



ANNUAL DIALOGUE 2023

COMPANIES (AMENDMENT) BILL 2023

5 DECEMBER 2023

KUALA LUMPUR (MS-Teams - Online)

SCOPE OF PRESENTATION



Companies (Amendment) Bill 2023

- Objectives of Amendments
- Consultation Process and Current Status
- Policy Clusters

Limited Liability Partnerships (Amendment) Bill 2023

- Policy Clusters

OBJECTIVES OF AMENDMENTS



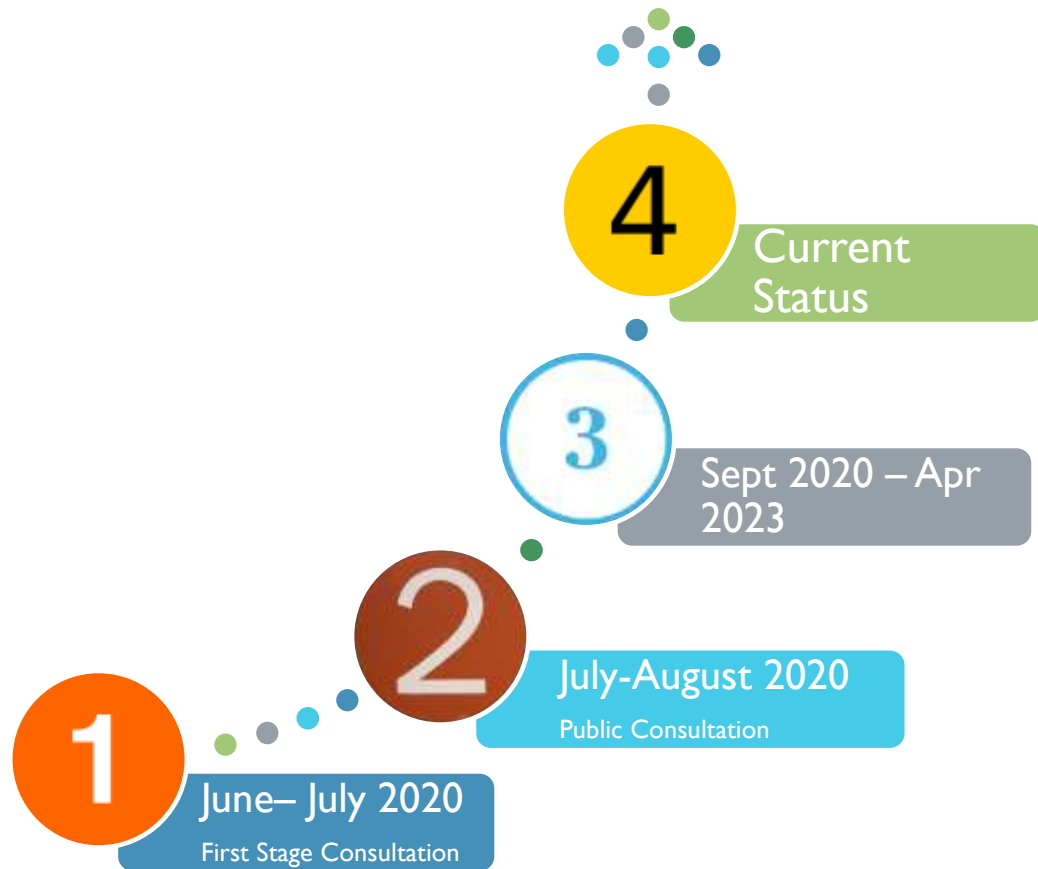
Strengthening corporate rehabilitation framework

- Facilitate companies facing financial difficulties
- Support economic recovery and competitiveness

Enhanced corporate transparency

- Enhancing transparency on beneficial ownership reporting
- Supporting enforcement activities against money laundering, terrorist financing, corruption and other serious crimes
- To support FATF/OECD evaluations in 2024/2025

CONSULTATION PROCESS AND STATUS



Dewan Rakyat (Passed)

1st Reading on 10 Oct 2023

2nd and 3rd reading in Parliament – 28 Nov 2023

Dewan Negara – Tentative December 2023

Policy approvals

Drafting Process

Issuance of consultative document to public

Discussion with stakeholders

Circulation of draft Bill to regulatory bodies
and professional bodies

POLICY CLUSTERS



- **Policy 1:** Widening the application of corporate rescue mechanism [(CVA) and (JM)];
- **Policy 2:** Strengthening the corporate rehabilitation frameworks through:
 - (a) Enhancement of provisions relating to scheme of arrangement or compromise (SOAC); and
 - (b) Enhancement of provisions on CVA/JM and SOAC
- **Policy 3:** Strengthening the beneficial ownership reporting framework; and
- **Policy 4:** Enhancement of corporate governance & practices

CLUSTER POLICY I

WIDENING THE APPLICATION OF CORPORATE RESCUE MECHANISM [(CVA) AND (JM)]

POLICY 1: WIDENING THE APPLICATION OF CORPORATE RESCUE MECHANISM – CORPORATE VOLUNTARY ARRANGEMENT [CVA]



- Current policy:
- CVA is limited ONLY to private companies that do not have charges on any of their assets.
- These constraints cause the existing provisions unable to be fully utilized by most companies including public companies.
- There are no lodgements in 2023 as at 31.10.2023. Statistics on lodgement of CVA for 2018-2022:

Status	2018	2019	2020	2021	2022
Lodgement	3	1	1	2	1
Plan approved by creditor	3	1	1	2	1

POLICY 1: WIDENING THE APPLICATION OF CORPORATE RESCUE MECHANISM – CORPORATE VOLUNTARY ARRANGEMENT [CVA]



Proposed policy under the Bill:

- The scope of application of CVA under the Companies Act 2016 be expanded to all companies regardless of whether the company has a charge or not.

