

## **Company Law**

### **Scheme of arrangement – Definition of ‘class of creditors’ under section 176 Companies Act 1965 – Whether scheme could be made to benefit and prioritise one specific group of creditors in a company’s winding up process**

#### ***Francis a/I Augustine Pereira v Dataran Mantin Sdn Bhd & Ors and other appeals***

[2014] 6 MLJ 56, Federal Court

**Facts** The first respondent, a property development company, was involved in the development of a condominium project (“the housing project”). The housing project was a joint venture with the first respondent’s wholly-owned subsidiary, Mico Vionic, on its land which was charged to OCBC Bank (M) Bhd. Construction was abandoned, and upon default of repayments by the first respondent, a creditor presented a winding up petition and appointed provisional liquidators. To arrange for the settlement of debts, a scheme of arrangement (“the scheme”) was sought by a group of purchasers. However, the scheme only benefited and prioritised creditors of the housing project. The High Court approved the scheme (“sanction order”). Thereafter, four unsecured creditors of the first respondent (appellants) separately applied to set aside the sanction order and succeeded. The Court of Appeal reversed the decision, ruling that the scheme did not unduly prefer one set of creditors over another as it was a compromise between the secured and unsecured creditors under the housing project. The appellants appealed to the Federal Court.

**Issues** The issues before the Federal Court were (1) whether the creditors under the housing project could not constitute a ‘class of creditors’ within the meaning of section 176 of the Companies Act 1965 (“the Act”); and (2) whether sections 176\* and 292\*\* of the Act were breached when the scheme only benefited and prioritised creditors of the housing project instead of the first respondent’s creditors as a whole.

**Held** The Federal Court dismissed the appellants’ appeal and held that the creditors under the housing project could be recognised as a distinct class of creditors of the first respondent as they had similar rights, enabling them to consult together to achieve their common interest. It was also held that since the purpose of section 176 of the Act is to enable compromises for the common benefit of the creditors, the sanction order was ruled not defective. This is because a scheme of arrangement could be made to benefit and prioritise one specific group of creditors in a company’s winding up process.

\*Power to compromise with creditors and members.

\*\*It provides for the list of how all unsecured debts shall be paid in priority in a winding up process.