

## SESSION 7

# IMPLEMENTATION OF CORPORATE RESCUE MECHANISM IN MALAYSIA

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## CORPORATE RESCUE MECHANISM DIVISION 8, PART III, COMPANIES ACT 2016



§ Modernization of the insolvency framework through the introduction of the Corporate Rescue Mechanism provisions under Division 8, Part III of the Companies Act 2016 together with the Companies (Corporate Rescue Mechanism) Rules 2018 - which came into force on 1<sup>st</sup> March 2018.

§ 2 types of corporate rescue mechanism:

- ∅ Corporate Voluntary Arrangement [CVA] [Section 394-402 of the CA 2016]; and
- ∅ Judicial Management [JM] (Section 395-430 of the CA 2016).

Objectives :

- ∫ To assist company in financial difficulties to be rehabilitated and to improve the company's profit performance.
- § To enable company to prepare and implement the rehabilitation plan without interference from the creditors.
- ∫ The mechanisms provide process and procedure for rehabilitation rather than taking the last resort to wind-up the company.



## CORPORATE VOLUNTARY ARRANGEMENT (CVA)

- § CVA is not applicable to :
  - ∅ public companies;
  - ∅ companies licensed or regulated under the law enforced by the Central Bank Act;
  - ∅ companies subjected to the Capital Market Services Act 2007;
  - ∅ companies that have charge over its property (S395).
- § The moratorium period of 28 days commences automatically from the filing of relevant documents in Court. (S398).
- § The effect of moratorium (Para 17, 8<sup>th</sup> Schedule):
  - ∅ No petition or resolution for the winding-up of a company is allowed.
  - ∅ An application for Judicial Management Order is not allowed.
  - ∅ No creation of Charge over company's property except with leave of Court.
  - ∅ No transfer of share/alter status member of the company except with leave of Court.



## JUDICIAL MANAGEMENT [JM]

- i JM is not applicable to :
    - ∅ companies licensed or regulated under the law enforced by the Central Bank Act;
    - ∅ companies subjected to the Capital Market Services Act 2007;
  - i JM is a Court supervised rescue plan.
  - i A moratorium period of 6 months will be granted by Court on making of the order. This period may be extended up to a further period of 6 months.
- § The effect of moratorium [S410, S411(4)] –
    - ∅ No resolution/order shall be made for the winding-up of the company.
    - ∅ No action can be taken to enforce the charge or security against the company's property or security except with leave of the Court.
    - ∅ No transfer of share/alter status member of the company except with leave of the Court.