

THE APPROVED COMPANY SECRETARIES



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ISSUE 4/2024

**Corporate Rescue Mechanism, Methods And Enhancement
Provided By Companies (Amendment) Act 2024**

Carry Forward Leave In Malaysia

**Navigating Shareholder Rights And Exit Mechanisms:
Strategies For Effective Corporate Governance**

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FROM THE EDITOR'S DESK

Dr. Adissayam Xavier Suseimanikam, FIACS



Warmest greetings to all and welcome to the last issue of IACS newsletter for the year 2024.

The year 2024 has been an eventful and industrious year for IACS, having successfully organised and conducted a total of thirty five (35) seminars/webinars [nine (9) physical seminars and twenty six (26) webinars] throughout the country. Throughout the year, IACS also participated in various technical meetings and programmes organised by SSM, MAICSA, MIA and MACS, as well as supported various events organised by other professional bodies. Additionally, IACS has seen a notable increase in its membership base as a result of its membership promotion campaign.

The Companies Commission of Malaysia (SSM) has on 26th November 2024 issued notices in relation to the mandatory implementation of MBRS 2.0 in stages as follows:-

Phase 1 under the Companies Act 2016 (CA2016) takes effect on 1 December 2024	Phase 2 takes effect on 1 March 2025	Phase 3 takes effect on 1 June 2025
<ul style="list-style-type: none">i. Annual Return (AR);ii. Unaudited Financial Statements and Reports (FS);iii. Certificate for Exempt Private Company (EPC); andiv. Application and submission of Rectification / Court Order for AR and Unaudited FS. <p>Application for an EOT under the CA2016:</p> <ul style="list-style-type: none">i. EOT for submission of EPC Certificate;ii. EOT for submission of Unaudited FS; andiii. EOT for submission of AR. <p>The lodgement of the above documents over the counter is only allowed until 30 November 2024.</p>	<ul style="list-style-type: none">i. AR under the Companies Act 1965 (CA1965);ii. FS under the CA1965;iii. EPC under the CA1965;iv. FS under the CA1965 and CA2016 for financial institutions regulated by Bank Negara Malaysia; andv. Application and submission of Rectification/ Court Order for AR and FS under the CA1965.	<ul style="list-style-type: none">i. FS under the CA2016ii. Application and submission of Rectification/ Court Order for FS under the CA2016iii. Including all other types of applications and exemption applications related to EOT or FS

In the meantime, members are strongly encouraged to attend our MBRS seminars to acquire an in-depth understanding and knowledge of the MBRS 2.0

system, and to be fully equipped in using the system. Do check out our website, www.iacs.org.my, for our MBRS training programmes as well as other programmes.

In addition to the above, SSM has on 16th December 2024 issued Practice Directive No.10/2024 entitled "Qualifying Criteria For Audit Exemption for Certain Companies in Malaysia" which sets out the qualifying criteria for private companies from having to appoint an auditor in a financial year. To facilitate the transition into the new audit framework, the threshold criteria for audit exemption will be implemented via a phased approach over a period of three (3) years. This Practice Directive and the related FAQs could be accessed via SSM's website, www.ssm.com.my.

We strongly encourage all practising IACS members to take up the pre-approved MSIG Group Professional Indemnity Insurance coverage, which was specially designed to protect and safeguard your interest as practising professional company secretaries.

Members are also invited to write to us on any technical or operational issues and enquiries with SSM or other agencies in relation to the company law and corporate secretarial matters so that we can provide a reply or address them at the appropriate forums/meetings.

In closing, on behalf of the Council, I wish all our members and their families who celebrate Christmas a "Merry & Joyous Christmas" and to all a very 'Happy & Blessed New Year 2025'. The Council feels privileged to have served you in 2024 and would like to thank you for your loyalty, unwavering support, and participation in our programmes.

As we say goodbye to the year 2024, we are eagerly anticipating the new year 2025 that will be fruitful, bountiful, and successful.

Thank you.



INSTITUTE OF APPROVED COMPANY SECRETARIES
[199601015175 (387525-X)]

INSTITUTE OF APPROVED COMPANY SECRETARIES (IACS) was incorporated in Malaysia on 16 May, 1996 as a company limited by guarantee and not having a share capital under the Companies Act.

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Contributions of Article

The Council would like to invite members to contribute articles and news, which may be of interest to company secretaries for publication. However, the Council reserves the right to edit articles for clarity purposes or it shall at its absolute discretion not publish any or all articles or news received from contributors. A fee will be paid for contributions approved by the Board.

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CORPORATE RESCUE MECHANISM, METHODS AND ENHANCEMENT PROVIDED BY COMPANIES (AMENDMENT) ACT 2024

By
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Background

Corporate Rescue Mechanism was introduced in the Companies Act 2016 in Division 8 of Part III (Management of Company) under the following pathways:-

Subdivision 1 – Corporate Voluntary Arrangement; and

Subdivision 2 – Judicial Management

In the Corporate Voluntary Arrangement (CVA), the proposal may be made by a judicial manager, if a company is under a judicial management order, or by a liquidator, if the company is being wound up, and shall include the appointment of a nominee either acting as a trustee or supervisor for the purpose of supervising the implementation of the voluntary arrangement. Basically CVA is a composition in satisfaction of a company's debts or a scheme of arrangement of a company's affairs under Subdivision 1. Currently, the availability of CVA as a rescue mechanism is limited only to private companies that do not create charge over their assets or undertaking.

