluntarily; and
- b) Company resolves by special resolution for the Company to be wound up voluntarily;

## PROCESS OF COMMENCING



Please refer to section **73** of Insolvency Order, **2016**

## INSOLVENCY PROCEDURE CREDITORS' VOLUNTARY WINDING UP

**Company may opt for a creditors' voluntary winding up if the directors believe that it cannot, by any reason its liabilities, continue its business. The company will appoint a liquidator, to wind up its affairs of the company and distributing its assets.**

Where a company is already in voluntary winding up, the Court may still grant leave to wind up the company compulsory if it is **satisfied that it is necessary to do in the interests of the company's** creditors and contributories

### PROCESS OF COMMENCING



Please refer to section 78 of Insolvency Order, 2016

## INSOLVENCY PROCEDURE WINDING UP BY COURT

The company, creditors, contributories, liquidator, judicial manager, or the Minister may present an application to the court to wind up the company.

The Court may appoint a liquidator to wind up the affairs of the company. Where no liquidator is appointed by the Court, the Official Receiver shall be the liquidator of the company.

A company may be wound-up under an Order of the Court under certain circumstances:

- The company has by special resolution resolved that the company be wound up by the Court;
- Default is made in delivering the statutory report to the Registrar or in holding the statutory meeting;
- The company does not commence its business within a year from its incorporation, or suspends its business for a whole year;
- The number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven;
- The company is unable to pay its debts\*; or
- The Court is of opinion that it is just and equitable that the company should be wound up.

### EFFECTS OF WINDING UP BY COURT

- Any disposition of the property of company/transfer of shares/alteration of status of members after commencement of winding up is VOID.
- When winding up order is made or provisional liquidator has been appointed, no action shall commence without the leave of the Court.

## PROCESS OF COMMENCING



Please refer to section **97** of the Insolvency Order, **2016**

Companies may apply to the Registry of Companies to be struck off under Section **157 (1)** of the Insolvency Order, **2016**. The Registrar of Companies may approve the application if there is reasonable cause to believe that the company is not carrying on business and it satisfies the criteria of striking off.

## REQUIREMENTS FOR STRIKING OFF

Before making an application, the Company has to ensure :

- The Company has ceased trading or has not commence business since incorporation;
- There is written consent of the majority of shareholders submit the latest balance sheet;
- Submit the latest balance sheet;
- There is no outstanding liabilities with the Government Agencies;
- That the Company has no involvement in any Court proceedings (within or outside Brunei Darussalam); and
- No current or contingent liabilities.

Please refer to section 157 of the Insolvency Order, 2016



# WORLD BANK QUESTIONNAIRE ON RESOLVING INSOLVENCY

## 1. DEFINITIONS OF TERMS USED IN THIS QUESTIONNAIRE

The Resolving Insolvency indicators measure the time, cost and outcome of either insolvency or debt enforcement proceedings involving domestic entities, as well as the strength of the insolvency framework. The purpose of the indicators is to assess the efficiency of the insolvency system by measuring the share of debt recouped by the creditors (the recovery rate) in insolvency and to assess the quality of insolvency laws by testing whether such laws include internationally accepted good practices. In completing the questionnaire, please keep in mind the following definitions:

**"Foreclosure"** is a process through which a secured creditor requires sale of the assets used as collateral in satisfaction of secured lending when the debtor fails to make payment. For the purpose of this study, *Foreclosure* refers to the sale of the assets to collect the value of the loan extended to the debtor through formal court proceedings (judicial foreclosures). *Foreclosure* also includes enforcement of security interests other than real estate mortgages.

**"Insolvency"** means that a debtor is generally unable to pay its debts as they mature and/or that its liabilities exceed the value of its assets.

**"Insolvency representative"** is a person or body (including one appointed on an interim basis) authorized in insolvency proceedings to administer the reorganization or the liquidation of the insolvency estate.

**"Liquidation"** is a process of assembling and selling the assets of an insolvent debtor in order to dissolve it and distribute the proceeds to its creditors. *Liquidation* may include the piecemeal sale of the debtor's assets or the sale of all or most of the debtor's assets as a going concern. For the purpose of this study, the term *Liquidation* refers only to formal in-court proceedings and does not include voluntary winding up of a company.

