

SCHEME OF ARRANGEMENT PURSUANT TO SECTION 176  
OF THE MALAYSIA COMPANIES ACT 1965

A PAPER SUBMITTED TO THE MARA INSTITUTE OF TECHNOLOGY  
IN PARTIAL FULFILLMENT OF THE REQUIREMENT FOR  
THE ADVANCE DIPLOMA IN ACCOUNTANCY.

BY

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DATE : FEBRUARY 1991

## C O N T E N T S

	Page	
ACKNOWLEDGEMENT	i	
ABSTRACT	ii - iii	
CHAPTER 1	INTRODUCTION	
	Other causes of failure	1
	Background of Study	2
	Definition	6
CHAPTER 2	LITERATURE REVIEW	7
CHAPTER 3	RESEARCH METHODOLOGY	11
CHAPTER 4	SCHEME OF ARRANGEMENT	
	Companies Act 1965	15
	Problems and Advantages	16
	Compromise or Arrangement	20
	Court Approval	22
	Current Practice	27
CHAPTER 5	CONCLUSION	30
BIBLIOGRAPHY		
A P P E N D I C E S		
APPENDIX A	Section 176 of the Companies Act 1965	
APPENDIX B	Explanatory Statement to Creditors (Scheme of Arrangement)	
APPENDIX C	Notice to Creditors	
APPENDIX D	Proxy Form	

## ABSTRACT

In the process of carrying out the study, limited articles and studies by specialists especially on the realities of the business and financial environment of Malaysia and compiling the information gathered in a logical order to form this paper delays the completion of this project paper. However with extraction from foreign manuals and academic texts and also advice from the practising professionals while conducting the interviews, this paper is made possible.

Methods and procedures done by way of interviewing and discussing with academicians and professionals in position to comment authoritatively on the problems involved and relying on secondary data i.e published materials and journals as guidelines.

In Malaysia, scheme of arrangement is still very new and most of our precedent cases are the English cases relating to this scheme. Initially, an informal scheme will be introduced, perhaps, with full co-operation from all parties involved. Basically it is done by way of written agreement with good relationship of trust between management and creditors whereby the creditor agrees to accept the expected fruits of the scheme in consideration for the deferred repayment of the debt. If this proved to be in jeopardy and to prevent a

## CHAPTER 1

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### INTRODUCTION

A successful company requires competent management, an efficient workforce and worthwhile products. James Lingard (1986) defines failure of companies due to :

"their products become obsolete or because the workforce adopts crippling restrictive practices or because of an unforeseen disaster, but most failures are the fault of management." (p.1)

Any management failure will weaken a company but three areas in particular are of prime importance, namely (a) under capitalisation, (b) poor operations management and (c) weak financial control and management. Failure in any of these will, in the end, destroy the business.

#### Other causes of failure

The business may fail as a result of inability to meet current obligation through illiquidity. Based on special report by TA Securities states "in the recent economic recession, maintaining liquidity is a major problem for most companies. In fact, the absence of liquidity has been a common factor in the affairs of those unfortunate companies which have found themselves in difficulties in this recession." (p.1)

This may lead the company to curtail its activities until such time as its liquidity improves, or at worst, its creditors may appoint a receiver to obtain payment.

This situation is undesirable, and it could equally point to an urgent need for cash capital injection or the conversion of certain assets into cash to correct the situation. It is often thought that most companies fail because they are not solvent. They go out of business because they are not profitable.

### Background of Study

MACPA Manual (Company Law) states "A company is a creation of law. It can only be dissolved and its name removed from the Registrar of Companies when the proper legal procedure has been completed. However before any such dissolution is made, the company will be put under receivership." (p.18)

The remedies available will depend upon whether the debenture holder is secured or not. In the latter event then, on default of payment of principle or interest he will be able to sue the company, and if judgement is unsatisfied, levy execution against the company; an alternative available to the unsecured debenture holder is to petition for the compulsory liquidation of the company.