CVA provides a consensual statutory restructuring tool that is presently available to private companies only. The CVA process enables a company experiencing financial difficulties to enter into a plan or an arrangement with the creditors without the need to have the plan or arrangement being approved by the Court. Upon filing of CVA to the Court, a moratorium of 28 days will kick-in which protects the company from any legal proceedings including the petition to wind up the company. The moratorium period can be extended to a maximum period of 60 days. The moratorium period is critical to allow the company and its creditors to consider the plan or arrangement with the objective of rehabilitating the company.

When a company is under CVA, a moratorium is in force automatically from the time of filing the requisite documents by the company to the Court. The effects of the moratorium are as follows:-

- (a) no petition may be presented for the winding up of the company;
- (b) no meeting of the company may be called or requisitioned except with the consent of the nominee or the leave of the Court and subject to, where the Court gives leave, such terms as the court may impose;
- (c) no resolution may be passed or order may be made for the winding up of the company;
- (d) no application for judicial management order may be made against the company;
- (e) no judicial manager of the company may be appointed under Subdivision 2 of Division 8 of Part III;
- (f) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises let to the company in respect of a failure by the company to comply with any term or condition of its tenancy of such premises, except with the leave of the Court and subject to such terms as the Court may impose;

- (g) no other steps may be taken to impose any security over the company's property, or to repossess goods in the company's possession under any hire-purchase agreement, except with the leave of the Court and subject to such terms as the Court may impose;
- (h) no other proceedings and no execution or other legal process may be commenced or continued, and no distress may be levied, against the company or its property except with the leave of the Court and subject to such terms as the Court may impose; and
- (i) no steps shall be taken to transfer any share of the company or to alter the status of any member of the company except with the leave of the Court and, where the Court gives leave, subject to such terms as the Court may impose.

Judicial Management

Judicial Management (JM) on the other hand allows for the appointment by the Malaysian High Court of a judicial manager over an insolvent corporate debtor, in circumstances where it can be shown that there is a reasonable prospect of, *inter alia*, preserving all or part of the company as a going concern and where interests of creditors would be better served than on a winding up.

Currently, the Court has not approved any application by public listed companies for JM due to the ambiguity in the current provision.

In JM process, an application is made to the Court for the company to be placed under judicial management and for the appointment of a judicial manager to take over management of the company, if the application can prove that despite the company's inability to pay its debts, there is a reasonable probability of rehabilitating of the company or of preserving all or part of its business as a going concern, or that the creditors' interest can be better served, instead of resorting to a winding up.

During the period for which a judicial management order is in force—

- (a) no resolution shall be passed or order made for the winding up of the company;
- (b) no receiver or receiver and manager of the kind referred to in section 374 shall be appointed;
- (c) no other proceedings and no execution or other legal process shall be commenced or continued and no distress may be levied against the company or its property except with the consent of the judicial manager or with the leave of the Court and, if the Court grants leave, subject to such terms as the Court may impose;
- (d) no steps shall be taken to enforce security over the company's property or to repossess any goods in the company's possession under any hire purchase agreement, chattels leasing agreement or retention of title agreement, except with consent of the judicial manager or leave of the Court and subject to such terms as the Court may impose; and
- (e) no steps shall be taken to transfer any share of the company or to alter the status of any member of the company except with the leave of the Court and, if the Court grants leave, subject to such terms as the Court may impose.

Enhancement under Companies (Amendment) Act 2024

The amendment of section 395 on non-application of CVA aims at widening the application of CVA to all companies including companies which have created a charge over their property or undertaking. The existing framework already offer sufficient safeguards to address the interests of all stakeholders including secured creditors.

The amended Section 395 states:-

“This Subdivision shall not apply to—

- (a) a company which is a licensed institution or an operator of a designated payment system regulated under the laws enforced by the Central Bank of Malaysia;
- (b) a company which is approved or registered under Part II, licensed or registered under Part III, approved under Part IIIa or recognized under Part VIII of the Capital Markets and Services Act 2007; and
- (c) a company which is approved under Part II of the Securities Industry (Central Depositories) Act 1991.”

The amendment to section 403 on non-application of Judicial Management (JM) aims to clarify that judicial management can be applied by all companies including public listed companies.

Section 403 of the principal Act is amended—

- (a) in paragraph (a), by deleting the word “and” at the end of the paragraph;
- (b) by substituting for paragraph (b) the following paragraph: “(b) a company which is approved or registered under Part II, licensed or registered under Part III, approved under Part IIIa or recognized under Part VIII of the Capital Markets and Services Act 2007; and”; and
- (c) by inserting after paragraph (b) the following paragraph: “(c) a company which is approved under Part II of the Securities Industry (Central Depositories) Act 1991.”

In summary, the amendments to sections 395 and 403 aim at allowing all companies to utilise CVA or JM should they face financial difficulties. However, companies which are regulated by Central Bank of Malaysia and companies which are licensed, approved or registered under the Capital Market and Services Act 2007 [Act 671] and the Securities Industry (Central Depositories) Act 1991 [Act 453] are not eligible to utilise CVA and JM as they are subject to specific financial and governance policies and safeguards imposed on them by the Central Bank of Malaysia or Securities Commission Malaysia, respectively.

STRENGTHENING THE CORPORATE REHABILITATION FRAMEWORK:

(A) Enhancement of provisions relating to scheme of arrangement or compromise (SOAC)

A scheme of arrangement or compromise is a process commonly used by financially distressed companies for purposes of restructuring their debts, while receiving the benefit of court-supervised restraining orders that restrict the commencement of any legal proceedings including any petition to wind up the company. A scheme of arrangement or compromise allows for the Court-approved scheme to be imposed on all creditors and members, provided the statutory voting majorities have been obtained.

SOAC is not exclusively intended for financially distressed companies and is also widely utilised by solvent entities.

