

A SCHEME OF ARRANGEMENT AND
A PROPOSAL OF COMPOSITION
IN THE LAW OF BANKRUPTCY;
AN ANALYTICAL DISCUSSION.

by

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PREFACE

The availability of credit is a fundamental requirement for the satisfactory functioning of any modern society. But closely linked to this need for credit, is the need for a law of bankruptcy, to make provisions for that state of insolvency which can unfortunately occur a consequence of credit. Therein of course, lies the element of risk inherent in the granting of credit for the creditor is dependant upon this debtor's being both able and willing to settle the account on the date agreed, and may, moreover proceed to arrange his own affairs on the assumption that he will receive that payment when it falls due. Consequently, the inability or refusal of the debtor to honour his obligation may furnish embarrassment also to the creditor who in his turn may become unable to meet his own obligation owed to others. It may be observed, at this point, that a failure to settle a debt promptly maybe due either to the debtor's lack of the means to pay at that moment or to his deliberate refusal to pay albeit that he possesses the means so to do. In either case, his failure to pay can entail very serious consequences for those who have extended credit to him, and it is thus essential that the law should provide an adequate range of remedies which are capable of affording the creditor as high a degree of protection as possible.

A debtor may find himself in one or two situations: on the one hand his assets, though in excess of his liabilities, may not be sufficiently liquid to enable him to command enough cash to make proper payment of his debt at the time when they fall due, such a situation is usually termed "practical insolvency". On the other hand, he may have reached the situation where the sum of all his debts exceeds the total estimated

valuation of his assets, this situation is usually termed "absolute insolvency". Although the former circumstances is obviously the less serious one, it is a consequence of both events that the debtor is unable to meet his liabilities currently due for settlement out of cash actually in hand.

A variety of reasons may have been responsible for the embarrassed circumstances in which the debtor finds himself whatever the special circumstances of the case, the provisions of the law of bankruptcy maybe invoked in order to impose an ordered settlement of the debtor's affairs in which matters are taken altogether out of the control of the debtor. All his assets then become vested in another person, known as Official Assignee who is empowered to realise them and from the proceeds to satisfy, as far as possible, the debt owed by the bankrupt debtor.

It is the subject-matter of the Project Paper not on the whole of the Law of Bankruptcy but only a small area of it. It is on the question of whether there is a difference between a Scheme of Arrangement or a proposal of Composition. Little study have been done on this area and that is the reason why this subject-matter was chosen.

The object is to show that there are little differences between the scheme of arrangement and a proposal of composition. However, it must be acknowledged that there is a difference between them.

The Project Paper is divided into five parts. In the First Chapter that is "Introduction" the emphasis is to give a general idea of the Law of Bankruptcy and where in such Law, to note the process whereby a scheme of arrangement or composition is being offered by the

debtor to the creditors. Chapter II concentrates on what scheme of arrangement or composition really is. It is useful to know their meaning, purpose, procedure and effects before an analysis on their differences can be made. Chapter III is the comparison itself and Chapter IV discusses the duty of an Official Assignee as an officer of the Court. Finally the conclusion is under Chapter V.

The method used in completing this Project Paper is by interviewing officers in the Official Assignee's office. It is because they are the people who handles bankruptcy proceedings in Malaysia. They are the people who runs the show and it is from them that the author is able to collect materials and statistics for the Project Paper.

A preliminary assumption on the Project Paper is that there is no difference between a scheme of arrangement and a proposal of composition. It is confirmed that there is no difference in substance but even if differences exists, it is just as to its form and such difference is useful in relation to administrative function.

It would be ungracious of me if I omitted to mention the debt I owe to the full and frank discussions that I had with many other people. I found the frankness of these conversations often a little surprising and greatly refreshing. Of the many people to whom I am indebted by their time and views I can only mention a few here:-

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I am very grateful to my supervisor, Encik Harith Kassim in assisting me in preparing my Project Paper. I am also very thankful to the typist Cik Rosiah bt. Mohd. Derus, for without her help, it is very difficult for me to complete the Project Paper. It is acknowledged here that any errors in the Project Paper are all mine.

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