



CONSULTATIVE DOCUMENT ON THE PROPOSED COMPANIES (AMENDMENT) BILL 2020

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The Companies Commission of Malaysia (SSM) invites comments on the Consultative Document by **26 August 2020**.

Please provide your name and the organisation you represent (where applicable) and to provide reference on the questions you are commenting.

Comments must be forwarded by email to: lrpia@ssm.com.my

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SECTION A: INTRODUCTION

INTRODUCTION

1. Amidst the recovery period of the Covid-19 pandemic and as we continue to establish Malaysia as the preferred destination to do business, it is imperative that measures to improve the insolvency framework and transparency are introduced.

2. In this regard, the Companies Commission of Malaysia (SSM) is proposing to amend the Companies Act 2016 (CA 2016) by introducing new policies to enhance the provisions relating to corporate rescue mechanisms and beneficial ownership framework to bring Malaysia in tandem with international best practices.

3. The Covid-19 pandemic has resulted in some companies facing financial pressures. Earlier, temporary reliefs have been introduced such as increasing the threshold for the company's inability to pay its debts as well as other measures to alleviate financial burdens faced by companies. Such reliefs will not be enough for the long run as the economy is being rejuvenated. Therefore, there is an urgent need for long term measures to support companies and mitigate risks of their failure by providing the right tools for their survival.

4. Although the Covid-19 event had accelerated the need to enhance the provisions relating to corporate rescue, SSM is of the view that such improvements must be set in context to ensure that they are not only able to cushion the impact of Covid-19 but also able to ensure the rights and responsibilities of debtors and creditors are adequately addressed through fair and efficient procedures.

5. This Consultative Document sets out the proposed Policies and Guiding Principles in relation to the Companies (Amendment) Bill and seeks responses on the following clusters:

- (a) Widening the application of corporate rescue mechanism;
- (b) Enhancing the framework in relation to restructuring and rescue mechanism;
- (c) Enhancing the framework in relation to beneficial ownerships; and
- (d) Consequential and miscellaneous amendments on certain provisions in the CA 2016.

WIDENING THE APPLICATION OF CORPORATE RESCUE MECHANISMS

6. When the CA 2016 was enforced on 31 January 2017, an entirely whole new framework for corporate rescue mechanisms was introduced through provisions on corporate voluntary arrangement and judicial management.

7. The corporate rescue mechanisms framework is aimed at assisting financially distressed companies to return to be going concern organizations without the need for a scheme of arrangement or to be placed under receivership or to be wound-up by creditors. These rescue mechanisms are meant to rehabilitate a financially viable company with a sustainable ongoing business rather than winding up the distressed company.

8. A corporate voluntary arrangement is not a Court supervised arrangement and it is not available for—

- (a) a public company;
- (b) a company which is a licensed institution or an operator of a designated payment system regulated under the law enforced by the BNM;
- (c) a company which is subject to the Capital Markets and Services Act 2007 (CMSA 2007); and
- (d) a company which creates a charge over its property or any of its undertaking.

9. Meanwhile, a judicial management is a Court supervised arrangement and made through an originating summons supported by an affidavit stating the grounds for the application. However, the arrangement is not available for—

- (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; and
- (b) a company which is subject to the CMSA 2007.

10. In the last three years since the CA 2016 was enforced, SSM has received numerous requests and proposals to review the scope of application for corporate rescue mechanism, particularly to widen its application to allow more companies to benefit from the rehabilitative tools.

11. In response to these feedbacks, the scope of the corporate rescue mechanisms will be proposed to be widened to allow certain classes of companies to adopt corporate voluntary arrangement or judicial management.

12. One of the proposals in the Bill is substituting paragraphs 395(a) and (b) of the CA 2016 with new subsections to enable public

companies and companies with charges over its properties or any of its undertakings to adopt the corporate voluntary arrangement mechanism.

13. Similarly, with judicial management, paragraph 403(b) of the CA 2016 is substituted to allow public companies to adopt the judicial management.

14. In addition, new safeguards are embedded into the legislations to safeguard the risk of creditors since public interest entities can now invoke these corporate rescue mechanisms.

ENHANCING THE FRAMEWORK IN RELATION TO RESTRUCTURING AND RESCUE MECHANISMS

15. The development of insolvency practices in other jurisdictions also necessitated a review of the existing framework relating to restructuring and corporate rescue mechanism.

16. With the introduction of corporate rescue mechanisms provisions in the CA 2016 to rehabilitate financially distressed companies, the use of restructuring provisions should be limited to corporate restructuring exercises and arrangement with creditors. In practice however, the restructuring provisions have been used to assist companies in financial difficulties as a rescue mechanism. Notwithstanding, there has been significant development in many developed jurisdictions where there is a convergence of restructuring and rescue frameworks which could also be applied in Malaysia.

17. The latest is the United Kingdom which has just passed the Corporate Insolvency and Governance Act in June 2020. Singapore has enhanced its scheme of arrangement provisions in 2017 by

introducing provisions to address the complexity of modern debt restructuring exercise and at the same time provides sufficient safeguards for creditors when companies are finalising the scheme of arrangement.

18. Despite having introduced the judicial management provisions to rehabilitate financially distressed companies, the Singapore experience has suggested that judicial management as a rehabilitative regime has not seen a high level of success, among others, due to the following reasons:

- (a) the judicial management regime is invoked far too late which could be attributed to companies' reluctance to hand over the control to judicial manager. The displacement of the management may itself be a significant impediment to the effectiveness of the judicial management regime; and
- (b) the statutory moratorium does not apply to self-help remedies such as contractual termination clauses and contractual set-off.

19. SSM is of the view that the corporate voluntary arrangement and the judicial management regimes have not been fully tested yet due to the limitation of its scope of application. As such, one of the proposals in the proposed Bill is to allow more categories of companies to have access to the corporate rescue mechanisms through amendments to sections 395 and 403. In addition, there is also a need to introduce provision to deal with contractual termination clauses to better complement the judicial management regime.

20. On the other hand, the scheme of arrangement regime has been heavily relied on by the corporate community not only for restructuring exercises but also for rehabilitating process. Since 2004 to 30 June 2020, there have been a total of 253 applications for schemes of arrangements. However, when the provisions on corporate rescue mechanism were enforced on 1 March 2018, the number of applications for scheme of arrangements are higher compared to the new rescue mechanisms.

| Year | Scheme of Arrangement | Corporate Voluntary Arrangement | Judicial Management |
|----------------------|------------------------------|--|----------------------------|
| 2018 | 35 | 3 | 15 |
| 2019 | 16 | 1 | 13 |
| 2020 (as at June) | - | - | 20 |

*Note: Corporate Voluntary Arrangement and Judicial Management were only enforced effective on 1 March 2018.

21. To this end, SSM is of the view that there are merits to enhance the provisions relating to scheme of arrangements. As the management of the company under a scheme of arrangement is not displaced, the management is incentivised to prepare a reorganisation plan to be proposed to the creditors and to ensure that the plan is seen through.

22. In many jurisdictions such as the USA, Germany, France and Singapore, a debtor-in-possession reorganisation regime has been implemented with the following features:

- (a) the management is still in control of the company and be able to prepare reorganisation plan to be agreed by the creditors;
- (b) there is a moratorium to protect the company from its creditors;
- (c) there is usually a “cram down” mechanism available to the Court to compel creditors to agree with the proposed plan;
- (d) there is a specific mechanism to allow company to obtain financing for the purposes of continuing its operations or to further the organisation.

23. Taking into consideration of these factors, a more facilitative approach is proposed to give companies a range of options in restructuring exercises or rehabilitation measures.

24. As such, SSM is proposing for the following new policies to be introduced:

- (a) enhancement of the scheme of arrangements framework including:
 - (i) empowering the Court to grant an “automatic moratorium” upon an application of a restraining order under section 368;
 - (ii) empowering the Court to restrain proceedings against subsidiary or holding company;

- (iii) empowering the Court to order a meeting to revoke the proposed compromise or arrangement
 - (iv) empowering the Court to approve a compromise or an arrangement without having the meeting of creditors;
 - (v) empowering the creditor to apply to the Court for a review of the decisions made by the company during the moratorium;
 - (vi) allowing super priority for rescue financing;
 - (vii) introducing cross-class cramdown provisions; and
 - (viii) empowering creditors to restrain disposition of properties during moratorium.
- (b) enhancement of the corporate rescue mechanisms framework:
- (i) empowering secured creditors to recover certain categories of properties during moratorium; and
 - (ii) allowing super priority for rescue financing.
- (c) introducing provisions to deal with contractual termination clauses to ensure continuous supply of essential goods and services.

ENHANCING THE FRAMEWORK FOR BENEFICIAL OWNERSHIP

25. SSM has introduced several provisions relating to beneficial ownership for example, the definition of 'beneficial owner' under section 2 of the CA 2016 and power of a company to enquire beneficial ownership information from its members under section 56.

26. The insertion of those provisions is based on the gaps identified by the Financial Action Task Force (FATF) through the Malaysian Mutual Evaluation Report published in 2015 (MER 2015). In the MER 2015, Malaysia has been rated as partially compliant in terms of taking measures to prevent the misuse of legal persons for money laundering and terrorist financing. Typically, legal persons such as companies and limited liability partnerships are vulnerable to be used in a money laundering and terrorist financing activities by irresponsible persons behind the entity (beneficial owners).

27. Based on the feedback received from the FATF and in line with the legislative improvements made by other jurisdictions like Hong Kong and Singapore, SSM initiated an in-depth study of the beneficial ownership reporting framework in 2019 and early 2020 to strengthen its anti-money laundering and counter terrorism financing measures.

28. Among the gaps identified based on the study are as follows:

- (a) to give clarity to the definition of 'beneficial owner' which goes beyond ownership of shares in line with the FATF recommendations;
- (b) to provide clarity and guidance of the beneficial ownership reporting framework which include foreign and local for companies and limited liability partnerships;
- (c) to streamline the reporting of the beneficial ownership information between SSM and other relevant statutory bodies in order to avoid overlapping reporting; and
- (d) to harmonize the laws with the FATF recommendations and international standards.

29. Based on the study, SSM is proposing several amendments to the CA 2016 for completeness of the beneficial ownership legal framework in SSM.

CONSEQUENTIAL AND MISCELLANEOUS AMENDMENTS

30. Apart from the main policy statements proposed as stated above, certain existing and new provisions are proposed to be amended and aimed at formulating a more efficient business process and procedures for the corporate community. These proposed amendments seek to provide clarification in the existing policy to enable the relevant provisions to be implemented accordingly and to clarify or streamline drafting issues of certain provisions.

31. The proposed amendments are based on the feedbacks received from the relevant stakeholders such as co-regulators and the public.

CONSULTATION PROCESS

32. SSM has identified several gaps that need to be addressed through amendments to the laws. Hence initial consultation processes were carried out through circulation of the drafts Companies (Amendment) Bill 2020 from 17 June until 1 July 2020 to the following selected stakeholders consisting of statutory bodies and practitioners:

- (a) Bank Negara Malaysia (BNM);
- (b) Securities Commission (SC);
- (c) Bursa Malaysia Berhad;

- (d) Association of Islamic Banking & Financial Institutions Malaysia;
- (e) The Association of Banks in Malaysia;
- (f) Malaysian Institute of Accountants;
- (g) Chartered Secretaries of Malaysia;
- (h) The Malaysian Institute of Certified Public Accountants;
- (i) Insolvency Practitioners Association of Malaysia;
- (j) Malaysian Bar; and
- (k) Institute of Approved Company Secretaries.

