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TREATMENT OF SECURED CLAIMS IN INSOLVENCY AND PRE-INSOLVENCY PROCEEDINGS - III

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PRESIDENT'S INTRODUCTION

An effective restructuring and insolvency system plays an important role in supporting financial stability and economic growth. When there is a clear, predictable and transparent process for secured creditors to enforce their rights in the event of a debtor's default - or otherwise to receive adequate protection if their rights are compromised - banks and other financiers are more willing to extend credit at lower commercial rates. This enhances liquidity and is an enabler of business growth and innovation. With the variety of providers of secured credit increasing and diversifying, an updated review of the way claims are dealt with is incredibly timely.

The inherent link between insolvency systems, the legal framework governing security rights and a healthy and functioning financial system and economy has been highlighted by the World Bank in its *Principles for Effective Insolvency and Creditor / Debtor Regimes*, as well as by UNCITRAL in its *Legislative Guide on Insolvency*. It is also now motivating legislators to advance significant insolvency and restructuring reform as a means to navigate the volatile and fluctuating economic conditions we are now experiencing.

In this context, the analysis of secured creditors' rights in restructuring and insolvency proceedings is both valuable and timely. INSOL International is therefore delighted to present the Third Edition of one of our most highly respected and valued titles, *The Treatment of Secured Claims in Insolvency and Pre-Insolvency Proceedings*, first published in June 2007. The second edition was published in November 2020.

The publication of the Third Edition was led by Evan C. Hollander of Orrick, Herrington & Sutcliffe LLP, New York. Evan was also involved in the publication of the First Edition of the book, and we are very grateful for his guidance, interest and ongoing commitment to ensure the publication continues to be of such exceptional quality.

This exciting Third Edition features 29 Chapters - including 09 new Chapters from Botswana, Colombia, Egypt, Ghana, Israel, Kenya, Malaysia, Saudi Arabia and South Korea.

The Chapters cover a wide range of key issues that practitioners will find useful, including the forms of security available, the means for secured creditors to enforce their rights in restructuring and insolvency scenarios, the impact of preference and voidable transactions laws on secured creditors, priority in the distribution of the insolvency estate, and what happens when a creditor is over-secured or under-secured.

The Third Edition of the book also includes a number of new questions, reflecting the evolving global economic circumstances - and the pace of insolvency reform and cross-border insolvency developments - since the last edition was released.

Of particular note, each country report now provides an analysis of security rights available over digital assets, cryptocurrency and other intangible property.

This book is a highly valuable resource for INSOL's global membership. Indeed, given the frequency with which complex restructuring and insolvency matters now involve a cross-border element, it is important to remain up-to-date on comparative security rights and enforcement mechanisms in restructuring and insolvency scenarios in various jurisdictions around the world.

INSOL expresses its sincere appreciation to the project leader and each of the country contributors for their time, expertise and commitment in preparing their Chapters, and helping to bring this landmark Third Edition to life.



Alastair Beveridge
President, INSOL International

March 2026

FOREWORD

In support of its mission to educate insolvency professionals about commercial laws across the globe, INSOL International released the First Edition of this Guide in 2007. That handy, accessible and well-organised reference tool addressed the issues impacting secured creditors in 12 jurisdictions.

The Second Edition of the Guide, published in 2020, was expanded to cover the laws in 20 jurisdictions.

This new Third Edition now significantly expands on the scope of questions and issues developed for the prior editions and covers the laws in 29 jurisdictions, reflecting the breadth of INSOL's coverage and networks around the world.

The treatment of secured claims is a matter that insolvency practitioners address in virtually every case in every jurisdiction. As more corporations extend their presence across borders in a globalised, digital economy, it has become critical for lenders and their counsel to understand the nuances of the treatment of secured claims in multiple jurisdictions.

This new volume of the Guide clearly illustrates the advantages and limitations of having secured status in restructuring and liquidation proceedings in each of the jurisdictions covered.

We hope that this study will enable practitioners to navigate the complexities that arise in multinational restructurings and that it will provide investors with a handy guide for sound practical information regarding the risks and rewards of secured investments in different countries.

The project would not have been possible without the help and support of others. The initial acknowledgement must go to the INSOL Technical Research Committee for developing the concept and format of the project and to my predecessor, Andrew DeNatale, who oversaw the production of the initial edition of the Guide. I also extend my thanks to the contributors, each of whom submitted excellent materials for their respective jurisdictions. Finally, I would like to extend my sincere gratitude to my colleagues, Daniel Rubens, Meredith Dawson, Nicholas Sabatino, Michael Trentin and Lenni Elias for assisting in drafting the United States chapter and in helping to review the other chapters of the Guide.



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MALAYSIA

1. Briefly summarise the types of security interests / rights that are available

1.1 What are the common forms of security interests / rights taken in respect of movable or personal property, including the taking of a pledge, lien, retention of title, fixed or floating charge?

In Malaysia, the commonly recognised forms of security interests over movable or personal property include debentures, pledges, pawns and liens.

1.1.1 *Debenture*

In the case of a company incorporated under the legislation relating to companies (currently, the Companies Act 2016 (CA 2016)), the common form of security over company assets is a debenture.¹ A debenture acknowledges or creates a debt and typically charges the company's undertaking or assets.

A debenture must be registered in accordance with the CA 2016.² Failure to register renders the security ineffective against a liquidator or subsequent chargees and may constitute an offence by the company and its officers.

A debenture charge may be fixed or floating, or both, and may be over real or personal property and tangible and / or intangible property, whether present or future.

1.1.2 *Pledge*

Pledges in Malaysia are governed by the Contracts Act 1950 (CA 1950) and common law. Section 125 of the CA 1950 defines a pledge as the bailment of goods delivered as security for the payment of a debt or the performance of a promise. The party delivering the goods is the pawnor and the party receiving them is the pawnee.³ Under section 126 of the CA 1950, the pledgee is entitled to retain possession not only for repayment of the debt but also for interest and any necessary expenses incurred in preserving the goods.

