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ALERT

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## Corporate Rescue Mechanisms under Division 8 of the Companies Act 2016 comes into operation

On 1 March 2018, Division 8 of Part III of the Companies Act 2016 (“CA 2016”) came into operation; well ahead of the earlier indicated time line of ‘the last quarter of 2018’. Division 8 is significant as it sets out the two mechanisms introduced by CA 2016, aimed at facilitating financially distressed companies to implement their rescue plans. Prior to CA 2016, the procedure often utilised by financially distressed companies in Malaysia was the scheme of compromise or arrangement under section 176 of the former Companies Act, 1965.

The two corporate rescue mechanisms under Division 8 are judicial management and corporate voluntary arrangement. To facilitate their procedural implementation, the [Companies \(Corporate Rescue Mechanism\) Rules 2018](#) were also brought into operation on the same date.

For the key features of judicial management and corporate voluntary arrangement, please see below.

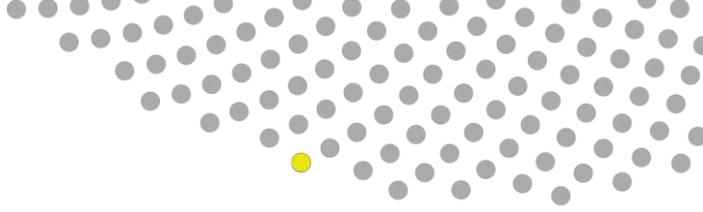
### Judicial Management (“JM”)

Judicial management is a court-supervised rescue procedure whereby a Court appointed judicial manager i.e. a licensed liquidator is tasked to come up with a rescue proposal for the company. Either the board of directors or members or creditors of the company can apply to Court to place the company under judicial management. However, it is not applicable to financial institutions or public listed companies.

The aim of the rescue proposal is either to return the company to financial health or to ensure more advantageous realisation of its assets for the creditors than in liquidation. A workable rescue proposal not only requires the judicial manager to have sufficient knowledge of company’s affairs but also the ability to manage its operation to prevent further deterioration. Hence, the CA 2016 vests in the appointed judicial manager the powers to manage the company’s affairs in place of the directors. Another significant feature of a judicial management is that as soon as the application is filed in Court, an automatic freeze (moratorium) sets in on all proceedings, legal and execution process against the company including winding-up proceedings. This gives the company and the judicial manager breathing space to work out the rescue proposal.

A company can only be placed under judicial management for a maximum period of 12 months. From the date the company is placed under judicial management, the judicial manager has about two months to come out with a rescue proposal and table it at a creditors’ meeting. To approve the proposal, 75% of the total value of creditors present and voting is needed. Once approved, the proposal will be binding on all creditors including those who voted against the proposal and those who did not attend the creditors’ meeting.

To this end, the judicial management which is helmed by a licensed liquidator i.e. an independent third party may be an attractive option to creditors who believe that the company can be rescued but do not have the confidence or trust in the directors’ ability or willingness to do so. After all, a company’s financial predicament is often caused by the directors’ poor management of the company’s business.



## Corporate voluntary arrangement (“CVA”)

CVA is probably the simplest form of corporate rescue. Unlike judicial management, there is no Court involvement for a CVA except for the filing of certain statutory forms and documents in Court. Neither is the board of directors displaced. In fact, it is the directors who come out with the proposal seeking a compromise with the company’s creditors. To ensure the proposal is genuine and viable, the CA 2016 requires the directors to appoint a licensed liquidator as a nominee. The nominee’s function is to assess the viability of the proposal and, if it is subsequently approved by the creditors, to act as a supervisor who oversees its implementation.

Similar to a judicial management, the feature which makes CVA an effective corporate rescue procedure is the automatic moratorium on lodgement of certain statutory forms and documents in Court. It ring fences the company from any legal or execution process (including winding up proceedings) during the formulation period of the CVA until a decision on the proposal is made by its creditors and members. To approve the directors’ proposal, 75% of the total value of creditors present and voting and a simple majority (51%) of the value of the company’s members present and voting are needed. Once the requisite statutory approvals are obtained, the proposal will bind all creditors including those who voted against it and who did not attend the creditors’ meeting.

Unfortunately the CVA is of limited utility as it is only applicable to a private limited company (i.e. Sdn Bhd) which has not created any charge over its property or undertaking. The condition relating to non-creation of charge does not sync well in practice. Obtaining funding for business operations and the corresponding creation of charges as security to the financier is common amongst companies including private limited set ups. Interestingly, the United Kingdom Insolvency Act 1986 from which our CVA originated, does not have such condition. It is hoped that the legislature will remove this condition to give the CVA an opportunity to become an effective corporate rescue procedure for ailing small and medium corporations.

To what extent companies will utilise these two corporate rescue mechanisms remains to be seen. However, together with the scheme of compromise and arrangement under Division 7 of CA 2016, Malaysian companies now have several statutory procedure options to execute their rescue plans if one becomes necessary.

If you have any questions or require additional information, please contact [Effendy Othman](#) or the ZICO Law partner you usually deal with.

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