SECTION B: POLICY STATEMENTS AND GUIDING PRINCIPLES

SUMMARY OF THE POLICY STATEMENTS

33. The following is summary of the proposed policy statements:

| POLICY | POLICY STATEMENT |
|------------------------------------|--|
| Proposed Policy Statement 1 | Empowering the Court to grant an "automatic moratorium" upon an application of a restraining order under section 368 |
| Proposed Policy Statement 2 | Empowering the Court to restrain proceedings against subsidiary or holding company in a scheme of arrangement |
| Proposed Policy Statement 3 | Introducing super priority for rescue financing in a scheme of arrangement |
| Proposed Policy Statement 4 | Empowering creditors to restrain disposition of properties during moratorium in a scheme of arrangement |
| Proposed Policy Statement 5 | Introducing cross-class cramdown provisions in a scheme of arrangement |
| Proposed Policy Statement 6 | Empowering the Court to order a meeting to revoke the proposed scheme of arrangement |
| Proposed Policy Statement 7 | Filing, inspection and adjudication of proofs of debts in relation to a scheme of arrangement |

| POLICY | POLICY STATEMENT |
|-------------------------------------|--|
| Proposed Policy Statement 8 | Empowering the Court to approve a compromise or an arrangement without having the meeting of creditors |
| Proposed Policy Statement 9 | Empowering the creditor to apply to the Court for a review of the decisions made by the company during the moratorium in relation to a scheme of arrangement |
| Proposed Policy Statement 10 | Widening the access by companies to corporate voluntary arrangement |
| Proposed Policy Statement 11 | Allowing a secured creditor to recover property other than immovable property during the moratorium of a corporate voluntary arrangement |
| Proposed Policy Statement 12 | Clarifying accessibility of judicial management |
| Proposed Policy Statement 13 | Allowing a secured creditor to recover property other than immovable property during the moratorium in relation to a judicial management |
| Proposed Policy Statement 14 | Introducing super priority rescue financing for judicial management |

| POLICY | POLICY STATEMENT |
|-------------------------------------|---|
| Proposed Policy Statement 15 | Providing protection for continuation of supply of essential goods and services for company under a scheme of arrangement, corporate voluntary arrangement or judicial management |
| Proposed Policy Statement 16 | Exempting certain categories of company from the beneficial ownership reporting framework |
| Proposed Policy Statement 17 | Defining the concept of 'beneficial owner' for companies and foreign companies |
| Proposed Policy Statement 18 | Introducing a new register, 'register of beneficial owners' to record all information relating to beneficial owners |
| Proposed Policy Statement 19 | Empowering companies to obtain beneficial ownership information from members or any person whom to believe is a beneficial owner or has knowledge of a person who is a beneficial owner |
| Proposed Policy Statement 20 | Imposing an obligation to the beneficial owner to notify and provide information relating to his status as 'beneficial owner' |
| Proposed Policy Statement 21 | Compelling foreign companies to lodge beneficial ownership information at the registration stage |
| Proposed Policy Statement 22 | Introducing a new policy of 'register of members of foreign companies' which consist of local and foreign shareholding to |

| POLICY | POLICY STATEMENT |
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| | be kept and maintained in Malaysia in substitution to the current policy of 'branch register' for foreign companies |
| Proposed Policy Statement 23 | Deletion of sections 569 and 570 in relation to registration of shares and removal of shares in the branch |
| Proposed Policy Statement 24 | Adopting relevant provisions relating to the index of members, inspection and closing of branch registers to the new sections 56A, 56B, 56C, 56D and 56E relating to beneficial ownership |
| Proposed Policy Statement 25 | Consequential amendments to sections 572 and 573 in relation to reference to "branch register" |
| Proposed Policy Statement 26 | Clarifying the mandatory obligation to submit beneficial ownership information to the Registrar together with annual return |
| Proposed Policy Statement 27 | Requiring particulars on beneficial ownership information as part of the annual return to be lodged |
| Proposed Policy Statement 28 | Consistency in terms of terminology with Capital Markets and Services Act 2007 |
| Proposed Policy Statement 29 | Clarifying that a public company shall not issue shares to the public with only a statement in lieu of prospectus |
| Proposed Policy Statement 30 | Allowing extension of time for sending out copies of financial statements and reports |

| POLICY | POLICY STATEMENT |
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| Proposed Policy Statement 31 | Allowing independent company auditors within a firm of auditors to act as auditors of a company even though the spouse of a partner is an employee of the company |
| Proposed Policy Statement 32 | Requiring approved liquidator to notify particulars and changes of liquidator |
| Proposed Policy Statement 33 | To provide flexibility on the mode of notification in a manner determined by the Registrar |
| Proposed Policy Statement 34 | To provide flexibility on the mode of calling a meeting by an advertisement in a manner to be determined by the Registrar |
| Proposed Policy Statement 35 | Requiring foreign companies to lodge with Registrar changes or alteration of particulars in its status |
| Proposed Policy Statement 36 | Allowing the Registrar to extend time for lodgement of documents without any application made |
| Proposed Policy Statement 37 | Allowing the Minister to make regulations on matters relating to scheme of arrangement, corporate voluntary arrangement and judicial management |

POLICIES STATEMENTS AND GUIDING PRINCIPLES

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| Proposed Policy Statement 1 | Empowering the Court to grant an "automatic moratorium" upon an application of a restraining order under section 368 |
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34. The policy objective of this proposal is to provide 'automatic' moratorium of two (2) months when an application for a compromise or arrangement is made to the Court.

35. Under the current regime, typically an application under section 366 will also be coupled with an application for a restraining order under section 368. This is done to ensure that companies proposing for a scheme of arrangement is able to convene meetings with creditors without the threat of a petition of winding up being filed.

36. Often this has resulted in practical issue faced by companies is to fulfil the conditions set out under paragraph 368(2)(d). Whilst the requirement under the paragraph is important to ensure that creditors' rights and interests remains protected, the requirement at the initial stage of the process seems to be counterproductive.

37. As such, it is proposed that a clarification for the moratorium is needed where companies can be given a moratorium of two (2) months to ensure that agreements from the creditors can be obtained and the existing conditions under paragraphs 368(2)(a) to (d) must be complied with on the extension of the restraining order to a period of no longer than ten (10) months.

38. The two (2) months moratorium is proposed in line with the maximum moratorium period for corporate voluntary arrangement

and for the period in which a judicial manager is required to hold meetings to propose a plan under the judicial management application.

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| Proposed Policy Statement 2 | Empowering the Court to restrain proceedings against subsidiary or holding company in a scheme of arrangement |
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39. The policy objective is to empower a related company to apply to Court for a restraining order if such company plays an integral part in the compromise or arrangement to ensure its success.

40. Currently, the Court is only empowered to order a restraining order against the company undergoing the compromise or arrangement. The restraining order is not extended to a related company. In certain circumstances where the compromise or arrangement is assisted by a related company, the chances of success of the scheme is reduced if the related company is not protected by the moratorium.

41. To ensure such power is not abused, the provision under the new section 368A outlines certain criteria before a related company can apply for a restraining order such as:

- (a) the company plays a necessary and integral role to the compromise or arrangement;
- (b) the compromise or arrangement will be frustrated if the restraining order is not granted;
- (c) the Court is satisfied that the creditors of the related company is not prejudiced.

42. The policy intent of this proposal was to support debtor-led restructurings through a “super charged” scheme of arrangement regime and includes rescue financing provisions allowing the grant of super priority status for financing arising from such arrangement.

43. The rescue financing provision under the new section 368B allows the Court to grant an order that the rescue financing be afforded super priority where a company has made an application to convene a meeting for the purposes of a scheme of arrangement under section 366 or restraining order under section 368 of the CA 2016.

44. In summary, the Court can make one or more of the following orders in respect of any debt arising from any rescue financing obtained, namely for the debt—

- (a) to be treated as part of the costs and expenses of the winding up;
- (b) have priority over all the preferential debts and all other unsecured debts;
- (c) to be secured by a security interest on property not otherwise subject to any security interest or that is subordinate to an existing security interest; and
- (d) to be secured by a security interest on property subject to an existing security interest, of the same priority as or higher priority than that existing security interest.

45. The Court may approve for a rescue financing order if—

- (a) reasonable efforts are made to secure rescue financing without super priority;
- (b) there is adequate protection for the interests of the holder of the existing security interest; and
- (c) the proposed financing must constitute a “rescue financing” as defined in the provision, either in sole or collectively, where –
 - (i) rescue financing is necessary for the survival of a company that obtains the financing;
 - (ii) rescue financing is necessary to achieve a more advantageous realisation of the assets than on a winding up.

46. In the event the company is wound up, the debt arising from the rescue financing will be treated as follows:

- (a) if the company has two or more super priority debts—
 - (i) the debt will rank equally between themselves; and
 - (ii) are to be paid in full or if there is no sufficient property to meet them, to be paid in equal proportions between them,
- (b) the debts will be ranked *pari passu* with payments under paragraph 527(1)(a).

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| Proposed Policy Statement 4 | Empowering creditors to restrain disposition of properties during moratorium in a scheme of arrangement |
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47. The policy objective is to ensure that creditors' rights are protected when a moratorium is granted to the company. The proposal under the new section 368C is particularly important in view of the proposal to allow the Court to provide a restraining order without any condition to the company for the initial period of two (2) months as stated under Policy Statement 1.

48. Under the current law, unless with the leave of Court, a disposition of property which is not in the ordinary course of business is void once a scheme of arrangement has been approved.

49. This proposal will strike a balance between the rights of the company and the creditors by allowing right to apply for an order to restrain the company from disposing its assets or transferring any shares except in good faith and in the ordinary course of business.

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| Proposed Policy Statement 5 | Introducing cross-class cramdown provisions in a scheme of arrangement |
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50. It is common that in any arrangements that not all creditors are open for negotiations on the amount outstanding due from the company and these dissenting creditors may jeopardize the arrangement by taking legal actions against the company.

51. The proposed provision under the new section 368D is to ensure the proposed scheme of arrangement does not discriminate unfairly on creditors who have not accepted the plan. The objectives

of this provision is to enable the proposal be improved and implemented successfully.

52. The cram down mechanism is to—

- (a) ensure companies in distress will have successful scheme with least interference; and
- (b) provide protection to creditors in debt the creditors would receive a value equal to the allowed amount of their claims as compared to if the company has gone into liquidation.

53. The proposed provision creates a mechanism to compel one or more non-consenting classes of creditors to be bound by the scheme of arrangement if—

- (a) the scheme is approved by a majority in number, representing at least 75% of the value, of those present and voting at the meeting of at least one class of creditors;
- (b) the scheme is also approved by creditors comprising a majority in number, representing at least 75% of the value, of those present and voting at the meetings of scheme creditors as a whole; and
- (c) the scheme is “fair and equitable” to each dissenting class of creditors and does not “discriminate unfairly” between two or more classes of creditors.

54. The concept of “fair and equitable” requires—

- (a) no creditor in the dissenting class receive less under the scheme than it is estimated by the Court to receive in the most likely scenario if the scheme is not passed;

- (b) if the creditors in the dissenting class are secured, they must receive deferred cash payments totalling the amount secured (and security preserved until such time), be given a charge over the proceeds of their secured asset or be entitled to realise the “indubitable equivalent” of the security; and
- (c) if the creditors in the dissenting class are unsecured, they must either be paid out in full, or the scheme must not provide for any creditor or shareholder subordinate to the dissenting creditor to receive or retain any property (for these purposes, the term “unsecured”, appears to be intended to include secured creditors to the extent of any shortfall claim that cannot be satisfied from the secured collateral).

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| Proposed Policy Statement 6 | Empowering the Court to order a meeting to revote on the proposed scheme of arrangement |
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55. The policy objective of the proposal is to allow the Court to order a meeting to revote on the proposed scheme of arrangement if objections are raised on the terms of the scheme but not rejecting the proposed scheme itself.

56. Under the existing framework, a compromise or an arrangement is only binding if approved by at least 75% of the creditors in value. Once such agreement has been obtained, the matter must still be sanctioned by the Court. During the hearing, if there is any objection raised on the approval or terms of the proposed compromise or arrangement, the Court will have to reject the proposed scheme and the process will have to start all over again.

57. The proposed provision under the new section 369A will assist the Court to make better decision with regards the scheme rather than rejecting the scheme altogether. If exercised by the Court, such power will avoid the whole process from having to start all over again and which would reduce costs and delay to the company and the creditors.

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| Proposed Policy Statement 7 | Filing, inspection and adjudication of proofs of debts in relation to a scheme of arrangement |
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58. The policy objective is to ensure there is a standard procedural rule on proof of debts applicable for a compromise or arrangement similar to that which is applicable to corporate voluntary arrangement and judicial management.

59. This policy will promote transparency during the compromise and arrangement by putting in place a proper procedure in admitting debts.

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| Proposed Policy Statement 8 | Empowering the Court to approve a compromise or an arrangement without having the meeting of creditors |
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60. The policy objective of this statement is to allow the Court to approve a compromise or an arrangement without having the meeting of creditors.

