



SURUHANJAYA SYARIKAT MALAYSIA

ANNUAL DIALOGUE 2022

**COMPANIES (AMENDMENT) BILL 2022
LIMITED LIABILITY PARTNERSHIPS (AMENDMENT) BILL 2022**

YAP WENG SEONG
6 October 2022

PROPOSED AMENDMENT I



The proposed amendments to the Companies Act 2016 relate to Corporate Rescue Mechanism (CRM) and Scheme of Compromise or Arrangement.

- ✓ The company can obtain new sources of financing (rescue financing) to sustain the company's operations.
- ✓ The Court can approve the scheme of arrangement and at the same time protecting the rights of existing creditors.
- ✓ Access to the Corporate Rescue Mechanism is widened to all categories of companies including public listed companies.

PROPOSED AMENDMENT 2



Introducing provisions relating to Corporate Rescue Mechanisms (CRM) under the Limited Liability Partnerships Act 2012.

- ✓ The existing legal framework related to corporate rehabilitation for Limited Liability Partnerships (LLP) is enhanced.
- ✓ The application of CRM to assist financially troubled LLPs to apply for the corporate rehabilitation process to continue its operations (stay afloat) is enhanced.
- ✓ To assist financially troubled limited liability partnerships, especially those who are affected from the COVID-19 pandemic, to stay afloat and continue to operate and generate income for the nation.
- ✓ New provisions on strengthening the policy pertaining to a comprehensive beneficial ownership reporting framework.



- ✓ **SCHEME OF ARRANGEMENT**
- ✓ **CORPORATE RESCUE MECHANISM**

CRM – APPLICATIONS RECEIVED



Categories		2018	2019	2020	2021	2022	Total
1.	Application for Judicial Management Order in Court	14	12	35	27	21	109
2.	Application for Corporate Voluntary Arrangement	3	1	1	2	0	7

**As at May 2022*



RESTRAINING ORDERS UNDER S. 368 CA 2016

2018	2019	2020	2021	2022*
32	5	14	37	33

**As at 15 Sept 2022*

PROPOSED POLICY UPDATES



Strengthening of provisions relating to scheme of compromise or arrangement (SOA)

- (a) Clarification of moratorium for SOA;
- (b) Empowering Court to order a meeting to revote on a SOA;
- (c) Requiring proof of debts for purposes of meetings on a proposed SOA;
- (d) Empowering Court to approve SOA without meeting of creditors;
- (e) Allowing creditor to apply to Court to review decision of companies post approval of SOA;
- (f) Extension of restraining order to related companies; and
- (g) Empowering creditor to restrain disposition of properties during moratorium.

Strengthening the existing CRM framework

- (a) Giving more companies to access CVA and JM;
- (b) Empowering secured creditors to recover property during moratorium of CVA/JM under certain circumstances; and
- (c) Continuation supply of essential goods and services.

POLICY PROPOSAL - SCHEME OF ARRANGEMENT



POLICY	Power of Court to order compromise or arrangement with creditors and members (s. 366)	Power of Court to appoint an approved liquidator (s. 367)
OBJECTIVE	<ul style="list-style-type: none"> • To introduce the requirement for the meeting to be chaired by an insolvency practitioner • To ensure mandatory appointment of a chairperson for meetings held by companies, members, creditors and liquidators pursuant to an order by the Court. • To ensure the meeting is conducted smoothly and achieve its objectives. 	<ul style="list-style-type: none"> • Introducing a mandatory requirement for the appointment of an insolvency practitioner to act as monitor in a scheme of arrangement or compromise as when a company makes an application under RO for related company, super priority status and cram down. • To emphasis that the role of insolvency practitioners is critical based on the documents that need to be prepared by them in ensuring the successfulness of the scheme of arrangement or compromise and at the same time protects the rights of creditors.

POLICY PROPOSAL - SCHEME OF ARRANGEMENT



POLICY	Enhancements on the Scheme of Arrangement (SOA) relating to Restraining Order (s. 368)	Empowering the Court to restrain proceedings against related company
OBJECTIVE	<ul style="list-style-type: none"> • 2 months moratorium period <i>from the date of application</i> for a restraining order (RO) of a compromise or arrangement against the applicant company. • Granting of the initial 3 months of RO will not be subjected to conditions under s. 368(2). 	<ul style="list-style-type: none"> • If a related company plays a necessary and integral part in the compromise and arrangement of the applicant company, the related company can apply for a restraining order. • Maximum period must not exceed the RO period granted to the applicant company.