Justification:

- The existing provisions guarantee that the rights of CVA secured creditors cannot be exercised without the consent of secured creditors.
- Allows more companies to take advantage of this mechanism through out-of-court negotiations and reduce the cost of rehabilitating companies facing financial difficulties.

POLICY 1: WIDENING THE APPLICATION OF CORPORATE RESCUE MECHANISM – JUDICIAL MANAGEMENT [JM]



Current Policy:

- JM is available for all companies except for companies which are regulated under the Capital Market Services Act or laws regulated by Bank Negara Malaysia.
- Public listed companies are not eligible to apply JM
- Number of JM applications at 31 October 2023:

Status	2018	2019	2020	2021	2022	2023 (31.10.2023)
Application	14	12	35	27	41	48
JM Order Obtained	5	5	15	15	11	17

POLICY 1: WIDENING THE APPLICATION OF CORPORATE RESCUE MECHANISM – JUDICIAL MANAGEMENT [JM]



Proposed Policy under the Bill:

- The amendment Bill clarifies the existing provisions so that the application of JM is extended to all companies including public listed companies.

Justification

- To address inconsistency in law and assist the Court for better interpretation.

POLICY 1: WIDENING THE APPLICATION OF CORPORATE RESCUE MECHANISM – EXCEPTION TO GENERAL RULE



Exception under the Bill:

- CVA and JM do not apply to:
 - a) companies licensed by BNM;
 - b) companies approved/licensed under Parts II, III, IIIA and VIII of the Capital Markets and Services Act 2007 [Act 671]; or
 - c) an approved company approved under Part II of the Securities Industry (Central Depository) Act 1991.
- Such companies have to comply with governance reporting procedures as well as specific financial policies that are fully regulated by BNM or the SC in event these companies faces financial difficulties.

CLUSTER POLICY 2

(A) STRENGTHENING THE CORPORATE REHABILITATION FRAMEWORKS -
ENHANCEMENT OF PROVISIONS RELATING TO SCHEME OF ARRANGEMENT OR
COMPROMISE (SOAC)

POLICY 2: STRENGTHENING OF CORPORATE REHABILITATION FRAMEWORK - SCHEME OF ARRANGEMENT OR COMPROMISE (SOAC)



Current policy:

- SOAC is used to restructure the company to make it viable or for the purpose of entering into a compromise scheme with creditors.
- Since the directors and management of a company still have full control over the company, rehabilitation plan by SOAC have a better prospect to successfully turn around a company
- The number of SOAC lodged with SSM as at 31 October 2023:

Year	2018	2019	2020	2021	2022	2023 (31.10.23)
No. of SOAC	35	16	17	37	108	92

POLICY 2: STRENGTHENING OF CORPORATE REHABILITATION FRAMEWORK - SCHEME OF ARRANGEMENT OR COMPROMISE (SOAC)



Proposed Policy Under the Bill:

- To enhance the overall SOAC by clarifying provisions on moratorium, role of insolvency practitioners, rescue financing and cram down

Justification

- To strengthen the SOAC framework in line with other jurisdictions

POLICY 2: STRENGTHENING CORPORATE REHABILITATION FRAMEWORK - ENHANCEMENT OF SOAC



Proposed Policies under the Bill:

- to clarify the appointment of an insolvency practitioner in relation to a proposed scheme of compromise or arrangement including his duties, remuneration and the rights of access to all records of the company.
- to clarify the existing process of restraining order application. A company may obtain a restraining order of not more than three months from the date the restraining order is granted and an extension of not more than nine months can be given if it satisfies the requirements

POLICY 2: STRENGTHENING CORPORATE REHABILITATION FRAMEWORK THROUGH ENHANCEMENT OF SOAC



Proposed Policies under the Bill (continuation):

- Introduction of a moratorium period of not more than two months which takes effect upon filing of an application for a restraining order under SOAC
- To curb abuse of process – cooling off period of 12 months is introduced before a new application of SOAC is allowed if restraining order has been granted.
- introduces rescue financing for a company in a SOAC and that rescue financing is given super priority ranking in the event of a winding up
- to empower the Court to cram down on a class of creditors and be satisfied that the dissenting creditors are not prejudiced when approving SOAC