61. The proposed amendment is intended to provide a faster process to approve the comprise or arrangement provided that the Court is satisfied that the creditors would have agreed with the

62. As a safeguard, the proposed amendment can only be used if the Court is satisfied that the creditors would have agreed to the proposed scheme had the meeting of creditors been convened. There are also safeguards available where the company is required to send notices and information concerning the creditors' rights to every creditor.

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| Proposed Policy Statement 9 | Empowering the creditor to apply to the Court for a review of the decisions made by the company during the moratorium in relation to a scheme of arrangement |
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63. The policy objective is to empower the creditors to apply to the Court to review the decisions of the company once a compromise or arrangement has been approved.

64. Under the current framework, creditors who are aggrieved by the actions of the company are unable to review the decisions made. The Court will then have the power to reverse the actions or decisions made by the company. This new provision will ensure that the company will strictly follow the terms of the compromise or arrangement.

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| Proposed Policy Statement 10 | Widening the access to corporate voluntary arrangement |
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65. The amendment to section 395 is to widen the access to corporate voluntary arrangement to all companies except:

- (a) a company which is a licenced institution or an operator of a designated payment system regulated by BNM; or

- (b) a company which is approved or licenced by SC under the CMSA 2007 or SICDA 1991 or prescribed upon the written request by Ministry of Finance (MOF).

66. The purpose of this policy is to give wider access to companies to corporate rescue mechanisms. Presently, the benefit of corporate voluntary arrangement is limited to private companies which do not have any charge over its property or undertaking.

67. The widening of the application of corporate voluntary arrangement will assist companies facing financial difficulties to attempt a workable solution with their creditors.

68. This provision is especially critical in cushioning the impact of Covid-19 pandemic.

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| Proposed Policy Statement 11 | Allowing a secured creditor to recover property other than immovable property during the moratorium of a corporate voluntary arrangement |
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69. The policy objective of this proposal is to allow a secured creditor to recover property other than immovable property during the moratorium of a corporate voluntary arrangement. The power can only be exercised when the secured creditor gives notice to the nominee.

70. The objective is to reduce the risk of secured creditors in relation to certain types of properties during a corporate voluntary arrangement, especially if it involves public interest entities.

71. When a corporate voluntary arrangement moratorium is in effect, no actions can be taken by creditors against the company.

72. The proposal aims at providing relief to secured creditors by allowing them to recover property other than immovable property from the company subject to the following conditions:

- (a) The property is not required during the voluntary arrangement;
- (b) The moratorium poses a high risk to the existence of the property; or
- (c) The value of the property decreases due to the moratorium.

73. The World Bank has recommended that there should be a mechanism for secured creditors to mitigate the risk associated with providing the credit to a company.

74. The mechanism will also reduce the debts owed by the debtor to the creditor.

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| Proposed Policy Statement 12 | Clarifying accessibility of judicial management |
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75. The policy intent of the new paragraph 403(b) is to clarify accessibility of judicial management to all companies except:

- (a) a company which is a licenced institution or an operator of a designated payment system regulated by BNM; or
- (b) a company which is approved or licenced by SC under the CMSA 2007 or Securities Industry (Central Depositories) Act 1991 (SICDA 1991) or prescribed upon the written request by Ministry of Finance (MOF).

76. The objective is to widen the access to corporate rescue mechanism framework by companies.

77. Currently, the benefit of judicial management is not available to companies which are regulated under CMSA 2007 including listed companies. The proposed amendment would assist all companies facing financial difficulties including listed companies an avenue to rehabilitate their situations through judicial management. This provision is especially critical in cushioning the impact of Covid-19 pandemic.

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| Proposed Policy Statement 13 | Allowing a secured creditor to recover property other than immovable property during the moratorium in relation to a judicial management |
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78. The policy intent is to allow a secured creditor to recover property other than immovable property during the moratorium in relation to a management. The objective of this clause is to reduce the risk of secured creditors in relation to certain types of properties. The power may be exercised by giving notice to that effect to the judicial manager.

79. When a moratorium is in effect, no actions can be taken by creditors against the company.

80. The proposal aims at providing relief to secured creditors by allowing them to property other than immovable property from the company subject to the following conditions:

- (a) if the property is not required by the company during the period for which a judicial management order is in force;

- (b) if the period for which a judicial management order is in force poses a high risk to the existence of the property;
or
- (c) if the value of the property decreases in value due to the judicial management order.

81. The World Bank has recommended that there should be a mechanism for secured creditors to mitigate the risk associated with providing the credit to a company. The mechanism will also reduce the debts owed by the debtor to the creditor.

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| Proposed Policy Statement 14 | Introducing super priority rescue financing for judicial management |
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82. The new section 415A will introduce the same policies stated under Policy Statement 3 to be applicable to the judicial management framework. The policies will assist financially distressed companies to obtain fresh financing as part of their rehabilitation plan.

83. These policies are critical to assist companies especially during the recovery period post Covid-19 pandemic.

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| Proposed Policy Statement 15 | Providing protection for continuation of supply of essential goods and services for company under a scheme of arrangement, corporate voluntary arrangement or judicial management |
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84. It is proposed that a new Division 9 is introduced into the CA 2016 whereby a new section 430A provides for relief to creditors so that the essential supplies, under existing contracts, continue to be

provided whilst the company is under a compromise or arrangement, corporate voluntary arrangement or judicial management.

85. The UK Government in their Explanatory Notes to the Corporate Governance and Insolvency Act 2020 found that "... by far the largest proportion of benefits derives from the suspension of *Ipsa Facto* (termination) clauses, which will result in significant benefits to creditors due to an increase in company rescue efforts and accompanying improved returns¹".

86. In line with this, a provision is proposed upon an application in relation to any compromise or arrangement, during a moratorium in a voluntary arrangement or upon the making of a judicial management order for an *ipso facto* (termination) clauses in any contract or agreement for the supply of essential goods and services ceases to have effect.

87. Suppliers will have to continue to fulfil their commitments under their contract with the debtor company. This will ensure that the companies are not affected during rehabilitation procedures permitting a degree of stability in their operations so that the rehabilitation will be more likely to succeed.

88. The Suppliers are provided with an avenue including to apply for consent to have the contract or supply terminated on grounds of non-payment of liabilities incurred within the period of thirty (30) days beginning with the day on which payment is due.

¹ <https://services.parliament.uk/Bills/2019-21/corporateinsolvencyandgovernance/documents.html>

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| Proposed Policy Statement 16 | Exempting certain categories of company from the beneficial ownership reporting framework |
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89. In general, the beneficial ownership reporting framework applies to all companies incorporated and registered under the CA 2016, unless exempted. Under the proposed new section 56A of the CA 2016, companies which are exempted are those regulated or licensed by BNM, SC or traded on a stock exchange. For example, listed companies are subjected to an exhaustive disclosure of interest and obligations prior to the listing as determined by the SC and Bursa Malaysia Berhad. As such, such exemption is warranted to ensure that these companies are not unduly burdened by this requirement.

90. However, the exemption provided does not exonerate the exempted companies from the duty to provide beneficial ownership information to other regulators, competent authorities and law enforcement agencies in accordance with other written laws.

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| Proposed Policy Statement 17 | Defining the concept of 'beneficial owner' for companies and foreign companies |
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91. The FATF defines beneficial owner as "*the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement*"² whilst section 2 of the CA 2016

² *The FATF Recommendations, International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*, Updated October 2018, General Glossary, p 111.

defines beneficial owner as *'the ultimate owner of the shares and does not include a nominee of any description'*.

92. The definition provided under section 2 of the CA 2016 has been criticised by the FATF because did not meet the recommendation where such definition should go beyond the holding of voting shares.

93. Thus, the proposed definition introduced under the new section 56B will provide guidance to the industry on how to determine a beneficial owner either for companies limited by shares or companies limited by guarantee. This revised definition will give clarity and in line with the FATF's recommendation as the definition will cover from the perspective of both ownership based on shares and/or control over a company.

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| Proposed Policy Statement 18 | Introducing a new register, 'register of beneficial owners' to record all information relating to beneficial owners |
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94. To ensure the beneficial ownership information is up to date, accurate and can be obtained in a timely manner, mandatory reporting of beneficial ownership information is crucial for companies to record such information in a register.

95. With the introduction of the new section 56C of the CA 2016, register of beneficial owners shall be the platform for companies to record and maintain all information relating to beneficial owners and individuals that are directly related to members or shares of a company and shall also include those who control the company through criteria set under section 56B. The same policy shall apply

to foreign companies to ensure no information gap for all companies incorporated or registered in Malaysia under the CA 2016.

96. Under the same provision, companies are required to lodge changes to the beneficial ownership information within fourteen (14) days from the date of the change of the information pursuant to section 51.

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| Proposed Policy Statement 19 | Empowering companies to obtain beneficial ownership information from members or any person whom to believe is a beneficial owner or has knowledge of a person who is a beneficial owner |
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97. Based on the FATF recommendations, a beneficial owner will be identified not only from the perspective of voting shares but also from the perspective of the power to control a company even without voting rights. This issue was not addressed in the current framework as it only covers beneficial ownership information relating to members of the company.

98. The new section 56D of the CA 2016 will empower the company to issue a notice to obtain beneficial ownership information from its members and from any persons believed to be a beneficial owner or believed to have information of a beneficial owner, for the purpose of recording such information in the register of beneficial owners under the new section 56C.

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| Proposed Policy Statement 20 | Imposing an obligation to the beneficial owner to notify and provide information relating to his status as 'beneficial owner' |
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99. From the feedback received during the earlier pre-consultation, there is a need to impose obligation on the beneficial owner himself to notify the company of his status as beneficial owner to ensure such information is obtained.

100. The new section 56E of the CA 2016 will assist the company in obtaining the beneficial ownership information through issuance of notices under section 56D and self-declaration by the beneficial owner himself. Through this provision, the beneficial owner will have the obligation to submit the beneficial ownership information to the company with or without notices send by the company.

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| Proposed Policy Statement 21 | Compelling foreign companies to lodge beneficial ownership information at the registration stage |
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101. The obligation to submit the beneficial ownership information as part of the information to be submitted during registration has been provided under paragraph 562(1)(g) of the CA 2016:

"(g) such other information as the Registrar may require."

102. Notwithstanding, this amendment will provide clarity and in line with the new policy for foreign companies to submit beneficial ownership information to the Registrar at the point of registration since such companies have already incorporated outside Malaysia. Based on this proposal, subsection 562(1) is amended to include beneficial ownership information as part of the information to be submitted during registration stage.

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| Proposed Policy Statement 22 | Introducing a new policy of 'register of members of foreign companies' which consist of local and foreign shareholding to be kept and maintained in Malaysia in substitution of the current policy of 'branch register' for foreign companies |
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103. The current section 568 of the CA 2016 that require foreign companies to keep a branch register in Malaysia for the purpose of registration of shares only consist information of members of local shareholding.

104. In line with the FATF's recommendations, foreign companies should record information of local and foreign shareholdings similar with the policy of register of members under section 50 of the same Act.

105. Therefore, the proposed new section 568 will be introduced to substitute the current provision wherein foreign companies will have to keep and maintain 'register of members of foreign companies' in Malaysia for the purpose of recording information of local and foreign shareholders.

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| Proposed Policy Statement 23 | Deletion of sections 569 and 570 in relation to registration of shares and removal of shares in the branch register |
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106. Under the current section 569 of the CA 2016, local members can apply to register shares in a branch register from the foreign company for shares kept in other register. Under the current section 570 of the CA 2016, members holdings shares registered in a branch

register can apply for removal of particulars relating to the shares from the branch register and register the shares in other register within Malaysia.

107. Following the proposed amendment to section 568 of the CA 2016, the provisions under sections 569 and 570 are proposed to be deleted as they are no longer relevant.

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| Proposed Policy Statement 24 | Adopting relevant provisions relating to the index of members, inspection and closing of branch registers to the new sections 56A, 56B, 56C, 56D and 56E relating to beneficial ownership |
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108. As a consequence to the amendment made to section 568 of the CA 2016, adaptations to the index of persons holding shares in a branch register and to the inspection and the closing of the register under section 571 of the CA 2016 shall also apply to sections 56A, 56B, 56C, 56D and 56E.

