Chapter 8
The New Law of Corporate Restructuring in Malaysia: Analysis of the Concept of Scheme of Creditors’ Arrangements in Corporate Insolvency Proceeding

Aishah Bidin
National University of Malaysia, Malaysia

Nordin Hussin
National University of Malaysia, Malaysia

ABSTRACT
The passing of the Malaysian Companies Bill 2015, which replaced the Companies Act 1965, marks the most comprehensive legislative change in Malaysia’s corporate law in 50 years. The Companies Act 2016 makes some significant changes to Malaysia’s corporate insolvency regime, as it introduces two new insolvency processes: judicial management and corporate voluntary administration. It also modifies the existing law relating to schemes of arrangement. The objective of this chapter is to study and evaluate the legislative position in United Kingdom, Australia, and Malaysia with regard to the scheme of creditors’ arrangement. The introduction of the judicial management mechanisms is a move towards bringing Malaysia’s insolvency laws up to the same international standards as many other countries in the region. It also discusses on the strength and limitation of the mechanism as opposed to the concept of judicial management.

DOI: 10.4018/978-1-5225-5541-4.ch008
INTRODUCTION

An Overview of the Corporate Restructuring in Malaysia

The underlying philosophy of Malaysian insolvency law has been described as combining the elements of distributive, rehabilitative and penal philosophies (Rabindra, n.d.). The main objectives of corporate insolvency law of Malaysia are as follows: (1) to provide for rehabilitation where possible; (2) to ensure the preservation and ranking of secured creditors’ rights and equal treatment of all other creditors where a company cannot be saved; and (3) to punish delinquent officers who have contributed to the insolvency. In the case of personal bankruptcy, on their discharge, the bankrupt is freed from all debts provable in bankruptcy and is also released from many civil liabilities attached to him or her as a bankrupt.

In practice, however, insolvency law has been described as having a bias towards the interests of creditors. Insolvency law in Malaysia is designed to help creditors enforce their rights, recover their debts and protect their interests. Malaysia primarily has a creditor focused system. There are, however, indications of growing dissatisfaction with Malaysia’s pro-creditor laws. In particular, there have been repeated calls for the introduction of an equivalent to the US Chapter 11 rescue procedures. Bankruptcy and Insolvency law in Malaysia has been developed through the interaction and interdependence of case law that originated in England and Australia. Legislation dealing with personal bankruptcy consists of the Malaysian Bankruptcy Act 1967 and the Bankruptcy Rules 1969. They are modelled on English bankruptcy law. Similarly, the core company legislation in Malaysia, that is, the Companies Act 1965, is modelled on the English Companies Act 1948 and the Australian Uniform Companies Act 1961. Principles of common law that comprise English and Australian insolvency law are reflected in the Malaysian insolvency regime. In view of this historical relationship, English and Australian judicial pronouncements on the interpretation of company legislation are still highly persuasive in interpreting Malaysia company law, even though there is increasing divergence in Australian and English judicial attitudes to corporate governance (Arjunan, 1995).

The broad aims of Malaysian corporate insolvency law are similar to the Australian and English equivalents. The purposes and principles of insolvency law in many different Western legal systems have been described in terms of such criteria as fairness, efficiency and impartiality (Tomasic & Whitford, 1997). The aims of Malaysian insolvency law are similar. They include the rehabilitation of debtors, fair and efficient distribution of debtors’ assets to creditors, equality and impartiality of treatment of creditors, and the punishment of wrongdoers. The rehabilitative aim of the law manifests itself in section 176 of the Companies act, which deals with the schemes of arrangements and in the Pengurusan Danaharta Nasional Berhad
Related Content

Military Expenditure in India: Trends and Its Relation With GDP and Education Expenditure
[www.igi-global.com/chapter/military-expenditure-in-india/206692?camid=4v1a](www.igi-global.com/chapter/military-expenditure-in-india/206692?camid=4v1a)

The Central American Clothing Assembly Industry and the Asian Competition
[www.igi-global.com/chapter/the-central-american-clothing-assembly-industry-and-the-asian-competition/112272?camid=4v1a](www.igi-global.com/chapter/the-central-american-clothing-assembly-industry-and-the-asian-competition/112272?camid=4v1a)
Effects of Globalization on Economies in Transition
Drago Cvijanovi and Branko Mihailovi (2016). *Global Perspectives on Trade Integration and Economies in Transition* (pp. 26-44).
www.igi-global.com/chapter/effects-of-globalization-on-economies-in-transition/156962?camid=4v1a

Tackling Energy Issues in Rural India
www.igi-global.com/chapter/tackling-energy-issues-in-rural-india/132396?camid=4v1a