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A Critical Analysis of Legal Gaps in Malaysia's Judicial Management Regime

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ABSTRACT

Malaysia has introduced a primary corporate rescue mechanism to rehabilitate financially distressed companies by virtue of Companies Act 2016, i.e Judicial Management (JM). While its legislative objectives are clear which is to provide a ‘second chance’ to the companies and to promote a rescue-oriented insolvency framework, the mechanism however has remained relatively underutilized despite the recent amendment of legislation in 2024 and persistently face several structural and procedural challenges.

This article critically explores the legal gaps in Malaysia’s judicial management regime in serving their objectives to rehabilitate companies and also in protecting the stakeholder interest through a doctrinal and comparative legal analysis, with particular reference to United Kingdom’s administrative regime under Insolvency Act 1986. The comparative analysis demonstrates that the United Kingdom has adopted a more flexible and rescue-oriented approach that better balances the interests of debtors and creditors.

Keywords: Judicial Management, Malaysia, United Kingdom, Loopholes, Stakeholder interest

Themes: Judicial Management under Companies Act 2016

INTRODUCTION

Corporate insolvency law in Malaysia serves as a regulation on how to restructure or wound up financially distressed companies. Companies Act 2016 (“**the CA 2016**”) as a primary legislation which is supported by the Companies Winding-Up Rules 1972 that governs these procedures. Within Malaysia's broader corporate insolvency framework, under Division & Part III of the CA

2016, JM serves as an alternative to asset liquidation or receivership. From another point of view, JM is also considered as a court-supervised corporate rescue mechanism designed to give financially distressed companies a second chance to restructure. Instead of ordering a financially-struggled company into winding up, an independent professional who is generally known as the Judicial Manager (JM) will be appointed by the High Court for the process of taking over management duties of the relevant company from its directors.

Although this JM is statutorily available in Malaysia, there are significant gaps in JM framework and significantly underutilised due to its procedural difficulties. Despite the recent legislative amendment that have modernised aspects of corporate insolvency by introducing several corporate rescue mechanisms, structural legal gaps continue to impede its effectiveness compared to mature rescue regimes, comparatively in the United Kingdom.

Therefore, this article will critically examine the loopholes in Malaysia’s JM framework through comparative analysis with the UK, identify its respective lacunae with regards to relevant statutory provisions and propose comprehensive recommendations in order to enhance its effectiveness and accessibility.

METHODOLOGY

Throughout the writing of this article, there will be two research methodologies that were being adopted in gathering all the relevant information. These two research methodologies served as the main pillar throughout the process of writing this article. In addition to this, there will be two separate parts under the literature review parts which are the conceptual and legal framework studies.

As stated in the above paragraph, a doctrinal and comparative legal approach will be adopted. Firstly, it relies on doctrinal analysis. This means a critical examination on the relevant statutory provisions such as the CA 2016, the Companies Winding-Up Rules 1972, SSM's Frequently Asked Question to name a few are being done. This examination will emphasize over the efficacy of Malaysia's JM framework in the present iteration.

According to S. Nathan (2020), following the introduction of the several JM systems in Malaysia, there is no evidence yet that the mechanism has achieved a good take up rate. On the other side, this article will also include relevant decided cases to serve as the supporting guidelines.

Secondly, this article will have the conceptual and legal framework parts. A proper analysis will be done over the legal theory and the current academic work on how effective JM works in Malaysia. The aim is to identify the lacunae in Malaysia's JM following its introduction in the present years. A review over the decisions of the Malaysian courts since the application of the JM will also be considered.

Thirdly, this article also adopts a comparative method where it will examine the UK's JM regime under the Insolvency Act 1986. For the part of the doctrinal analysis, a deeper analysis on the conceptual and legal framework parts will also be included in this article in order to further understand the JM and corporate rescue mechanisms in Malaysia and the UK respectively.