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| Proposed Policy Statement 25 | Consequential amendments to sections 572 and 573 in relation to reference to "branch register" |
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109. Following the proposed amendment to section 568 of the CA 2016, reference made to 'branch register' under section 572 of the CA 2016 will be replaced with 'register of members of foreign companies' and any references made to 'branch register' under section 573 of the CA 2016 will be replaced with 'register of members of foreign companies'

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| Proposed Policy Statements 26 | Clarifying the mandatory obligation to submit beneficial ownership information to the Registrar together with annual return |
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110. The obligation to submit beneficial ownership information as part of the information to be submitted with the annual return has been provided under paragraph 576(2)(i) of the CA 2016:

“(j) such other information as the Registrar may require.”

111. Nevertheless, the main objective of this amendment is to provide clarity of the current policy to have an annual mandatory submission of beneficial ownership information to the Registrar. Based on this proposal, the current subsection 576(2) is amended to include beneficial ownership information as part of the information to be submitted together with the annual return.

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| Proposed Policy Statement 27 | Requiring particulars on beneficial ownership information as part of the annual return to be lodged |
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112. The current CA 2016 does not provide that it is a mandatory annual obligation to submit the beneficial ownership information to the Registrar.

113. It is proposed that companies are required to provide for the particulars on beneficial ownership information as part of the annual return. This is to ensure that companies lodge the beneficial ownership information with the Registrar at least once a year as to be consistent with the current practice of submitting the beneficial ownership information together with the annual return. This inclusion is also to ensure that such information is updated annually

especially when there is no change to the information from the previous lodgment of the annual return to up to date.

114. In light of this proposed amendment, the Registrar has the power to determine and control that the right to access the beneficial ownership information can only be accessed by the competent authorities, law enforcement agencies, the beneficial owner whose name has been entered in the register of beneficial owners and any other person authorised by the beneficial owner.

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| Proposed Policy Statement 28 | Consistency in terms of terminology with Capital Markets and Services Act 2007 |
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115. To provide clarity to subsection 152(2), an amendment is proposed that terminologies “issuance, offer and invitation” be made consistent with that in the Capital Markets and Services Act 2007.

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| Proposed Policy Statement 29 | Clarifying that a public company shall not issue shares to the public with only a statement in lieu of prospectus |
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116. It is proposed that a new subsection 190(2A) to be introduced into the CA 2016 to clarify that a public company is not allowed to issue shares to the public with only a statement in lieu of prospectus. This ambiguity was discussed in the cases of *Pendakwa Raya v Raja Samsul Bahri bin Raja Muhammad, Abdul Malek bin Yusof dan Noor Aida binti Abdullah* (No Kes: 62SC-(001-003)-06/2016) and *Public Prosecutor v Chong Yuk Min & Ors and another appeal* [2019] MLJU 180.

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| Proposed Policy Statement 30 | Allowing extension of time for sending out copies of financial statements and reports |
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117. Currently, the CA 2016 only provides for an extension of time for lodgement of financial statements and reports under subsection 259(2).

118. There is no similar provision for an extension of time for circulation of copies of financial statements and reports for companies under section 258 of the CA 2016.

119. It is proposed that a new subsection 258(2A) is inserted to provide the power of the Registrar to allow such extension of time for sending out copies of financial statements and reports for companies to be in line with subsection 259(2) of the CA 2016 on extension of time for lodgement of financial statements and reports.

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| Proposed Policy Statement 31 | Allowing independent company auditors within a firm of auditors to act as auditors of a company even though the spouse of a partner is an employee of the company |
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120. Paragraph 264(1)(c) of the CA 2016 provides that an auditor of a company is subject to compliance with the provision which sets out the conditions relating to the appointment of auditors before carrying out the audit work. This provision also lists the circumstances that may result in a person being barred from acting as an auditor of the company.

121. Among the circumstances which cause the auditors to be prohibited from acting or preparing any report required by the CA 2016 is where the husband or wife is the "officer" of the audited

company as prescribed by section 264(1)(c)(iii)(A) of the CA 2016. As a precautionary measure, this provision is a new provision introduced through the enforcement of the CA 2016 on 31 January 2017 aimed at ensuring the independence of the auditor from any interest or influence in carrying out its duties.

122. Currently, by virtue of section 615 of the CA 2016 an audit firm must make an application to obtain the approval of the Minister, upon the recommendation of the SSM, by order published in a *Gazette* to be exempted from complying with the provisions under section 264(1)(c)(iii)(A) of the CA 2016 on statutory auditing of the accounts of the affected companies.

123. In light of the current CA 2016, it is proposed that a new subsection 264(2A) is introduced to provide that the Minister may prescribe terms and conditions in relation to appointment of an auditor for the purposes of section 264(1)(c)(iii)(A).

124. The insertion of subsection 264(2A) is in line with the intention to uphold the original policy of the Companies Act 1965 [Act 125] so that other partners in the auditing firm are not disqualified from acting as a company auditor under subsection 264(1) of the CA 2016 because of the spouse or spouse of a partner of an audit firm is an employee of the company being audited. However, this is subjected to the conditions to be set by the Minister. The same policy also applies to the auditor's firm.

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| Proposed Policy Statement 32 | Requiring approved liquidator to notify particulars and changes of liquidator |
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125. In view of the requirement of Jabatan Akauntan Negara (JAN) which issued a guidelines called *Garis Panduan untuk Kelulusan sebagai Penyelesai di bawah Akta Syarikat 2016*, SSM proposes a new section 433A to support the same under paragraph 5.7 in order to ensure that the complete particulars relating to approved liquidator and its firm and any changes to such particulars is lodged with SSM.

126. The new provision is to provide that an approved liquidator is required to notify the Registrar the information of certain particulars and update such changes to the particulars.

127. The amendment is to be in line with the provision on the information of the auditor firm and as provided in section 265 of the CA 2016.

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| Proposed Policy Statement 33 | To provide flexibility on the mode of notification in a manner determined by the Registrar |
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128. Paragraph 439(2)(b) of the CA 2016 is proposed to be amended in order to enable companies to give notice of resolution in a manner to be determined by the Registrar within ten (10) days after the passing of the resolution rather than being called by an advertisement published in one widely circulated newspaper in Malaysia in the national language and one widely circulated newspaper in Malaysia in the English language.

129. The proposed amendment is to provide flexibility on the mode of notification in a manner determined by the Registrar. This is to clarify that companies may give notice of resolution in a manner to be determined by the Registrar within ten (10) days after the passing of the resolution.

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| Proposed Policy Statement 34 | To provide flexibility on the mode of calling a meeting by an advertisement in a manner to be determined by the Registrar |
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130. Similarly, it is proposed that subsection 459(2) of the CA 2016 is amended to allow the company to call its final meeting by an advertisement in a manner to be determined by the Registrar in certain circumstances without incurring further costs for advertisement, e.g during the MCO period.

131. This proposed amendment is to provide clarity and flexibility on the mode of calling a meeting by an advertisement in a manner to be determined by the Registrar.

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| Proposed Policy Statement 35 | Requiring foreign companies to lodge with Registrar changes or alteration of particulars in its status |
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132. It proposed that a new paragraph 567(1)(fa) is introduced into the CA 2016 to provide that a foreign company shall lodge with the Registrar particulars of any changes or alteration made in the status of the foreign company.

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| Proposed Policy Statement 36 | Allowing the Registrar to extend time for lodgement of documents without any application made |
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133. Under the current CA 2016, it is proposed that section 609 be amended to allow the Registrar to extend time for lodgment of documents without any application made by the company on certain circumstances

134. Therefore, the insertion of a new subsection 609(3) provides the power of the Registrar to extend time for lodgement of documents or any action or document required to be in compliance with the Act upon consideration of the circumstances requiring such extension of time, and the Registrar may impose any terms and conditions as he deems fit.

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| Proposed Policy Statement 37 | Allowing the Minister to make regulations on matters relating to scheme of arrangement, corporate voluntary arrangement and judicial management |
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135. Further, it is also proposed that section 613 of the CA 2016 is amended with the insertion of a new paragraph 613(1)(ba) as an enabling provision for the Minister to make regulations for and with respect to any matters relating to scheme of arrangement, corporate voluntary arrangement and judicial management.

SECTION C: THE COMPANIES (AMENDMENT)
BILL 2020

A BILL

intituled

An Act to amend the Companies Act 2016.

[]

ENACTED by Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Companies (Amendment) Act 2020.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Amendment of section 2

2. The Companies Act 2016 [*Act 777*], which is referred to as the “principal Act” in this Act, is amended in section 2 by substituting the definition “branch register” as follows:

““branch register”, in relation to a company, means—

- (a) a branch register of members of the company kept under section 53; or

(b) a branch register of debenture holders kept under section 60(7),
as the case may require;”.

New sections 56A, 56B, 56C, 56D and 56E

3. The principal Act is amended by inserting after section 56 the following sections:

“Non-application of sections 56B, 56C, 56D and 56E

56A. Sections 56B, 56C, 56D and 56E shall not apply to—

- (a) companies which are licensed under the Financial Services Act 2013 [*Act 758*], Islamic Financial Services Act 2013 [*Act 759*], a prescribed development financial institution under the Development Financial Institutions Act 2002 [*Act 618*] or a licensed money services business under the Money Services Business Act 2011 [*Act 731*];
- (b) any company—
 - (i) which is registered or approved under Part II, licensed under Part III, or recognised under Part VIII of the Capital Markets and Services Act 2007; and
- (c) (ii) which is approved under Part II of the Securities Industry (Central Depositories) Act 1991; Companies whose shares are quoted in a stock exchange, either local or foreign exchange; and
- (d) Companies whose shares are deposited in the central depository pursuant to the Securities Industry (Central Depositories) Act 1991 [*Act 453*], provided that the shares

in the company remain deposited with the central depository.

Definition of beneficial owner

56B. (1) For the purpose of sections 56C, 56D and 56E, a “beneficial owner” means a natural person who ultimately owns or controls a company and includes an individual who exercises ultimate effective control over a company.

(2) Notwithstanding subsection (1), the Registrar shall have the power to determine the ownership and control of a person relating to the definition of beneficial owner.

(3) This section shall be applicable to a foreign company by modifying the word “company” with “foreign company” wherever it appears.

Register of beneficial owners

56C. (1) Every company shall keep a register of beneficial owners and record in the register—

(a) the name, number of identity card issued under the National Registration Act 1959 [Act 78], if any, passport number or other identification number, nationality, the date of birth and the usual place of residence of every person who is a beneficial owner;

- (b)* the date of the person becoming or ceasing to be a beneficial owner; and
- (c)* such other information as the Registrar may require.

(2) The register of beneficial owners shall be prima facie evidence of any matters inserted in the register as required or authorized by this Act.

(3) The register of beneficial owners shall be kept at the registered office or at any other place as notified of the Registrar.

(4) The company and every officer who contravene subsection (1) commit an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and, in the case of continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

(5) A company shall notify the Registrar of the changes in the particulars in the register under subsection (1) within fourteen days from the date—

- (a)* of the change of any information in the register;
- (b)* after a person ceases to be, or becomes, a beneficial owner; or
- (c)* the information required under section 56C is received by the company.

(6) The Registrar shall determine the form, manner and extent of the information to be lodged under subsection (4).

(7) The beneficial ownership information lodged under this section shall only be made available to the bodies specified in the Schedule, the beneficial owner whose name is recorded in the register of beneficial owners and the persons authorised by the beneficial owner.

(8) The company and every officer who contravene subsection (4) commit an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit and, in the case of continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

(9) This section shall be applicable to a foreign company by modifying the word—

(a) “company” with “foreign company”;

(b) “officer” with “agent”,

wherever it appears.

Power of company to require disclosure of beneficial owner

56D. (1) A company shall, by notice in writing, require any member of the company within such reasonable time as is specified in the notice—

- (a) to inform the company whether the member is a beneficial owner;
- (b) if the member is not the beneficial owner, as far as it is possible to do so, to indicate the persons by name and by other particulars sufficient to enable those persons to be identified as beneficial owner; and
- (c) to provide such other information as stated in the notice.

