

# SSM ENHANCES LEGAL FRAMEWORK RELATED TO CORPORATE REHABILITATION AND BENEFICIAL OWNERSHIP REPORTING THROUGH COMPANIES (AMENDMENT) ACT 2024



**SURUHANJAYA SYARIKAT MALAYSIA**  
COMPANIES COMMISSION OF MALAYSIA

A robust corporate rehabilitation legislation, aligned with global legal advancements, is imperative for upholding the stability of the nation's business ecosystem while embracing international best practices.

In an effort to strengthen the legal framework related to corporate rehabilitation during the recovery phase post Covid-19 pandemic, the Ministry of Domestic Trade and Cost of Living (KPDN) through the Companies Commission of Malaysia (SSM), has embarked on significant amendments to the provisions under the Companies Act 2016.

The amendments are geared towards bolstering the legal framework for corporate rehabilitation, aiming to provide support to companies navigating financial challenges and contributing to economic revival and competitiveness. Furthermore, the amendments seek to augment corporate transparency regarding beneficial ownership reporting, enabling more robust enforcement against financial crimes such as money laundering, terrorist financing, corruption, and other serious offences.

These efforts also align with the upcoming evaluations of Malaysia by the Financial Action Task Force (FATF) and the Organisation for Economic Co-operation and Development (OECD) scheduled in 2024/2025.

While the FATF focuses on developing global standards to combat money laundering and terrorist financing as well as safeguarding the integrity of the global financial system, OECD assesses transparency issues for tax purposes on countries like Malaysia, which engage in trade with OECD nations.

Towards realising a stronger legal framework for the corporate sector, SSM embarked on the journey of amending the Companies Act 2016 in 2020. The initial stage involved a consultation process from June to July 2020, during which the draft Bill was circulated to regulatory and

professional bodies. Subsequently, a public consultation ensued, spanning from July to August 2020, featuring the issuance of consultative documents to the public and collaborative discussions with stakeholders.



Following that, from September 2020 to August 2023, the necessary policy approval was obtained and the drafting process was carried out.

The Companies (Amendment) Bill 2023 was passed in Dewan Rakyat on 28 November 2023 and was subsequently passed in Dewan Negara on 13 December 2023. The Bill received Royal Assent on 24 January 2024 and was officially gazetted as the Companies (Amendment) Act 2024 on 2 February 2024. The Companies (Amendment) Act 2024 came into force on 1 April 2024 except Sections 4,14,26 and 28 as announced by the Domestic Trade and Cost of Living (KPDN) Minister Datuk Armizan Mohd Ali during his official visit to SSM on 27 March 2024.

The Companies (Amendment) Act 2024 encompasses 31 clauses relating to four policy clusters.

**Cluster Policy 1** focuses on expanding the application of corporate rescue mechanisms, such as Corporate Voluntary Arrangements (CVA) and Judicial Management (JM). CVA empowers companies facing financial difficulties to negotiate with creditors without court intervention.

Previously limited to private companies without charges on assets, CVA's scope now extends to all company types, regardless of whether the company has security interests over its assets (charge).

Additionally, JM's usage is broadened to encompass all public companies, including those listed on Bursa Malaysia. JM allows companies, creditors, or resolution holders to appoint a judicial manager to implement a rehabilitation plan. This plan, agreed upon by the company and its creditors and approved by the court, grants a moratorium period shielding the company from legal actions, including winding-up orders.

Previously, JM was applicable to all companies except those regulated under the Capital Markets and Services Act 2007 [Act 671] or laws governed by Bank Negara Malaysia. With the amendment, all companies facing financial challenges, including public listed ones, could utilise JM for business rehabilitation.

Meanwhile, **Cluster Policy 2** focuses on strengthening the corporate rehabilitation framework through enhancements to provisions related to schemes of arrangement or compromise (SOAC) and improvements to provisions regarding CVA/JM.

The application of SOAC for the corporate rehabilitation process is expected to be the primary choice for companies grappling with financial challenges, given that it allows the company to remain under the management's supervision throughout the corporate rehabilitation process.

Consequently, the legislative framework governing SOAC has been strengthened to provide incentives for company managements to propose viable rehabilitation plans, to ensure seamless business operations and mitigating the risk of winding-up actions.

Enhancements to the legislative framework within the context of SOAC are vital for supporting company managements in maintaining business operations, thereby ensuring the success of the proposed rehabilitation plan.

These enhancements include clarifications regarding existing procedures for restraining order applications, allowing companies to secure a restraining order for up to three months, with the possibility of extension to nine months upon meeting specific criteria.

Furthermore, amendments across the SOAC framework clarify provisions related to moratorium, the role of insolvency practitioners, rescue financing and the implementation of cramdown mechanisms.

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Cramdown provisions empower courts to compel dissenting creditors to adhere to proposed arrangement schemes, aiming to facilitate successful schemes with minimal interference while protecting the interests of dissenting creditors.

Moreover, the amendments also enable the extension of JM orders for six months or longer, ensuring that approved JM orders remain effective for over 12 months, providing ample time for comprehensive business rehabilitation.

**Cluster Policy 3** aims to reinforce the beneficial ownership reporting framework to bridge existing legislative gaps, aligning them

maintaining a register of beneficial owners, as well as new obligations imposed on beneficial owners.