In Malaysia, the SOAC framework is the most widely used mechanism to rehabilitate a financially distressed companies due to various reasons such as the familiarity of the corporate sector with the SOAC framework and the fact that the directors are still in control of the management of the companies. Thus, the directors are incentivized to propose a rehabilitation plan which has a high probability rate of success.

As such, the Companies (Amendment) 2024 has introduced provisions to accord a more comprehensive framework at par with international practices to ensure that SOAC can be used as a more effective rehabilitation tool for companies facing financial difficulties.

Amongst the significant policies introduced under the proposed amendments are as follows:

- (a) The introduction of automatic moratorium period for companies applying a restraining order under SOAC;

- (b) The provision on restraining order by related company that play an integral part in the rehabilitation plan;
- (c) The provision of rescue financing;
- (d) The provision relating to cram down; and
- (e) The mandatory appointment of insolvency practitioners to oversee the rehabilitation plan.

The Companies (Amendment) Act 2024 introduces new subsection 368(1A) which will give companies applying for restraining order under SOAC an automatic moratorium upon filing of such application for a maximum of two (2) months or until the Court decides on the application, whichever is earlier.

During the moratorium, the company is protected from legal proceedings including the petition to wind up the company. In other words, the company will be continuously protected until the restraining order is granted by the Court.

To prevent abuse of process whereby the application for restraining orders can be used to continuously deprive or prejudice the rights of creditors, the Companies (Amendment) Act 2024 introduces a policy that no restraining order would be granted by the Court if an order has been granted in the preceding twelve (12) months involving a rescue financing, a cram down, an approval of the proposed scheme without a meeting of creditors or when a related company makes an application for a restraining order in relation to a proposed scheme.

In some circumstances, restructuring does not involve just one company. In a larger restructuring of a group of companies, some other entities may be involved although they may not be part of the SOAC itself.

Recognising this situation, the Companies (Amendment) Act 2024 introduces new section 368A where a related company can apply for a restraining order on similar terms with the company undergoing SOAC provided that the company plays an integral part in the SOAC; that SOAC will be frustrated if actions are taken against the related company and that the creditor of the related company will not be prejudiced if a restraining order is granted.

Under new section 368B, rescue financing is defined as financing that is necessary for the survival of a company that obtain the financing or that the financing is necessary to achieve a more advantageous realisation of the assets of a company that obtain the financing, than on a winding up of that company.

Rescue financing allows the debtor 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.

In cognizance of the fact that often financially distressed companies face higher cost of borrowing as banks or financial institutions become more wary to provide fresh loans without some protection, a new policy is introduced to provide better protection to parties giving the rescue financing.

As such, under the proposed section 368B, the Court is empowered to order the debt arising from any rescue financing to be secured against the property of the company on certain conditions. In the event the company is wound up, debts arising from rescue financing are given super priority over all other debts in the event of a winding up.

What is Cram Down Mechanism?

A cram down is a mechanism that will allow the Court to compel dissenting creditors to be bound by the proposed scheme of arrangement. The aim of a cram down is to ensure that companies in distress will have a successful scheme with less interference and at the same time accord protection to the dissenting creditors.

The Companies (Amendment) Act 2024 introduces new section 368D which allows an application for cram down to be made to the Court provided that:

- (a) The scheme is approved by a majority representing at least 75% of the total value of the creditors or members or class of members that are present and voting at the meeting; and
- (b) The scheme is fair and equitable to each class of dissenting creditors and does not unfairly discriminate between the classes of creditors.

An application for a cram down must ensure that the dissenting creditors will receive at least a value equal to their approved claims as compared to if the company was to be in liquidation.

Insolvency Practitioner to be Appointed

The Companies (Amendment) Act 2024 introduces a new policy through an amendment to section 367 that the appointment of insolvency practitioners is mandatory when a company proposing an SOAC made an application involving a rescue financing, a cram down, an approval of the proposed scheme without a meeting of creditors or when a related company makes an application for a restraining order in relation to the proposed scheme.

The Companies (Amendment) Act 2024 emphasizes the important role of insolvency practitioners to oversee the proposed scheme and report of its status to the Court before the scheme is approved. This is to ensure a higher chance that the proposed scheme would be successful.

The new law and Court practices will lead to greater involvement of insolvency practitioners in these restructurings.

For instance, the use of super priority rescue financing or the cross-class cramdown requires the Court to appoint an insolvency practitioner to oversee that process. We will then increasingly see the court relying on the expert views of different insolvency practitioners as they put forward their contrasting views and analysis to the court.

In the recent scheme of arrangement of court proceedings involving KNM Group Bhd, the Court appointed an insolvency practitioner to issue a report on the viability of the scheme. Another insolvency practitioner then submitted to the court an alternative report with a different analysis of the scheme. We will likely see an increase in a contest of opinions of insolvency practitioners.

(B) Enhancement of other provisions relating to CVA/JM/SOAC

Amongst the significant amendments introduced to enhance the corporate rehabilitation framework under the Companies Act are as follows:

- (a) Allowing the Court to extend the duration of the judicial management order beyond 12 months;
- (b) Allowing companies which have obtained judicial management order the access to rescue financing;
- (c) Minimising loss faced by companies in insolvent proceedings by allowing secured creditors to recover assets in certain circumstances; and
- (d) Ensuring companies in insolvent proceedings continue to be supplied with essential goods and services to reduce disruption in their operations.

Subsections 406(1) and (2) provide that the duration of the judicial management order would be for a period of 6 months from the date of the making of the order.

This period can be extended for another 6 months on application by the judicial manager to the Court.

In certain circumstances however, more time is required to allow the appointed judicial manager to present

a comprehensive revitalizing plan for a financially distressed company. Thus, amendments are introduced to these subsections to allow sufficient time not limited to a maximum of 12 months for the judicial manager to carry out his duties such as to make appropriate recommendations in accordance with the terms as imposed by the Court.