**"Receivership"** is the process of appointment by a court, a contract or a government official of a receiver to take custody of the property, business, rents and profits of a debtor that has breached the terms of its borrowing from a creditor with an enterprise charge. A receiver may be authorized to continue the debtor's business before selling the business as a going concern or before selling the assets separately to satisfy the debt.

**"Reorganization"** is a process through which the financial well-being and viability of a debtor's business may be restored so that the business can continue to operate, through means that may include debt forgiveness, debt rescheduling, debt equity conversions and sale of the business (or parts of it) as a going concern. For the purpose of this study, *Reorganization* refers only to formal in-court proceedings available to all commercial debtors and does not include schemes of arrangement, out-of-court agreements with creditors or reorganization before administrative bodies.

**"Reorganization plan"** is a plan by which the financial well-being and viability of the debtor's business can be restored.



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### 2. REFORMS AND STATISTICS

2.1. Have there been any reforms in the area of corporate insolvency between June 1, 2015, and now, including any developments in the laws or practices relating to foreclosure, liquidation or reorganization? Please describe.

Response	Description
Yes	A reform was made where Brunei Darussalam has introduced a new legal framework which incorporated the winding up provisions relating to corporate insolvency under the Companies Act (Chapter 39). The Insolvency Order, 2016 is effective on the 1 <sup>st</sup> March 2016. The objective of the Order is to give emphasis on reviewing and rehabilitating companies that are facing financial difficulties.

2.2. Are any reforms in the area of corporate insolvency expected to come into effect prior to June 1, 2016, or in the longer term? Please describe.

Response	Description
-Click to Select-	

2.3. How many insolvency cases involving commercial entities did you or your firm handle in 2015? Please count all foreclosure, liquidation and reorganization proceedings completed between January 1 and December 31, 2015, or pending as of December 31, 2015.

Response	Precise number or approximate estimate
(c) 11-50	17 cases for involuntary winding up companies 10 cases for winding up petitions by the Court

2.4. How many insolvency cases against commercial entities were filed in your economy in 2015? Please provide the estimates for foreclosure, liquidation and reorganization proceedings separately. Please note that we do not consider cases that involve unincorporated sole proprietorships.

Response	Precise number or approximate estimate
(c) 11-50	17 cases for involuntary winding up 2 cases for winding up petitions by the Court No cases were filed for voluntary winding up

2.5. In your opinion, what proportion of distressed businesses filing for insolvency continued to operate as a going concern upon completion of insolvency proceedings in 2015, including sale as a going concern through liquidation as well as through reorganization? Please provide details in the comments section, if any, or reference to available statistics.

Response	Comment
0	



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### 3. CASE STUDY ASSUMPTIONS

Please answer the questions in section 4 of this questionnaire on the basis of the case study assumptions below.

(a) Mirage is a local limited liability company that runs a hotel in Bandar Seri Begawan; its only asset and source of income is the hotel property. The value of the hotel is BND 4,627,795. On January 1, 2010, Mirage signed a 10-year loan agreement with BizBank, a local bank. The loan was secured by the hotel property and/or by a universal business charge (an enterprise charge) in those economies where this type of collateral is allowed. BizBank's outstanding credit is BND 4,627,795, which represents 74% of Mirage's total outstanding debt. The outstanding amount owed to BizBank is exactly equal to the market value of the hotel business.

(b) Unsecured creditors (e.g. suppliers, tax authorities and employees) hold the remaining 26% of Mirage's debt, which is equivalent to BND 1,625,979. Among unsecured creditors, the largest group is Mirage's suppliers (50 in total), all of which are owed payment for their last deliveries.

(c) Mirage's founder owns 51% of the company and is the chairman of its board of directors (or equivalent supervisory body). No other shareholder holds more than 5% of the voting power. The company has a professional general manager and 201 employees. All parties in this scenario are local entities or citizens. The founder and Mirage's management both want to keep the firm operating.

(d) Today is January 1, 2016. Since the execution of the loan agreement with BizBank, Mirage has met all conditions of its loan and made all payments on time. However, at the end of 2015, Mirage experienced an unexpected operating loss due to worsened market conditions. As a result, Mirage will default on its next loan payment to BizBank, which is due tomorrow, January 2, 2016. Mirage can neither obtain a new loan from another financial institution nor renegotiate its current loan with BizBank.

(e) The company expects to have negative net worth and operating losses in both 2016 and 2017. The company's expected 2016 cash flow will cover all operating expenses, including supplier payments, salaries, maintenance costs and taxes. It will not cover principal or interest payments to BizBank.

