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Takaful as a Mechanism for Protecting Unsecured Creditors: Legal and Operational Considerations in Malaysia

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Abstract

In the mandatory winding-up procedure, all payments must be prioritised before disbursements to unsecured creditors, as the Malaysia Companies Act 2016 stipulated. Unsecured creditors, positioned lower in the hierarchy of creditors, may not recover the funds owed to them from the company's liabilities, resulting in financial hardship for these creditors. All unsecured creditors must demonstrate their claims following the issuance of the winding-up order. Nonetheless, the existence of debt evidence does not guarantee payment if the corporation lacks sufficient assets to satisfy unsecured creditors after addressing secured and preferential creditors. This article seeks to investigate the rights of the unsecured creditors during winding up and to analyse the possibility of establishing a new mechanism, specifically takaful (Islamic insurance), to protect the unsecured creditors during winding up. This study adopts a qualitative approach, employing doctrinal analysis and interviews with industrial stakeholders. This article highlights the need to implement takaful as a potential solution for unsecured creditors to recover their debt if the company is wound up.

I. Introduction

The term "winding up" often refers to a company's closure or liquidation (Esu, 2017). It describes the process of ending a company's operations and existence (Farrar & Hannigan, 1998). This involves gathering and selling assets, paying off debts, and sharing any leftover money with eligible parties. Winding up means selling all assets, settling debts with creditors.

It also gives any remaining assets to partners or shareholders. There are two main types of winding up: voluntary and compulsory. The Malaysia Companies Act 2016 [hereinafter written in the Companies Act 2016] lists reasons why a court can start winding up a company (Zawawi & Idris, 2018). Section 465(1) of this Act has 12 conditions that allow the court to order a company's winding up. If a winding-up order is made, the court picks a liquidator to handle the process. Unless the court says otherwise, any property transfers after the winding-up start are invalid.

Creditors are split into secured and unsecured groups based on whether they have assets to back their loans (Hazarika, 2013). When a company is liquidated, creditors are paid back in a certain order. There are two main types: secured and unsecured creditors. An unsecured creditor has no security or claim on the company's property or assets. Unsecured creditors can only ask for money after secured creditors have been paid. They rank higher than shareholders but only get money if there's anything left after selling assets and paying secured creditors. Unsecured creditors often get little money back or, in the worst case, nothing at all during liquidation.

Companies facing financial troubles in Malaysia have traditionally used liquidation or winding-up methods. The Companies Act 2016 introduced corporate rescue as a new approach (Kumaraendran, 2019). This law gives struggling companies tools to ask courts for help with rescue and recovery efforts. On March 1, 2018, Division 8 of Part III of the Companies Act 2016 came into effect, along with the Companies (Corporate Rescue Mechanism) Rules 2018. These rules aim to help financially troubled companies and restore their business health. They offer options besides liquidation, such as Scheme of Arrangements, Corporate Voluntary Arrangement, and Judicial Management.

Compulsory winding up, ordered by a court when creditors or others request it, is the most common type. In this case, unsecured creditors face more risks and have less legal protection. This circumstance can cause financial problems for unsecured creditors and affect the country's financial stability, as there is no good way to protect their rights. This paper aims to justify the need for a new method for unsecured creditors to recover when companies wound up.

II. Compulsory Winding Up in Malaysia

In Malaysia, three main laws control how companies are wound up: the Companies Act 2016, Companies Winding-up Rules 1972, and Rules of Court 2012. Winding Up aims to end the company, sell its assets, and pay its debts. There are two types: voluntary winding up and involuntary (or compulsory) winding up.

Liquidation means fairly distributing a company's assets to pay its debts (Kean & Shih, 2017). Liquidation means fairly distributing a company's assets to pay its debts. It is part of winding up a company. Creditors should focus on the money owed to them during liquidation. This process is crucial in deciding how much creditors will get paid. After liquidation, the company is dissolved and no longer exists.

Members can start winding up voluntarily even if the company is solvent. They might do this to change business strategy or because the company no longer serves their needs. The Companies Act 2016 outlines two types of voluntary winding up: members' voluntary and creditors' voluntary winding up (Zawawi & Idris, 2018).

Compulsory winding up happens when a court orders it. Someone files a petition based on reasons in the Companies Act 2016. The court will only wind up a company if the person filing has the right to do so and meets one of the criteria in section 465. This section lists 12 situations where a court can wind up a company. These mainly relate to how the company operates, including when it has no members or can't pay its debts.