Only goods capable of possession may be pledged and delivery can be either actual, such as handing over the keys to a warehouse, or constructive. Possession need not coincide with the advance of money; however, until delivery takes place, the pledgee has only contractual rights in the property rather than a proprietary interest. Section 131 of the CA 1950 requires that a valid pledge be created only by a person in possession of the goods or of a recognised document of title, such as a bill of lading or warehouse receipt.

A pledge creates a special property interest in favour of the pledgee. In the event of default, the pledgee may sue for the debt or sell the goods after giving reasonable notice.⁴ Any surplus from the sale must be returned to the pledgor.

Banks sometimes take fixed deposit receipts and shares of a company as security by way of pledge.

1.1.3 *Pawn*

The terms "pawn" and "pledge" are often used interchangeably. In Malaysia, pawn transactions fall under the Pawnbrokers Act 1972 (PA 1972) if conducted by licensed pawnbrokers. The PA 1972 governs licensing, interest rates, sales powers and business conduct.

The PA 1972 does not apply to loans above RM5,000 or loans above RM1,000 with interest below 10% per annum. Licensed banks and cooperative societies are exempt.⁵

¹ Section 2 of the CA 2016: "debenture" includes debenture stock, bonds, sukuk, notes and any other securities of a corporation whether constituting a charge on the assets of the corporation or not.

² Section 352 of the CA 2016.

³ Section 125 of the CA 1950.

⁴ Section 129 of the CA 1950.

⁵ Section 46 of the PA 1972.

Pawning is most commonly used for small personal loans, especially in rural and small-town areas.

1.1.4 Possessory lien

The term “lien” refers to “a right in one man to retain that which is in his possession belonging to another man until certain demands of the person in possession are satisfied.”⁶

As established in the case of *KCC Container Moving Service Sdn Bhd & Anor v Tahan Tractor (M) Sdn Bhd*,⁷ the essential element for a lien to arise is the continued possession of the goods, and such possession must have been created either by the legal owner of the goods or by someone authorised by the owner.

The CA 1950 codifies these principles: section 123 recognises a bailee’s particular lien for work done on goods, while section 124 recognises that a general lien is available as security to bankers, factors and wharfingers, among others. In *Re The Firm of TSN*,⁸ “goods” was held to include title deeds deposited with bankers, though it does not include items kept for safekeeping or account balances.

Additionally, the Sale of Goods Act 1957 (SOGA 1957) gives an unpaid seller the right to retain possession of goods until the purchase price is paid.⁹

Statutory liens also exist in specialised areas. For aircraft, the Civil Aviation Regulations 2016 empower the Civil Aviation Authority of Malaysia (CAAM) to detain aircraft for unpaid charges¹⁰ and, after 6 months, deregister or sell them with court approval.¹¹ The International Interests in Mobile Equipment (Aircraft) Act 2006, implementing the Cape Town Convention,¹² further recognises non-consensual liens in favour of employees for wages, authorities for unpaid taxes or charges, and repairers in possession.¹³

For ships, section 351 of the Merchant Shipping Ordinance 1952 allows a shipowner to preserve a lien for freight on landed goods by notifying the wharfinger or warehouseman, who must retain the goods until the lien is discharged.

1.2 What are the common forms of security interests / rights taken in respect of intangible property, including intellectual property and digital assets? Are digital assets (including cryptocurrency) recognised as “property” capable of being subject to a security interest?

As intangible assets lack physical form, they are more appropriately secured through non-possessory security interests such as charges and assignments. For instance, in *Duar Tuan Kiat & Anor v Carotech Bhd & Ors*,¹⁴ the court found that there was a fixed charge over intellectual property. Under the Trademarks Act 2019, a registered trademark is expressly recognised as personal or movable property. It is acknowledged as a form of security interest and can be the subject of a charge under a debenture.

Digital assets are regulated by the Securities Commission of Malaysia (SC) under the Capital Markets & Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019 (Prescription Order 2019).¹⁵

The Prescription Order 2019 classifies digital assets as “securities” if statutory criteria are met, making them issuable and tradeable within Malaysia’s securities framework. In *Jonathan Wong*

⁶ *Hong Leong Bank Bhd v Staghorn Sdn Bhd & Other Appeals* [2008] 2 CLJ 121.

⁷ [1996] 2 BLJ 243.

⁸ [1935] MLJ 139.

⁹ Section 47(1) of the SOGA 1957.

¹⁰ Regulation 172 of the Civil Aviation Regulations 2016.

¹¹ Regulation 173 of the Civil Aviation Regulations 2016.

¹² Section 2 of the International Interests in Mobile Equipment (Aircraft) Act 2006.

¹³ Article XI, Alternative A, section 12 of the International Interests in Mobile Equipment (Aircraft) Act 2006.

¹⁴ [2013] 6 CLJ 185.

¹⁵ Paragraph 3 of the Prescription Order 2019.

Futt Po v Koh Chin Wei & Anor,¹⁶ the court accepted cryptocurrency as an asset capable of constituting valid consideration under CA 1950, affirming its proprietary nature. Accordingly, digital assets may also function as collateral in lending transactions, depending on the value attributed to them by the lender.

1.3 What are the common forms of security interests / rights taken in respect of immovable or real property, including the taking of a mortgage, lien or privilege?

Immovable property can be secured by way of a charge under the applicable land code, a lien, a debenture or an assignment.

1.3.1 Charges

Land law in Peninsular Malaysia is governed by the National Land Code 1965 (NLC 1965). While the East Malaysian states of Sabah and Sarawak have their own land codes, this Chapter does not address those provisions under either of the East Malaysian land codes.