(f) If Mirage is sold as a going concern (i.e. as a business that has the resources needed in order to continue to operate in the foreseeable future), it would fetch 100% of its current market value. But if Mirage's assets are sold piecemeal, they would fetch only 70% of Mirage's current market value.



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4. CHOICE OF PROCEDURE, APPLICABLE LAWS AND GENERAL ESTIMATES

Please update the data in this section on the basis of the case study assumptions in section 3. For your convenience, we have included, where available, a summary of the responses provided by our contributors last year to the same questions. Because they represent the responses from all Doing Business contributors in your economy, they may not match the specific answers that you or colleagues in your firm provided last year.

4.1. Which in-court procedure is most likely to apply in Mirage's case? Please explain why, in your opinion, this would be the most likely procedure. Please refer to definitions of possible procedures in section 1.

Last year		This year	
Procedure	Comment	Procedure	Comment
Foreclosure	After Mirage's default, BizBank would enforce its security interest over Mirage's assets as the debenture holder and initiate foreclosure proceeding in the High Court	Reorganization	Mirage would have the option of a company voluntary arrangement (CVA) under the Insolvency Order, 2016. Mirage would then consider terminating any other contracts that could burden the company and re-arrange the company assets and debts.

4.2. Which court will be involved in Mirage's case? For example, Mirage's management applies to a city court for reorganization or BizBank commences judicial foreclosure proceedings in a commercial court.

Last Year	This Year
High Court	Brunei High Court

4.3. Will the hotel be able to continue operating upon completion of the entire insolvency process? Please explain why, in your opinion, this would be the most likely outcome. Please note that the hotel may survive as a going concern either through continuation of its operations or through a sale as an operating whole. Going concern means that a business has the resources needed in order to continue to operate in the foreseeable future.

Last Year		This Year	
Response	Comment	Response	Comment
No, the hotel will stop operating and assets of Mirage will be sold piecemeal	The hotel will stop operating and Mirage's assets will be sold piecemeal upon the completion of insolvency proceeding. Usually the assets will be sold through tender sale.	Yes, the hotel will continue operating	The hotel will continue operating as a going concern after the reorganization procedure. Since the sole income of the company is from hotel property, Mirage would be advised to operate as usual (maximizing the return of the company) while restructuring the assets and liabilities of the company.

4.4. How long will the entire insolvency process for Mirage take? Please provide the most likely estimate based on your experience. Please, indicate the main procedural steps required to complete the entire process and how much time each procedural step will take in practice. The time begins at the moment of Mirage's default and ends when BizBank is repaid all or some of the money owed to it. If the procedure is reorganization, the timeframe ends when the reorganization plan is approved. If the initial procedure is converted from one to another, please take into account the time of the second procedure as well.

Last Year		This Year	
Response	Comment	Response	Comment
30 months	The foreclosure procedure takes approximate 2.5 years until BizBank is repaid some or all of the money owed to it. The delay is largely due to the	months	



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	possible delaying tactics adopted by Mirage. When the BizBank tries to foreclose the assets, it is likely that Mirage would file for an injunction at the Court. It takes at least 1 year for the Court to hold several hearings until the execution order is granted to BizBank. Then the preparation and execution of the assets sale would take at least an additional 1 year until BizBank receives the sales proceeds.		
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4.5. How much will the entire insolvency process cost? Please provide the most likely estimate based on your experience. The estimate below should be expressed as percentage of the value of Mirage's estate, which is BND 4,627,785. Please indicate the applicability of and the estimates for the following cost components: court fees, fees of lawyers, insolvency representatives, auctioneers and other professionals involved in the proceedings, and all other applicable fees and costs. If the initial procedure is converted from one to another, please take into account the cost of the second procedure as well.