The Companies Act 2016 introduced new ways to help struggling companies (Radhakrishna, 2020). Companies in financial trouble can now ask the court to approve rescue and recovery efforts. The Companies Act 2016 and Companies (Corporate Rescue Mechanism) Rules 2018 cover these laws. Companies have three options: a Scheme of Arrangement (sections 365-371), a Voluntary Arrangement (sections 394-402 and rules 3-7), and Judicial Management (sections 403-430 and rules 8-37).

III. Unsecured Creditors 'Rights and Positions under Malaysian Law

A creditor owes money or has a financial claim against a debtor. In **KNM Process Systems Sdn Bhd v Mission Biofuels Sdn Bhd & Anor MLJU 584 (2015)**, the court said, "A creditor is a person to whom money is owed. An unpaid creditor can usually request a winding-up order against a company that hasn't paid its debt."

Creditors play a pivotal role in winding up. They can start the process by filing a petition if a company owes them money. The court considers if the company can pay its debts when deciding to wind it up. Creditors also have the right to know about the winding-up process and can attend meetings about it. However, not all creditors are treated equally. Secured creditors who have collateral for their loans have more protection. Unsecured creditors, without collateral, are at higher risk. They often get paid last and might not get all their money back.

Creditors fall into two main categories: secured and unsecured. Secured creditors, typically financial institutions, claim the borrower's assets. If a borrower defaults, these creditors can legally seize and sell the assets to recover their money. Unsecured creditors lend without specific asset backing. Their disadvantage is that if a borrower defaults, they have limited options, as secured creditors get paid first from asset sales (unless a special arrangement is made). The law tries to balance fairness to creditors with the need to efficiently organise the company's affairs. It sets rules for how debts are paid and in what order. This structure ensures that the process is fair and transparent. Despite these protections, unsecured creditors often face challenges. They might struggle to recover their money, especially if the company doesn't have many assets. This circumstance can cause financial problems for the creditors, potentially affecting the broader economy.

As businesses become more complex, there's growing recognition that the current system might not adequately protect all creditors. This condition has led to calls for reform better to balance the interests of different types of creditors and to provide more options for companies in financial distress. The Federal Court case **Frabcus a/l Augustine Periera v Dataran Mantin Sdn Bhd & Ors and Other Appeals 6 MLJ 56 (2014)** clearly defined creditor classes, stating, "Their common interest determines a class of creditors, such interest separating them from other creditors with whom they are unable to consult together in respect of that common interest."

In Malaysia, this case reinforced the principle from **Sovereign Life Assurance Co v Dodd 2 QB 573 (1892)**. The Federal Court used Bowen LJ's test from **Sovereign Life Assurance Co v Dodd** to determine creditor classes in arrangement schemes. This test says a class must consist of people whose rights are similar enough to allow them to consult together about their common interests.

This principle also applies to arrangement schemes under the Companies Act 2016 in Malaysian law. For example, in **Jin Lin Wood Industries Sdn Bhd & Ors v Mulpha International Bhd 7 CLJ 208 (2005)**, the court confirmed that creditor classification must consider their ability to consult on common interests, applying the Sovereign Life Assurance Co v Dodd test.

The key point is that while creditors are broadly categorized as secured or unsecured, these groups can be further divided based on shared interests and the ability to work together towards these interests. This classification is crucial in legal proceedings, especially in cases involving company restructuring or liquidation.

The distinction between secured and unsecured creditors significantly impacts their rights and potential outcomes in case of a borrower's default. Secured creditors have a stronger position, with specific assets backing their claims. This gives them more certainty in recovering their funds. Unsecured creditors, lacking this security, face greater risk and often receive lower priority in debt repayment.

Understanding these classifications is vital for both creditors and debtors. For creditors, it helps assess the risk associated with lending and make informed decisions about securing their interests. For debtors, particularly companies in financial distress, it's crucial to navigate restructuring or liquidation processes.

The legal framework surrounding creditor classification aims to balance fairness with practicality. It recognizes that not all creditors are alike and that their differing interests and positions must be accounted for in legal proceedings. This approach helps ensure that the rights of all parties are considered and that legal processes can proceed efficiently (Farhah Abdullah et al, 2021).

In compulsory winding up, the liquidation process determines creditor payouts based on remaining assets and creditor priority rules (Duggan, 2008). This system places unsecured creditors at the bottom, potentially leaving them unpaid and causing financial strain, which can impact the country's economic stability (Volberda, 2021).

