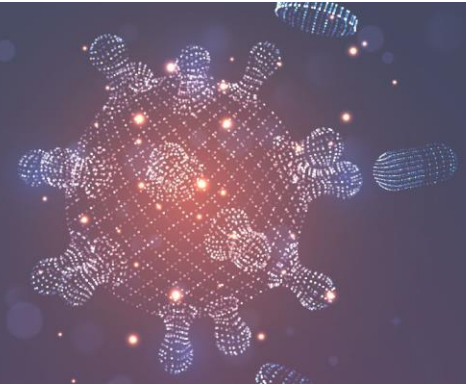


# FAQ: Corporate Rescue Mechanisms

for LexisNexis Resource Hub – COVID-19



**Q. What is a Scheme of Arrangement?**

A. A Scheme of Arrangement ('SOA') is a court-sanctioned mechanism used by companies to restructure debts, reconstruct a company and to vary creditors'/security holders' rights.

Being a mechanism for corporate rescue, a SOA is commonly deployed when a company is facing financial difficulty. This mechanism is used to assist companies in financial peril to fulfil their debt obligations.

SOA is primarily governed by [section 366](#) of the Companies Act 2016 ('CA 2016').

**Q. Who can apply for a SOA?**

A. A SOA can be applied for by either a company, the members of the company, a creditor of the company, its liquidator or a Judicial Manager.

**Q. How does a SOA work?**

A. Firstly, in a SOA application, a proposed compromise or arrangement plan is required ('**Proposed Arrangement**'). A Proposed Arrangement may include the reorganisation of the Company's shares, assets and/or the rights and liabilities of its members. The company must then apply to the High Court ('**Court**') to convene a shareholders'/creditors' meeting ('**Meeting**'), for shareholders/creditors to consider the Proposed Arrangement.

Once a Meeting is ordered by the Court, a notice summoning the Meeting must be given to every creditor or member of the company. The notice will be accompanied with, inter alia, an explanatory statement of the effect of the Proposed Arrangement and any material interests of the directors and the effect of the Proposed Arrangement.

If the Proposed Arrangement achieves an approval of a majority of 75% of total value of creditors (or class of creditors or the members or class members) present and voting is achieved at the Meeting, a further order by the Court is to be obtained to sanction the scheme of arrangement. This order shall bind all creditors and shareholders once it is lodged with the Registrar.

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**Q. What are the advantages of a SOA?**

A. Under SOA, the directors remain in charge of the company.

Depending on the circumstance, some companies may apply for a restraining order under [section 368](#) of the CA 2016. A restraining order effectively restricts any legal proceedings being brought by creditors against the company, whilst the company is restructuring its debt.

**Q. What is Judicial Management?**

A. Judicial Management ('JM') is a form of corporate rescue mechanism supervised by the court, to save companies which are in financial distress from being wound-up. However, to be eligible for this scheme, the company in question should have a reasonable chance of rehabilitation.

JM is a method to restructure a company's debt by suspending any potential legal action against them whilst finding solution to solve the debt.

The key provisions governing JM are sections 403 to 430 of the CA 2016.

**Q. Who may apply for JM?**

A. The company or its creditor(s) may apply for JM. Judicial Management however do not apply to companies which are licensed institutions, operators of a designated payment system under the laws of Central Bank of Malaysia and those which are subject to the Capital Markets and Services Act 2017.

**Q. What is the time period or validity of a JM Order?**

A. A JM Order is valid for 6 months from the date the order, unless it is discharged earlier by the Court. The Court, on the application of the Judicial Manager, may choose to extend the order for a further 6 months. However, this extension is be subject to any terms the Court deems fit to impose.

**Q. What are the powers and duties of a Judicial Manager?**

A. The Judicial Manager is given a wide discretion in the performance of their duties. The Judicial Manager may take custody or control of all properties to which the company is or appears to be entitled to, execute any things necessary for the management of affairs, business and property of the company, and execute any orders by the Court. They may also dispose of the company's property subject to a floating charge or alternatively, they may apply to the Court to dispose of it.

The Judicial Manager may also summon a meeting of the company's creditors (if they think fit or if directed by the court) to approve the statement of their proposals on how they intend to rehabilitate the company.

The Judicial Manager may also apply to the Court for any directions in regard to any particular matter in carrying out their functions.

However, they are not allowed to make payments towards discharging any debt, unless the payment is sanctioned by the Court or the payments are to discharge sums secured by security or under a hire purchase, lease agreement or retention of titles.

A full list of the Judicial Manager's powers are specified under the [Ninth Schedule](#) of the CA 2016.

**Q. What are the advantages of an application for JM?**

A. Once an application for JM is filed in Court, a 6-month moratorium against all legal proceedings (akin to a restraining order) automatically kicks in until the application is decided. This contrasts with a SOA, where a Court Order is necessary.

**Q. What is a Corporate Voluntary of Arrangement?**

A. A Corporate Voluntary Arrangement ('CVA') allows a company facing financial difficulty to propose to its unsecured creditor(s) and reach an amicable arrangement with the latter to settle/reschedule repayment of the company's debts.

Under the CVA regime, the directors of the company appoint a nominee, who must be a qualified insolvency practitioner, to supervise the implementation of the CVA proposal.

The key provisions governing CVA are sections 395 to 402 of the CA 2016.

**Q. Who may apply for CVA?**

A. The company, its Judicial Manager, or the liquidator may apply for CVA. CVA however does not apply to companies which are licensed institutions, operators of a designated payment system under the laws of Central Bank of Malaysia and those which are subject to the Capital Markets and Services Act 2017.

**Q. How does an application for CVA work?**

A. The company is required to prepare the proposal setting out the terms of the voluntary arrangement ('**Proposal**') and the statement of affairs.

The nominee is required to submit to the directors (based on the information provided to him by the company) a statement of opinion indicating the following matters:

- (a) whether the Proposal has a reasonable prospect of it being approved and implemented;
- (b) whether the company is likely to have sufficient funds to operate during the moratorium period; and
- (c) whether meetings of members and creditors should be called to consider the Proposal.

Upon the filing of the requisite documents in Court, a moratorium of 28 days (which may be extended to not more than 60 days) will commence automatically. This moratorium period protects the company from any legal proceedings, winding-up proceedings, execution proceedings or forfeiture by landlords (except with the leave of Court).

During the moratorium period, the nominee must give notification of the moratorium and call for a meeting of the members and creditors of the company in accordance with Division 5 Part III of the CA 2016.

The approval of 75% of the total value of creditors (or a simple majority in the case of shareholders) is required for the Proposal to be binding on all the creditors of the company before it can be implemented by the supervisor.

**Q. What are the advantages of CVA?**

A. CVA is a simpler and cheaper process with minimum intervention of the Court in comparison to other corporate rescue mechanisms.

CVA provides additional time to a company to negotiate with its creditors on the settlement the company's debts, whilst still carrying on its business to facilitate the recovery process. This, in turn, will save the company from going into liquidation directly.

*In light of the constantly changing circumstances, this is a general overview and should not be treated as legal advice. The information presented is correct to the date of its publication.*

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