	Last Year		This Year	
	Response	Comment	Response	Comment
Total Cost	3.5%	The costs associated with the case would amount to approximately 4% of the value of the debtor's estate. Main components of the costs incurred during the insolvency process include attorney fees (2%), insolvency representative fees (1%), fees of accountants, assessors, inspectors and other professionals (1%).	%	Filing of Petition \$160 Filing of Affidavit in Support of petition \$16 Filing of Affidavit verifying petition \$8 Filing of Affidavit of service \$8 Filing of winding up order \$25 Filing of each proof of debt \$10
Court fees			%	
Attorney's fees			%	
Fees of insolvency representative or receiver			%	
Auctioneer's fees			%	
Fees of accountants and other professionals			%	
Other (please specify)			%	

4.6. What laws and supporting regulations/rules will apply in Mirage's case?

Last Year	This Year
Companies Act, Bankruptcy Act	Insolvency Order, 2016, Companies Act, Bankruptcy Act



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5. LEGAL FRAMEWORK

This section focuses on the legal framework applicable to judicial REORGANIZATION and LIQUIDATION of commercial entities (personal insolvency excluded) in your economy. When answering the questions in this section, please keep in mind the applicable legal framework and specify the relevant article of the law for each answer. If the legal framework has no provisions explicitly addressing the questions below, please indicate so in your answers. For your convenience, we have included a summary of the responses provided by our contributors last year to the same questions. Because they represent the responses from all Doing Business contributors in your economy, they may not match the specific answers that you or colleagues in your firm provided last year. Please refer to section 1 for definitions of legal terms used below.

5.1. COMMENCEMENT OF PROCEEDINGS

5.1.1. What procedures are available to a DEBTOR when commencing insolvency proceedings?

Last Year		This year	
Response	Comment/Legal Basis	Response	Comment/Legal Basis
(b) Debtor may file for liquidation only	Section 164 of the Companies Act: An application to the court for the winding-up of a company shall be by petition presented by the company.	(a) Debtor may file for	Section 8 of the Insolvency Order, 2016 [proposal for voluntary arrangement] provides for a proposal for voluntary arrangement, whereby proposal to the company and to its creditors may be made, for a voluntary arrangement. Section 32 of the Insolvency Order, 2016 [Application to court for company to be placed under judicial management and for appointment of judicial manager] establishes that where a company or its directors (pursuant to a resolution of its members or the board of directors) makes an application for a judicial management order, the court may make a judicial management order in relation to the company Section 101 [Application of winding up] establishes that a company may be wound up under an order of the Court on the petition presented by the company

5.1.2. Does the insolvency framework allow a CREDITOR to file for insolvency of the debtor?

Last Year		This year	
Response	Comment/Legal Basis	Response	Comment/Legal Basis
(b) Yes, but a creditor may file for liquidation only	Section 164 of the Companies Act: An application to the court for the winding-up of a company shall be by petition presented by any creditor or creditors (including any contingent or prospective creditor or creditors).	(a) Yes, a creditor may	Section 8 of the Insolvency Order, 2016 [proposal for voluntary arrangement] provides for a proposal to the company and to its creditors may be made for a voluntary arrangement. Section 32 of the Insolvency Order, 2016 [Application to court for company to be placed under judicial management and for appointment of judicial manager] establishes that where a creditor or creditors (including



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			any contingent or prospective creditor or creditors or all of those parties, together or separately) makes an application for a judicial management order, the court may make a judicial management order in relation to the company Section 101 [Application for winding up] establishes that a company may be wound up under an order of the Court on the petition presented by any creditor or creditors (including any contingent or prospective creditor or creditors)
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5.1.3. What basis for commencement of insolvency proceedings is allowed under the insolvency framework? If different tests are available in your economy for different proceedings, please explain the distinctions in the comment section.

Last Year		This year	
Response	Comment/Legal Basis	Response	Comment/Legal Basis
(a) Debtor is generally unable to pay its debts as they mature	Section 162 of the Companies Act establishes that a company may be wound up by the Court if it is unable to pay its debts. Section 163 of the Companies Act establishes when a company shall be deemed to be unable to pay its debts.	(c) Both (a) and (b)	Section 100 of the Insolvency Order, 2016 [Meaning of "inability to pay debts"] provides that a company is deemed unable to pay its debts if (a) if a creditor (by assignment or otherwise) whom the company indebted a sum exceeding such sum amount and the company is due to pay the sum to secure or compound for it to the reasonable satisfaction of the creditor; (b) execution or other process issued on a judgement, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; (c) Proves to the satisfaction of the court, the company is unable to pay its debts, the Court shall take into account its contingent and prospective liabilities.

5.2. MANAGEMENT OF DEBTOR'S ASSETS

5.2.1. Does the insolvency framework provide for the continuation of contracts supplying essential goods and services to the debtor (goods and services necessary for the survival of the business)?