Malaysia's Companies Act 2016 is the primary law governing company matters, including winding up. Despite the structured nature of this process, unsecured creditors face the highest risk of non-payment. This is due to the creditor priority rule, which ranks them lowest and subjects them to secured creditors' rights.

A. Key Issues Facing Unsecured Creditors in Malaysia During Compulsory Winding Up

The main difference between secured and unsecured creditors is payment priority and collateral. Secured creditors rank higher and have legal claims on specific company assets. Unsecured creditors lack this security and only receive a payment if funds remain after other creditors are satisfied.

Malaysian insolvency proceedings follow the Companies Act 2016 and are handled by specialized courts, ensuring an organized process. In compulsory winding up, company dissolution occurs when the appointed liquidator applies, as per Section 490 of the Act. Section 527 mandates that all priority payments must be made before unsecured creditors receive anything. This lower ranking often results in unsecured creditors not recovering their debts, leading to financial hardship.

Section 525 requires unsecured creditors to prove their debts after a winding-up order. A proof of debt document, supported by evidence, validates the amount owed. However, even with this proof, payment isn't guaranteed if the company lacks sufficient assets after paying secured and preferential creditors. The Companies Act 2016 aims to balance various stakeholders' interests during insolvency. However, the current system often leaves unsecured creditors at a disadvantage. This situation raises questions about fairness and the potential need for reforms to better protect these creditors' rights.

While designed to create an orderly process, the Act's provisions can have unintended consequences. The strict adherence to creditor hierarchy, while logical from a legal standpoint, can lead to significant financial losses for unsecured creditors. This not only affects individual creditors but can have broader economic implications, potentially discouraging unsecured lending and impacting business growth. Moreover, the requirement for unsecured creditors to prove their debts adds an additional burden. While this step is necessary to prevent fraudulent claims, it can be time-consuming and costly, especially for smaller creditors who may lack the resources to navigate complex legal processes.

The challenges unsecured creditors face in Malaysia's compulsory winding-up process highlight the need for ongoing evaluation of insolvency laws. Potential areas for improvement include mechanisms to protect unsecured creditors, streamlining the debt-proving process, or exploring alternative dispute-resolution methods to reduce the burden on the court system. Ultimately, while the current system provides a structured approach to company dissolution, the vulnerabilities of unsecured creditors remain a significant concern. Addressing these issues could lead to a more balanced and equitable insolvency process, benefiting not just creditors but the broader business environment in Malaysia (Rahman N.A et al, 2017).

The law sets a clear order for settling creditor claims. **In Dubon Berhad (in Liquidation) v Wisma Cosway Management Corporation 5 AMR 33 (2020)**, the court confirmed that secured and unsecured creditor rights, along with priority and preference payments, are firmly established by law and case precedents. This provides certainty and legal guidance. **The Bursa Malaysia Securities Bhd v Gan Boon Aun 6 MLJ 695 (2009)** case further explained that section 527 of the Companies Act 2016 outlines asset distribution in winding up. Liquidators must first gather unencumbered assets to cover preferential debts as law requires. They then distribute the remaining assets equally among unsecured creditors (pari passu). Debts in the same category are treated equally, paid in full if possible, or proportionally if assets are insufficient. These rulings show that courts have set a clear hierarchy for resolving creditor claims and should avoid favoring certain creditors over others.

As outlined in these laws and cases, unsecured creditors lack collateral for their claims. They receive payment after preferred and secured creditors. If a company's assets are used up paying secured and preferential creditors, unsecured creditors may get nothing (Aziz, 2021). Malaysian Department of

Insolvency data shows 29,516 bankruptcy cases from 2020 to August 2024 (Malaysian Department of Insolvency, 2024), with business loans among the top three causes. This suggests that when companies run out of assets to repay debts, especially to unsecured creditors, it causes financial hardship and affects the country's financial stability.

The law's priority system, while providing order, often leaves unsecured creditors at a disadvantage. It raises questions about fairness and the need for potential reforms to protect these creditors' rights better. Though legally sound, strict adherence to the creditor hierarchy can lead to significant financial losses for unsecured creditors. This condition impacts individual creditors and can have broader economic consequences, potentially discouraging unsecured lending and affecting business growth. The requirement for unsecured creditors to prove their debts adds another challenge. While necessary to prevent fraudulent claims, this process can be time-consuming and costly, especially for smaller creditors with limited resources to navigate complex legal procedures. These issues highlight the need for ongoing evaluation of insolvency laws in Malaysia. Potential improvements could include mechanisms to protect unsecured creditors, streamlining the debt-proving process, or exploring alternative dispute resolution methods to reduce the court system burden (Sulaiman, Tuan Fatma Tuan, et al, 2021).