(2) A company shall, by notice in writing, require any person within such reasonable time and manner as specified in the notice,—

- (a) whom the company knows or has reasonable grounds to believe is a beneficial owner of the company to—
 - (i) state whether he is a beneficial owner of the company;
 - (ii) state whether he knows or has reasonable grounds to believe that any other person is a beneficial owner of the company or is likely to have that knowledge and to give such particulars of the other person that are within his knowledge; and
 - (iii) provide such other information as stated in the notice; and
- (b) whom the company knows or has reasonable grounds to believe knows, the identity of a person who is a beneficial owner of the company or is likely to have that knowledge, requiring the member or the person—
 - (i) to state whether he knows, or has reasonable grounds to believe that any other person is a

beneficial owner of the company or is likely to have that knowledge and give such particulars of that person that are within his knowledge; and

- (ii) to provide such other information as specified in the notice.

(3) Whenever a company receives information from a person in accordance with a requirement imposed on such person under this section with respect to beneficial owner, the company shall record the information in a register of beneficial owner on—

- (a) the fact that the requirement was imposed and the date on which it was imposed; and
- (b) the information received in accordance with the requirement.

(4) If a company knows or has reasonable grounds to believe that a relevant change has occurred in the particulars of a beneficial ownership that are stated in the company's register of beneficial owner, the company shall give notice to the beneficial owner—

- (a) to confirm whether or not the change has occurred; and
- (b) if the change has occurred—
 - (i) to state the date of the change; and
 - (ii) to provide the particular of the change.

(5) If a company knows or has reasonable grounds to believe that any of the particulars of a beneficial ownership that are

stated in the company's register of beneficial owner is incorrect, the company shall give notice to the beneficial owner to confirm whether the particulars are correct, and if not, to provide the correct particulars.

(6) A company commits an offence if, without reasonable ground, it fails to comply with subsection (1).

(7) Subject to subsection (8), any person who—

(a) contravenes a notice under this section; or

(b) in purported compliance with such a notice makes any statement which he knows to be false in a material particular or recklessly makes any statement which is false in a material particular,

commits an offence.

(8) A person shall not be guilty of an offence under paragraph (7)(a) if he proves that the information in question was already in the possession of the company or that the requirement to give it was for any other reason that is frivolous or vexatious.

(9) This section shall be applicable to a foreign company by modifying the word "company" with "foreign company" wherever it appears.

Duty of a beneficial owner to provide information

56E. (1) A person who knows or ought reasonably to know that the person is a beneficial owner in relation to a company shall within such reasonable time—

- (a)* notify the company, that the person is a beneficial owner in relation to the company; and
- (b)* provide such other information as may be prescribed.

(2) A person who is a beneficial owner in relation to a company who knows, or ought reasonably to know that a relevant change has occurred in the prescribed particulars of the register of beneficial owner shall notify the company of the relevant change—

- (a)* stating the date that the change occurred; and
- (b)* providing the particulars of the change.

(3) A person shall not be required to comply with the requirements of subsection (1) or (2) if the person has received a notice from the company under section 56D and has complied with the requirements of the notice within the time specified in the notice for compliance.

(4) Any person who fails to comply with subsection (1) or (2) commits an offence.

(5) This section shall be applicable to a foreign company by modifying the word “company” with “foreign company” wherever it appears.

Amendment of subsection 68(3)

4. Subsection 68(3) of the principal Act is amended—
- (a) by deleting the word “and” in paragraph 68(3)(i); and
 - (b) by inserting after paragraph 68(3)(i) the following paragraph:
“(ia) beneficial ownership information; and”.

Amendment of subsection 152(2)

5. Subsection 152(2) of the principal Act is amended—
- (a) by inserting substituting the words “offer or invitation” the word “offer, invitation or issuance,”; and
 - (b) by substituting for the words “any excluded offer or excluded invitation” the words “any excluded offer, excluded invitation or excluded issuance”.

Amendment of section 190

6. Section 190 of the principal Act is amended—
- (a) by substituting for subsection (2) the following subsection:

“(2) A public company having a share capital shall be entitled to commence any business or exercise any borrowing power if—

(a) it has lodged with the Registrar a statement in lieu of prospectus which complies with this Act has been lodged with the Registrar; and”;

(b) by inserting after subsection (2) the following subsection:

“(2A) Notwithstanding subsection (2), a public company having share capital shall not issue, offer for subscription or purchase or make an invitation to subscribe for or purchase the securities of the public company unless—

(a) a prospectus has been registered by the Securities Commission under the Capital Markets and Services Act 2007; or

(b) it is an excluded offer, excluded invitation or excluded issue as defined in the Capital Markets and Services Act 2007.”.

Amendment of section 258

7. Section 258 of the principal Act is amended by inserting after subsection (2) the following subsection:

“(2A) If an application for extension is made before the expiry of the period referred to in paragraph 1(a) or (b), the Registrar

may, as he considers fit, extend the period to such period as specified in the notice of extension.”.

Amendment to section 264

8. Section 264 of the principal Act is amended by inserting after subsection (4) the following subsection:

“(4A) For the purposes of paragraph 4(b), a partner is deemed as not disqualified if his spouse being an officer of the company has no influence on the independence of the firm of auditors in preparing the report.

(4B) For the purposes of paragraph 4A, the Minister may prescribe terms and conditions in relation to an appointment of an auditor and a firm of auditors.”.

Amendment to section 368

8. Section 368 of the principal Act is amended—

- (a) in subsection (1), by inserting after the words “any action or proceeding” the words “for a period of sixty days”; and
- (b) by substituting for subsection (2) the following subsection:

“The Court may, on the application of the company, extend the period referred to in subsection (1) for not more than ten months if—“.

New sections 368A, 368B, 368C and 368D

10. The principal Act is amended by inserting after section 368 the following sections:

“Power of Court to restrain proceedings, etc., against subsidiary or holding company

368A. (1) Where the Court has made an order under subsection 368(1) in relation to a company, the Court may, on the application of a company that is a subsidiary, a holding company or an ultimate holding company of that company, make one or more of the following orders, each of which is in force for such period, but not exceeding the period for which the order under subsection 368(1) is in force, as the Court thinks fit:

- (a)* an order restraining the passing of a resolution for the winding up of the related company;
- (b)* an order restraining the appointment of a receiver or manager over any property or undertaking of the related company;
- (c)* an order restraining the commencement or continuation of any proceedings, other than proceedings under section 366 or 370 or this section or section 368C or 369A, against the related company, except with the leave of the Court and subject to such terms as the Court imposes;
- (d)* an order restraining the commencement, continuation or levying of any execution, distress or other legal process

against any property of the related company, except with the leave of the Court and subject to such terms as the Court imposes;

- (e)* an order restraining the taking of any step to enforce any security over any property of the related company, or to repossess any goods held by the related company under any chattels leasing agreement, hire-purchase agreement or retention of title agreement, except with the leave of the Court and subject to such terms as the Court imposes;
- (f)* an order restraining the enforcement of any right of re-entry or forfeiture under any lease in respect of any premises occupied by the related company except with the leave of the Court and subject to such terms as the Court imposes.

(2) The related company may make the application under subsection (1) only if all of the following conditions are satisfied:

- (a)* no order has been made and no resolution has been passed for the winding up of the related company;
- (b)* the order under subsection 368(1) made in relation to the subject company is in force;
- (c)* the related company plays a necessary and integral role in the compromise or arrangement relied on by the subject company to make the application for the order under subsection 368(1);
- (d)* the compromise or arrangement mentioned in paragraph *(c)* will be frustrated if one or more of the actions that

may be restrained by an order under subsection (1) are taken against the related company;

(e) the Court is satisfied that the creditors of the related company will not be unfairly prejudiced by the making of an order under subsection (1).

(3) When the related company makes the application under subsection (1) to the Court —

(a) the related company shall publish a notice of the application in the manner as prescribed by the Registrar; and

(b) unless the Court orders otherwise, the related company shall send a notice of the application to each creditor of the related company who will be affected by an order under subsection (1) and who is known to the related company.

(4) An order of the Court under subsection (1)—

(a) may be made subject to such terms as the Court imposes; and

(b) may be expressed to apply to any act of any person in Malaysia or within the jurisdiction of the Court, whether the act takes place in Malaysia or elsewhere.

(5) The Court may make an order extending the period for which an order under subsection (1) is in force, if an application for the extension of the period is made by the related company before the expiry of that period.

(6) The related company, any creditor of the related company, or any receiver and manager of the whole, or substantially the whole, of the property or undertaking of the related company, may apply to the Court for an order discharging or varying any order made under subsection (1).

(7) An order made by the Court under subsection (1) does not affect—

- (a) the exercise of any legal right under any arrangement, including a set-off arrangement or a netting arrangement, that may be prescribed by regulations; or
- (b) the commencement or continuation of any proceedings that may be prescribed by regulations.

(8) The related company shall, within fourteen days after the date of an order made under subsection (1), (5) or (6), lodge an office copy of the order with the Registrar.

Super priority for rescue financing

368B. (1) Where a company has made an application under subsection 366(1) or subsection 368(1), the Court may, on an application by the company under this subsection, make one or more of the following orders:

- (a) an order that if the company is wound up, the debt arising from any rescue financing obtained, or to be obtained, by the company is to be treated as if it were

part of the costs and expenses of the winding up mentioned in paragraph 527(1)(a);

(b) an order that if the company is wound up, the debt arising from any rescue financing obtained, or to be obtained, by the company is to have priority over all the preferential debts specified in paragraphs 527(1)(a) to (f) and all other unsecured debts, if the company would not have been able to obtain the rescue financing from any person unless the debt arising from the rescue financing is given the priority mentioned in this paragraph;

(c) an order that the debt arising from any rescue financing to be obtained by the company is to be secured by—

- (i) a security interest on property of the company that is not otherwise subject to any security interest; or
- (ii) a subordinate security interest on property of the company that is subject to an existing security interest,

if the company would not have been able to obtain the rescue financing from any person unless the debt arising from the rescue financing is secured in the manner mentioned in this paragraph;

(d) an order that the debt arising from any rescue financing to be obtained by the company is to be secured by a security interest, on property of the company that is subject to an existing security interest, of the same priority as or a higher priority than that existing security interest, if—

- (i) the company would not have been able to obtain the rescue financing from any person unless the debt

- arising from the rescue financing is secured in the manner mentioned in this paragraph; and
- (ii) there is adequate protection for the interests of the holder of that existing security interest.

(2) A company that makes an application under subsection (1) shall, unless the Court orders otherwise, send a notice of the application to each creditor of the company.

(3) Where a company that has two or more super priority debts is wound up, the super priority debts—

- (a) rank equally in priority between themselves; and
- (b) are to be paid in full or, if the company has insufficient property to meet them, are to abate in equal proportions between themselves.

(4) Where a company that has any super priority debt or debts is wound up, the super priority debt or debts constitute one class of debts and, despite section 527—

- (a) the super priority debt or debts rank *pari passu* with debts specified in paragraphs 527(1)(a) ; and
- (b) if the property of the company available for the payment of the super priority debt or debts is insufficient to meet the super priority debt or debts, the super priority debt or debts—
 - (i) have priority over the claims of the holders of any debentures of the company secured by a floating charge, which, as created, was a floating charge; and

(ii) are to be paid out of any property comprised in or subject to that floating charge.

(5) The reversal or modification on appeal of an order under paragraph (1)(c) or (d) does not affect the validity of any debt so incurred, or any security interest that was granted pursuant to the order, or the priority of that security interest, if the rescue financing, from which arose the debt intended to be secured by that security interest, was provided in good faith, whether or not with knowledge of the appeal, unless the order was stayed pending the appeal before the rescue financing was provided.

(6) For the purposes of subparagraph (1)(d)(ii), there is adequate protection for the interests of the holder of an existing security interest on the property of a company, if—

- (a) the Court orders the company to make one or more cash payments to the holder, the total amount of which is sufficient to compensate the holder for any decrease in the value of the holder's existing security interest that may result from the making of the order under paragraph (1)(d);
 - (b) the Court orders the company to provide to the holder additional or replacement security of a value sufficient to compensate the holder for any decrease in the value of the holder's existing security interest that may result from the making of the order under paragraph (1)(d);
- or

(c) the Court grants any relief, other than compensation, that will result in the realisation by the holder of the indubitable equivalent of the holder's existing security interest.