Charges are recognised under NLC 1965 as a legal interest in land and a predominant form of security taken by banks and financial institutions in Malaysia when financing the purchase or development of real property or when providing a loan. A charge must be created over the whole of an alienated land, an undivided share or a lease,¹⁷ and only takes effect upon registration¹⁸ under the NLC 1965.

The other type of security recognised under the NLC 1965 is the lien. It is created when the registered owner or lessee of land deposits as security for a loan the issue document of title, or a duplicate lease with the lender, who then applies for a lien-holder's caveat¹⁹ to be lodged with the appropriate authority. It is only upon entry of the caveat that the lien takes effect²⁰ to protect the lender's interest over the land by prohibiting any further dealings over the said land.

It was held in *Daito Kogyo (Sarawak) Sdn Bhd v Port Dickson Land Development Sdn Bhd*²¹ that the mere parting of possession with the issue document of title to the land for some intention other than that of giving up the lien would not cause the lien to be lost. Hence, the caveatable interest of the lienholder is not easily extinguished.

For a lien to arise, not only must there be a deposit of the issue document of title or duplicate lease, but there must also be an intention to create a lien. In *Zeno v Prefabricated Construction Co (Malaya) Ltd*,²² it was held that the intention to create a lien may be inferred from the relevant circumstances of the case. In *Life Paradise Sdn Bhd v Export-Import Bank of Malaysia Bhd & Anor and Another Appeal*,²³ the Court of Appeal held that the intention to create a lien may be gathered from the fact that the issue document of title to the land is deposited with the lender as security for the loan, even if it was for the purpose of third-party charges.

There is also a requirement that there must be an entry of a lien-holder's caveat in respect of the property in question on the application of the lender, although it was held in *Mercantile Bank Ltd v The Official Assignee of the Property of How Han Teh*²⁴ and in *Consolidated Credit Co Sdn Bhd v Gladys Loh & Ors (as the executrix of the estate of Loh Hoot Yeang, deceased) and another suit*,²⁵ that the failure to enter a lien-holder's caveat will not deprive a lender of an equitable right to a lien.

¹⁶ [2024] CLJU 2525.

¹⁷ Section 241(1) of the NLC 1965.

¹⁸ Section 243 of the NLC 1965.

¹⁹ Section 281 of the NLC 1965.

²⁰ Section 281(1) of the NLC 1965.

²¹ [2001] 2 MLJ 531.

²² [1967] 2 MLJ 104.

²³ [2022] 2 CLJ 745.

²⁴ [1969] 2 MLJ 196.

²⁵ [2014] 10 MLJ 329.

1.3.2 **Debenture**

Similar to movable property, a debenture under the CA 2016 may also be created to secure corporate borrowings, with fixed and floating charges relating to land.

1.3.3 **Assignment**

In Malaysia, banks commonly take security over immovable property without a separate title of its own (for example, properties under construction or pending strata titles) through a Loan Agreement cum Assignment (LACA). Under this arrangement, the purchaser assigns to the bank their rights under the Sale and Purchase Agreement signed with the developer, and the developer is notified of the assignment. Since no separate title is available for registration of a charge under the NLC 1965, LACA operates as a form of security.

Section 4(3) of the Civil Law Act 1956 (CLA 1956) sets out the requirements for a valid statutory assignment, namely that it must be absolute (not by way of charge only), in writing, and with express notice in writing given to the debtor or trustee. If these requirements are satisfied, the assignee may sue in its own name. The Federal Court in *Damai Freight (M) Sdn Bhd v Affin Bank Bhd*²⁶ confirmed this principle, holding that where a LACA expressly provided for an absolute assignment, the requirements of section 4(3) of CLA 1956 were met and the bank acquired enforceable legal rights under the SPA, even though the individual title had not yet been issued.

To further secure their position, banks typically also require purchasers to execute a Deed of Assignment and a Power of Attorney, which enables the bank to enforce its rights against the property in the event of default. Once a separate title is issued, the bank will typically perfect its security by registering a legal charge under the NLC 1965, at which point the LACA is replaced with the NLC charge.

1.4 **Is the security interest / right granted by law, contract or both?**

In Malaysia, security interests may be created by contract, by law, or through a combination of both.

▪ **Contractual security interests**

Most security interests are created contractually, such as charges and pledges. These arise from agreements between creditor and debtors that outline the scope of the security, enforcement conditions, and remedies in the event of default. For example, a debenture may grant both fixed and floating charges over the company's assets. These interests exist with an express agreement.

▪ **Security interests arise by operation of law**

Certain rights arise automatically by operation of law, without the need for a contract. The most common are liens. Under SOGA 1957, an unpaid seller has a statutory lien over goods in possession until payment is made. Likewise, sections 123 and 124 of the CA 1950 recognise possessory liens, such as a worker's lien over goods improved by labour and a banker's lien over securities deposited by customers. These liens may be reinforced by contract but are effective even without one.

▪ **Security interests arising from contract and operation of law**

Some forms require both a contractual instrument and compliance with statutory formalities. For example, a charge over land must be executed through a contract between the parties, but it is only perfected upon registration under NLC 1965. Similarly, corporate charges created by companies are contractual in nature but must be registered under the CA 2016 to be enforceable against third parties.

²⁶ [2015] 4 CLJ 1.

1.5 What steps must be taken to ensure that the security interests / rights are enforceable against third parties?

For security to be effective, three key matters must be considered. First is perfection, which depends on whether the lender obtains ownership or possession and complies with statutory formalities, such as registration, while also ensuring the asset is identifiable, valuable, and marketable in the event of default. Second, the form of security must protect the lender against third parties, attaching effectively so it is enforceable not only against the borrower but also against competing claimants, including a liquidator. Third, priority must be secured, often by registration or by retaining title deeds or possession of the asset.²⁷

Once perfection, attachment, and priority are in place, the lender must also consider whether remedies on default can be exercised directly or require court intervention, depending on the type of security and degree of control obtained.