The main objective of the new section 415A is to allow a company under judicial management to obtain rescue financing, similar to the policy introduced for companies proposing a scheme of arrangement with its creditors (SOAC). With the introduction of this new provision, the Court is empowered to order the debt arising from any rescue financing to be secured against the property of the company on certain conditions. In the event the company is wound up, debts arising from rescue financing are given super priority over all other debts in the event of a winding up.

What is the main aim of new section 398A and new subsection 411(5) relating to recovery of property by secured creditors?

The main aim of new section 398A and new subsection 411(5) is intended to provide relief to the company by allowing secured creditors to take possession, exercise any rights or recover secured property during a moratorium in a voluntary arrangement or judicial management based on the circumstances of the property.

For example, the secured creditors can take back perishable goods or any machinery on a lease agreement that are not used by the company during the voluntary arrangement or judicial management process. To this effect, the perishable goods would not go into waste and the supplier would not have to invoice the amount to the company. In the case of the machinery, it would not be left idle and would fall into disrepair if the company has limited resources to ensure that the machinery is maintained in good condition. This action would also allow the company to reduce any debts with the secured creditor with regards to those secured property.

What does section 430A provide to both supplier and the company when the company becomes subject to the proceedings in relation to a compromise or arrangement, a voluntary arrangement or a judicial management?

For a company that becomes subject to the proceedings in relation to a compromise or arrangement, a voluntary arrangement or a judicial management, section 430A provides that an insolvency related clause in any contract for the supply of essential goods and services cannot be exercised against the company merely because the company becomes subject to those proceedings.

What this means is that under the new section 430A, suppliers will have to continue to fulfil their commitments under their contract so that companies can continue trading through the rescue process, including making it easier for companies to maintain supply of contracts that are essential for the continuation of the business. Essential supply of contracts proposed under this new section would include supply of water, electricity or gas.

Conclusion

A restructuring scheme involves a collective process designed to achieve an equitable treatment for all stakeholders. The process will have to balance the different legal rights and commercial aims of the distressed company, its directors, financial institution creditors, unsecured creditors, preferential creditors such as employees, and any appointed insolvency practitioners.

With the likely growth in the number of restructuring cases, Malaysia already has specialist insolvency Courts in Kuala Lumpur and Shah Alam. These Courts currently focus on cases involving post-winding up, judicial management and CVA. There may then be a need for more insolvency Courts to be set up, perhaps to cater for the northern and southern areas.

CARRY FORWARD LEAVE IN MALAYSIA

By Adelyn Fang (Associate)
Messrs Donovan & Ho

In Malaysia, employees enjoy the privilege of “carrying forward” their unused leave from one year to another, ensuring flexibility in managing personal and professional commitments. It allows employees to make plans to attend to their personal matters, without the burden of losing their unused leave entitlement.

Here are some frequently asked questions about carry forward leave in Malaysia.

What is carry forward leave?

You will not find this phrase anywhere in legislation. “*Carry forward leave*” is the colloquial phrase used to describe the employee’s balance annual leave that they are allowed to use (i.e.: “carry forward”) in the subsequent year.

Are employers legally required to allow their employees to carry forward their unused leave?

Under section 60E(2) of the Employment Act 1955 (“EA”), which applies to all employees in Malaysia, an employer must allow their employees to take their annual leave “*not later than twelve months after the end of every twelve months continuous service*”, failing which it can be forfeited.

Reading the section as a whole, it means that employees are entitled to use their annual leave up to 12 months from when the leave is earned. This is because the entitlement to annual leave is given on the basis of every twelve months of continuous service.

Wouldn’t it be difficult to keep track of when each day of leave expires?

Many companies provide that annual leave entitlements shall accrue on a pro-rata basis. For example, if an employee is entitled to 12 days of annual leave, this means that they do not get to use the full 12 days of annual leave on the first day of employment. They will gradually accrue 1 day of leave per month, where at the end of 12 months of service, they will have earned the full entitlement of 12 days.

Illustration

An employee joins the Company on 1 January 2022 and is entitled to 12 days of annual leave for every twelve months of continuous service. His annual leave accrues on a pro-rata basis, so he will accrue 1 day of annual leave per month, until he hits 12 days of annual leave in end December 2022.

The difficulty with following section 60E(2) strictly is that this means every day of annual leave could have a different “expiry” date” if it is accrued on a pro-rata basis. That is why, for administrative purposes, some employers fix the expiry date to the end of the following year, even if this means providing for a longer carry forward period than legally required.

Can Employers limit carry forward leave?

Some annual leave policies dictate that an employee can only carry forward a maximum of X days of annual leave. However, the EA doesn’t provide for a limit to carry forward leave. As required under section 60E(2), employees should be allowed to use their annual leave not later than twelve months after the end of every twelve continuous months of service – any limitation on this would be non-compliant.

If an employer does not want to give carry forward leave, can it be replaced by a payment in lieu?

Yes, provided this is requested by the employer, and the employee agrees in writing not to avail themselves of part or all of the balance annual leave entitlement.

What does this all mean for employers?

Employers should review their annual leave policies to ensure compliance with the EA. Policies that restrict employees' use of annual leave or reduce the allowable duration may be non-compliant. With the recent expansion of the EA's coverage to include all employees as of 1 January 2023, it is important not to assume that previously acceptable "old" policies do not require updating.

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This article was written by Adelyn Fang (Associate) from Donovan & Ho's employment law practice. Donovan & Ho is a law firm in Malaysia which provides advice on employment law and industrial relations, including review of employment contracts, policies and handbooks, advising on workforce reductions, and managing dismissals of employees for poor performance or misconduct. The firm also represent clients in unfair dismissal claims and employment-related litigation. Have a question? Find out more at dnh.com.my.