Last Year		This year	
Response	Comment/Legal Basis	Response	Comment/Legal Basis
No	Section 164 of the Companies Act establishes that the liquidator in a winding-up by the court shall have power, with the sanction either of the court or of the committee of inspection to carry on the business of the company, so far as may be necessary for the beneficial winding-up thereof. However, there are no explicit provisions on continuation of contracts.	Yes	Section 8 of the Insolvency Order, 2016 [Proposal for voluntary arrangement] establishes on a proposal for voluntary arrangement where the company or its creditors may propose to restructuring of debts through restatements of assets and liabilities and agreement. Section 40 of Insolvency Order, 2016 [Agency and liability for contracts]

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		establishes judicial manager of the company shall be personally liable on any contract, entered into or adopted by the judicial manager in the carrying out of his functions.
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5.2.2. Does the insolvency framework provide for the rejection by the debtor (or by insolvency representative or by court on debtor's behalf) of overly burdensome contracts (the cost of performance is greater than the benefit to be received), where both parties have not fully performed their obligations?

Last Year		This year	
Response	Comment/Legal Basis	Response	Comment/Legal Basis
Yes	Section 253 of the Companies Act allows the liquidator to disclaim unprofitable contracts (onerous property).	Yes	Section 212 of the Insolvency Order, 2016 [Extortionate credit transactions] establishes that the court may make an order with respect to the provision of credit to the company make an order with respect to the transactions if the transaction is or was extortionate and was entered to a judicial management or went into liquidation.

5.2.3. Does the insolvency framework provide for avoidance (invalidation) of the following transactions concluded before the filing for insolvency?

	Last Year		This year	
	Response	Comment/Legal Basis	Response	Comment/Legal Basis
(a) Preferential transactions, which resulted in a creditor obtaining more than its pro rata share of the debtor's assets and which occurred when the debtor was insolvent	Yes	Section 251 of the Companies Act establishes that any conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property which would, if made or done by or against an individual, be deemed in his bankruptcy a fraudulent preference, shall, if made or done by or against a company, be deemed, in the event of its being wound up, a fraudulent preference of its creditors, and be invalid accordingly. Section 49 of the Bankruptcy Act regulates fraudulent transactions which are considered any acts that give preference to one or some of the creditors made within 3 months of bankruptcy commencement.	Yes	For liquidation, Section 51 of the Insolvency Order, 2016 [Undue preference in case of judicial management] establishes that a settlement, a conveyance or transfer of property, charge of property, a payment made or an obligation incurred by a company which if it had been made or incurred by an individual would in the event of his becoming a bankrupt be void as against the Official Receiver under the Bankruptcy Act shall in the event of the company being placed under judicial management, be void as against the judicial manager. For reorganisation, Section 209 of the Insolvency Order, 2016 [Preferences] establishes that a company gives a preference to a person if (a) that person is one of the company's creditors or a surety or guarantor for any of the company's debts or other liabilities; and (b) the company does anything or suffers

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				anything to be done which has the effect of putting the person into a position which, in the event of the company going into insolvent liquidation, will be better than the position he would have been in if that thing has not been done.
(b) Undervalued transactions, which were made as a gift or in exchange for less than equivalent value and which occurred when the debtor was insolvent or resulted in the debtor becoming insolvent.	No	No specific provisions on undervalued transactions.	Yes	For judicial management and liquidation, section 208 of the Insolvency Order, 2016 [Transactions at undervalue] establishes for a company enters into a transaction with a person at an undervalue if (a) the company makes a gift to the person or otherwise enters into a transaction with that person on terms that provide for the company to receive no consideration, or (b) the company enters into a transaction with that person for consideration the value which is significantly less than the value of the consideration provided by the company.

5.2.4. Does the insolvency framework provide for the possibility of the debtor obtaining credit after commencement of insolvency proceedings (post-commencement credit) to finance its on-going needs during the proceedings?

	Last Year		This year	
	Response	Comment/Legal Basis	Response	Comment/Legal Basis
	No	The only relevant provision is Section 184 of the Companies Act, which establishes that the liquidator in a winding-up by the court may raise on the security of the assets of the company any money requisite.	Yes	Section 8 of the Insolvency Order, 2016 [proposal for voluntary arrangement] establishes on a proposal for voluntary arrangement, whereby a proposal to the company and to its creditors may be made for a voluntary arrangement. A voluntary Arrangement may include restructuring of debts through restatements of assets and liabilities and agreement with creditors on maintaining payments.