The perfection requirements under the relevant laws in Malaysia are as follows:

Law	Types of property
Section 352 of the CA 2016 requires a company to lodge with the Companies Commission of Malaysia (CCM) a statement of particulars of any charge over its property or undertaking within 30 days of its creation, together with the prescribed fee, in the form and manner determined by the CCM.	Property in this context refers to and includes the items defined in section 2 of the CA 2016, which includes land, goods and choses in action, movable or immovable. Section 352 of the CA 2016 lists the sort of charges - and the subject property charged - which need to be registered.
Section 4 of the Bills of Sale Act 1950 (BSA 1950) requires every bill of sale to be attested and registered within seven clear days of execution (or, if executed outside Peninsular Malaysia, within seven days of its ordinary postal arrival). The bill must also state the true consideration. Failing this, a bill of sale given as security for payment of money is deemed void as against the personal chattels comprised in it.	Any type of security interest against any personal movable property.
Section 243 of the NLC 1965 provides that a charge takes effect only upon registration, rendering the land or lease liable as security in accordance with its terms, express or implied.	Charges taken against any land.

2. How are security interests / rights enforced? Is a court process or out-of-court procedure required, or are both methods available? What are the practical difficulties experienced when security is enforced?

In Malaysia, security interests may be enforced through either court processes or statutory and contractual procedures that do not require the court's direct involvement.

(A) Enforcement requiring court process

Types of security interests	Court process	Practical difficulties
Securities over movable property	Under section 9 of the Specific Relief Act 1950 (SRA 1950), a person entitled to possession of specific movable property may apply to the court for recovery.	It may involve a trial of facts to establish the existence and validity of the security, resulting in potential delays in reclaiming the property. A writ of delivery can only bind the defendant sued. If the property has moved to the possession of a third party, a separate suit against this third party must be filed

²⁷ *Malayan Banking Bhd v Premier Expand Sdn Bhd & Ors* (the owners of and / or any other persons interested in the ship or vessels the "Zuhairi" and "Nasuha") [2013] 8 MLJ 32.

		There may be potential difficulties in locating and retrieving the property, making recovery a lengthy process in some cases.
Debenture	A receiver and manager may be appointed by the court to enforce the debenture charge.	It will involve more time and costs as compared to the appointment under the debenture instrument.
Charges over immovable property (via NLC 1965)	For land held under Registry titles, a court order must be obtained for the sale of the charged property.	The chargee must strictly comply with the statutory requirements to secure the order for sale.
Lien-holder over immovable property	Section 281 of the NLC 1965 provides that any lien-holder who has obtained judgment for the amount due to him shall be entitled to apply to the court for an order for the sale of the land or lease.	The enforcement is a two-step process. The lien holder must first obtain a judgment. Enforcement against the property can only take place after the judgment has been made. Consequently, it involves more costs and time.

(B) Enforcement that does not require court process

Types of security interests	Enforcement process	Practical difficulties
Charges for land held under: ²⁸ (a) Land Office title; (b) the form of qualified title corresponding to Land Office title; or (c) subsidiary title.	Section 260 of the NLC 1965 requires that an application for an order for sale be made to the Land Administrator.	Strict procedural compliance must be observed by the chargee - i.e. filing the statutory forms. ²⁹ There is court involvement where the Land Administrator refers any question arising in the application for an order for sale to the court.
Debentures that are created over the property and undertaking of a company.	A receiver or receiver and manager may be appointed under sections 374 and 375 of the CA 2016 to enforce the security, without court involvement, unless otherwise required.	
LACA	Enforcement is contractual: the lender (assignee), relying on section 4(3) of the CLA 1956, together with a deed of assignment and power of attorney, may enforce rights directly against the property. This avoids initial court involvement, though disputes over title or competing claims may still require judicial resolution.	

²⁸ Section 260(1) of the NLC 1965.

²⁹ *Adzhar bin Mohd Nordin (Menyaman sebagai Pentadbir kepada Estet Mohd Nordin bin Yaakob) v Pentadbir Tanah Daerah Hulu Langat & Ors and another suit* [2025] 7 MLJ 568.

2.1 If pre-insolvency (restructuring) proceedings are available in addition to insolvency (liquidation) proceedings, how is the enforcement of security interests / rights treated differently in each type of proceeding?

Type of proceedings	Enforcement procedure
A. Pre-insolvency proceedings	
Schemes of arrangement	Under section 368 of the CA 2016, once an application for a restraining order is filed, an automatic moratorium applies for a period of 2 months (or until the application is decided, if earlier). During this period, secured creditors cannot enforce their security without the leave of court. The scope of protection after the 2-month period depends on the terms of the restraining order granted.
Corporate voluntary arrangement (CVA)	Upon the filing of the requisite documents in court under section 398 of the CA 2016, a moratorium commences for a period of 28 days, but can be extended up to 60 days provided certain conditions are met. Under section 398A of the CA 2016, secured creditors may enforce security over movable property only if the property is not required for the arrangement, is at risk, or its value is deteriorating. Otherwise, leave of court is required.
Judicial management	Under section 410 of the CA 1965, an automatic moratorium is imposed, restraining various acts upon the filing of an application for a judicial management order, which remains in effect until the order is made or the application for judicial management is dismissed. Under sections 411(4)-(5) of the CA 2016, the enforcement of security is stayed during the currency of the Judicial Management order. Secured creditors may enforce only if the judicial manager confirms that the property is not required, is at risk, or its value is deteriorating.