NAVIGATING SHAREHOLDER RIGHTS AND EXIT MECHANISMS: STRATEGIES FOR EFFECTIVE CORPORATE GOVERNANCE

By Jesselyn Tham, Corporate Lawyer
Messrs Jesselyn Tham

Shareholder rights and share transfer mechanisms form the backbone of a company's governance and ownership structure. They are critical not only for managing relationships among shareholders but also for navigating corporate transactions and disputes. Understanding these mechanisms from a legal perspective allows companies to make informed decisions that protect their interests and promote growth. This article explores these rights and mechanisms in a comprehensive yet accessible manner, focusing on their implications for businesses and stakeholders.

Key Shareholder Rights: Protecting Interests and Balancing Power

Shareholder rights are essential in safeguarding stakeholders' investments and ensuring equitable treatment in corporate decision-making. Hence, it needs to be carefully structured and spelt out in a shareholder agreement, as these rights balance the interests of both majority and minority shareholders, fostering trust and collaboration.

1. **Drag-along rights** grant majority shareholders the authority to compel minority shareholders to sell their shares during a significant transaction, such as a company sale. While this simplifies the process for potential buyers, it can also marginalize minority shareholders. Hence, it is crucial to set out fair valuation and clear conditions triggering these rights, to help mitigate such risks.

2. In contrast, **tag-along rights** protect minority shareholders by allowing them to sell their shares under the same terms as the majority during a sale. These rights ensure that minority shareholders realize the value of their investment without being left behind in a major transaction.
3. Rights such as the **Right of First Refusal (ROFR)** and the **Right of First Offer (ROFO)** grant existing shareholders the first opportunity to purchase shares being sold by an exiting shareholder before those shares are offered to external parties. These mechanisms preserve the existing ownership structure and prevent dilution but can also delay transactions if procedures are overly complicated. Clear and practical timelines are essential to prevent unnecessary delays.
4. Put and call options are important mechanisms that provide flexibility in managing shareholdings, particularly in the context of an ever-changing business environment.
 - a) A **put option** grants shareholders the right to sell their shares to a designated party at a predetermined price or under specific conditions. This is especially valuable when market conditions are volatile or uncertain, or when an exit becomes necessary due to predefined circumstances, such as a strategic restructuring.
 - b) Conversely, a **call option** allows a party, often the company or another shareholder, to acquire shares from other shareholders under agreed-upon terms. This can be useful for consolidating ownership, facilitating succession planning, or ensuring control remains within a certain group.

However, disputes over valuation frequently arise in the context of exercising these options. Such disputes can create significant delays and conflicts, which is why agreements often include provisions for independent valuations by neutral experts or arbitration clauses to resolve disagreements fairly and efficiently.

In addition to addressing valuation challenges, ensuring regulatory compliance is critical for the successful implementation of these options. This is particularly true in jurisdictions that impose restrictions on share transfers, enforce capital markets regulations, or have specific rules governing shareholder agreements. Proper drafting and adherence to legal and regulatory frameworks are essential to mitigate risks and ensure the smooth execution of put and call options.

Breaking Deadlocks: Legal Solutions When Internal Mechanisms Fall Short

In Malaysia, deadlock situations often arise in companies where ownership is equally split (50:50) and where shareholder agreements are not carefully structured to prevent such impasses. Despite the best efforts of the shareholders and directors, they may fail to agree on the best course of action for the company, leaving it in a state of paralysis. In such cases, legal interventions become necessary to resolve the deadlock. Below are notable instances that illustrate how deadlocks have been managed through the judicial process:

1. **Perak Integrated Network Services Sdn Bhd v. Urban Domain Sdn Bhd & Anor [2018] 5 CLJ 513:** This Federal Court case involved a deadlock where the board was equally split between directors with opposing views, and the shareholding was equally divided among shareholders taking opposite stances. This stalemate effectively paralyzed the decision-making process within the company, creating an operational impasse.

The Federal Court made an important ruling, recognizing that such a deadlock does not preclude a shareholder from seeking relief through a derivative action. A derivative action allows a shareholder, particularly a minority shareholder, to initiate legal proceedings on behalf of the company when the board or majority shareholders are unwilling or unable to act. This legal remedy provides a

pathway for minority shareholders to address grievances and ensure the company's interests are safeguarded, even when internal mechanisms fail to resolve the deadlock.

The court's ruling highlights the judiciary's proactive role in resolving corporate disputes and maintaining the functionality of businesses. It underscores the importance of the legal system as a safeguard for minority shareholders who might otherwise be disadvantaged in situations where equal power dynamics lead to a complete standstill. This case also serves as a reminder for companies to proactively include robust deadlock resolution mechanisms in their shareholder agreements to minimize reliance on court intervention.

By stepping in to allow derivative actions, the judiciary demonstrated its commitment to preserving the integrity and continuity of corporate entities, ensuring that shareholder disputes do not compromise the broader interests of the company or its stakeholders.

2. **Chew Meu Jong v. Ultimate Engineering (M) Sdn Bhd [2020] MLJU 123:** In this case, the High Court addressed a deadlock by granting an application under Section 37 of the Companies Act 2016 to alter the company's constitution. The alteration aimed to break the deadlock by clarifying voting rights and decision-making processes, demonstrating the court's power to intervene and modify a company's constitution to resolve shareholder disputes.

However, the exercise of power under Section 37 is rare, as courts are generally reluctant to intervene in a company's internal affairs, particularly by amending its constitution—a document mutually agreed upon by the shareholders. The High Court allowed the application in this case because the circumstances made it impracticable to follow the usual procedures for modifying the company's constitution.

