Malaysia
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DIY share capital reduction

The Companies Bill 2013, tabled by the Companies Commission of Malaysia, proposes a new approach to the reduction of share capital, in line with developments in jurisdictions like Australia and Singapore.

At present, a special resolution for the reduction of share capital requires a confirmation by the court before it can take effect. The new bill allows an alternative and a seemingly simpler process of capital reduction, whereby only a special resolution and solvency statement are required. The option of going to court to confirm a capital reduction resolution is still preserved under this new Bill. Although it may appear that this non-court approach is simpler, several reasons may be offered as to why the court approach may continue to remain popular and not be rendered obsolete.


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First, the solvency statement is required to be signed by 'each director making the statement'. The solvency statement is a personal statement, and will only be considered sufficient if it is made by all the directors (a majority of the directors will not suffice). Further, making a solvency statement without reasonable grounds may result in imprisonment, if found guilty.

Secondly, a notice is required to be sent to the director general of the Inland Revenue where a capital reduction to return capital is intended. Some directors may not want to create unnecessary attention.

Thirdly, a court-confirmed capital reduction carries with it a stamp of approval and finality. In the new section 115(7) of the Bill, which is essentially section 64(7) of the present Act, it is provided that the Certificate of the Registrar should be 'conclusive evidence that all requirements of this Act… have been complied with'. Curiously, the new section 118 of the Bill only provides for the special resolution 'taking effect' if the listed requirements are complied with for a non-court capital reduction.

Taking all these factors together, the non-court approach may not be a walk in the park at all, and it is possible that some companies may consider avoiding it.

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