(7) Sections 425, 426 and 528 do not affect any priority conferred, any security interest or relief granted, or any payment made, pursuant to and in accordance with an order made by the Court under subsection (1).

(8) The company shall, within fourteen days after the date of an order made under subsection (1), lodge an office copy of the order with the Registrar.

(9) In this section—

“rescue financing” means any financing that satisfies either or both of the following conditions:

- (a) the financing is necessary for the survival of a company that obtains the financing, or of the whole or any part of the undertaking of that company, as a going concern;
- (b) the financing is necessary to achieve a more advantageous realisation of the assets of a company that obtains the financing, than on a winding up of that company;

“security interest” means any mortgage, charge, pledge, lien or other type of security interest recognised by law;

“super priority debt” means a debt, arising from any rescue financing obtained or to be obtained by a company, that is to have priority, pursuant to an order under paragraph (1)(b), over all the preferential debts specified in paragraphs 527(1)(a) to (f) and all other unsecured debts, if the company is wound up.

Restraint of disposition of property, etc., during moratorium period

368C. (1) The Court may, on an application made by any creditor of a relevant company at any time during a moratorium period, make either or both of the following orders, each of which is in force for such part of the moratorium period as the Court thinks fit:

- (a) an order restraining the relevant company from disposing of the property of the relevant company other than in good faith and in the ordinary course of the business of the relevant company;
- (b) an order restraining the relevant company from transferring any share in, or altering the rights of any member of, the relevant company.

(2) In this section — “moratorium period”, in relation to a relevant company, means any of the following periods that is applicable to the company:

- (a) the automatic moratorium period mentioned in subsection 368(1);

- (b)* the period during which an order under subsection 368(1) is in force, including any extension of that period under subsection 368(2);
- (c)* the period during which an order under subsection 368A(1) is in force, including any extension of that period under subsection 368A(5);

“relevant company” means a company that has made an application under subsection 368(1), or in relation to which an order under subsection 368A(1) is made.

Power of Court to cram down

368D. (1) This section applies where—

- (a)* a compromise or an arrangement between a company and its creditors or any class of those creditors has been voted on at a relevant meeting;
- (b)* the creditors meant to be bound by the compromise or arrangement are placed in two or more classes of creditors for the purposes of voting on the compromise or arrangement at the relevant meeting;
- (c)* the conditions in section 366(1), insofar as they are applicable, are satisfied at the relevant meeting in respect of at least one class of creditors; and
- (d)* either or both of the conditions in section 366(1), insofar as they are applicable, are not satisfied at the relevant meeting in respect of at least one class of creditors, each called in this section a dissenting class.

- (2) Notwithstanding subsections 366(3) and 366(1), the Court may, subject to this section and on the application of the company, or a creditor of the company who has obtained the leave of the Court to make an application under this subsection, approve the compromise or arrangement, and order that the compromise or arrangement be binding on the company and all classes of creditors meant to be bound by the compromise or arrangement.
- (3) The Court may not make an order under subsection (2) unless—
- (a) a majority in number of the creditors meant to be bound by the compromise or arrangement, and who were present and voting either in person or by proxy at the relevant meeting, have agreed to the compromise or arrangement;
 - (b) the majority in number of creditors mentioned in paragraph (a) represents three-fourths in value of the creditors meant to be bound by the compromise or arrangement, and who were present and voting either in person or by proxy at the relevant meeting; and
 - (c) the Court is satisfied that the compromise or arrangement does not discriminate unfairly between two or more classes of creditors, and is fair and equitable to each dissenting class.
- (4) For the purposes of paragraph (3)(c), a compromise or an arrangement is not fair and equitable to a dissenting class unless—

- (a) no creditor in the dissenting class receives, under the terms of the compromise or arrangement, an amount that is lower than what the creditor is estimated by the Court to receive in the most likely scenario if the compromise or arrangement does not become binding on the company and all classes of creditors meant to be bound by the compromise or arrangement; and
- (b) either of the following applies:

 - (i) where the creditors in the dissenting class are secured creditors, the terms of the compromise or arrangement must—

 - (A) provide for each creditor in the dissenting class to receive deferred cash payments totalling the amount of the creditor's claim that is secured by the security held by the creditor, and preserve that security and the extent of that claim, whether or not the property subject to that security is to be retained by the company or transferred to another entity under the terms of the compromise or arrangement;
 - (B) provide that where the security held by any creditor in the dissenting class to secure the creditor's claim is to be realised by the company free of encumbrances, the creditor has a charge over the proceeds of the realisation to satisfy the creditor's claim that is secured by that security; or
 - (C) provide that each creditor in the dissenting class is entitled to realise the indubitable equivalent of the

- security held by the creditor in order to satisfy the creditor's claim that is secured by that security;
 - (ii) where the creditors in the dissenting class are unsecured creditors, the terms of the compromise or arrangement—
 - (A) must provide for each creditor in that class to receive property of a value equal to the amount of the creditor's claim; or
 - (B) must not provide for any creditor with a claim that is subordinate to the claim of a creditor in the dissenting class, or any member, to receive or retain any property on account of the subordinate claim or the member's interest.
- (5) The Court may appoint any person of suitable knowledge, qualification or experience to assist the Court in estimating the amount that a creditor is expected to receive in the most likely scenario if the compromise or arrangement does not become binding on the company and all classes of creditors meant to be bound by the compromise or arrangement.
- (6) In this section, "relevant meeting" means—
- (a) in a case where the compromise or arrangement in question is subject to a revote under subsection 369A(1), the meeting held for that purpose; or

- (b) in any other case, the meeting ordered by the Court under subsection 366(1) or, if that meeting is adjourned under subsection 366(2), the adjourned meeting.”.

New sections 369A, 369B, 369C and 369D

11. The principal Act is amended by inserting after section 369 the following sections:

“Power of Court to order revote

369A. (1) At the hearing of an application for the Court’s approval under subsection 366(4) of a compromise or an arrangement between a company and its creditors or any class of those creditors, the Court may order the company to hold another meeting of the creditors or class of creditors, called in this section the further meeting, for the purpose of putting the compromise or arrangement to a revote.

(2) When making an order under subsection (1), the Court may—

- (a) make the order subject to such terms as the Court thinks fit;
- (b) direct that the further meeting be summoned or convened in such manner as the Court thinks fit; and
- (c) make such orders or directions as the Court thinks appropriate in respect of one or more of the following matters:

- (i) the classification of any creditor for the purposes of voting at the further meeting;
- (ii) the quantum of any creditor's debt that is to be admitted for the purposes of voting at the further meeting;
- (iii) the weight to be attached to the vote of any creditor at the further meeting.

Filing, inspection and adjudication of proofs of debt

369B. (1) Where the Court orders under subsection 366(1) a meeting of the creditors, or a class of creditors, of a company to be summoned, the company shall state in every notice mentioned in subsection 369(1) summoning the meeting, called in this section the notice summoning the meeting,—

- (a) the manner in which a creditor is to file a proof of debt with the company; and
- (b) the period within which the proof is to be filed.

(2) Subject to subsection (3), if a creditor does not file the creditor's proof of debt in the manner and within the period stated in the notice summoning the meeting, the creditor is not allowed to vote, whether in person or by proxy, at the meeting.

(3) The Court may, on an application made by the company or a creditor, make an order extending the period stated in the notice summoning the meeting within which a proof of debt is to be filed.

(4) Upon the making of an order under subsection (3), the company shall as soon as practicable send a notice of the order to each creditor meant to be bound by the compromise or arrangement.

(5) Every proof of debt filed under this section is to be adjudicated by the person who is appointed by the Court to serve as the chairperson of the meeting summoned pursuant to the order made under subsection 366(1), called in this section the chairperson.

(6) A creditor who has filed a proof of debt under this section is entitled to inspect the whole or any part of a proof of debt filed by any other creditor, except a part of the other creditor's proof that contains information that is subject to any obligation as to secrecy, or to any other restriction upon the disclosure of information, imposed by any written law, rule of law, contract or rule of professional conduct, or by any person or authority under any written law.

(7) The chairperson shall inform each creditor who has filed a proof of debt, within such time and manner as may be prescribed, of the results of the adjudication of the proofs of debt filed by all creditors.

(8) A creditor who has filed a proof of debt may object to one or more of the following:

- (a) the rejection by the chairperson of the whole or any part of the creditor's proof of debt;
- (b) the admission by the chairperson of the whole or any part of a proof of debt filed by another creditor;
- (c) a request by another creditor to inspect the whole or any part of the creditor's proof of debt.

(9) Any dispute between the chairperson and the company, between the chairperson and one or more creditors in relation to the rejection of a proof of debt, or between two or more creditors in relation to the inspection or admission of a proof of debt, may be adjudicated by an independent assessor appointed—

- (a) by the agreement of all parties to the dispute; or
- (b) if there is no such agreement, by the Court on the application of—
 - (i) any party to the dispute; or
 - (ii) the company, whether or not a party to the dispute.

(10) Where a creditor, the company or the chairperson disagrees with any decision of an independent assessor on an adjudication under subsection (9) in relation to the inspection, admission or rejection of a proof of debt, the creditor, company or chairperson, as the case may be, may file a notice of disagreement regarding that decision for consideration by the Court when the Court hears an application for the Court's approval under subsection 366(4) of the compromise or arrangement in question.

(11) When exercising its discretion under subsection 366(4), the Court shall take into account any notice of disagreement filed under subsection (10).

(12) The Minister may make regulations to provide for the procedure relating to the inspection and adjudication of proofs of debt filed by creditors under this section.

(13) Without limiting subsection (12), the regulations mentioned in that subsection may provide for the following matters:

- (a)* the procedures for the making of a request, by a creditor who has filed a proof of debt, to inspect a proof of debt filed by any other creditor, and for the objection to the request by that other creditor;
- (b)* the period within which a proof of debt is to be adjudicated by the chairperson;
- (c)* the time and manner in which creditors are to be informed under subsection (7) of the results of the adjudication;
- (d)* the procedure relating to the resolution of any dispute mentioned in subsection (9).

(14) Notwithstanding anything in the regulations mentioned in subsection (12), the Court may—

- (a)* on an application by the company, approve any variation in or substitution of the procedure relating to

the inspection and adjudication of proofs of debt filed by creditors under this section; and

- (b) on an application by any person subject to any requirement imposed by the regulations, grant relief to the person or extend the time for the person to comply with the requirement.

Power of Court to approve compromise or arrangement without meeting of creditors

369C. (1) Notwithstanding section 366 but subject to this section, where a compromise or an arrangement is proposed between a company and its creditors or any class of those creditors, the Court may, on an application made by the company, make an order approving the compromise or arrangement, even though no meeting of the creditors or class of creditors has been ordered under subsection 366(1) or held.

(2) Subject to subsection (10), if the compromise or arrangement is approved by order of the Court under subsection (1), the compromise or arrangement is binding on the company and the creditors or class of creditors meant to be bound by the compromise or arrangement.

(3) The Court shall not approve a compromise or an arrangement under subsection (1) unless—

- (a) the company has provided each creditor meant to be bound by the compromise or arrangement with a

statement that complies with subsection (6) and contains the following information:

- (i) information concerning the company's property, assets, business activities, financial condition and prospects;
 - (ii) information on the manner in which the terms of the compromise or arrangement will, if it takes effect, affect the rights of the creditor;
 - (iii) such other information as is necessary to enable the creditor to make an informed decision whether to agree to the compromise or arrangement;
- (b)* the company has published a notice of the application under subsection (1) in the manner as determined by the Registrar;
- (c)* the company has sent a notice and a copy of the application under subsection (1) to each creditor meant to be bound by the compromise or arrangement; and
- (d)* the Court is satisfied that had a meeting of the creditors or class of creditors been summoned, the conditions in subsection 366(3) would have been satisfied.

(4) Notwithstanding paragraph (3)(c), the company may, if directed by the Court, give notice of the application under subsection (1) to the creditors or class of creditors in such manner as the Court may direct.

(5) The Court may grant its approval of a compromise or an arrangement subject to such alterations or conditions as the Court thinks just.