The court deemed the situation impracticable because it was impossible for the company to obtain the requisite quorum needed to hold a shareholders' meeting to amend the constitution. Additionally, the court's decision was premised on ensuring that the amendment would not prejudice the other shareholders. This case highlights the judiciary's flexibility in addressing exceptional circumstances while balancing fairness and practicality.

The complexities of shareholder rights, share transfer mechanisms, and deadlock resolution highlight the importance of a proactive and well-structured approach to corporate governance. These mechanisms are not merely tools for resolving disputes but essential components for safeguarding the interests of all stakeholders, promoting fairness, and ensuring business continuity. By incorporating robust provisions in shareholder agreements and adhering to sound legal principles, companies can minimize disruptions, foster collaboration among shareholders, and navigate challenges with confidence.

In an ever-evolving business landscape, understanding and effectively implementing these mechanisms is vital for sustaining growth and protecting the long-term interests of the company and its stakeholders.



THE BENEFICIAL OWNERSHIP REGIME UNDER THE LIMITED LIABILITY PARTNERSHIPS (AMENDMENT) BILL 2024

By Rachel Ng Li Hui (Principal Associate) & Tan Zec Kie (Legal Researcher)
Messrs Thomas Philip

The Limited Liability Partnerships (Amendment) Bill 2024 (the “**Bill**”) was passed by the *Dewan Negara* on 31.07.2024. The Bill covers proposed amendments of the Limited Liability Partnerships Act, 2012 (the “**Act**”), where one of the important amendments is the introduction of a reporting and disclosure framework on beneficial ownerships in a limited liability partnership. The key amendments are in the proposed insertion of Part IIIA to the Act.

According to proposed **Section 20E of the Act**, Part IIIA of the Act shall apply to all limited liability partnerships, except for certain classes of limited liability partnerships that are subjected to similar obligations under other written laws.¹

Definition of a Beneficial Owner

The definition of beneficial owner of a limited liability partnership is provided under the proposed **Section 20A(1) of the Act**, which reads as follows:-

“A person is a beneficial owner of a limited liability partnership if he is a natural person who ultimately owns or controls over a limited liability partnership and includes a person who exercises ultimate effective control over a limited liability partnership.”²

Section 20A(2) of the Act empowers the Registrar to issue guidelines for the identification of a beneficial owner of a limited liability partnership³. The Deputy Minister of Domestic Trade and Cost of Living, Fuziah Salleh, said that the Companies Commission of Malaysia has prepared guidelines to aid limited liability partnerships to understand and comply with the said amendments.⁴

Obligations of a Limited Liability Partnership

A limited liability partnership must keep and maintain a register of beneficial owners. According to the proposed **Section 20B(1) of the Act**⁵, every limited liability partnership shall keep a register of beneficial owners and record in the register. The following information are required to be recorded:

- a. the full name, addresses, nationality, identification and usual place of residence of the beneficial owner;
- b. the date the person becomes the beneficial owner;
- c. the date the person ceases to become the beneficial owner; and
- d. such other information as the Registrar may require.

This is important as the proposed **Section 20B(8) of the Act**⁶ provides that the register of beneficial owners of the limited liability partnership shall be prima facie evidence of any matter inserted in the register under this Act.

Powers of a Limited Liability Partnership

In addition, the proposed **Section 20C of the Act**⁷ empowers a limited liability partnership to require the disclosure of its beneficial owner from any partner. This provision enables a limited liability partnership to obtain its beneficial owner's information or confirm the accuracy of information herein.

For the above purpose, **Clause 5 of the Bill**⁸ seeks to amend paragraph 27(7)(a) of the Act to impose additional obligations on the compliance officer to maintain the register of beneficial owner and to require the disclosure of beneficial owner.

Duties of a Beneficial Owner

The proposed **Section 20D of the Act**⁹ sets out the duty of a beneficial owner to provide certain information:

1. A person who has reason to believe that he is the beneficial owner of the limited liability partnership shall notify and provide information prescribed to the limited liability partnership.
2. A person who is a beneficial owner of a limited liability partnership shall notify the limited liability partnership of any changes in his particulars.
3. A person who ceased to be beneficial owner of a limited liability partnership shall notify the limited liability partnership of the said cessation with the date and particulars of the cessation.

Registration of a Limited Liability Partnership

For a limited liability partnership formed after the commencement of the amendments above, **Section 10(2) of the Act**¹⁰ provides that the registration of limited liability partnership shall be accompanied by a statement signed by all partners of the limited liability partnership, and that **Clause 2 of the Bill**¹¹ requires this statement to contain the particulars of a beneficial ownership.

Conclusion

The Limited Liability Partnerships (Amendment) Bill, 2024 mandates beneficial ownership disclosure, boosting transparency and accountability in limited liability partnerships.

1 Limited Liability Partnership (Amendment) Bill, 2024, Section 20E.

2 Limited Liability Partnership (Amendment) Bill, 2024, Section 20A(1).

3 Limited Liability Partnership (Amendment) Bill, 2024, Section 20A(2).

4 (2024, July 31) "Dewan Negara Passes Limited Liability Partnership (Amendment) Bill 2024", Bernama. Accessed on 12.08.2024

5 Limited Liability Partnership (Amendment) Bill 2024, Section 20B(1).

6 Limited Liability Partnership (Amendment) Bill 2024, Section 20B(8).

7 Limited Liability Partnership (Amendment) Bill 2024, Section 20C.

8 Limited Liability Partnership (Amendment) Bill 2024, Clause 5.

9 Limited Liability Partnership (Amendment) Bill, 2024, Section 20D.

10 Limited Liability Partnership (Amendment) Bill, 2024, Section 10(2).

11 Limited Liability Partnership (Amendment) Bill, 2024, Clause 2.

This article was originally published on Thomas Philip website www.thomasphilip.com.my on 23rd October 2024 and reproduced with permission of the writers.