Meanwhile, **Cluster Policy 4** focuses on enhancing corporate governance and practices.

As part of ongoing efforts to uphold a high standard of corporate governance across companies, amendments to the Companies Act 2016 have been implemented to foster compliance and facilitate ease of doing business.

Continuously evolving policies are introduced to meet the evolving needs of the corporate community, promoting greater efficiency and improved governance.

the amendments to the Companies Act 2016 through the Companies (Amendment) Act 2024, SSM Chief Executive Officer Datuk Nor Azimah Abdul Aziz highlighted SSM's commitment to streamline processes for companies grappling with financial challenges.

This amendment is in line with the commitment of SSM to drive strategies and approaches that support the reform agenda in strengthening the framework of governance as a whole.

The amendment is crucial in enhancing provisions related to corporate rescue and

## QUICK FACTS

### CORPORATE RESCUE MECHANISM

The Companies Act 2016 introduces a robust corporate rescue mechanism framework, consisting of the Corporate Voluntary Arrangement (CVA) and Judicial Management (JM). This corporate rescue mechanism framework is designed to safeguard the interests of various stakeholders, including the company itself, creditors, and shareholders, amidst financial distress. By offering a structured and transparent process, the framework facilitates financially troubled companies in navigating through challenging times. Together, these mechanisms provide a lifeline for struggling companies, promoting stability and recovery within the business landscape.



### CORPORATE VOLUNTARY ARRANGEMENT (CVA)

The CVA process enables company experiencing financial difficulties to enter into a plan or an arrangement with the creditors without the need to have the plan or arrangement being approved by Court. Upon filing of CVA to the Court, a moratorium of 28 days automatically comes into effect which protects the company from any legal proceedings including the petition to wind up the company. Furthermore, this moratorium duration is extendable up to a maximum of 60 days, providing the company with a crucial window to stabilise its financial position and execute the restructuring plan effectively.



### JUDICIAL MANAGEMENT (JM)

The JM allows for the appointment by the Malaysian High Court a judicial manager to oversee an insolvent corporate debtor under specific conditions. These conditions include demonstrating a reasonable prospect of, inter alia, preserving the company, in whole or in part, as a viable entity as it is a going concern and where the creditors' interests would be more effectively served through judicial management compared to winding up proceedings. This mechanism aims to facilitate the rehabilitation of financially distressed companies while safeguarding the rights and interests of creditors and stakeholders.



### SCHEME OF ARRANGEMENT OR COMPROMISE (SOAC)

A scheme of arrangement or compromise is a process commonly used by financially distressed companies for purposes of restructuring their debts, while receiving the benefit of Court-supervised restraining orders that restrict the commencement of any legal proceedings including any petition to wind up the company. A scheme of arrangement or compromise allows for the court-approved scheme to be imposed on all creditors and members, provided the statutory voting majorities have been obtained. SOAC is not exclusively intended for financially distressed companies and is also widely utilised by solvent entities.



### BENEFICIAL OWNERSHIP REPORTING FRAMEWORK

The Beneficial Ownership Reporting Framework is a regulatory structure that mandates companies to obtain, verify and maintain records of their beneficial ownership information. Companies are obligated to ensure the accuracy of beneficial ownership information, which must be regularly updated and submitted to the Registrar as stipulated. Presently, these reporting requirements are governed by sections 51 and 56 of the Companies Act 2016. Compliance with these provisions is essential for enhancing transparency and combating financial crimes such as money laundering and tax evasion.



with international best practices and standards advocated by organisations like FATF and OECD. Beneficial owners, individuals ultimately owning or controlling a company, are at the forefront of these efforts.

These amendments will enhance the transparency of beneficial ownership information lodged with SSM, aiding enforcement agencies and regulators such as the Royal Malaysia Police, Bank Negara Malaysia, and the Malaysian Anti-Corruption Commission in facilitating their investigations and efforts to combat crimes like money laundering, terrorism financing, corruption as well as tax evasion.

The amendments include introducing a new definition of beneficial owner, empowering the registrar to issue guidelines for identifying beneficial owners, requirements for keeping and

The amendments under cluster policy 4 empowers the Registrar to issue guidelines to ensure that the principle of auditors' independence is maintained in relation to the appointment of auditors who have spouses working in the company or group of companies to be audited by the auditor's firm.

Moreover, the amendments entail the utilisation of SSM's official website for the publication of information and gazettes, replacing the legislative requirement for addressing practical issues in light of the reduced circulation of physical newspapers throughout Malaysia. This move not only streamlines processes but also potentially reduces high advertising costs.

In articulating SSM's aspirations for corporate practitioners poised to benefit from

rehabilitation mechanisms, particularly for companies grappling with financial constraints, while concurrently elevating standards of transparency," she said.

She added that this initiative aligns with SSM's broader goal of bolstering the national economic recovery and ensuring competitiveness, especially in the wake of the post COVID-19 pandemic landscape.

Corporate practitioners seeking further understanding of the revisions in the Companies (Amendment) Act 2024 are encouraged to view the guidelines, Practice Directive, FAQs and educational series on the amendments as well as participate in courses offered by SSM's Training and Knowledge Management Academy (COMTRAC) by visiting SSM's official portal at [www.ssm.com.my](http://www.ssm.com.my).