

**Schemes of Arrangement – Revival of Abandoned Housing Projects**

**8 October 2013 - LEE SHIH**





## Schemes of Arrangement – What Is It?

- Mechanism whereby an arrangement or compromise between a company and its members or creditors or classes of members or creditors can be made binding without the need for separate agreements of all the members or creditors.
- Purpose & Nature of Schemes can vary greatly from one to another.
- To prevent in certain circumstances a minority of members or creditors frustrating a beneficial scheme i.e. no need for unanimous consent.



## What Does it Involve?

- Calling for meetings of creditors who are classified according to similarity of interests.
- Achieving approval of 50% in number and 75% in value of the creditors present and voting at the meeting.
- Court Approval.



## Relevant Law

- Sections 176 and 177, Companies Act 1965
- Common Law
- Such other relevant legislations depending on the nature of the proposed Scheme

*(e.g.: Section 8 of the Housing Development (Control & Licensing) Act 1966 requires approval of the Controller where the housing developer wants to undertake a Scheme)*



## Who Can Apply?

- Company
- Members of the Company
- Creditors of the Company
- Liquidators appointed over the Company
- Receiver & Managers appointed over the Company  
*(depending on the powers conferred by the Court or the debenture)*

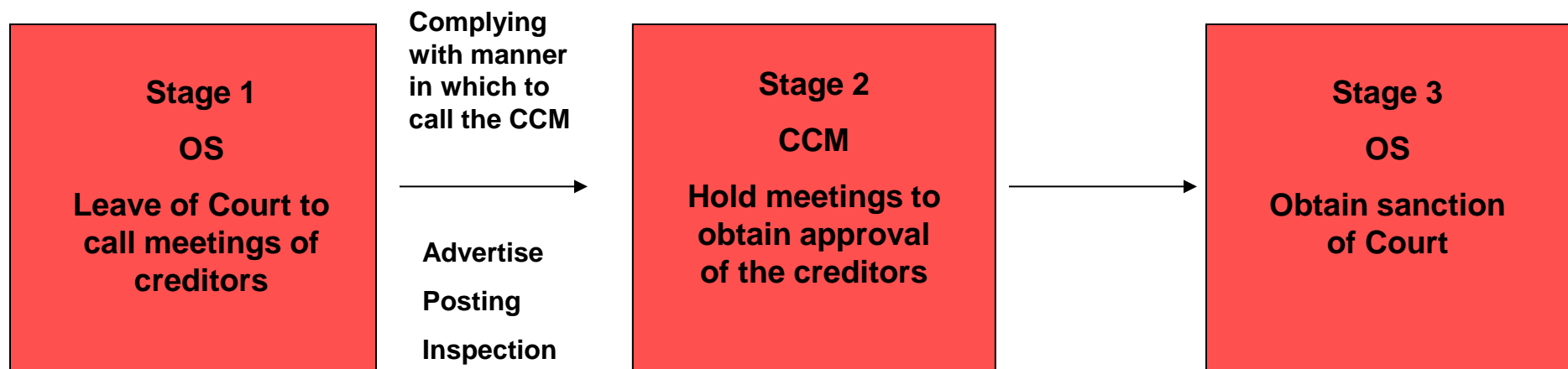


## Key Issues in a Proposed Scheme for an Abandoned Project

- To allow the waiver of the accrued liquidated ascertained damages from the delay in handing over vacant possession.
- To possibly require the purchasers to provide additional money to complete the project.
- To execute new sale and purchase agreements and related agreements.



## Three Stages





## Stage 1: Court Application for Leave

- By way of Originating Summons;
- Rationale of the proposed Scheme;
- Draft Explanatory Statement;
- Summary of the terms of the proposed Scheme;
- Identify the classes of members or creditors;
- Directions as to the methods to convene the meetings (notices & advertisements);
- Identify the chairperson(s) and location (need not be precise); and
- Rules of the meetings and proxy forms.



## Stage 2: Calling and Holding the Meeting(s)

### Send to Scheme Creditors:

- Notice of the Court Convened Meeting.
- Court Order directing the Court Convened Meeting.
- Explanatory Statement.
- Rules of the Court Convened Meeting.
- Proxy Forms.

### Also:

- Advertise the Notice of Court Convened Meeting and make available for inspection copies of Explanatory Statement.



## Explanatory Statement



- Akin to a Contractual Document.
- Explains the effect of the proposed Scheme.
- Normally contains the Notice, Rules of the CCM, Proxy Form.



## Stage 2: Calling and Holding the Meeting(s)

**For each meeting, approval from:**

- a majority in number
- representing three-fourths in value of each class of creditors or members
- who were present and voting either in person or by proxy at the meeting

**The Rules of Court Convened Meeting governs the way the Meeting should be conducted and votes to be tabulated.**



## Stage 2: Calling and Holding the Meeting(s)

### Practical Tips for the CCM

- Groundwork: Support from Scheme Creditors.
- Transparency.
- Use of proxy forms.
- Drafting of the Rules of the CCM.
- Choice of Chairperson.
- Supportive speakers at the meeting.



## Stage 3: Court Application for Sanction

- Court application by way of Originating Summons.
- Include the same documents as the application for the CCM.
- Explanatory Statement (usually will be appended to the final Court Order).
- Chairperson's Report, Minutes and Scrutineers' Report.
- Evidence of convening the Meeting – post & advertisement.



## Stage 3: Court Application for Sanction

- Order takes effect on the date of lodgement with the Registrar.
- Order shall be lodged within one month (possible to obtain Court Order for extension).
- Copy of Order shall be annexed to every copy of the Memorandum of the Company, unless Court allows exemption.

[sections 176(5), 176(6), 176(7) of the Companies Act, Rule 16 of the Companies Regulations 1966]



## Some Legal Issues in Abandoned Housing Projects Schemes

- Classification of Creditors: Cash purchasers and purchasers with End-Financing.
- Purchasers with judgment and those without.
- Issue of time bar of purchasers' claims: *Insun Development* [1996] 2 MLJ 188 (F.C.) and *Loh Wai Lian* [1987] 2 MLJ 1 (P.C.)
- Revision of building plans.



# THANK YOU

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