COMPANY GENERAL MEETINGS – PHYSICAL, VIRTUAL, OR HYBRID

By Toh Jia Yi (Associate)
Messrs Donovan & Ho

During the COVID-19 pandemic, public listed companies (PLCs) were given the flexibility to conduct fully virtual general meetings to comply with social distancing measures. This approach ensured the continuity of shareholder engagement during unprecedented times. However, even after the pandemic subsided, more than 50% of PLCs continued to hold their annual general meetings (AGMs) entirely online in the first half of 2024.

Recognizing the importance of in-person engagement, the Securities Commission Malaysia (SC) and Bursa Malaysia have now mandated a return to hybrid or physical meeting formats, signalling a shift back to more traditional and inclusive shareholder meetings. This principle of fostering direct interaction and engagement is also highly relevant for non-listed companies, SMEs, and small businesses, which can benefit from adopting similar practices to enhance stakeholder communication and trust.

What does this mean for PLCs —and Why Private Companies Should Take Notice?

1. *Enhanced Shareholder Engagement:* Hybrid and physical meetings allow shareholders to engage more personally with the board, which often leads to more honest conversations and deeper accountability. For PLCs, this is a move back toward corporate transparency, but SMEs and private companies should also see the value in fostering direct relationships with their stakeholders. Virtual-only formats can feel distant and transactional; blending physical and virtual can offer a balance that benefits all.
2. *Greater Flexibility and Inclusivity:* Hybrid models allow shareholders who can't attend in person—especially those overseas or with time constraints—to still participate. This flexibility isn't just for PLCs. SMEs with investors or partners abroad can use the same format to make meetings more inclusive, broadening their reach while maintaining the personal touch of in-person attendance.
3. *Strengthening Governance Practices:* The push for hybrid meetings reflects a broader trend toward stronger governance. PLCs must ensure transparency, but private businesses and SMEs also benefit from adopting governance practices that demonstrate accountability to investors, partners, and customers alike. The more inclusive the forum, the more trust is built.
4. *Logistical and Financial Consideration:* While hybrid meetings can introduce logistical and financial challenges, like managing both virtual and in-person setups, the payoff in deeper engagement often outweighs the costs. Smaller companies may balk at the initial investment, but for those eyeing growth, creating an inclusive, accountable forum for stakeholders could be a strategic advantage.

Preparing for the Transition

The transition to hybrid or physical general meetings represents a significant change in how PLCs engage with their shareholders. While it presents challenges in terms of logistics and costs, it also opens up opportunities

for deeper engagement and improved governance. PLCs should begin preparing by evaluating their current meeting formats, considering the needs of their shareholders, and ensuring that they have the necessary resources in place to support hybrid or physical meetings. This shift will require careful planning, but with the right approach, it can lead to more robust shareholder relations and stronger corporate governance.

However, the underlying principles also extends beyond listed companies. SMEs and private businesses should take note: building stronger connections with stakeholders, ensuring transparency, and fostering inclusion are key to long-term success, no matter the size of the company.

Looking Ahead: Regulatory Compliance

Bursa Malaysia will soon release additional guidance on these new requirements. As these updates unfold, we'll monitor the situation closely and provide the latest information to help PLCs, SMEs, and businesses alike navigate the evolving landscape. Whether you're complying with regulations or voluntarily enhancing shareholder engagement, this shift presents an opportunity for all businesses to strengthen governance and foster better relationships in a post-pandemic world.

This article was originally published on Donovan & Ho website www.dnh.com.my on 9th October 2024 and reproduced with permission of the writer.

IACS NEW MEMBERS

We are pleased to welcome the following new members on board:-

IACS No.	Names	Membership Category	State
M 2678	Ms. Maisara Binti Zol Fakar	Ordinary	Pahang
M 2679	Ms. Tharisheniy A/P Vijayan	Ordinary	Selangor
M 2680	Mr. Pison Bin Abidin	Ordinary	Selangor
M 2681	Ms. Angela Yip Suk Foong	Ordinary	Selangor
M 2682	Ms. Hana Afeeza Binti Rosman	Ordinary	Selangor
M 2683	Mr. Fong Kin Wai	Ordinary	Kuala Lumpur
M 2684	Mr. Wong Kok Chian	Ordinary	Selangor

In the meantime, we would like to take this opportunity to thank you for the on-going support given to the Institute. We look forward to your active participation in all the activities of IACS for the development of the company secretarial profession.

GENTLE REMINDER

ANNUAL SUBSCRIPTION FOR YEAR 2025

We wish to remind our members to remit their annual membership subscription for year 2025 to enable us to meet our objectives and discharge various structured programmes for year 2025 and beyond. For your information, the respective annual subscription fee for the time being is as follows:

CATEGORY OF MEMBERSHIP	ANNUAL SUBSCRIPTION
FELLOW	RM 250.00
ORDINARY	RM 200.00
ASSOCIATE	RM 150.00
GRADUATE	RM 150.00
STUDENT	RM 50.00

Kindly ignore this reminder if payment has been made.

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REMITTANCE SLIP - ANNUAL SUBSCRIPTION YEAR 2025

To:
Institute of Approved Company Secretaries
Suite C19, 1st Floor, Plaza Pekeliling
No.2, Jalan Tun Razak
50400 Kuala Lumpur

Name: IACS No:

I enclose herewith a Cheque/Bank Draft No. being payment of the above in favour of
INSTITUTE OF APPROVED COMPANY SECRETARIES

Should you wish to directly deposit or transfer online to our account, please fax/email a copy of the transaction slip to 03-4051 1133 or iacsc19@yahoo.com and call to confirm the receipt of your payment.