Moving towards the comparative legal approach method, an intensive analysis of the main features pertaining to the UK's JM regime. A major shift had taken place in the UK in terms of the balance between a debenture holder's rights and those of unsecured creditors in the receivership and administration regime under the Insolvency Act 1986 in the UK prior to the Singapore Insolvency Law Reform recommendations (ILRC) (S. Nathan, 2020). Through this, it will highlight the effectiveness and application on how the JM works within the UK country.

In conclusion, this article is a qualitative analysis study with no surveys and questionnaires to be conducted. A thorough and careful reading, comparison and critical discussion on the legal texts and academic literature will be done continuously. The involvement of the secondary sources such as the reviewed journals, books and reports are being used to provide support for the analysis and to introduce recommendations in strengthening the JM system in Malaysia.

LITERATURE REVIEW

Conceptual Framework

Centred on the CA 2016, the conceptual framework of this article evaluates the efficacy of Malaysia's JM as a corporate rescue mechanism. According to the statement by S. Nathan (2020), the JM framework had formally been introduced and embedded in the CA 2016 dated 31 August 2016 to be incorporated into Malaysia's statutory corporate insolvency framework. The framework opens with corporate insolvency, a state where financially distressed companies utilize legal mechanisms for restructuring and rehabilitation rather than face immediate liquidation. This article will thoroughly analyse the JM provisions that came into effect in Malaysia inclusive of its present iteration upon its sufficient embodiment in a rescue culture.

Serving as a vital corporate rescue mechanism, JM shields distressed companies from creditor actions via a moratorium while an independent judicial manager works to rehabilitate financial viability. Hence, in evaluating the efficacy of the Malaysian JM framework under the Insolvency Act 1967 (Act 360), this article will utilize the UK's administration regime under the Insolvency Act 1986 as the benchmark . This comparative analysis further examines the core elements of corporate rescue including accessibility, court involvement, rescue financing, creditor protection, and proceeding durations. It also assesses the integration of restructuring tolls, early intervention strategies, anti-abuse safeguards and business continuity preservation.

The framers of the JM framework in the CA 2016 used the regime for JM in the Singapore Companies Act as a blueprint (Nathan, 2020). At the time the CA 2016 was enacted, several reforms to address the deficiencies in the then existing regime in Singapore had already been recommended by the ILRC. The purpose of this was to reform and modernise the existing Singapore's JM. However, prior to the enactment of the CA 2016, none of this recommendation seem to be incorporated into the draft Companies Bill in Malaysia,. Contrary to the UK, prior to the recommendations, they had taken a major shift in their administration regime in order to strengthen the core corporate rescue foundation underpinning the UK provisions (S. Nathan, 2020).

As mentioned earlier, JM intended to operate as a corporate rescue mechanism. As per S. Nathan (2020) in her journal, a corporate rescue mechanism should facilitate a corporate rescue, whether of the business or the company itself. However, the JM in Malaysia has seen minimal uptake since its implementation as several applications were dismissed due to secured creditor opposition (Shah, n.d.). This is due to its framework's structural deficiencies that rendered it less effective. Under Malaysia's JM framework, the features can be seen as less effective and reformation as well as proper recommendations are indeed essential in order to address its deficiencies.

Looking into the UK's administration regime, it does prioritize the company rescue over secured creditors interests where the key features include automatic moratoriums, elimination of administrative receivership for most floating charges and court oversight balancing stakeholder interest (Shah, n.d.). The 2020 reforms introduced a standalone moratorium and enhanced debtor-in-possession procedures, significantly strengthening the rescue framework (S. Nathan, 2020). The reformation over the UK's administration regime proved that it has been far reaching in effect within the insolvency landscape.

In this article, a review over the decisions of the Malaysian courts seems necessary to further deepen the understanding over the JM regime on whether it is working in the intended cause or not and whether the recommendations are beneficial. A brief summary of the case of Leadmont Development Sdn Bhd v Infra Segi Sdn Bhd ("Leadmont") will also be discussed in this part. In the Leadmont case, the Malaysian High Court issued one of the landmark decisions on the Country's JM framework (Kumaraendran, 2019). This case demonstrates that factual sufficiency alone cannot sustain a Judicial Management order (JMO) if overwhelming creditor opposition renders the underlying rescue scheme futile.