(6) The statement mentioned in paragraph (3)(a) shall—

(a) explain the effect of the compromise or arrangement and, in particular, state—

(i) any material interests of the directors of the company, whether as directors or as members, creditors or holders of units of shares of the company or otherwise; and

(ii) the effect that the compromise or arrangement has on those interests, insofar as that effect is different from the effect that the compromise or arrangement has on the like interests of other persons; and

(b) where the compromise or arrangement affects the rights of debenture holders, contain the like explanation with respect to the trustees for the debenture holders as, under paragraph (a), the statement is required to give with respect to the directors of the company.

(7) Each director, and each trustee for debenture holders, shall give notice to the company of such matters relating to the director or trustee as may be necessary for the purposes of subsection (6) within seven days after the director or trustee receives a request in writing from the company for information as to such matters.

(8) Any director of a company or trustee for debenture holders who contravenes subsection (7) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding RM5,000 or to imprisonment for a term not exceeding twelve months.

(9) A person, being a director of a company or a trustee for debenture holders, is not guilty of an offence under subsection (8), if the person shows that the person's contravention of subsection (7) was due to the refusal of another director of the company or trustee for debenture holders to supply to the person the particulars of the person's material interests affected by the compromise or arrangement.

(10) Unless the Court orders otherwise, an order made under subsection (1)—

- (a)* has no effect until an office copy of the order is lodged with the Registrar; and
- (b)* upon being so lodged, the order shall take effect on and from the date of lodgement or such earlier date as the Court may determine and as may be specified in the order.

(11) Where the terms of any compromise or arrangement approved under this section provide for any money or other consideration to be held by or on behalf of any party to the compromise or arrangement in trust for any person, the person holding the money or other consideration may after the

expiration of two years, and shall before the expiration of ten years, starting on the date on which the money or other consideration was received by the person, transfer the money or other consideration to the Official Receiver.

(12) The Official Receiver shall—

- (a) deal with any moneys received under subsection (11) as if the moneys were paid to the Official Receiver under section 508; and
- (b) sell or dispose of any other consideration received under subsection (11) in such manner as the Official Receiver thinks fit, and deal with the proceeds of the sale or disposal as if those proceeds were moneys paid to the Official Receiver under section 508.

Power of Court to review act, omission or decision, etc., after approval, etc., of compromise or arrangement

369D. (1) This section applies after a compromise or an arrangement, between a company and its creditors or any class of those creditors or its members or any class of those members, has been approved by the Court under subsection 366(4) or subsection 369C(1).

(2) Where the Court is satisfied that the company has committed an act or omission, or made a decision, that results in a breach of any term of the scheme of arrangement, the Court

may, on the application of any creditor bound by the scheme of arrangement—

- (a) reverse or modify the act or decision of the company;
or
- (b) give such direction or make such order as the Court thinks fit to rectify the act, omission or decision of the company.

(3) The Court may, on an application of the company or any creditor bound by the scheme of arrangement, clarify any term of the scheme of arrangement.

(4) No order or clarification made, and no direction given, by the Court under subsection (2) or (3) may alter, or affect any person's rights under, the terms of the compromise or arrangement as approved by the Court under subsection 366(4) or subsection 369C(1).".

Substitution of section 395

12. The principal Act is amended by substituting for section 395 the following section:

"Non-application of this Division

395. 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; and
- (b) any company—

- (i) which is registered or approved under Part II, licensed under Part III, or recognised under Part VIII of the Capital Markets and Services Act 2007;
- (ii) which is approved under Part II of the Securities Industry (Central Depositories) Act 1991; and
- (iii) as may be prescribed by the Minister on the written request from the Minister charged with responsibility for finance.”.

New section 398A

13. The principal Act is amended by inserting after section 398 the following section:

“Recovering of property during voluntary arrangement

398A. (1) Nothing in section 398 will prevent a secured creditor from taking possession of, exercises any other right in relation to, or otherwise recovering, the property during a moratorium in a voluntary arrangement.

(2) The recovery for the purpose of subsection (1) shall apply in the following circumstances—

- (a) if the property is not required by the company for the voluntary arrangement;
- (b) if the moratorium poses a high risk to the existence of the property; or
- (c) if the value of the property decreases in value due to the moratorium.

(3) Subject to subsection (1), a secured creditor shall notify the nominee before the secured creditor takes possession of the property.

(4) For the purposes of this section, property means property other than immovable property.”.

Amendment of section 403

14. Section 403 of the principal Act is amended by substituting for paragraph *(b)* the following paragraph:

“(b) Any company—

- (i) which is registered or approved under Part II, licensed under Part III, or recognised under Part VIII of the Capital Markets and Services Act 2007;
- (ii) which is approved under Part II of the Securities Industry (Central Depositories) Act 1991; and
- (iii) as may be prescribed by the Minister on the written request from the Minister charged with responsibility for finance.”.

Amendment of section 411

15. Section 411 of the principal Act is amended by inserting after subsection (4) the following subsection:

“(5)(a) Nothing in this section shall prevent a secured creditor from taking possession of, exercising any other right in relation to the property, or otherwise recovering the property, during a period for which a judicial management order is in force.

(b) The recovering of property for the purpose of paragraph (a) shall apply in the following circumstances—

- (i) if the property is not required by the company during the period for which a judicial management order is in force;
- (ii) if the period for which a judicial management order is in force poses a high risk to the existence of the property; or
- (iii) if the value of the property decreases in value due to the judicial management order.

(c) Subject to subparagraph (a), a secured creditor shall notify the judicial manager before the secured creditor takes possession of the property.

(d) For the purposes of this section, property means property other than immovable property.”.

New section 415A

16. The principal Act is amended by inserting after section 415 the following section:

“Super priority for rescue financing

415A.(1) At any time when a company is in judicial management, the Court may, on an application by the judicial manager, make one or more of the following orders:

- (a)* an order that if the company is wound up, the debt arising from any rescue financing obtained, or to be obtained, by the company is to be treated as if it were part of the costs and expenses of the winding up mentioned in paragraph 527(1)(a);
- (b)* an order that if the company is wound up, the debt arising from any rescue financing obtained, or to be obtained, by the company is to have priority over all the preferential debts specified in paragraphs 527(1)(a) to (f) and all other unsecured debts, if the company would not have been able to obtain the rescue financing from any person unless the debt arising from the rescue financing is given the priority mentioned in this paragraph;
- (c)* an order that the debt arising from any rescue financing to be obtained by the company is to be secured by—
 - (i)* a security interest on property of the company that is not otherwise subject to any security interest; or
 - (ii)* a subordinate security interest on property of the company that is subject to an existing security interest,

if the company would not have been able to obtain the rescue financing from any person unless the debt arising from the rescue financing is secured in the manner mentioned in this paragraph;

- (d) an order that the debt arising from any rescue financing to be obtained by the company is to be secured by a security interest, on property of the company that is subject to an existing security interest, of the same priority as or a higher priority than that existing security interest, if —
 - (i) the company would not have been able to obtain the rescue financing from any person unless the debt arising from the rescue financing is secured in the manner mentioned in this paragraph; and
 - (ii) there is adequate protection for the interests of the holder of that existing security interest.

(2) A judicial manager that makes an application under subsection (1) shall send a notice of the application to each creditor of the company.

(3) Any creditor of the company may oppose an application under subsection (1).

(4) Where a company that has two or more super priority debts is wound up, the super priority debts—

- (a) rank equally in priority between themselves; and

- (b) are to be paid in full or, if the company has insufficient property to meet them, are to abate in equal proportions between themselves.

(5) Where a company that has any super priority debt or debts is wound up, the super priority debt or debts constitute one class of debts and, despite section 527—

- (a) the super priority debt or debts are to be paid in priority to all the preferential debts specified in paragraphs 527(1)(a) to (f) and all other unsecured debts; and
- (b) if the property of the company available for the payment of the super priority debt or debts is insufficient to meet the super priority debt or debts, the super priority debt or debts—
 - (i) have priority over the claims of the holders of any debentures of the company secured by a floating charge, which, as created, was a floating charge; and
 - (ii) are to be paid out of any property comprised in or subject to that floating charge.

(6) The reversal or modification on appeal of an order under paragraph (1)(c) or (d) does not affect the validity of any debt so incurred, or any security interest that was granted pursuant to the order, or the priority of that security interest, if the rescue financing, from which arose the debt intended to be secured by that security interest, was provided in good faith, whether or

not with knowledge of the appeal, unless the order was stayed pending the appeal before the rescue financing was provided.

(7) For the purposes of subparagraph (1)(d)(ii), there is adequate protection for the interests of the holder of an existing security interest on the property of a company, if—

- (a)* the Court orders the company to make one or more cash payments to the holder, the total amount of which is sufficient to compensate the holder for any decrease in the value of the holder's existing security interest that may result from the making of the order under paragraph (1)(d);
- (b)* the Court orders the company to provide to the holder additional or replacement security of a value sufficient to compensate the holder for any decrease in the value of the holder's existing security interest that may result from the making of the order under paragraph (1)(d); or
- (c)* the Court grants any relief, other than compensation, that will result in the realisation by the holder of the indubitable equivalent of the holder's existing security interest.

(8) Sections 425, 426 and 528 do not affect any priority conferred, any security interest or relief granted, or any payment made, pursuant to and in accordance with an order made by the Court under subsection (1).

(9) The judicial manager shall, within fourteen days after the date of an order made under subsection (1), lodge an office copy of the order with the Registrar.

(10) In this section—

“rescue financing” means any financing that satisfies one or more of the following conditions:

- (a)* the financing is necessary for the survival of a company that obtains the financing, or of the whole or any part of the undertaking of that company, as a going concern;
- (b)* the financing is necessary for the Court’s approval under subsection 366(4) or subsection 369C(5) of a compromise or an arrangement mentioned in subsection 366(1) or subsection 369C(1), as the case may be, involving a company that obtains the financing;
- (c)* the financing is necessary to achieve a more advantageous realisation of the assets of a company that obtains the financing, than on a winding up of that company;

“security interest” means any mortgage, charge, pledge, lien or other type of security interest recognised by law;

“super priority debt” means a debt, arising from any rescue financing obtained or to be obtained by a company, that is to have priority, pursuant to an order under subsection (1)(b), over all the preferential debts specified in

paragraphs 527(1)(a) to (f) and all other unsecured debts, if the company is wound up.”.

New section 430A

17. The principal Act is amended by inserting after section 430 the following:

“Division 9

Protection for essential goods and services

430A. (1) An insolvency-related term under any contract or agreement for the supply of essential goods and services ceases to have effect—

- (a) upon any application in relation to any compromise or arrangement;
- (b) during a moratorium in a voluntary arrangement;
- (c) upon the making of a judicial management order.

(2) An insolvency-related term under any contract or agreement does not cease to have effect by virtue of subsection (1) to the extent that—

- (a) it provides for the contract, agreement or the supply to terminate, or any other thing to take place, because the company becomes subject to any other procedure or application than compromise or arrangement, voluntary arrangement or judicial management;

- (b) it entitles a supplier to terminate the contract, agreement or the supply because the company becomes subject to any other procedure or application than compromise or arrangement, voluntary arrangement or judicial management;
- (c) it entitles a supplier to terminate the contract or the supply because of an event that occurs or may occur after the company is placed under an application for compromise or arrangement, a moratorium in a voluntary arrangement or judicial management order.

(3) Where an insolvency-related term of a contract or agreement ceases to have effect under this section, the supplier may—

- (a) terminate the contract or agreement, if the condition under subsection (4) is met;
- (b) terminate the supply, if the condition under subsection (5) is met.

- (4) (a) The contract or agreement may be terminated when the following consents to the termination of the contract:
- (i) the director under a compromise or arrangement;
 - (ii) the supervisor of the voluntary arrangement; or
 - (iii) the judicial manager under a judicial management;
- (b) any charges in respect of the supply that are incurred are not paid within the period of thirty days beginning with the day on which payment is due when:

- (i) the company is placed under an application for compromise or arrangement;
- (ii) the company is placed under a moratorium in a voluntary arrangement;
- (iii) the company is placed under judicial management order.

(5) The supply may be terminated when—

- (a) the supplier gives written notice to the director, the supervisor of the voluntary arrangement or judicial manager that the supply will be terminated unless the director, the supervisor of the voluntary arrangement or judicial manager guarantees the payment of any charges in respect of the continuation of the supply when the company is placed under an application for compromise or arrangement, a moratorium in a voluntary arrangement or judicial management order; and
- (b) the director, the supervisor of the voluntary arrangement or judicial manager does not give that guarantee within fourteen days beginning with the day the notice is received.

