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DISPUTE RESOLUTION

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POD DISPUTES IN A SCHEME OF ARRANGEMENT: WHO DECIDES?

by Chia Oh Sheng & Athena Chan Yat Mun

Introduction

Under a scheme of arrangement, a creditor is required to submit their proof of debt (“**POD**”) to the scheme chairman for purposes of voting and distribution of payment. If a creditor disagrees with the scheme chairman’s admission or rejection of the POD, s. 369B(9) of the Companies Act 2016 allows the parties to refer the dispute to a mutually agreed Independent Assessor (“**IA**”) for adjudication¹. If parties are unable to reach an agreement on their choice of IA, an application can be made to the Court for such an appointment.²

In *KNM Group Bhd & Anor v Hitachi Zosen Corp & Ors* [2025] MLJU 352, the High Court provided useful guidance on the IA’s role and the considerations for appointing an IA to adjudicate a disputed POD where there are competing nominations by the scheme applicant and the creditor.

[1] s.369B(9)(a), Companies Act 2016

[2] s.369B(9)(b), Companies Act 2016

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IA's role and relevant considerations

In facing the two competing nominations, the Court considered the following factors in determining who should be appointed as the IA:

Nature of the IA's Role; POD process

Having examined s. 369B of the Companies Act 2016³ and the various case laws, the Court held that the IA performs a quasi-judicial role⁴. The IA would evaluate the disputed POD and make a decision akin to the role of a judge or liquidator⁵. Given that the creditor's claim in the arbitration would be compromised and discharged under the proposed scheme of arrangement in question⁶, the Court held that the proof of debt process, as a substitute for arbitration and Courts, must be "robust, satisfactory, and justified".

Complexity And Nature of Dispute⁷

The creditors' POD runs up to 1,529 pages containing arbitration pleadings and supporting documents. The disputes between parties involved complex legal arguments and factual considerations. The Court stressed that these were predominantly legal issues raised in the arbitration which required a legally trained assessor to address the issues effectively.

Competing Nomination of IA⁸

The Court considered the respective backgrounds of the two nominated IAs. The IA nominated by the scheme applicants, Deloitte, has expertise in accounting and restructuring. However, the Court held that, given the legal nature of the disputes, it would be more appropriate for a legally trained assessor to adjudicate the disputed POD.

Apparent bias⁹

The scheme applicants argued that the past employer-employee relationship between the IA nominated by the creditor, namely Mr Tharminder and counsel for the creditor created a perception of bias. This argument was rejected. Applying the "real danger of bias" test, the Court held that a mere personal relationship is insufficient. There must be evidence of a special relationship to give rise to apparent bias.

Conclusion

In the circumstances, the Court held that, given the specific nature of the POD, the IA appointed to adjudicate the disputed POD should be a legal practitioner and not members of an accounting firm without any legal expertise. As such, the Court appointed the legal practitioner nominated by the creditor as the IA for the purposes of adjudicating the disputed POD in question.

[3] s.369B Companies Act 2016; Guidelines For The Adjudication Of Proof Of Debts Under Section 369B Of The Companies dated 1.4.2024 [see https://www.ssm.com.my/Pages/Legal_Framework/Document/Guidelines%20for%20POD%20and%20related%20matters.pdf]

[4] Paras [29] to [34] of Judgment

[5] Paras [37] of Judgment

[6] Paras [31] of Judgment

[7] Paras [63] to [65], [70] of Judgment

[8] Paras [61] to [62] of Judgment; Paras [67] to [70] of Judgment

[9] Paras [45] to [60] of Judgment

Key Takeaways

Takeaway 1:

For disputes involving legal issues, the Court will be more inclined to appoint an IA with legal expertise to adjudicate the disputed POD of a creditor, given the quasi-judicial role of the IA under s. 369B of the Companies Act 2016.

Takeaway 2:

Any allegation of apparent bias against the nominated IA must meet the threshold of a “real danger of bias”. A mere past professional working relationship between the IA and counsel is insufficient.

Takeaway 3:

Section 369B(9) of the Companies Act 2016 provides for the appointment of an IA to adjudicate disputes in relation to a POD filed for the purposes of a scheme of arrangement. This provides a structured, efficient and quasi-judicial avenue for creditors to obtain a fair determination of their claims. It is therefore an important avenue for creditors to safeguard their rights, particularly where the proposed scheme of arrangement will compromise their claims.

The grounds of judgment can be accessed via this [link](#).

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