Subsequent to Leadmont, the High Court decision in Dalam Perkara Wellcom Communication (NS) Sdn Bhd ("Wellcom Communications") also illustrates a textbook example where the JM regime works exactly as enacted but yet lacks utility as a rescue mechanism (S. Nathan, 2020). The results of these two landmark cases led to the discussion over the missed opportunities for the Malaysian courts to develop the law. Hence, a critical comparison analysis over the existing Malaysia's JM with the UK's judicial management regime is indeed significant as to promote a more successful JM framework.

Pursuant to the comparison, in this article, the lacunae within Malaysia's JM framework seems to hinder the effectiveness in achieving a successful corporate restructuring and rehabilitation. Therefore, the findings shall form the basis for recommendations aimed at strengthening the regime through flexibility, improved accessibility, enhanced protection as well as a stronger rescue oriented approach thereby promoting a more effective and commercially practical corporate rescue framework.

Legal Framework

The legal framework governing JM in Malaysia is primarily set out in Part III, Division 8 of the CA 2016, which introduces JM as a corporate rescue mechanism for financially distressed companies. Pursuant to the CA 2016, the High Court may appoint a Judicial Manager to take over the management of a company where there is a reasonable probability of rehabilitating the company or achieving a more advantageous realisation of assets rather than in winding up. It is then followed by a statutory moratorium that temporarily restrains any creditors' enforcement actions thereby providing the company with an opportunity to restructure its affairs. The framework has then been further strengthened by the Companies (Amendments) Act 2024, which introduced rescue financing provision that enhances the restructuring measures.

Through an academic perspective, although JM is intended to promote a corporate rescue culture by providing financial relief to distressed companies rather than proceed for liquidation, scholars have questioned the effectiveness of the Malaysian framework in achieving such objectives. In the article published by Nathan (2020), it argues that although the Malaysian judicial management regime was largely modelled after Singapore's framework, it did not incorporate several reforms that had already been proposed to strengthen corporate rescue mechanisms. Similarly, Chen, Azmi and Abdul-Rahman (2024) also contend that structural barriers such as secured creditor opposition, procedural difficulties as well as strict statutory requirements have contributed to the relatively low cases of judicial management in Malaysia.

The practical application under the Malaysian courts have also played and contributed to the developments of JM through judicial interpretations. As cited in Leadmont, the court stressed the importance of demonstrating a realistic prospect of rehabilitation before the court can grant a judicial management order. Similarly, in Wellcom Communications, the court has highlighted the practical challenges in implementing JM and balancing the interest of creditors for distressed companies. Moreover, these cases provide important guidance on the limitations and application of JM in Malaysia.

In comparison to UK's Insolvency Act 1986, particularly schedule B1, which promotes rescuing the company and achieving a better result for the creditors than liquidations and preserving the business. Unlike the Malaysia legal framework, the UK allows both court based and out of court appointments which facilitates a quicker intervention in cases for financially distressed companies. An example can be seen in Re T&D Industries plc ("Re T&D"), where the court emphasizes the administration should only be granted where there is a genuine prospect of achieving a statutory purpose of rescue. A similar case can be seen in, Re Transbus International Ltd ("Re Transbus"), where the court approved the administration to facilitate the corporate restructuring and preserve the business value hence reflecting the rescue oriented approach of UK's insolvency regime. These cases demonstrate the UK's strong rescue oriented approach as well as a useful benchmark for evaluating the effectiveness of the JM in Malaysia.

FINDING AND DISCUSSION

Comparative Analysis of Judicial Management Between Malaysia and United Kingdom

The introduction of JM under Part III Division of 8 of the CA 2016 represented Malaysia's first comprehensive attempt to establish a corporate rescue culture similar to those found in advanced insolvency jurisdictions. Nevertheless, numerous scholars have observed that the Malaysian framework under this act remains less effective than what United Kingdom's had adapted in their country for administration regime under Schedule B1 of the Insolvency Act 1986.