CLUSTER POLICY 2

(B) STRENGTHENING THE CORPORATE REHABILITATION FRAMEWORKS -
ENHANCEMENT OF PROVISIONS RELATING TO CVA/JM/SOAC

POLICY 2: STRENGTHENING CORPORATE REHABILITATION FRAMEWORK THROUGH ENHANCEMENT OF CVA/JM/SOAC



- Extension of JM can be more than 6 months and can extend beyond 12 months
- Rescue financing for companies under JM Order
- To allow secured creditors to recover secured movable property during the moratorium period of CVA/JM
- to introduce a new policy to deal with the insolvency related clause under any contract for the supply of essential goods and services between a supplier and a company that is implementing a scheme of arrangement or compromise, voluntary arrangement or under a judicial management

CLUSTER POLICY 3

STRENGTHENING BENEFICIAL OWNERSHIP REPORTING FRAMEWORK

POLICY 3: STRENGTHENING OF BENEFICIAL OWNERSHIP REPORTING FRAMEWORK



Current Policy:

- Section 56 of Act 777 has introduced a beneficial reporting framework where companies are required to obtain beneficial owner information, record and report that information to the Registrar.
- However, there is a need to improve the reporting framework as there are legal gaps that need to be addressed in order to be in line with best practices and international standards as advocated by international agencies such as FATF and OECD.
- These proposed improvements will increase the transparency of beneficial ownership information lodged with SSM and will assist enforcement and regulatory agencies including the Royal Malaysian Police, BNM and the Malaysian Anti-Corruption Commission to facilitate investigations and combat serious crimes that conduct behind business entities such as money laundering, terrorism financing, corruption, and tax evasion.

POLICY 3: STRENGTHENING OF BENEFICIAL OWNERSHIP REPORTING FRAMEWORK



- Introduction of new definition of “beneficial owner” by referring to a natural person who ultimately owns or controls a company and includes a person who exercises ultimate effective control over a company.
 - It will provide clarity on ownership and other means of control
 - It will no longer need to be read with section 8 of CA 2016
- Registrar is empowered to issue guidelines for the purposes of identifying a beneficial owner



- Requirement to keep and maintain register of beneficial owner
 - To be kept at registered office or a place notified to the Registrar
 - Update changes and lodged such notification to the Registrar within 14 days from the date the beneficial owner information is recorded
 - Beneficial owner information to be kept for 7 years from the date the person ceases to be a beneficial owner



- **Empowering companies with more tools in obtaining and verifying BO Information**
 1. A company is required to request BO information from its members
 2. If a company knows or has reasonable ground to believe that a person is a BO of the company, the company can request the person for confirmation
 3. If a company knows or has reasonable ground to believe that a member of a person knows the identity of a BO, the company can request such member or person for confirmation
 4. If a company knows or has reasonable ground that there is a change in the particulars of the BO, the company can request for confirmation from the BO.
 5. If a company knows or reasonable ground to believe that the information relating to a BO is incorrect, the company can request for confirmation from the BO.

POLICY 3: STRENGTHENING OF BENEFICIAL OWNERSHIP REPORTING FRAMEWORK



- New obligations imposed on beneficial owner
 - Obligation to notify the company that he is a beneficial owner
 - Obligation to notify the company if there is changes to his particulars which is recorded in the register of member
 - Obligation to notify the company when he ceases to be a beneficial owner

CLUSTER POLICY 4

ENHANCEMENT OF CORPORATE GOVERNANCE AND PRACTICES

POLICY 4: ENHANCEMENT OF POLICIES IN RELATION TO PROCEDURES TO SUPPORT THE IMPLEMENTATION OF A SUSTAINABLE CORPORATE GOVERNANCE



- As part of continuous effort to ensure high level of governance among companies, improvements are made to the Companies Act 2016 to promote compliance and facilitate ease of business.
- Among the important amendments proposed are as follows:
- the SSM official website can facilitate and be used to publish information and gazettes in lieu of legislative requirements to overcome practical issues where there is no longer widespread circulation of physical newspapers throughout Malaysia and reduce the high cost of advertising
- that the Registrar is empowered 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
- To require liquidators to report their details to Registrar once licenced has been approved



LIMITED LIABILITY PARTNERSHIPS (AMENDMENT) BILL 2023

OBJECTIVES OF AMENDMENTS



Introduction of corporate rescue mechanisms for LLPs

- Facilitate LLPs facing financial difficulties
- Support economic recovery and competitiveness

Enhanced corporate transparency

- Introduction of beneficial ownership reporting framework
- Supporting enforcement activities against money laundering, terrorist financing, corruption and other serious crimes
- To support FATF/OECD evaluations in 2024/2025

POLICIES UNDER THE LLP (AMENDMENT) BILL



- Introduction of corporate rescue mechanism framework for LLPs
 - The provisions relating to CVA and JM will be applicable to LLPs with modifications
- Introduction of beneficial ownership reporting framework
 - Similar policies under the Companies (Amendment) Bill

MOVING FORWARD



- The Companies (Amendment) Bill 2023 was tabled for 1st reading in Parliament on 10 October 2023.
- The Bill was tabled and passed at the 2nd and 3rd reading in Parliament on 28 November 2023
- The Bill is tentatively scheduled to be tabled at Dewan Negara in December 2023.



THANK YOU