While the current system provides a structured approach to company dissolution, the vulnerabilities of unsecured creditors remain a significant concern. Addressing these issues could lead to a more balanced and equitable insolvency process, benefiting not just creditors but the broader business environment in Malaysia. Given these facts, it's clear that unsecured creditors face the highest risk of non-payment compared to other creditor types. This circumstance is primarily due to the creditor priority rule (Kanda & Levvmore, 1994), which places unsecured creditors at the bottom of the list (Garrido et al., 2021). This situation calls for in-depth research into potential new mechanisms to safeguard unsecured creditors' rights when a company is liquidated.

IV. The Role of Takaful in Protecting Unsecured Creditors

In corporate insolvency, unsecured creditors are often the most vulnerable, receiving lower priority in the distribution of assets compared to secured and preferential creditors. This financial imbalance can leave unsecured creditors with significant losses during the winding-up process of a company, threatening their financial stability. Current legal frameworks, while structured to ensure an orderly distribution of assets, do not provide sufficient protection to unsecured creditors (Salim, Wan Noraini Mohd et al, 2012). To address this gap, the introduction of an innovative takaful (Islamic insurance) scheme based on the establishment of a Waqf fund offers a viable solution.

A. Fund Establishment (Waqf)

The foundation of the scheme is a Waqf fund, which is expertly managed by a Takaful operator. This Waqf fund is established as an integral part of the company's capital structure, specifically dedicated to providing support to participants who find themselves in financial distress (Md-Husin & Haron, 2020). Participating companies will contribute to this fund by allocating a portion of their profits or capital. These contributions will be made on a Tabarru' basis, which means they are treated as donations aimed at supporting those in need. The Takaful operator will oversee the management of the fund, ensuring that it operates both efficiently and transparently. Investments will be strategically made in Shariah-compliant and low-risk avenues, which are essential for preserving capital while also generating returns. By creating a dedicated fund to indemnify creditors, the scheme can significantly enhance financial stability and protect the interests of those affected by company insolvency (Ali & Oesni, 2021). Implementing this scheme necessitates careful planning, adherence to regulatory requirements, and collaboration among stakeholders. However, it holds substantial potential to address liquidity issues and uphold the financial well-being of society as a whole (Ghadas, Zuhairah Ariff Abd & Aziz, Hartinie Abd. (2019).

B. Participation

Companies can voluntarily join the scheme by making regular contributions to the fund. This voluntary aspect is crucial as it ensures that companies are not compelled to participate but can choose to opt in to protect their creditors. Unsecured creditors of participating companies will be eligible to claim from the fund in the event of winding up. This eligibility provides a vital financial safety net for creditors who otherwise face significant losses. By allowing companies to contribute voluntarily, the scheme fosters a sense of community responsibility and encourages businesses to safeguard their stakeholders' interests proactively (Khan & Ali, 2017). This approach not only benefits the creditors but also enhances the overall reputation of participating companies, as they demonstrate a commitment to ethical financial practices.

C. Regulatory

The scheme will be developed in strict compliance with Malaysian regulations, including the Companies Act 2016, Companies Winding-up Rules 1972, Rules of Court 2012, Insolvency Act 1967, Islamic Financial Services Act (IFSA) 2013, and the Takaful Operational Framework 2019 (TOF). Necessary approvals will be obtained from regulatory authorities such as Bank Negara Malaysia and the Securities Commission. Regular audits and Shariah reviews will ensure transparency and adherence to Islamic finance standards (Ramli, Nazri, et al. (2023). This compliance is essential, as it ensures that the scheme operates within the bounds of Islamic principles, thereby fostering trust among participants and stakeholders. The rigorous regulatory framework not only safeguards the interests of all parties involved but also enhances the scheme's credibility in the eyes of the public. By adhering to these regulations, the scheme can effectively mitigate financial distress and insolvency risks, ultimately contributing to a more stable financial environment.

In conclusion, the establishment of a Waqf fund managed by a Takaful operator represents a significant advancement in addressing financial distress among companies. Through voluntary participation, companies can contribute to a fund that serves as a safety net for unsecured creditors. The regulatory framework ensures that the scheme operates within Islamic principles, promoting transparency and trust. Overall, this initiative has the potential to enhance financial stability and protect the interests of all stakeholders involved.