According to Chen, Azmi and Abdul Rahman (2021), a modern corporate insolvency law has evolved from a liquidation oriented model towards a rescue oriented framework that prioritized business rehabilitation and preservation of going concern value. The authors above argues that although Malaysia has adopted judicial management as a corporate rescue mechanism, several provisions continue to reflect a creditor-centric approach which may undermine the broader objectives of corporate rescue which is particularly evident in the significant influence accorded to secured creditors under the judicial management framework. Under Section 409(b) of the CA 2016, a judicial management application may be dismissed if a secured creditors opposes the application thereby granting secured creditors substantial control over whether a company may access the rescue process. These provisions tends to put the interests of individual creditors ahead of the broader goals in rescuing financially troubled but potentially viable businesses.

In contrast, the United Kingdom's administration regime set under Schedule B1 of the Insolvency Act 1986 which takes more rescue-focused approach by making the preservation of the company as a going concern its main statutory goal. The UK system then aims to balance the interests of all stakeholders through a collective insolvency process preventing any single creditor or a group of creditors from blocking rescue efforts. This shows, by contrast and comparison, although Malaysia has made significant progress in developing a modern corporate rescue framework, its strong emphasis on creditor protection can limit the practical success of judicial management and weaken its role as an effective rehabilitation tool. This highlight the need for further legislative reform to create more balanced legal framework which aligns the creditor rights with the broader objectives of corporate rescue, in line with the international best practices and modern insolvency principles.

A further distinction lies in the underlying rescue philosophy guiding each jurisdiction such as UK, the administration regime is explicitly designed with a rescue-first approach. Under Schedule B1 Paragraph 3 of the Insolvency Act 1986, a clear statutory hierarchy of objectives is set out in which consists of the administrator's primary duty is to try to save the company as a going concern. Only if that goal is not reasonably attainable may the administrator move on to secondary aims, such as securing a better outcome for creditors than liquidation would provide or realizing assets for the benefit of secured and preferential creditors. This structures clearly reflects the Parliament's intent to prioritised the survival of the company over the mere recovery of the debts. In contrast, Malaysia's judicial management framework is also aims to rehabilitate financially troubled companies but its legislation does not establish a similarly defined hierarchy of rescue objectives. As a result, Malaysian courts have tended to place a greater emphasis on protecting creditor interests when deciding whether to grant a judicial management order.

Another key distinction lies in how secured creditors are treated in the UK where UK has major reforms that came with Enterprise Act 2002 which drastically limited the power of floating charge holders to appoint administrative receivers. This marked a clear shift away from the dominance of the secured creditors and towards collective rescue efforts. As Goode (2022) explains, abolishing administrative receivership in most cases was a deliberate move to promote business recovery and to maximize value for all stakeholders, rather than favoring individual secured creditors. In contrast, secured creditors in Malaysia continue to wield significant influence within the judicial management process. According to Section 409(b) of the Companies Act 2016, a judicial management application can be dismissed if a secured creditors objects to it. This provision has drawn criticism for effectively giving secured creditors a veto power that can block potentially viable corporate rescue efforts. In Judicial Management in Malaysia: Is the Regime Working as Intended? (S. Nathan, 2020), the author contends that this statutory barrier is a major factor behind the relatively low number of judicial management applications since the regime's introduction.

Next, the different jurisdictions take notably different approaches to rescue financing. As for the companies in financial distress, the access to fresh funding is often crucial for survival as they need liquidity to cover wages, supplier payments and day-to-day operation. The US led the way with debtor in possession financing under Chapter 11, a model that has inspired reforms in many other countries while in Malaysia, the Companies (Amendment) Act 2024 has introduced rescue financing provisions under Section 415A of the Companies Act 2016 which this provision allows a company under judicial management to secure new funding that can take priority over existing debts. While this marks a significant step forward for Malaysia's corporate rescue landscape, its real-world impact has yet to be proven as for now. By contrast, UK has developed a far more established restructuring environment where administration proceedings often work in tandem with other rescue mechanisms.