3. If pre-insolvency (restructuring) proceedings are available, describe the types of proceedings

	Scheme of arrangement	CVA	Judicial management
3.1 Who can initiate the proceeding?	<p>Under section 366 of the CA 2016, an application for a scheme of arrangement may be made by:</p> <ul style="list-style-type: none"> a. the debtor company; b. a creditor or member of the debtor company; c. a member or class of members of the company; d. a liquidator, if the debtor company is being wound up; or e. a judicial manager, if the debtor company is under judicial management. 	<p>Under section 396 of the CA 2016, a proposal for a voluntary arrangement may be made by:</p> <ul style="list-style-type: none"> a. the directors, if the company is not under judicial management or winding up; b. the judicial manager, if the company is under a judicial management order; or c. the liquidator, if the company is being wound up (where the liquidator is the Official Receiver, a separate insolvency practitioner must be appointed as nominee). 	<p>Under sections 403 and 404 of the CA 2016, an application for judicial management may be made by the company or its creditors, except in the case of:</p> <ul style="list-style-type: none"> a. licensed financial institutions or designated payment system operators (regulated under the laws enforced by the Central Bank of Malaysia); b. entities approved, licensed, or registered under certain sections of the Capital Markets and Services Act 2007; and c. entities approved under Part II of the Securities Industry (Central Depositories) Act 1991.

	Scheme of arrangement	CVA	Judicial management
3.2 What are the criteria used for opening the proceeding?	An application to commence such proceedings is usually accompanied by an application for the court to restrain proceedings. The restraining order, if granted, cannot be extended for more than 9 months unless the court is satisfied that there is a proposal for a scheme of compromise or arrangement between the company and its creditors or any class of creditors representing at least half in value of all the creditors.	A nominee ³⁰ who is appointed by the director of the company, must form an opinion on whether to proceed with a CVA by considering the following criteria: ³¹ <ol style="list-style-type: none"> 1. the proposed voluntary arrangement has a reasonable prospect of being approved and implemented; 2. the company is likely to have sufficient funds available during the proposed moratorium to enable the company to carry on its business; and 3. the meetings of the company and its creditors should be summoned to consider the proposed voluntary arrangement. 	As per section 405 of the CA 2016, the court may make a judicial management order in relation to the company if: <ol style="list-style-type: none"> (a) the court is satisfied that the company is or will be unable to pay its debts; and (b) the court considers that the making of the order would be likely to achieve one or more of the following purposes: <ol style="list-style-type: none"> i. the survival of the company, or the whole or part of its undertaking as a going concern; ii. the approval under section 366 of a compromise or arrangement between the company and any such persons as are mentioned in that section; and / or iii. a more advantageous realisation of the company's assets would be effected than on a winding up.
3.3 Who are the main actors: court, administrator, liquidator, trustee, receiver, controller, representative of creditors, state representatives etc?	The court, insolvency practitioner, creditors, directors and members of the company.	Nominee (insolvency practitioner), creditors, directors and members of the company.	Judicial manager, creditors, directors, the court and members of the company.
3.4 Does the debtor's management remain in control of the business during the proceeding?	Yes, the debtor's management remains in control of the business.	Yes, the debtor's management remains in control of the business.	No, the judicial manager will be in control.
3.5 May contracts, leases and secured and unsecured debts	Yes, if 75% in value of creditors (class of creditors) approve, and the court sanctions it,	Yes, but only for unsecured creditors. If 75% in value of unsecured creditors	One of the purposes of judicial management is to facilitate a scheme of arrangement.

³⁰ Section 394 of the CA 2016, "nominee" means any person who is qualified to be appointed as an insolvency practitioner whose powers and duties shall include the powers and duties specified in the Seventh Schedule.

³¹ Section 397 (2) of the CA 2016.

	Scheme of arrangement	CVA	Judicial management
be adjusted in the proceeding without affected creditor consent?	the scheme binds all creditors, including dissenters.	<p>approve (plus a simple majority of members), it binds them, though secured creditors cannot be bound without their consent.</p> <p>Under section 398A of the CA 2016, secured creditors may enforce security over movable property only if the property is not required for the arrangement, is at risk, or its value is deteriorating. Otherwise, leave of court is required.</p>	If 75% in value of creditors (class of creditors) approve, and the court sanctions it, the scheme binds all creditors, including dissenters.
3.6 Is creditor consent required to effectuate pre-insolvency (restructuring) proceedings? What is the level of consent required to effectuate a restructuring? Is it possible to "cram down" creditors, including secured creditors, that do not consent?	<p>(i) The level of consent required to effectuate a restructuring is 75% of consent from each class of creditors.</p> <p>(ii) The court may order a cram down, but only if the statutory safeguards under section 368D of the CA 2016 are satisfied.</p> <p>The safeguards, among others, include:</p> <p>(i) the condition that 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 for each dissenting class;</p> <p>(ii) no creditor in the dissenting class receives an amount that is lower than what the creditor is estimated by the court to receive if the compromise or arrangement does not become binding on the company; and</p> <p>(iii) where the creditors in the dissenting class are secured</p>	<p>(i) The level of consent required to effectuate a corporate voluntary arrangement is 75% of the total value of creditors present and voting at the meeting. However, section 400(4) of the CA 2016 provides that a secured creditor is not bound by the decision unless it agrees to it.</p> <p>(ii) No provision relating to "cram down" for a CVA.</p>	<p>(i) The level of consent is 75% in value of creditors (class of creditors), and the court sanctioning it.</p> <p>(ii) Yes, under judicial management, creditors can be crammed down through a court-sanctioned scheme of arrangement under section 366 of the CA 2016, provided the statutory safeguards are satisfied. The safeguards have been summarised under the scheme of arrangement column.</p>

	Scheme of arrangement	CVA	Judicial management
	creditors, the terms of the compromise or arrangement must 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, or provide that the security held by any creditor in the dissenting class to secure the creditor's claim is to be realised by the company and the creditor has a charge over the proceeds of the realisation to satisfy the creditor's claim that is secured by the security.		
3.7 Is shareholder consent required in order to effectuate pre-insolvency (restructuring) proceedings?	Yes	Yes, if their rights are altered.	Yes, if their rights are altered.

