

Companies (Amendment) Act 2024

Strengthening Malaysia's Corporate Rehabilitation Framework



The Companies (Amendment) Act 2024 ("CAA 2024") (save for few sections) came into force on 1 April 2024. A considerable portion of the CAA 2024 focuses on improving the Corporate Rehabilitation Framework ("the Framework") provisions of the Companies Act 2016 ("CA 2016") which include:

- Arrangements and Reconstructions
 - Scheme of Arrangement ("SOA")
- Corporate Rescue Mechanisms ("CRM")
 - Corporate Voluntary Arrangement ("CVA")
 - Judicial Management ("JM")

The enhancements on the Framework in CAA 2024 have widened the applicability of SOA and CRM. We set out below the key amendments to the Framework.

AMENDMENTS

RELATING TO SOA

1.0 Restraining Order ("RO")

The objective of RO is to preserve the assets and business of the company while it focuses on formulating and formalizing a rescue plan. The streamlined provisions on RO address some of the previous shortcomings and include safeguards against abuse of ROs.

- There was previously no automatic moratorium for a company applying for a SOA. CAA 2024 provides automatic moratorium of up to 2 months (or earlier) upon the submission of the RO application to the Court until the Court's decision to grant RO.
- The provision of an RO against the related company that play an integral part in the rehabilitation plan may be granted for a period not exceeding the RO period or an extended period of the subject company.
- There's a limitation to the extensions of the RO period (i.e. up to maximum of 9 months) in addition to the initial RO for a period of up to 3 months.
- A cooling-off period for the subsequent ROs is imposed (i.e. the Court cannot grant a RO if an earlier RO was granted to the company or its related company within the last 12 months).

2.0 Super Priority for Rescue Financing

Rescue financing allows the company to continue doing business, pay its suppliers and other creditors. In other words, in some circumstances, rescue financing is critical in ensuring the proposed scheme will be successful. Companies in financial distress face difficulties in securing funding for their rescue plan. Lender(s) and/or investor(s) may not be willing or are unable to readily extend credit to financially distressed companies.

As provided under CAA 2024, the Court is allowed to order the creation of priority and/or better security to encourage new/extended financing for the distressed company. The super priority for rescue financing will also be available to JM.



3.0 Court Approval for SOA

- The typical approval process for a SOA involves:
 - Obtaining a Court order to convene a scheme meeting ("Court convened meeting").
 - Conducting the Court convened meeting for the different classes of creditors (based on their different legal rights) to obtain the requisite approval from each of the classes for the SOA.
 - Obtaining the Court order approving the SOA.
- Court approval for SOA can now be expedited under CAA 2024:

Cram down

The Court can now approve a SOA binding the company and all classes of creditors even though there is one or more classes of creditors did not achieve the 75% majority. One or more classes of the approving creditors can cram down a class or classes of dissenting creditors if there is overall support from at least 75% of all the creditors present through voting at the Court-convened meeting; and the Court is satisfied that the SOA is fair and equitable to the dissenting creditors (i.e. the dissenting creditors in SOA will receive at least the value equal to their approved claims as if the company is to be wound up).

Pre-pack

The Court is now allowed to approve a pre-negotiated SOA without requiring a Court convened meeting of creditors. Disclosure of information, negotiations, and relevant notices can be made between the scheme company and creditors and they are meant to be bound by the SOA. This streamlines the process, reduces delays and facilitates faster recoveries.

4. Enhanced Role of Court Appointed Insolvency Practitioner ("IP")

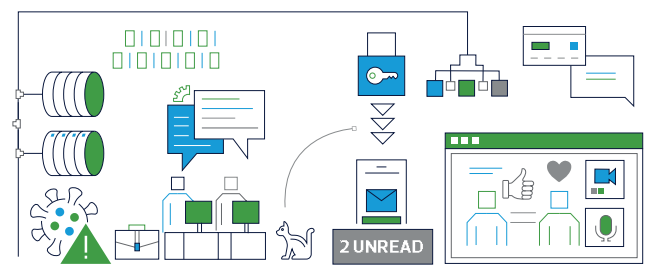
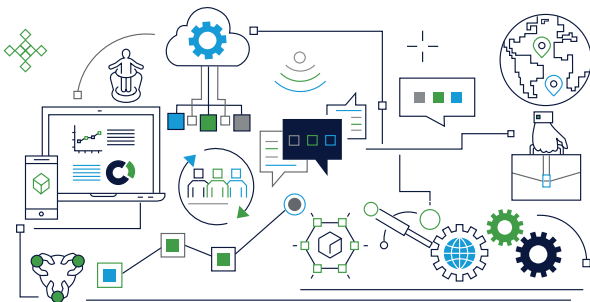
- The appointment of IP is mandatory when the scheme company is making the following applications:
 - Pre-pack
 - Cram down
 - Super priority for rescue financing
 - RO against related company
- The appointed IP will chair all the scheme meetings, chair all scheme meetings, prepare and submit a progress report to the Court on the proposed scheme prior to Court sanction.
- In a cram down, the Court may require the IP to assist in estimating the amount that a creditor is expected to receive under the SOA as compared to not having the SOA.





5.0 Other Enhanced Provisions

- The Court can now consider whether the class of creditors was fairly represented and order a revote of the SOA if the Court thinks fit (including the directions on the classification of creditors, admission and weightage of debt, treatment of vote etc.).
- A clearer codification of proof of debt process and procedures in SOA provide more certainty on the submission requirements including the dispute resolution mechanism in relation to the rejection, inspection or admission of the proof of debt.
- The Court has the power to review act, omission or decision, etc., after approval, etc., of SOA.
- Suppliers of essential goods and services are not allowed to exercise their rights pursuant to the insolvency-related clauses of the supply contracts merely because a company is entering into a SOA and/or CRM unless they have given written notice of at least 30 days to the company.



AMENDMENTS

RELATING TO CRM

1.0 Companies not eligible for CRM

The limiting non-applicability criteria for CVA and JM under CA 2016 precluded many companies from being able to apply CRM to formalize their rescue plans. CAA 2024 has broadened the access to CRM. The list of companies that cannot apply JM has now been narrowed down to:

- Licensed financial institutions
- Operators of designated payment systems, capital market intermediaries and central depositories carrying out certain regulated activities

The same eligibility criteria above are also introduced for CVA. However, the relevant provision has not been brought into force yet for CVA.

2.0 Duration of JM Order

CA 2016 provides that the duration of the JM order is for an initial period of 6 months and the Court was empowered to grant an extension for another 6 months subject to the terms that the Court may impose.

The Court has the discretion to allow for the extension of JM order to a longer period (i.e. beyond the 12 months cap) subject to the terms that the Court may impose under CAA 2024.

3.0 Recovery by secured creditor(s)

CAA 2024 also provides that the secured creditor(s)' recovery is allowed, after giving notice to the JM, if:

- The JM confirms that the goods or movable property is not required;
- The assets are highly likely to be disposed during the JM Order;
- The value of the assets decreases due to the JM Order.

COMMUNICATION

We are able to assist you to devise appropriate strategies and practices in relation to the Corporate Rehabilitation Framework. Kindly reach out to us.



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