Not only that, one of the differences between Malaysia and the UK lies in how each system handles moratoriums which highlights their differing approaches to corporate rescue. In the UK, once an administration begins, an automatic and comprehensive moratorium takes effect where this immediately stops creditors from starting or continuing legal actions, enforcing security or repossesing assets without the administrator's consent or the court's approval. This safeguard is considered a cornerstone of the UK's administration process as it gives struggling companies valuable breathing space to reorganize and work towards recovery. The UK further reinforced this protection through the Corporate Insolvency and Governance Act 2020 which later introduced a standalone moratorium that can be used even before formal insolvency proceeding begin in UK while in Malaysia, a similar statutory moratorium is granted when a judicial management order is issued under Section 410 of the Companies Act 2016. Since judicial management can only begin once a court order is granted, companies remain vulnerable to creditor actions in the time between submitting their application and receiving approval. As a result, the protection offered by Malaysia's moratorium tends to take effect less quickly than the safeguards provided under the UK system.

The duration and flexibility of rescue proceedings highlight a clear difference between UK and Malaysia which in Malaysia, the judicial management initially lasts for six months and can only be extended with court approval. Before the Companies (Amendment) Act 2024, many criticized this limited timeframe as inadequate for handling complex restructurings involving numerous creditors and stakeholders. Although the amendment has introduced more flexibility in granting extension, the overall framework are still remain fairly rigid. In contrast, the UK's administration regime gives administrators far greater freedom to achieve rescue goals. The process typically runs for a year but can be extended with the consent of creditors or by court order when it is necessary. This longer and more adaptable period eventually allows administrators to negotiate restructuring plans, attract new investors and implement turnaround strategies more effectively. In conclusion, the UK's approach reflects a broader understanding that successful corporate rescues often require both time and flexibility.

Another way of the UK framework shows its sophistication is through how it integrates different rescue mechanisms. The corporate rescue there is not limited to the administration alone but it works in tandem with company voluntary arrangements (CVAs) schemes of arrangement under Part 26 of the Companies Act 2006 and restructuring plans under Part 26A. These tools are designed to complement one another, giving companies several routes to recovery. In contrast, while Malaysia has introduced similar mechanisms which are under schemes of arrangement, corporate voluntary arrangements and judicial management, the connections between them are still not well fully developed. This lack of cohesion can make the overall system less effective as the structures are still weak and not smooth even if all the mechanisms are existing. Thus, a more unified restructuring framework would allow judicial management to act as a getaway to wider the restructuring effect and options rather than functioning as a standalone measure.

Finally, the UK's approach places a strong focus on the early intervention and fostering the culture of business rescue. The modern UK insolvency law is built on the idea that the companies should seek for restructuring support before their financial troubles become irreversible. As in th Cork Report 1982, it has heavily influenced under Insolvency Act 1986 where it stressed that insolvency laws should aim to rescue businesses whenever is possible and preserve those that remain economically viable which this philosophy continues to guide current reform standing today. In contrast, Malaysia's judicial management is often viewed as a last-ditch effort, typically pursued only when a company's financial condition has already deteriorated severely. This is shows that such late intervention greatly diminishes the chances of successful recovery and make liquidation more likely. Hence, encouraging earlier use of judicial management and raising awareness among directors and stakeholders could therefore significantly improve the effectiveness of Malaysia's insolvency legal framework.

As a whole, the comparison that have been mentioned earlier between UK and Malaysia where Malaysia has made a substantial progress in order to modernise their insolvency legal framework through the introduction of judicial management and recent amendment made in 2024 while UK administration regime remain more advance and balance in terms of accessibility, procedural flexibility, rescue financing, creditor balancing, integrated restructuring mechanisms and eary intervention strategies. Thus, UK's legal framework for insolvency provide a valuable benchmark to Malaysia for the future reforms in order to strengthen Malaysia's corporate rescue mechanism culture and to ensure that the judicial management function is effective as to preserving business rather than delaying the liquidation.