5.2.5. Does the insolvency framework assign priority to post-commencement credit?

	Last Year		This year	
	Response	Comment/Legal Basis	Response	Comment/Legal Basis
(c) No priority is assigned to post-commencement creditors		There is no specific provision in this regard.	(a) Yes, over all pre-	Section 147 of the Insolvency Order, 2016 [Preference payments] establishes that in a winding up there shall be paid in priority to all other unsecured debts - (a) First, the amount payable to any creditor for any unsecured credit granted by the



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			creditor after the commencement of any insolvency proceedings; (b) Second, the cost and expenses of the winding up; (c) Third, all wages or salary; (d) Fourth, the amount due to employee as a retrenchment benefit or ex gratia payment; (e) Fifth, All amount due in respect of contributors; (e) Sixth, all remuneration payable to any employee; (f) seventh, the amount of all tax or rates assessed and due.
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5.3. REORGANIZATION PROCEEDINGS

5.3.1. Which creditors vote on the proposed reorganization plan?

Last Year		This year	
Response	Comment/Legal Basis	Response	Comment/Legal Basis
N/A	There is no regulation on reorganization in Brunei.	(a) All creditors	Section 8 of the Insolvency Order, 2016 [proposal for voluntary arrangement] establishes that under the proposal to the company and to its creditors may be made for a voluntary arrangement. Creditors who are entitled to vote on the proposal are those whose rights are affected or modified by the proposal. Section 12 of the Insolvency Order, 2016 [Decision of meetings] establishes a meeting summoned which affects the rights of a secured creditor of the company to enforce his security.

5.3.2. Does the insolvency framework require that the following provisions must be followed in order for the reorganization plan to be approved?

	Last Year		This year	
	Response	Comment/Legal Basis	Response	Comment/Legal Basis
(a) Creditors entitled to vote on the reorganization plan are divided into classes according to their respective rights	N/A	There is no regulation on reorganization in Brunei.	Yes	Section 8 of the Insolvency Order, 2016 [Proposal for voluntary arrangement] establishes that Creditors who are entitled to vote on the proposal are those whose rights are affected or modified by the proposal shall - (a) designate classes of claims or interests; (b) specify any class of claims or interests that is not impaired under the proposal or the order; (c) specify the treatment of any class of claims or interests that is impaired under the proposal or the order; (d) provide the same treatment for each claims or



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				Interest of a particular class.
(b) Each class of creditors votes separately	N/A	There is no regulation on reorganization in Brunei.	Yes	There is no specific regulation in this regard. Section 8 of the Insolvency Order, 2016 [Proposal for voluntary arrangement] establishes that Creditors who are entitled to vote on the proposal are those whose rights are affected or modified by the proposal shall - (a) designate classes of claims or interests; (b) specify any class of claims or interests that is not impaired under the proposal or the order; (c) specify the treatment of any class of claims or interests that is impaired under the proposal or the order; (d) provide the same treatment for each claims or interest of a particular class.
(c) Creditors of the same class receive the same treatment under the reorganization plan	N/A	There is no regulation on reorganization in Brunei.	Yes	Section 8 of the Insolvency Order, 2016 [Proposal for voluntary arrangement] establishes that Creditors who are entitled to vote on the proposal are those whose rights are affected or modified by the proposal shall - (a) designate classes of claims or interests; (b) specify any class of claims or interests that is not impaired under the proposal or the order; (c) specify the treatment of any class of claims or interests that is impaired under the proposal or the order; (d) provide the same treatment for each claims or interest of a particular class.

5.3.3. Does the insolvency framework require that a reorganization plan must specify that the anticipated return to dissenting creditors will be at least equal to the return that they would obtain in a liquidation?