4. Are insolvency (liquidation) proceedings available? If so, describe the types of proceedings, including:

	Creditors' voluntary winding up	Compulsory winding up
4.1 Who can initiate the proceeding?	Under section 440 of the CA 2016, a creditors' winding up may be initiated by the directors of the company.	As per section 464 of the CA 2016, parties who may file for a petition for winding up include the following: <ul style="list-style-type: none"> i. the company; ii. any creditor, including a contingent or prospective creditor, of the company; and iii. a contributory.
4.2 What are the criteria used for opening the proceeding?	The directors acknowledge that the company cannot, by reason of its liabilities, continue its business (section 440(1)(a) of the CA 2016).	As per section 465(1)(e) of the CA 2016, in a situation of insolvency, a company may be wound up by the court on the grounds that it is unable to pay its debts.

	Creditors' voluntary winding up	Compulsory winding up
		The company may be wound up due to other reasons - for example, a shareholders' dispute or when it is just and equitable for the court to order a winding up.
4.3 Who are the main actors: court, administrator, liquidator, trustee, receiver, controller, representative of creditors, state representatives etc?	Directors, members, liquidators and creditors.	The court, the petitioner (often a creditor whose debt has not been paid) and liquidator.
4.4 Does the debtor's management remain in control of the business during the proceeding?	No	No
4.5 May contracts, leases and secured and unsecured debts be adjusted in the proceeding without affected creditor consent?	No. However, the liquidator may disclaim an onerous property under section 531 of the CA 2016.	No. However, the liquidator may disclaim an onerous property under section 531 of the CA 2016.
4.6 Is creditor consent required to effectuate insolvency (liquidation) proceedings? What is the level of consent required to effectuate a restructuring? Is it possible to "cram down" creditors, including secured creditors, that do not consent?	No, creditor consent is not required. Cram down provisions are not applicable to a creditors' voluntary winding up.	No, creditor consent is not required. Cram down provisions are not applicable to a compulsory winding up.
4.7 Is shareholder consent required to effectuate insolvency (liquidation) proceedings?	Yes, shareholder consent is required, as the shareholders must pass a special resolution in favour of a voluntary winding up. ³²	No, not required.

5. Could the granting of a security right or interest to a creditor be voided or be deemed a preferential treatment prejudicing the rights of the debtor or third parties? What are the grounds upon which the security right or interest can be challenged?

5.1 Pre-insolvency proceeding

Under section 426 of the CA 2016, any transfer, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company when the company is unable to pay its debts as they become due, and done with the intention of preferring one creditor over others, is void if the company is placed under judicial management within six months of the date of such acts relating to property made or done by or against the company. However, the rights of third parties who acquire title in good faith and for valuable consideration remain protected.

5.2 Insolvency proceedings

Similarly, in an insolvency proceeding, section 528 of the CA 2016 provides that a transaction made within 6 months before the commencement of winding up, when the company was insolvent, may be voided as a fraudulent preference. In addition, section 530 of the CA 2016

³² Ibid.

allows the liquidator to recover losses arising from a transaction at an undervalue or overvalue involving directors or connected persons within 2 years prior to winding up.

Section 529 of the CA 2016 further renders invalid any floating charge created within 6 months of winding up, except to the extent of new cash provided to the company at the time or after the charge, with limited interest.

Finally, for winding up by a court, section 472 of the CA 2016 provides that any disposition of property, transfer of shares or alteration of membership status made after the presentation of a winding up petition is void unless validated by the court.

6. What are the relative priorities in distributions among creditors and shareholders of the debtor during a pre-insolvency or insolvency proceeding?

For insolvency proceedings, the statutory priority of distribution is set out in section 527 of the CA 2016 as follows:

1. Secured creditors are satisfied first from the assets subject to their charges.
2. Preferential creditors are paid in the following order:
 - (a) costs and expenses of winding up;
 - (b) employees' wages and salaries up to RM15,000 earned within 4 months prior to commencement;
 - (c) workers' compensation;
 - (d) accrued vacation leave;
 - (e) contributions to social security, superannuation or provident funds within twelve months prior to commencement; and
 - (f) federal taxes assessed before commencement or before the time fixed for proving debts.
3. After these claims, floating charge holders are paid, followed by unsecured creditors, who share *pari passu* in any remaining assets.
4. Any surplus is then distributed to members or shareholders in accordance with their rights under the constitution.

7. How can secured creditors protect their interests in collateral during a pre-insolvency or insolvency proceeding?

7.1 Pre-insolvency proceedings

- **Scheme of arrangement** - a secured creditor may challenge the restraining order in court if it does not want to be part of any scheme as may be proposed by the debtor company and it wants to enforce the security.
- **Corporate voluntary arrangement** - a proposal shall not affect the right of a secured creditor to enforce its security except with its concurrence: section 400(4) of the CA 2016. Furthermore, recent amendments to the CA 2016 provide that during a moratorium, a secured creditor may, under section 398A, take possession of the secured property if the company does not require the said property during the CVA or where the moratorium causes a high risk to the existence of the property or leads to a decrease in its value. The secured creditor shall first notify and obtain consent from the nominee before taking possession of the secured property.

- **Judicial management** – an application for a judicial management order shall be dismissed by the court if the making of the order is opposed by a secured creditor, according to section 409 of the CA 2016. Furthermore, the recent amendments to the CA 2016 provide that a secured creditor may proceed to recover movable property if it falls within the prescribed circumstances (section 411 of the CA 2016).

