

LIQUIDATION, JUDICIAL  
MANAGEMENT & SCHEME OF  
ARRANGEMENTS  
– PROCEDURE & PRACTICES

presented by

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# SCHEME OF ARRANGEMENT

- Section 210, Companies Act (Cap 50) provides for schemes of arrangement to be binding on creditors and members alike after the requisite approval by the specified majority and upon confirmation by the court.

# SCHEME OF ARRANGEMENT

- *Re Norfolk Island & Byro Bay Whaling Co* (1969) 90 WN (Pt) (NSM) 353 at 354

*“The section is intended to provide machinery: (i) For overcoming the impossibility or impracticability of obtaining the individual consent for every member of the class intended to be bound thereby, and (ii) For prevent, in appropriate circumstances, a minority of class members frustrating a beneficial scheme ...”*

# SITUATIONS WHERE IT MAY BE PROPOSED

- Adjustment of members' or creditors' rights inter se
- Reorganisation of the share capital of the company
- In the case of a group, its reconstruction or merger

# TYPES OF SCHEMES

- Creditors' Schemes
  - ▣ Schemes of arrangement outside judicial management (“s 210 scheme”)
  - ▣ Schemes of arrangement in judicial management (“s 227X scheme”)
- Members' Schemes
  - ▣ Reorganisation of share capital in company
  - ▣ Reconstruction of rights of members of company
- Schemes in Merger and Acquisitions
  - ▣ Except voluntary merging of bank and its subsidiary

## Difference between Scheme of Arrangement In and Outside Judicial Management

Section 210 Scheme outside JM	Section 210 Scheme in JM (read with s 227X)
Class meetings essential	Class meetings dispensable
Required majority: Majority in number representing $\frac{3}{4}$ in value of creditors who are present and voting	Required majority: $\frac{3}{4}$ in value of creditors who are present and voting
May be more difficult to obtain court's approval	May be easier to obtain court's approval

## Difference between Scheme of Arrangement In and Outside Judicial Management

Section 210 Scheme outside JM	Section 210 Scheme in JM (read with s 227X)
Management in control (consider scheme administrator)	Judicial Manager in control of company
Not available	Claw back possible
Non automatic moratorium (must apply)	Automatic moratorium

# PURPOSE OF CREDITORS' SCHEME OF ARRANGEMENT

- Company rescue
- Permit a company in financial difficulty to continue business in order to repay creditors
- Avoid impending liquidation by persuading its creditors to defer, rearrange or extinguish their debts
- Possibility that the business of company may be viable
- Scheme must accord benefits to creditors



# SOME POSSIBLE PROPOSALS TO CREDITORS

- Compromise scheme
  - ▣ write off a percentage of its debts
- *Re NFU Development Trust Ltd*  
[1973] 1 All ER 135

## SOME POSSIBLE PROPOSALS TO CREDITORS

*The word “compromise” implies some element of accommodation on each side. It is not apt to describe total surrender. A claimant who abandons his claim is not compromising it. Similarly, I think that the word “arrangement” in this section implies some element to give and take. Confiscation is not my idea of an arrangement. A member whose rights are expropriated without any compensating advantage is not, in my view, having his rights rearranged in any legitimate sense of that expression.”*

# SOME POSSIBLE PROPOSALS TO CREDITORS



- Moratorium scheme
  - ▣ Defer time of repayment
- Debt for equity swap

# PROCEDURES FOR APPROVAL OF SCHEME OF ARRANGEMENT



# EXAMPLES WHERE COURT REFUSES TO CONVENE MEETING

- Impossible to acquire the required statutory majority to approve the scheme
  - ▣ *Re Savoy Hotel Ltd* [1981] Ch 351
- Company hopelessly insolvent
  - ▣ *Re Pheon Pty Ltd* (1986) 11 ACLR 142
- Scheme is unreasonable and just a mere extinction of rights without compensation
  - ▣ *Mercantile Investment & General Trust Co v International Co of Mexico* (1893) 1 Ch 484

## AT THE MEETING

- Chairman of meeting explains reasons for meeting
- Consideration of proposed scheme
- Questioning of directors of company or proposed scheme administrator
- Amendment of proposed scheme, if necessary
- Voting on the proposed scheme

# VOTING ON PROPOSED SCHEME

- Scheme outside judicial management
  - ▣ Majority in number and  $\frac{3}{4}$  in value of creditors or class of creditors present and voting
- Scheme in judicial management
  - ▣  $\frac{3}{4}$  in value of creditors or class of creditors present and voting

