

THE INTRODUCTION OF THE JUDICIAL
MANAGEMENT SCHEME

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Abstrak

Kertas projek ini memberi tumpuan kepada satu soalan utama, iaitu adakah ini masa untuk meminda Akta Syarikat 1965 untuk mengalu-alukan skim ‘judicial management’, sebagai alternatif lain untuk pembubaran, selain daripada ‘scheme of arrangement’ di bawah S.176 Akta Syarikat 1965? Untuk menjawab soalan ini, ‘scheme of arrangement’ di bawah S.176 Akta perlu diperiksa dan dikaji dengan teliti.

Objektif kertas projek ini adalah untuk mengenal pasti manfaat dan kekurangan daripada S.176 Akta Syarikat 1965, iaitu ‘scheme of arrangement’. Selain itu, ‘judicial management’ yang dicadangkan oleh Corporate Law Reform Committee dan Syarikat Bill 2013 juga akan diperiksa. Ia juga melibatkan kajian perbandingan dengan bidang kuasa yang lain iaitu dengan Republik Singapura dan bagi mencadangkan mana-mana penambahbaikan yang perlu atau pindaan kepada undang-undang semasa.

Kajian mendapati bahawa walaupun jelas kekurangan s 176 Akta Syarikat 1965, iaitu ‘scheme of arrangement’, pengenalan Syarikat Bill 2013 tiada apa-apa yang lebih dalam meningkatkan ia. Oleh itu, adalah penting untuk memperkenalkan ‘judicial management scheme’ di Malaysia, sebagai prima facie, ia dapat menyembuhkan isu klasifikasi pemiutang lama wujud dalam ‘scheme of arrangement’. Setelah menyemak peruntukan ‘judicial management scheme’ di Republik Singapura, ia seolah-olah bahawa Syarikat Bill 2013 telah diterima pakai sebahagian besar, tetapi masih terdapat ruang untuk penambahbaikan, sebagai contoh, dalam tempoh moratorium itu, mahkamah diberi kuasa untuk memecat petisyen dan menganggap bahawa perintah ‘judicial management’ telah dibentangkan sembrono, ia boleh membuat apa-apa perintah sebagaimana yang difikirkannya adil dan saksama untuk menangani sebarang ketidakadilan yang mungkin disebabkan, sebagaimana yang diperuntukkan di bawah s 227B (9) Akta Syarikat Singapura. Dan ini perlu diguna pakai oleh Rang Undang-undang Syarikat 2013 kerana ia dapat mengelakkan sebarang ketidakadilan yang disebabkan.

Abstract

This project paper will focus on one key question, viz. is it time to amend the Companies Act 1965 in order to welcome the judicial management scheme, as an another alternative to liquidation, other than the existing scheme of arrangement under s 176 of the Companies Act 1965? In order to answer this question, the existing scheme of arrangement provided under s 176 of the Act has to be examined and studied carefully.

The objectives of this project paper are to identify the benefits and shortfalls of s 176 of the Companies Act 1965, i.e. scheme of arrangement as well as to examine the judicial management scheme that proposed by the Corporate Law Reform Committee and the Companies Bill 2013. It also involves comparative study with other jurisdiction namely with the Republic of Singapore and to suggest any necessary improvements or amendments on the current law.

The study found that the despite the obvious lacking of s 176 of the Companies Act 1965, i.e. scheme of arrangement, the introduction of the Companies Bill 2013 did nothing much in improving it. Thus, it is important to introduce the judicial management scheme in Malaysia, as prima facie, it able to cure the issue of classification of creditors that long existed in the scheme of arrangement. Upon reviewing the judicial management provisions in the Republic of Singapore, it seems that our Companies Bill 2013 had adopted most of it, but there are still room for improvement, for example, during the moratorium period, the court is given the power to dismiss the petition and considers that the judicial management order was presented frivolously, it may make such orders as it thinks just and equitable to redress any injustice that may have been caused, as provided under **s 227B(9) of the Singaporean Companies Act**. And this should be adopted by the Companies Bill 2013 as it able to avoid any injustice being caused.

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CHAPTER ONE

BACKGROUND

1.1 Introduction

When a corporate business falls into financial difficulty, an application may be made to the court for winding up. **S.211 of the Companies Act 1965** recognizes two modes of winding up, viz. voluntary winding up, either by members' or creditors' and winding up by the order of the court, also referred to as compulsory winding up. In addition, there exists the possibility of using a scheme of arrangement for the reconstruction of companies.

The term 'winding up' basically means the process of collecting and realizing the assets of a company, discharging its debts and liabilities and distributing the balance, if any, among its members according to their entitlements or as the constitution of the company directs. After a company is wound up, it is dissolved and its legal and corporate existence comes to an end. Winding up and insolvency of companies in Malaysia is governed by the **Companies Act 1965 (Revised 1973)**. A judgment creditor may petition the court to wind up the corporate judgment debtor on the ground that the company is unable to pay its debts, as stated under **s 218(1)(e) of the Companies Act 1965**.¹ In *Teck Yow Brothers Hand-Bag Trading Co v Maharani Supermarket Sdn Bhd*², the court granted a winding up petition on the ground that the company was unable to pay its debts.

The main objectives of winding up proceeding are to ensure a fair distribution of the assets of an insolvent company amongst creditors and to identify the causes of failure and holding those guilty of mismanagement or misconduct responsible for their acts.

¹ Lee Mei Pheng and Ivan Jeron Detta, *Business Law* (Selangor Darul Ehsan: Oxford Fajar Sdn. Bhd., 1999), p.509

² [1989] 1 MLJ 101

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