Lacunae in Malaysia's Judicial Management Framework

One of the major lacunas in Malaysia's judicial management framework is that, even though the mechanism is statutorily expressed under the CA 2016, still practically it remains less accessible if to compare with the United Kingdom administration regime. Based on Section 404 of the CA 2016, the appointment of a judicial manager in Malaysia generally requires an application to the Court by the company, its directors or its creditors. Further, as stated in Section 405 of the CA 2016, the Court must be satisfied that the company is or will be unable to pay its debts and that the making of a judicial management order is likely to achieve one or more of the statutory rescue objectives. Therefore, the Malaysian framework remains heavily court-centred at the commencement stage which in some way could be a challenge towards the company.

As stated by Chen, Azmi and Abdul Rahman (2021), corporate rescue mechanisms under the CA 2016 were introduced as part of Malaysia's effort to modernise its insolvency law and to assist financially distressed but economically viable companies. However, although this legislative purpose is commendable, the practical effectiveness of judicial management may be weakened if access to the mechanism is delayed by procedural cost, court filing requirements and litigation-based commencement. In corporate rescue, timing is critical thus a company in financial distress may require immediate protection from creditor enforcement, creditor pressure, asset dissipation, termination of key contracts and loss of confidence from suppliers, financiers and customers. Hence, given situations where judicial management process is either incurred cost or involved too slow timely, the company may have incurred losses yet before the rescue protection can be taken by the company.

This challenge is also stated by Lokman, Khudzairi and Othman (2020), who further explain that Malaysia's corporate rescue mechanism is intended to rehabilitate ailing companies rather than merely liquidate them. Therefore based on that objective, judicial management should operate as a practical and accessible rescue tool; however, now, where this protection can only be triggered through a formal court application, the company may face obstacles in obtaining this urgent and essential protection at the very moment when the time is most essential. By doing so, it can be seen that there is a gap or lacunae between the legislative aim of how corporate rescue works and the exact practicality of how judicial management works in reality.

Furthermore, as stated by Chen (2024), the path to judicial management in Malaysia is "paved with obstacles", including obstacles at the beginning of the application stage, the merits stage and the creditors' approval stage. By looking at this, it shows that the downside of Malaysia's judicial management framework is not merely theoretical. The problem lies not only in whether judicial management is established under the law, but whether the distressed companies can ideally and practically access it. If a rescue mechanism is difficult to commence, it may be underused even though it appears efficiently adaptable to be used on paper.

On the other hand, another lacunae that has always revolved around judicial management is the potential abuse of judicial management as a delay mechanism rather than as a genuine corporate rescue tool. Based on Section 410 of the CA 2016, once an application for a judicial management order is made, an automatic effect which may be known as takes effect where due to the application for the judicial management, it prevents, among others, the commencement or continuation of legal proceedings, execution or enforcement process against the company except with leave of Court. Not limited to that section alone, further in Section 406 of the Companies (Amendment) Act 2024 where the Court now holds power and jurisdiction as to extend the JM order to another 6 months which is initially made limited to 6 months period when there is application by the judicial manager. With such an amendment, it can lead to another reason as to be used by the distressed companies just to buy time to prevent the company from being put in a tough condition. Thus, while this protection is necessary especially to preserve the company's assets, the growth and the business of the company and as to provide breathing space for company's restructuring, it can also be misused or taken advantage of by companies that have no genuine or bona fide intention and realistic prospect of rehabilitation of the company.

As stated by Chen (2024), the moratorium in judicial management holds the consequence of prohibiting proceedings against the applicant company, including winding-up proceedings and any enforcement action against the company's property. From this, it is clear that the moratorium is a strong and valid power of statutory protection. Similarly, Lee Shih (2019) explains that upon the filing of a judicial management application, an automatic moratorium applies and legal proceedings against the applicant company are stayed. Nonetheless, because this moratorium is triggered at the application stage, there is also a risk that the distressed companies may file judicial management applications merely to obtain a temporary protection from creditors thus in this kind of circumstances, judicial management could resort as to delay and frustrate winding up proceedings or being one of the methods of mala fide by the company that could even affect other entities.