# FACTORS CONSIDERED BY COURT IN APPROVING SCHEME

- Procedures in Companies Act have been complied with
- Scheme is fair and reasonable
- Scheme is of real benefit to the creditors

☰ *Re Halley's Departmental Store  
Pte Ltd* [1996] 1 SLR 70



## EFFECT OF APPROVED SCHEME

- Upon lodgment, order of court is binding on
  - ▣ Dissenting creditors or members (as the case may be)
  - ▣ Company
  - ▣ Liquidator
- Cannot be altered by agreement
  - ▣ Can only be varied by order of the court
  - ▣ *Srimata Premila Devi v Peoples Bank of Northern India Ltd* [1938] 4 All ER 337, Privy Council

## EFFECT OF APPROVED SCHEME

- Scheme of arrangement between company and creditors affects only rights of creditors against company **BUT NOT** rights of creditors against a third party, such as guarantor of liabilities of company
  - ▣ *Daewoo Singapore Pte Ltd v CEL Tractors Pte Ltd* [2001] 4 SLR 35

# JUDICIAL MANAGEMENT

- Governed by Part VIIIA, Companies Act (Cap 50)
- Idea is to rehabilitate an insolvent company & nurse it back to financial health or to realise the assets for the benefit of the creditors without the necessity of a liquidation

# WHO MAY PETITION?

- The Company - pursuant to shareholders' or directors' resolution
- Creditor - including contingent or prospective creditor

# PRE-CONDITIONS FOR ORDER

- Proof of insolvency of company
- Making of JM order is likely to achieve one of the following purposes:
  - ▣ Survival of the company as a going concern
  - ▣ Facilitate S 210 scheme
  - ▣ More advantageous realisation of assets

# GENERAL GUIDELINES ADOPTED BY THE COURT

- *Re Genesis Technologies International (S) Pte Ltd*  
[1994] 2 SLR 390
- *Re Cosmotron Electronics (Singapore) Pte Ltd* [1989] 2  
MLJ 11

# ADVANTAGES OF JUDICIAL MANAGEMENT

- Immediate moratorium against legal actions (breathing space)
  - ▣ No winding up order can be made
  - ▣ Creditors cannot enforce security
  - ▣ Civil proceedings cannot be commenced
  - ▣ Existing actions are stayed
  - ▣ Execution and distress may not be commenced or continued against the company's property

# ADVANTAGES OF JUDICIAL MANAGEMENT

- Interim judicial management available
- Unfair dispositions of property caught
- Independent management in charge
- Do not require ready scheme
- Do not require 100% agreement amongst creditors



# DISADVANTAGES OF JUDICIAL MANAGEMENT

- Adverse publicity / stigma of insolvency
- Secured creditors' rights affected
- Company trade on cash basis
- Rights of set-off or self-help still exercisable
- Event of default / termination

# CHOICE OF JUDICIAL MANAGER

- Applicant shall nominate
- Approved company auditor who is not auditor of company
- Majority in number and value of creditors may oppose if nomination is made by company
- Mere fact that company chose nominee does not warrant removal in favour of another

# EFFECT OF JM ORDER ON DIRECTORS

- Directors' powers and duties suspended
- Judicial managers replace board of directors
- Directors must submit statement of affairs
- Directors must provide information concerning company as JM requires & attend on JM as required

# WINDING UP

- Governed by Part X, Companies Act
- 2 types of winding up
  - ▣ by the court - initiated by presentation of a petition to the court
  - ▣ voluntary - initiated by passing of resolution

# GROUNDS FOR WINDING UP BY THE COURT

- Section 254, Companies Act
- Common ground - company is unable to pay its debts
- Company deemed to be unable to pay its debt if, upon statutory demand being made for payment of exceeding \$10,000, company fails to make payment

# EFFECT OF PRESENTTATION OF A PETITION

- Winding up is deemed to have commenced at the time that the petition is presented if order is subsequently made
- Avoidance of dispositions of property
- Avoidance of execution against the company
- Stay of pending proceedings or actions

# EFFECT OF COMMENCEMENT OF WINDING UP

- Cesser of company's business
- Cesser of directors' powers
- Termination of contracts of employment
- Avoidance of dispositions of company's property

# EFFECT OF COMMENCEMENT OF WINDING UP

- Avoidance of transfer of shares
- Avoidance of uncompleted execution
- Prohibition on executing being put in force against the company
- Staying of actions against the company