Details of our bank account are as follows:

Bank Name: Malayan Banking Berhad
 Account Number: 514075431102

(Please fill in your name and membership no. under the Tran Description and Reference No. columns of the bank-in slip respectively)

.....

Signature

EVENT HIGHLIGHTS

Official Opening Ceremony of the MACS National Conference 2024

The opening ceremony was held on 24th September 2024 at Avante Hotel, Petaling Jaya, Selangor. Our council member, Mr. Jaleeludeen Abu Baker attended the event.



CPCF Technical Committee Meeting No. 1/2024

The meeting was held on 30th September 2024 via Microsoft Team and was attended by our council members, Mr. See Poh Lam, Dr. Adissayam Xavier and Datuk M. Ramanathan.



Official Opening Ceremony of the MAICSA Annual Conference 2024

The opening ceremony was held on 23rd October 2024 at Sime Darby Convention Centre, Kuala Lumpur. Our council member, Mr. Jaleeludeen Abu Baker attended the event.



IACS-SSM Seminar: MBRS 2.0 For Preparers – Financial Statements

The 2-day course was held on 26th and 27th November 2024 at AC Hotel by Marriott Kuala Lumpur and the trainer was Mr. Peter Xavier



How to become a member of Institute of Approved Company Secretaries?



1) IACS

INSTITUTE OF APPROVED COMPANY SECRETARIES (IACS) was incorporated in Malaysia on 16 May, 1996 as a company limited by guarantee and not having a share capital under the Companies Act.

2) OBJECTS OF IACS

- To coordinate and co-operate with all the regulating authorities in enhancing the professionalism of company secretaries;
- To provide an avenue for company secretaries to get together to improve and advance their interest and professional status and to provide a vehicle for regulating the conduct and professional ethics of company secretaries;
- To conduct seminars, conference, and meetings for the presentation of papers, delivery of lectures, and for the acquisition and dissemination by other means of information connected with the profession of company secretaryship and other related corporate practice.
- To print and publish newsletters, periodicals, books or otherwise that are desirable for the benefits of members and the public with the approval of the authority concerned.

3) VISION STATEMENT OF IACS

"To be the Premier Professional Body for Approved Company Secretaries in Malaysia"

4) MISSION STATEMENT OF IACS

- To uphold the highest professional ethical standards and integrity for its members.
- To raise the profile and the professional status of its members in company secretarial practice, corporate governance and other related corporate practice.
- To support, promote and advance the profession of company secretaryship in cooperation with the relevant authorities and other akin professional bodies, universities, colleges, industry and the general public.
- To provide continuing professional development training and seminars for its members, and publications on company law and practice and related areas.

5) MANAGEMENT OF IACS

The Management of IACS is vested in the Council (the Board of Directors). The powers of the Council are governed by the provisions of the Constitution of IACS and the Companies Act 2016.

6) CATEGORIES OF MEMBERSHIP AND THEIR DISTINGUISHING LETTERS

The composition of membership of the Institute shall be classified as follows:-

- Fellow Member – FIACS
- Ordinary Member – MIACS
- Honorary Member – HIACS
- Associate Member – AIACS
- Graduate Member – GIACS
- Student Member

7) GUIDELINES FOR MEMBERSHIP APPLICATION

- Membership of IACS is by application on the prescribed form.

- The subscribers to the Constitution and such other persons as shall be admitted to membership in accordance with the provisions hereinafter contained shall, subject as provided by these present, be Members of the Institute.

- All applications shall be accompanied by the following:-

- Certified copy of valid Company Secretary Licence issued by CCM under Section 20G of the Companies Commission of Malaysia Act 2001 or Practising Certificate issued by the Registrar under Section 241 of the Companies Act 2016 by any other Company Secretary or Auditors or Commissioner for Oaths (applicable to Ordinary members only)
- Copies of other certificates of qualifications or membership in relevant associations/ bodies (if available). For Associate, Graduate and Student members, the copies of certificates must be certified by any other Company Secretary or Auditors or Commissioner for Oaths
- Two driving licence-size photographs.
- Photocopy of National Registration Identity Card.
- The registration fee and annual subscription shall be such sums as the Council may from time to time prescribe.

- The respective registration fee and annual subscription for the time being are as follows:

CATEGORY OF MEMBERSHIP	REGISTRATION FEE	ANNUAL SUBSCRIPTION
FELLOW	RM 150.00	RM 250.00
ORDINARY	RM 150.00	RM 200.00
ASSOCIATE	RM 100.00	RM 150.00
GRADUATE	RM 100.00	RM 150.00
STUDENT	RM 50.00	RM 50.00

** Members applying for upgrading to Fellow/Ordinary Members are required to pay a sum of RM170.00 being registration fee (RM150.00) and nominal upgrading fee (RM20.00).*

8) PRIVILEGES AND RULES OF MEMBERSHIP

- A Member is entitled to use the distinguishing letters as indicated in para 4 after his/her name.
- Members shall be entitled to:-
 - Receive notices and circulars of IACS pertaining to latest news relating to Secretarial Practices from CCM and other regulatory bodies.
 - Attend IACS' general meetings.
 - Vote at IACS' general meetings (applicable to Ordinary & Fellow Members)
 - Receive a Certificate and I.D. of Membership.
 - Participate in seminars, schemes and privileged to enjoy reduced fee and other benefits.
- All Members shall adhere to the provisions of the Constitution, the Code of Ethics and regulations in force and any amendments or changes thereof by the Institute.