POLICY PROPOSAL - SCHEME OF ARRANGEMENT



POLICY	Power of Court to order revote
OBJECTIVE	<p>Under the new provision, at the hearing of approving the scheme under section 366(4), the Court will have the power to direct a re-vote by setting the terms and conditions, amongst others, as follows:</p> <ul style="list-style-type: none">(a) The classification of creditors for the purposes of the meeting to re-vote;(b) The quantum of debts to be admitted; and(c) The weight to be attached to the vote of any creditor at the meeting to re-vote. <ul style="list-style-type: none">• The meeting will be chaired by an insolvency practitioner appointed under section 367 or a person appointed by a majority in value of the creditors or class of creditors or members or class of members.• This provision will facilitate the whole process and will assist the Court in arriving at a better and just decision.• To provide the Court with the means to arrive at a just decision.

POLICY PROPOSAL - SCHEME OF ARRANGEMENT



<p>POLICY</p>	<p>Super priority for rescue financing for a compromise or arrangement.</p>	<p>Empowering Court to approve a SOA without a meeting of creditors</p>	<p>Allowing creditors to apply to Court to review decision of companies post approval of SOA</p>
<p>OBJECTIVE</p>	<p>To assist company to get financial aid during the scheme.</p>	<ul style="list-style-type: none"> • The Court can approve a compromise or an arrangement without meeting of creditors subject to certain conditions. • To simplify the process and to reduce cost and compliance burden. 	<ul style="list-style-type: none"> • The creditors can apply to the Court to review decisions of the company once a compromise or arrangement has been approved. • To protect creditors' interest.

POLICY PROPOSAL - SCHEME OF ARRANGEMENT



POLICY	Empowering creditor to restrain disposition of properties during moratorium	Power of Court to cram down
OBJECTIVE	<ul style="list-style-type: none"> • Restrain the company from disposing its assets or transferring any shares of the company except in good faith in the course of business of the company. • To ensure creditors' rights are protected. 	<ul style="list-style-type: none"> • To enable the proposal be improved and implemented successfully even with objections from dissenting creditors. • To provide protection to creditors so that the creditors would receive at least a value equal or better to the allowed amount of their claims as compared to the value if the company is in liquidation.

CORPORATE RESCUE MECHANISM



Strengthening the existing CRM framework

- (a) Giving more companies to access CVA and JM;
- (b) Empowering secured creditors to recover property during moratorium of CVA/JM under certain circumstances; and
- (c) Continuation supply of essential goods and services.
 - provision allowing continuation of essential supplies (relief to companies) during a moratorium in a SOA, voluntary arrangement or judicial management process.

POLICY PROPOSAL - CORPORATE RESCUE MECHANISM



POLICY	Widening access to corporate voluntary arrangement to more companies.	Widening access to judicial management to more companies.
OBJECTIVE	<p>(a) A company which is a licenced institution or an operator of a designated payment system regulated by BNM;</p> <p>(b) A company which is approved or registered under Part II, licensed or registered under Part III, approved under Part IIIA or recognised under Part VIII of the CMSA 2007; and</p> <p>(c) A company which is approved under Part II the SICDA 1991.</p>	<p>(a) A company which is a licenced institution or an operator of a designated payment system regulated by BNM;</p> <p>(b) A company which is approved or registered under Part II, licensed or registered under Part III, approved under Part IIIA or recognised under Part VIII of the CMSA 2007; and</p> <p>(c) A company which is approved under Part II¹⁴ the SICDA 1991.</p>

POLICY PROPOSAL - GENERAL



POLICY	Protection for Essential Goods and Services
OBJECTIVE	<ul style="list-style-type: none">✓ companies can carry on its business operation without interruption during a moratorium in a voluntary arrangement or judicial management process.✓ Protection is given for continuation of supply of essential goods and services when an automatic moratorium or a restraining order has been placed on the company under a compromise or arrangement, during a moratorium in a voluntary arrangement or judicial management.



Proposed Types Of Essential Goods And Services (Subject to further refinements)

- Supply of water
- Supply of electricity
- Supply of gas
- Point of sales terminals
- Computer hardware and software

- Information, advice and technical assistance in connection with the use of information technology
- Data storage and processing
- Website hosting

Thank you