This can be seen in the Court of Appeal's case of CIMB Islamic Bank Berhad v Wellcom Communications (NS) Sdn Bhd and Anor [2019] MLJU 148, where the Court warned against the misuse of judicial management to freeze creditors' claims without bona fide proof of rescue. As discussed by Skrine (2019) in its case update, the Court of Appeal emphasised that an application for judicial management must be supported by strict proof and evidence, and not merely by surmise, conjecture or sympathy-evoking narratives of the distressed companies. Similarly, in Leadmont case, the Court's approach supports the proposition that judicial management should not be used as a procedural shield to delay legitimate creditor enforcement where the statutory rescue purpose is not genuinely shown. As stated by KH Lim & Yap (2023), there is a concern that judicial management may be misused where the application is filed not for genuine rehabilitation, but to obtain the protection of the moratorium and delay creditor action.

The concern is further illustrated by developments in Malaysian judicial management litigation. As explained by Lui & Bhullar (2021), judicial management in Malaysia has continued to develop which for instance can be seen through case law, particularly in relation to the scope and effect of the statutory moratorium. These developments show that Malaysian courts are required to balance two essential considerations which is to assist the distressed company with alternatives to rehabilitate and also to prevent the chance for the company to use judicial management as a toll to operate unfairly towards creditors.

The need for stronger creditor safeguards is further illustrated by Desa Tiasa Sdn Bhd v CME Group Bhd & Anor [2025] MLJU 4345, where the Court of Appeal considered the position of creditors in judicial management proceedings. Although the case primarily concerned the extent to which an unsecured creditor may intervene or be heard in opposition to a judicial management application, it remains relevant because it highlights the importance of a clear statutory balance between rescue protection and creditor participation. If creditors are restrained by the moratorium but have limited procedural avenues to resist an unmeritorious application, there is a greater risk that judicial management may operate unfairly against them.

At the same time, the risk of abuse must be balanced against the legitimate purpose of judicial management. As stated by Lokman, Khudzairi and Othman (2020), Malaysia's corporate rescue mechanisms were introduced to rehabilitate financially distressed companies and prevent unnecessary liquidation. Therefore, the solution is not to weaken the moratorium altogether. Instead, the law should ensure that only companies with a credible prospect of rescue are allowed to benefit from such protection. A moratorium should function as a rescue shield, not as a tactical weapon against creditors.

Another significant lacunae in judicial management in Malaysia is the unheard voice of unsecured creditors. Section 407(3) of CA 2016 gives the power to secured creditors in raising objections towards the judicial management arrangement. The provision is to be interpreted strictly towards secured creditors only as held by the court in the Leadmont case, Wong Chee Lin JC held that unsecured creditors may only raise objections against the judicial manager nominations and not to the judicial management order itself. This decision is followed by the judge in the case of Million Westlink Sdn Bhd v Maybank Investment Bank Berhad & Ors [2019] MLJU 1721 where an unsecured creditor is considered to have no legal standing in the court to raise any objection against the judicial management order.

This legal position is adopted differently by the Court in the case of Goldpage Assets Sdn Bhd v Unique Mix Sdn Bhd [2020] MLJU 723, where the Court adopted the purposive approach in interpreting the Companies Act. In clarifying the nexus between the CA 2016 and the CRM 2018, the Court employed a purposive interpretation that emphasized statutory access to justice while upholding judicial supervision. The Court is of the view that unsecured creditors should not be excluded from judicial management processes on the ground of some loopholes in CA 2016. Although Rule 13 of the CRM 2018 serves as restriction against involvement of secured creditors, the Court affirms that the fundamental doctrine of the subsidiary legislation cannot overrule or conflict with the primary legislation. As a result, the judiciary acknowledged the legal rights of unsecured creditors to actively participate during JM hearings, enveloping the capacity to challenge the issuance of a judicial management order.