7.2 Insolvency proceedings

In insolvency proceedings, secured creditors stand outside the collective distribution pool and may enforce directly against the collateral. Their priority is expressly recognised by statute, though they may still seek court relief to restrain wrongful dispositions of secured assets or to challenge avoidance transactions (for example, fraudulent preferences under section 528 of the CA 2016) that would otherwise undermine their security.

8. Can the rights of a creditor against a non-debtor guarantor be affected in a proceeding of the primary obligor?

In *Sentoria Bina Sdn Bhd v Impak Kejora Sdn Bhd & Ors*,³³ the High Court recognised an exception in the context of a Scheme of Arrangement under section 366 CA of the 2016. The court held that a restraining order under section 368 of the CA 2016 could be extended to cover guarantors where they are integrally linked to the scheme and proceedings against them would jeopardise the restructuring. This shows that while the default position preserves creditors' rights against guarantors, the court may suspend or vary such rights if necessary to ensure the viability of a collective restructuring.

9. What happens to secured creditors who have not complied with all the required processes for protecting their secured rights?

9.1 Failure to comply with registration under CA 2016

If a creditor fails to comply with the necessary steps to perfect their security interest under section 352 of the CA 2016, the charge will be void against the liquidator and any other creditor of the company. This means that, in the event of winding up, the secured creditor will be treated as an unsecured creditor and will lose any priority or rights over the charged assets.

However, the failure to register the charge does not affect the validity of the underlying debt obligation or limit the effect of the charge created³⁴. Thus, failure to register does not invalidate the charge between the parties, but it will not be enforceable against third parties, including other creditors or the liquidator.

9.2 Failure to register under the NLC 1965

If a secured creditor fails to comply with the necessary registration required under the NLC 1965, it will not confer the indefeasible interest to the creditor as provided in section 340 NLC 1965 and the creditor will not be able to obtain an order for sale. Without registration, the security interest is merely a contractual right between the creditor and debtor, as provided in section 206 of the NLC 1965, which is not binding on third parties.

10. During a pre-insolvency or insolvency proceeding, is the secured party permitted to foreclose or take other enforcement action against the collateral? Does this stay apply to all claims against the debtor? Can the stay be challenged? If so, how?

10.1 Scheme of arrangement

Upon the filing of an application for a restraining order and until the application is decided by the court or until the lapse of 2 months from the date of filing of the application, whichever is earlier, there is an automatic stay for all creditors. The stay may be extended by the court and this applies

³³ [2021] 9 CLJ 814.

³⁴ Section 352(2) of the CA 2016.

to secured creditor. The stay may be challenged by secured or unsecured creditor. It would be for the court to adjudicate whether the stay is to be modified or suspended.

10.2 CVA

As explained above, this is an out-of-court restructuring scheme. There is no stay, except for a brief 28-day period as described in section 2.1.

10.3 Judicial management

As stated in section 2.1, under section 410 of the CA 1965, an automatic moratorium (stay) is imposed, restraining various acts upon the filing of an application for a judicial management order, which remains in effect until the order is made or the application for judicial management is dismissed. Under sections 411(4) and 411(5) of the CA 2016, the enforcement of security is stayed during the currency of the judicial management order. Secured creditors may enforce only if the judicial manager confirms that the property is not required or the judicial manager is notified that the order poses a high risk to the existence of the goods or movable property, or its value is decreasing due to the order.

This moratorium (stay) may be challenged by secured or unsecured creditors. It would be for the court to adjudicate whether the stay is to be modified or suspended.

10.4 Creditor's voluntary winding up

After the commencement of the winding up, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court and subject to such terms as the court may impose – section 451 of the CA 2016.

10.5 Compulsory winding up

When a winding up order has been made or an interim liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court and in accordance with such terms as the court imposes – section 471 of the CA 2016.

11. **Can collateral in which a secured party has an interest be used by the debtor or sold during a case without the consent of the secured party? If collateral may be sold without the secured party's consent, may it be sold "free and clear" of the liens of the secured party? Are there specific rules regarding the debtor's use of "cash collateral" as opposed to other types of collateral?**

In Malaysia, collateral, including cash collateral, cannot be used or sold without the secured creditor's consent, where the registration of interests is required. However, where an asset is movable (for example, an inventory subject to a floating charge), there is a risk of asset dissipation, as the debtor may dispose of it without authorisation despite crystallisation.

12. **During the course of a pre-insolvency and insolvency proceeding, can additional liens on a secured creditor's collateral be granted to a third party in violation of the contractual arrangements between the debtor and the secured creditor?**

A debtor cannot create a new security over property already encumbered, generally.

Under the NLC 1965, section 241(2) recognises that second and subsequent charges may be created, but they always rank subordinate to earlier charges. In practice, the first chargee's consent is required because they hold the issue document of title needed for registration. For liens, only one lien can exist at a time, since the creation of it depends on possession of the issue document of title,³⁵ making subsequent liens impossible.

³⁵ Section 281 of the NLC 1965.

Under the CA 2016, charges created by companies must be registered³⁶ and priority is determined by the order of registration. Without the first chargee's consent, subsequent charges cannot displace the rights of existing secured creditors.

The recent amendments to the CA 2016 provide for a security to be created over an existing security in the context of rescue financing. This applies to both the scheme of arrangement and judicial management. The ability to create security on an existing security only applies if certain statutory conditions or safeguards are met and complied with.

13. What distribution will a secured creditor receive in a pre-insolvency proceeding if a company is successfully reorganised?

The distribution will depend on the terms of the scheme. Typically, a secured creditor is placed in a better position in collective restructuring compared to the unilateral enforcement of its security. The level of distribution will depend on the commercial circumstances and the terms of the scheme.

14. Will the rights of a secured creditor over assets of a debtor remain intact subsequent to the reorganisation of the company?

The rights of a secured creditor over the debtor's assets remain intact following a successful reorganisation unless the rights are varied pursuant to a scheme of arrangement.