	Last Year		This year	
	Response	Comment/Legal Basis	Response	Comment/Legal Basis
	N/A	There is no regulation on reorganization in Brunei.	Yes	Section 17 of the Insolvency Order, 2016 [Implementation of proposal] establishes that if any of the company's creditors or any other person is dissatisfied by any act, omission or decision of the supervisor, he may apply to court and on the application, the court may (a) confirm, reverse or modify any act or decision of the supervisor; (b) give him directions; (c) require a dissenting creditor to receive as much under the voluntary arrangement as



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		he would receive on a winding up; or (d) make such other order as it thinks fit. Section 49 of the Insolvency Order, 2016 [Protection of interests of creditors and members] establishes that at any time when a judicial management order is in force, a creditor or member of the company may apply to court for an order. A dissenting creditor shall receive as much under the judicial management as he would receive on a winding up.
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5.4. CREDITOR PARTICIPATION

5.4.1. Does the insolvency framework require that creditors (through either a decision of the creditors' meeting or a decision of the creditors' committee) appoint the insolvency representative or approve/reject the appointment of the insolvency representative?

Last Year		This year	
Response	Comment/Legal Basis	Response	Comment/Legal Basis
Yes	The liquidator is court appointed. Section 177 of the Companies Act establishes that for the purpose of conducting the proceedings in winding-up a company and performing such duties in reference thereto as the court may impose, the court may appoint a liquidator or liquidators. Under Section 175, at the first meeting of the creditors, the creditors can decide to replace the liquidator appointed by the court.	Yes	Section 73 of the Insolvency Order, 2016 [Appointment of liquidator] establishes that in the member's voluntary winding up, the company shall appoint one or more liquidators for the purpose of winding up the company's affairs and distributing its assets. Section 116 of the Insolvency Order, 2016 [Choice of liquidator at meetings of company's creditors and contributories] establishes where the company is being wound up by the Court, company's creditor and contributories are summoned for the purpose of choosing a person to be liquidator of the company and may nominate a person to be liquidator.

5.4.2. Does the insolvency framework require that creditors (through either a decision of the creditors' meeting or a decision of the creditors' committee) approve the sale of substantial assets of the debtor, if such sale is made in the course of the insolvency proceedings?

Last Year		This year	
Response	Comment/Legal Basis	Response	Comment/Legal Basis
No	Section 184 of the Companies Act establishes that the liquidator has the power to sell the property of the company, by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels. No approval from the creditors is required.	Yes	Section 138 of the Insolvency Order, 2016 [Creditors' voluntary winding up] establishes that in the case of a creditor's winding up, a liquidator has been nominated by the company. The exercise by the liquidator of the power to sell any of the company's property shall not be challenged on the grounds of any prior inhibition.

5.4.3. Does the insolvency framework provide that an individual creditor has the right to request at any time information from the insolvency representative on the debtor's business and financial affairs?

Last Year	This year
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Response	Comment/Legal Basis	Response	Comment/Legal Basis
No	There is no specific provision allowing an individual creditors the right to request from the insolvency representative information. However, Section 186 of the Companies Act establishes that every liquidator of a company which is being wound-up by the court shall keep, in manner prescribed, proper books in which he shall cause to be made entries or minutes of proceedings at meetings and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the court, personally or by his agent inspect any such books. Section 204 of the Companies Act establishes that after an order for a winding-up by the court, the court may make such order for inspection by creditors of the company of its books and papers as the court thinks just, and any books and papers in the possession of the company may be inspected by creditors.	Yes	Section 241 of the Insolvency Order, 2016 [Right of creditor to access information] establishes that a creditor of a company shall have the right to access information about insolvency proceedings relating to the company, either by requesting it from an insolvency practitioner or by reviewing the official records of the company.

5.4.4. Does the insolvency framework provide that an individual creditor has the right to object to the decision accepting or rejecting its own claims AND claims of other creditors?

Last Year		This year	
Response	Comment/Legal Basis	Response	Comment/Legal Basis
No	Provisions of the Bankruptcy Act apply under Section 249 of the Companies Act to winding up of insolvent companies with regard to the respective rights of secured and unsecured creditors and to. Under the Bankruptcy Act, there are no specific provisions that allow creditors to challenge each other's proof of debts.	Yes	Section 17 of the Insolvency order, 2016 [Implementation of proposal] establishes that if any of the company's creditors or any other person is dissatisfied by any act, omission or decision of the supervisor, he may apply to the Court and on the application. Section 49 of the Insolvency Order, 2016 [Protection of interest of creditors and members] establishes at any time when a judicial management order is in force, a creditor or member of the company may apply to the court for the affairs, business and property are being or have been managed by the judicial manager in a manner which is or was unfairly prejudicial to the interests of its creditors or members generally or of some part of its creditors or members or of a single creditor that represents one-quarter in value of the claims against the company.

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