Analysing from the judicial precedent pertaining to the rights of unsecured creditors, the issue of imbalance of rights between secured and unsecured creditors in judicial management proceedings is highlighted. It is to be noted that there is no amendment to legislation particularly section 409 of CA 2016 to incorporate the recent judgment which has recognised the right of unsecured creditors to be heard. This discrepancy contravenes the principle of equal participation in corporate rescue proceedings and may prejudice the interests of unsecured creditors. As noted by Balan (2024), the current position which gives veto power to secured creditors creates a structural imbalance that defeat the objectives of judicial management and effectiveness of Malaysia's corporate rescue mechanism.

RECOMMENDATIONS

The first recommendation is that Malaysia should introduce a more flexible appointment mechanism for judicial management which is also efficient. This can be made by basing on the UK model where Malaysia may allow a limited and controlled form of out-of-court commencement in such cases where it fits and suitable, subject to safeguards. For instance, a debtor company, its directors or the secured creditors could be permitted to initiate judicial management by filing prescribed documents, a nominee's consent to act and a preliminary rescue statement whereby this filing then could trigger these interim protection or a temporary moratorium, but still the Court retains the power to review, confirm, vary or terminate the appointment at a subsequent hearing.

The second recommendation is for Malaysia to strengthen safeguards against the misuse of judicial management. This can be done by requiring applicants to show a preliminary viable rescue plan when they apply. The applicant/the company is not required to present or to prove that they have a complete and the final one of the restructuring plan yet before the judicial manager is appointed by the Court. However, still the applicant/the company must provide adequate proof and evidence as to show their capacity and ability of the rescue mechanism later on. For instance, this evidence could include the initial cash flow, the secured creditors positions, business and projects plan and essentially highlight on how this HM could be a great alternative for the applicant/the company. By doing so, this will assist the Court more on to look and differentiate on whether the application was a genuine one or otherwise. These such requirements might involve requiring commitments, limiting the duration of interim protection, mandating regular reporting, allowing creditors to make their own applications, or requiring the applicant to share its restructuring proposal within a certain time frame.

The third recommendation is that there should be a reform that distinguishes between three levels of unsecured creditor participation. Initially, all unsecured creditors must be granted a legal entitlement, to receive notice on the judicial management application and nomination of the proposed judicial manager. Further, the Court should provide unsecured creditors whose claims exceed a certain threshold or who can show that their interests would be materially affected, with a right to make written representations before the Court decides to grant the judicial management order. In addition, a representative body of unsecured creditors, like a creditors' committee or a minimum percentage of unsecured creditors by value, should be given standing to object to the judicial management order on the ground of bad faith, abuse, absence of a viable rescue plan or unfair prejudice.

This model is preferable to granting unsecured creditors an individual veto power. An absolute veto may weaken the rescue objective of judicial management because a single dissatisfied unsecured creditor could frustrate a restructuring effort that may benefit the creditor body as a whole. However, excluding unsecured creditors completely is equally problematic because they may bear substantial economic loss if the company fails, yet they have limited control over the process. A tiered model therefore strikes a fairer balance as it recognises that unsecured creditors should be heard, but their participation should be channelled through controlled and proportionate procedures.

CONCLUSION

As an overall conclusion, JM remains an important corporate rescue mechanism under the CA 2016 for rehabilitation companies that are financially distressed and for preservations, However, despite the recent reforms introduced by the Companies (Amendments) Act 2016, several lacunae still continues to affect its effectiveness, including limited accessibility, excessive court insolvent, uncertainties in rescue financing creditor protection concerns and the insufficient integration with other restructuring tools. Based on a comparative analysis with the United Kingdom's Administration regime, this article has highlighted the lacunae in our current judicial management mechanism which does not fulfill the objective of the corporate rescue mechanism in Malaysia. Hence, a reformation should be implemented to enhance the effectiveness of JM as a commercially viable mechanism for corporate rehabilitation in Malaysia.

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