V. Proposing Takaful Indemnity Scheme to Safeguard Unsecured Creditors Throughout the Winding Up Process

This article intends to identify the most effective approach that could be employed for achieving the primary purpose of this research, which is immensely important for addressing the financial distress and liquidity issues prevalent in society. In Malaysia, professional indemnity insurance serves as a protective measure for professionals against their professional liabilities. It also safeguards individuals who possess a legitimate claim for damages against a professional, often referred to as a "third-party" (Nazarov & Dhiraj, 2019). A business entity may incur significant losses due to negligent acts committed by a professional it has engaged. Therefore, it is essential for professionals to maintain a professional indemnity insurance policy ("PIIP") to protect themselves against any civil actions that may arise against them (Meng et al., 2007).

Other than professional indemnity, presently, the protective mechanism for special home financing known as Mortgage Reducing Term Takaful (MRTT) is available in the market in this regard. This scheme is designed to assist buyers in settling any outstanding home financing amounts in the unfortunate event of death or Total and Permanent Disability (TPD). Takaful, which is sometimes referred to as "Islamic insurance," provides a method for businesses to mitigate their exposure to the financial consequences of disasters or other unforeseeable events (Md-Husin & Haron, 2020). The similarities between Takaful and conventional insurance lie in their shared objective of providing a financial safety net. Both systems are significant as they offer protection in the event of unexpected occurrences, such as the development of a critical illness, involvement in an accident, loss of property, or even death.

By leveraging the principles of Takaful (Islamic insurance), the proposed scheme offers a structured and Shariah-compliant solution to the challenges faced by unsecured creditors. Takaful operates on the foundational principles of mutual assistance (Ta'awun), mutual security and responsibility (Tadhamun), and mutual protection and assurance, which are all incorporated into the concept of donation (Tabarruq). Participants contribute to a common fund that is managed by a Takaful operator. This fund is utilized to support members in need due to unforeseen events (Iqbal & Mirakhor, 2011). This system emphasizes collective welfare and ethical investment, aligning seamlessly with the principles of Islamic finance.

Currently, Takaful products available in Malaysia, such as professional indemnity insurance and Mortgage Reducing Term Takaful (MRTT), provide financial protection for specific scenarios, including professional liability and home financing. However, it is noteworthy that these products are primarily marketed towards individuals and professionals, thereby lacking a focus on broader financial stability mechanisms. This is particularly concerning for unsecured creditors during company winding-up processes, as they often find themselves at a disadvantage when it comes to recovering debts owed to them.

The proposed Takaful Indemnity Scheme aims to create a specialized fund management mechanism that indemnifies unsecured creditors. This fund will be designed to provide the necessary payments during the winding-up process, ensuring that unsecured creditors have a reliable means of recovering their debts, even in situations where the company is declared insolvent. The Takaful Indemnity Scheme presents a viable solution to safeguard unsecured creditors during the winding-up process, effectively integrating Islamic finance principles with modern financial management practices.

The implementation of this scheme would not only enhance the financial security of unsecured creditors but also promote a more equitable distribution of resources during the winding-up process. By establishing a dedicated fund, the Takaful Indemnity Scheme would ensure that unsecured creditors are prioritized, thereby reducing the financial burden they face in the event of a company's insolvency. This approach aligns with the ethical principles of Takaful, which emphasize mutual support and collective responsibility among participants.

Furthermore, the proposed scheme could serve as a model for other financial institutions and sectors, encouraging them to adopt similar practices that prioritize the welfare of unsecured creditors (Hamid & Othman, 2009). By fostering a culture of responsibility and mutual assistance, the Takaful Indemnity Scheme has the potential to contribute to a more stable and resilient financial ecosystem in Malaysia.

In conclusion, the Takaful Indemnity Scheme significantly protects unsecured creditors during the winding-up process. By integrating the principles of Takaful with modern financial management practices, this scheme offers a comprehensive solution that addresses the unique challenges faced by unsecured creditors. It provides a safety net for those often left vulnerable in times of financial distress and promotes a more ethical and responsible approach to financial management. As such, the Takaful Indemnity Scheme stands to benefit not only the creditors but also the broader financial landscape in Malaysia, fostering a culture of mutual support and collective responsibility.