15. What rights does a secured creditor have if its secured claim is over-secured? What happens if a secured claim is under-secured?

Under section 524(3) of the CA 2016, if a secured creditor's claim is over-secured, it shall account to the liquidator for any surplus remaining from the net amount realised after the satisfaction of the debt, including interest payable, but which shall not exceed 6 months.

If it is under-secured, the secured creditor may claim, as an unsecured creditor, for any balance due after deducting the net amount realised.

16. Will a court respect and give full force and effect to a foreign restructuring of contractual arrangements that are governed by local law? If so, what requirements will need to be met for the court to do so?

At the time of writing, Malaysia does not have a statutory framework for recognising foreign restructuring schemes.

Malaysia, being part of the Commonwealth, may nevertheless give effect to such arrangements based on the principle of comity of law and the inherent jurisdiction of the court.

The position is set to change with the Cross-Border Insolvency Bill 2025 (2025 Bill), tabled and passed in Parliament recently in 2025.

The 2025 Bill substantially adopts the UNCITRAL Model Law on Cross-Border Insolvency and establishes a mechanism for recognising foreign insolvency and restructuring proceedings. Clause 15 of the 2025 Bill sets out the requirements for the recognition of foreign insolvency and restructuring proceedings, which include that:

- an application must be made by a foreign representative³⁷ directly to the Malaysian High Court;

³⁶ Section 352 of the CA 2016.

³⁷ Clause 2 of Cross Border Insolvency Bill 2025: "foreign representative" means a person or body appointed, including a person or body appointed on an interim basis, and authorized in foreign proceedings to administer the reorganisation or liquidation of a debtor's property or affairs or to act as a representative of the foreign proceedings.

- an application must be accompanied by supporting evidence;³⁸
- an application must also include a statement of all known foreign and Malaysian proceedings relating to the debtor; and
- the documents have to be in English (or otherwise English translation certified as accurate must be provided).

Recognition will be granted if the court is satisfied that the proceedings qualify as “foreign proceedings,”³⁹ the applicant qualifies as a “foreign representative,” the application meets procedural requirements, and it is filed in the competent court (clause 17).

If the requirements are met, the court will recognise the foreign restructuring as either:

- foreign main proceedings (where the debtor has its centre of main interests); or
- foreign non-main proceedings (where the debtor has an establishment).

Upon recognition, the court may grant significant relief, including stays on proceedings and executions against the debtor’s property and suspension of rights to dispose of assets (clause 20). However, secured creditors’ rights of enforcement remain unaffected unless otherwise ordered. Additional discretionary relief (clauses 19-21) may also be granted to protect the debtor’s property and creditor interests.

In a recent restructuring case, *AirAsia X Berhad v BOC Aviation Limited* [2021] 1 LNS 188, the High Court held that the rule in *Gibbs* does not prevent Malaysian courts from approving a scheme of arrangement even where the underlying debts are governed by English or other foreign laws.

17. Will a court administer plenary jurisdiction (full, complete, unqualified and absolute jurisdiction the same as if the COMI of the company was in Malaysia) over a foreign company in a pre-insolvency or insolvency case where the foreign company has only a limited connection to or limited amount of property located? What level of connection is required before a court will administer a plenary case of a company registered in another country?

When the law takes effect, Malaysia will administer plenary jurisdiction if Malaysia is the centre of main interests of the debtor company. In the absence of proof to the contrary, the court may presume that the debtor’s centre of main interests is the place of its registered office.

³⁸ This includes a certified copy of the decision commencing the foreign proceedings and appointing the foreign representative; or a certificate from the foreign court affirming the existence of the foreign proceedings and appointment; or other evidence acceptable to the court.

³⁹ Clause 2 of Bill 2025 defines “foreign proceedings” as collective judicial or administrative proceedings in a foreign State, including interim proceedings, under the law relating to insolvency in which the property and affairs of the debtor are subject to supervision by a foreign court, for the purposes of reorganisation or liquidation.



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BLRRC-CUPL Bankruptcy Law and Restructuring Research Centre, China University of Politics and Law
BRIPAN Business Recovery and Insolvency Practitioners Association of Nigeria
BRIPASL Business Recovery and Insolvency Practitioners Association of Sri Lanka
BRP Business Recovery Professionals (Mauritius) Ltd
CAIRP Canadian Association of Insolvency and Restructuring Professionals
CLLA Commercial Law League of America (Bankruptcy and Insolvency Section)
DRA Dutch Restructuring Association
EISAR Bankruptcy Commission (Saudi Arabia)
FGV Câmara de Mediação e Arbitragem / FGV Arbitration and Mediation Chamber
FILA Finnish Insolvency Law Association
GARIA Ghana Association of Restructuring and Insolvency Advisors
GDABA Guangdong Association of Bankruptcy Administrators
HKICPA Hong Kong Institute of Certified Public Accountants (Restructuring and Insolvency Faculty)
IAIR International Association of Insurance Receivers
IBR Instituto Brasileiro de Estudos de Recuperação de Empresas
IIDC Instituto Iberoamericano de Derecho Concursal
IIDC Colombia Instituto Iberoamericano de Derecho Concursal – Capitulo Colombiano
IIPI-ICAI Indian Institute of Insolvency Professionals of the Institute of Chartered Accountants of India
INSOL Europe
INSOL India
IPAM Insolvency Practitioners Association of Malaysia
IPAS Insolvency Practitioners Association of Singapore
IWIRC International Women’s Insolvency and Restructuring Confederation
JFIP Japanese Federation of Insolvency Professionals
LCA Law Council of Australia (Business Law Section)
MIA Malaysian Institute of Accountants
MICPA Malaysian Institute of Certified Public Accountants
NAFER National Association of Federal Equity Receivers
NIVD Neue Insolvenzrechtsvereinigung Deutschlands e.V.
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