(6) An insolvency-related term of a contract or agreement for the supply of essential goods and services to a company is a provision of a contract or agreement where—

- (a) the contract, agreement or supply would terminate, or any other thing would take place after the company is placed under judicial management order;
- (b) the supplier would be entitled to terminate the contract or the supply because the company becomes subject to any other procedure than judicial management; or
- (c) the supplier would be entitled to terminate the contract or the supply because of an event that occurs or may occur after the company is placed under judicial management order.

(7) For the purposes of this section, the Minister may prescribe the types of essential goods and services which fall under this section and the extent to which the provision is to be applied.”.

New section 433A

18. The principal Act is amended by inserting after section 433 the following section:

“Requirement to notify particulars and changes of liquidator

433A. (1) Any person who have been approved as a liquidator under subsection 433(4) shall, within thirty days of the approval, notify the Registrar the following information:

- (a)* particulars of personal information;
- (b)* particulars of approval as an approved liquidator;
- (c)* particulars of firm of liquidators;
- (d)* particular of partners;
- (e)* particular of branches, if any; and
- (f)* any other particulars required by Registrar.

(2) If there is any change to the particulars specified in subsection (1), the liquidator shall update the information within fourteen days from the date of such change.”.

Amendment of section 439

19. Subsection 439(2) of the principal Act is amended by substituting for paragraph *(b)* the following paragraph:

- “*(b)* give notice of resolution in a manner to be determined by the Registrar within 10 days after the passing of the resolution.”.

Amendment of section 459

20. Section 459 of the principal Act is amended by substituting for subsection (2) the following subsection:

- “(2) The meeting shall be called by an advertisement in the manner as determined by the Registrar, which the advertisement shall specify the time, place and object of the

meeting and shall be published at least thirty days before the meeting.”.

Amendment of section 562

21. Subsection 562(1) of the principal Act is amended—
- (a) by deleting the word “and” in paragraph (f); and
 - (b) by inserting after paragraph (f) the following paragraph:
“(fa) beneficial ownership information; and”.

Amendment of section 567

22. Subsection 567(1) of the principal Act is amended by inserting after paragraph (f) the following paragraph:
“(fa) the status of the foreign company; or”.

Substitution of section 568

23. The principal Act is amended by substituting for section 568 the following section:

“Register of members of foreign companies

568. (1) A foreign company registered under this Division, within thirty days after it is registered—

- (a) keep a register of its members at its registered office in Malaysia or at some other place in Malaysia; and

(b) lodge a notice with the Registrar specifying the address at which the register of members is kept.

(2) A foreign company registered under this Division before the appointed day shall, within sixty days after the appointed day—

(a) keep a register of its members at its registered office in Malaysia or at some other place in Malaysia; and

(b) lodge a notice with the Registrar specifying the address at which the register of members is kept.

(3) If there is any change in the address at which the register of members mentioned in subsection (1) or (2) is kept, the foreign company shall, within thirty days after the change, lodge a notice of the change with the Registrar.”.

Deletion of sections 569 and 570

24. The principal Act is amended by deleting sections 569 and 570.

Substitution of section 571

25. The principal Act is amended by substituting for section 571 the following section:

“Index of members, inspection and closing of register of members of foreign companies

571. Sections 50, 51, 52, 53, 54, 55, 56, 56A, 56B, 56C, 56D and 56E shall, with such adaptations as are necessary, apply respectively to the index of persons holding shares in a register of members of foreign companies and to the inspection and the closing of the register.”.

Amendment of section 572

26. Section 572 of the principal Act is amended by substituting for the words “branch register of a foreign company” the words “register of members of foreign companies”.

Amendment of section 573

27. The principal Act is amended by substituting for section 573 the following section:

“Register of members of foreign companies to be prima facie evidence

573. A register of members of foreign companies shall be prima facie evidence of—

- (a) any matters directed or authorized by this Subdivision to be inserted in the register of members of foreign companies; and
- (b) the title of the member to the shares and the registration of the shares in the register of members of foreign companies.”.

Amendment of section 576

28. Subsection 576(2) of the principal Act is amended—

- (a)* by deleting the word “and” in paragraph *(h)*; and
- (b)* by inserting after paragraph *(h)* the following paragraph:
“*(ha)* beneficial ownership information; and”.

Amendment of section 609

29. Section 609 of the principal Act is amended by inserting after subsection (2) the following subsection:

“(3) Notwithstanding any provision in this Act, the Registrar may, without an application being made, exercise his power to extend any period of time relating—

(a) to the lodgement of any document required to be lodged under this Act; or

(b) to any action or document required to be in compliance with this Act,

if, in his view, the extension of time is just and in the interest of the public after having taken into consideration the circumstances requiring such extension of time, and the Registrar may impose any terms and conditions as he deems fit.”.

Amendment of section 613

30. Subsection 613(1) of the principal Act is amended by inserting after paragraph *(b)* the following paragraph:

“(ba) any matters relating to scheme of arrangement, corporate voluntary arrangement and judicial management;”.

New Schedule

31. The principal Act is amended by inserting the following Schedule:

“SCHEDULE [Subsection 56C(7)]

BODIES

1. Royal Malaysian Police
2. Malaysian Anti-Corruption Commission
3. Royal Malaysian Customs Department
4. Bank Negara Malaysia
5. Securities Commission”

EXPLANATORY STATEMENT

This Bill seeks to amend the Companies Act 2016 (“Act 777”).

2. *Clause 1* contains the short title and seeks to allow the Minister to appoint the date of commencement of the proposed Act.
3. *Clause 2* seeks to amend section 2 of Act 777 to provide clarity on the definition provisions.
4. *Clause 3* seeks to introduce new sections 56A, 56B, 56C, 56D and 56E into Act 777 to provide definition of a beneficial owner through ownership and control, the registers of beneficial owners, the reporting framework relating to the beneficial ownership information, the power of a company to require the disclosure of beneficial owner and duty of a beneficial owner to provide information.
5. *Clause 4* seeks to introduce paragraph 68(3)(ia) into Act 777 to provide that a company shall lodge with the Registrar its annual return which include particulars on beneficial ownership information.
6. *Clause 5* seeks to amend subsection 152(2) of Act 777 to standardise the language with the Capital Markets and Services Act 2007.
7. *Clause 6* seeks to introduce subsection 190(2A) into Act 777 by providing that a public company can issue shares to the public with

only a statement in lieu of prospectus. This ambiguity was discussed in the cases.

8. *Clause 7* seeks to introduce a new subsection 258(2A) into Act 777 to provide the power of the Registrar to extend the time for circulation of financial statements and reports.
9. *Clause 8* seeks to introduce a new subsection 264(2A) into Act 777 to provide that the Minister may prescribe terms and conditions in relation to appointment of an auditor for the purposes of section 264(1)(c)(iii)(A).
10. *Clause 9* seeks to amend subsections 368(1) and (2) of Act 777 to clarify the period for application of the company to retrain proceedings.
11. *Clause 10* seeks to introduce a new sections 368A, 368B, 368C and 368D to better facilitate companies under a scheme of arrangement. Section 368A allows the Court to grant a restraining order for proceedings against subsidiary or holding company which provide assistance to a company undergoing a scheme of arrangement or compromise including a restraining order against a resolution for winding up, appointment of receiver or receiver and manager, etc. Section 368B allows a company undergoing a restructuring exercise to apply to the Court to place any person providing rescue financing a super priority over any other preferential debts under section 527. Section 386C provides for the right of any creditor to apply to Court for a restraining order against the company or its director from

disposing assets or transferring the shares of the company during the moratorium period of a scheme of arrangement. Section 368D provides protection to creditors in debt where the creditors would receive a value equal to the allowed amount of their claims as compared to if the company has gone into liquidation. This is to ensure the proposed scheme of arrangement does not discriminate unfairly on creditors who have not accepted the plan.

12. *Clause 11* seeks to introduce new section 369A, 369B, 369C and 369D into Act 777. These new sections aim at complementing the existing procedures for a scheme of arrangement or compromise towards a more facilitative approach in ensuring the success of a scheme of arrangement proposed by a company. Section 369A empowers the Court to order another meeting to revote on the proposed scheme of arrangement or compromise. Section 368B allows a company undergoing a restructuring exercise to apply to the Court to place any person providing rescue financing a super priority over any other preferential debts under section 527. Section 369B provides for the requirement for creditors to submit the proof of debt to allow them to vote in the meeting to consider the scheme of arrangement or compromise. Section 369C provides for the Court's power to approve compromise or arrangement even without the meeting of creditors. Section 369D provides for safeguard for any aggrieved creditor to apply to Court for a review against the order for a scheme of arrangement or compromise.
13. *Clause 12* seeks to amend section 395 of Act 777 by extending the application of the corporate voluntary arrangement scheme to

companies with a charge over its property or undertaking to ensure that such a company is able to rehabilitate its business and overcome its financial difficulties.

14. *Clause 13* seeks to introduce a new section 398A into Act 777 to provide for relief to secured creditors to recover certain property during a moratorium of a corporate voluntary arrangement.
15. *Clause 14* seeks to amend paragraph 403(b) of Act 777 to extend the application of judicial management framework to wider categories of companies including listed companies.
16. *Clause 15* seeks to introduce a new subsection 411(5) into Act 777 to provide for relief to secured creditors to recover certain property during a moratorium of a judicial management.
17. *Clause 16* seeks to introduce a new subsection 415A into Act 777 to provide for super priority for rescue financing which allows a company undergoing a judicial management exercise to apply to the Court to place any person providing rescue financing a super priority over any other preferential debts under section 527.
18. *Clause 17* seeks to introduce a new section 430A into Act 777 to provide for relief to creditors so that the essential supplies, under existing contracts, continue to be provided whilst the company is under judicial management.

19. *Clause 18* seeks to introduce new section 433A into Act 777 to provide that an approved liquidator is required to notify the Registrar the information of certain particulars and update such changes to the particulars.
20. *Clause 19* seeks to amend paragraph 439(2)(b) of Act 777 to clarify that companies may give notice of resolution in a manner to be determined by the Registrar within 10 days after the passing of the resolution.
21. *Clause 20* seeks to amend subsection 459 of Act 777 to clarify that the final meeting of the company shall be called by an advertisement in a manner to be determined by the Registrar.
22. *Clause 21* seeks to introduce new paragraph 562(1)(fa) into Act 777 to provide that a foreign company shall lodge with the Registrar particulars on beneficial ownership information for the purpose of registration.
23. *Clause 22* seeks to introduce new paragraph 567(1)(fa) into Act 777 to provide that a foreign company shall lodge with the Registrar particulars of any changes or alteration made in the status of the foreign company.
24. *Clause 23* seeks to amend section 568 of Act 777 to clarify the requirement of registered foreign companies to keep a register of members of foreign companies at its registered office in Malaysia or

some other place in Malaysia for the purposes of beneficial ownership information reporting.

25. *Clause 24* seeks to delete sections 569 and 570 of Act 777 in line with the amendment to section 568.
26. *Clause 25* seeks to amend section 571 of Act 777 to include the index of members, inspection and closing of register of members of foreign companies in line with the introduction of section 56A.
27. *Clause 26* seeks to amend section 572 of Act 777 to clarify the provisions applicable to the transfer of shares and rectification of the register of members of foreign companies in line with the amendment to section 568.
28. *Clause 27* seeks to amend section 573 of Act 777 to clarify that the register of members of foreign companies shall be prima facie evidence in line with the amendment to section 568.
29. *Clause 28* seeks to introduce paragraph 576(2)(ha) into Act 777 to provide that a foreign company shall lodge with the Registrar its annual return which include particulars on beneficial ownership information.
30. *Clause 29* seeks to introduce subsection 609(3) into Act 777 to provide the powers of the Registrar to extend time for lodgement of documents without any application by the company on certain circumstances which is just and for the interest of the public.

31. *Clause 30* seeks to introduce subsection 613(1)(ba) into Act 777 to provide the powers of the Registrar to make regulations for and with respect to any matters relating to scheme of arrangement, corporate voluntary arrangement and judicial management.
32. *Clause 31* seeks to introduce a new Schedule into Act 777 to provide a list of bodies that will have access to the beneficial ownership information.