VI. Analysis of Semi-Structured Interviews with Stakeholders Regarding Takaful Protection for Unsecured Creditors in Compulsory Winding-Up

This study examines the semi-structured interviews conducted with three key stakeholders: Suruhanjaya Syarikat Malaysia (SSM), the Malaysia Department of Insolvency (MDI), and Takaful Ikhlas Sdn Bhd. The interviews aim to investigate the rights of unsecured creditors during compulsory winding-up proceedings in Malaysia and evaluate the potential of Takaful indemnity as a protective mechanism. The analysis is structured around four thematic areas: (1) the legal framework governing unsecured creditors' rights in Malaysia and the United Kingdom, (2) the implications of current winding-up legislation on unsecured creditors' rights, (3) the prospective role of Takaful indemnity in safeguarding unsecured creditors, and (4) proposals for enhancing unsecured creditor protection in corporate insolvency scenarios.

A. Legal Framework Governing the Rights of Unsecured Creditors in Malaysia and the United Kingdom

The interviews with SSM and MDI facilitated a comparative analysis of insolvency laws in Malaysia and the United Kingdom. In Malaysia, the primary legislative instruments governing insolvency and winding-up procedures comprise the Companies Act 2016, the Insolvency Act 1967, and the Rules of Court 2012. Conversely, the United Kingdom operates under a more consolidated framework, primarily the Insolvency Act 1986, which encompasses all aspects of corporate insolvency, including unsecured creditor protection. The fragmented legal landscape in Malaysia was identified as a constraint that complicates the process of safeguarding unsecured creditors' rights, as the relevant laws are dispersed across multiple statutes.

Both jurisdictions position unsecured creditors at a disadvantage in terms of payment priority. In the UK, as in Malaysia, unsecured creditors are ranked lowest, subordinate to secured creditors and preferential debts. SSM interviewees noted that this low-ranking priority frequently results in unsecured creditors receiving minimal or no repayment if the company's assets are insufficient after settling secured debts. This legal disparity engenders significant risk for unsecured creditors, particularly in sectors where companies may possess limited tangible assets, such as the construction and service industries.

B. Impact of Existing Winding-Up Laws on Unsecured Creditors' Rights

Interviews with MDI and SSM emphasized that the current winding-up legislation in Malaysia inadequately protects unsecured creditors' rights. The priority system codified in the Companies Act 2016 relegates unsecured creditors to the end of the asset distribution queue, often resulting in substantial financial losses. According to MDI, this issue disproportionately affects smaller creditors, such as suppliers and service providers, who lack the negotiating leverage of secured creditors.

MDI also emphasized the procedural inefficiencies and complexities that further compound the financial hardship of unsecured creditors. The protracted process of liquidating a company's assets, combined with administrative expenses, significantly reduces the remaining funds available for distribution to creditors. Moreover, the MDI interviewees noted that unsecured creditors in Malaysia frequently encounter challenges in recovering even a fraction of the debt, as the assets are typically insufficient to satisfy the claims of higher-priority creditors, particularly in cases involving the liquidation of small and medium-sized enterprises (SMEs).

C. The Potential Role of Takaful Indemnity in Protecting Unsecured Creditors

Interviews with Takaful Ikhlas Sdn Bhd introduced the concept of Takaful indemnity as a prospective financial mechanism to provide additional protection for unsecured creditors during winding-up proceedings. The establishment of a Waqf fund, administered by Takaful operators, was proposed as a method to indemnify unsecured creditors in the event of insolvency. Participating companies would voluntarily contribute a portion of their profits or capital to a communal fund based on the principle of tabarru' (donation). This fund would be specifically designated to compensate unsecured creditors, offering a financial safety net in instances where a company's assets are insufficient to cover its debts.

Takaful Ikhlas emphasized the ethical and Shariah-compliant nature of such a scheme, which aligns with the principles of risk-sharing and communal responsibility. The fund would be invested in Shariah-compliant, low-risk instruments to preserve capital while generating returns. Although promising, the interviewees highlighted that the implementation of this scheme necessitates careful consideration of regulatory compliance, particularly under the Islamic Financial Services Act 2013 and the Takaful Operational Framework 2019 (TOF).

Despite these challenges, Takaful Ikhlas maintained that Takaful indemnity could offer a sustainable solution to address the financial vulnerability of unsecured creditors. Such a mechanism would mitigate the risks associated with insolvency and provide protection for creditors who would otherwise face significant losses. However, they also noted that further research is required to refine the model, particularly in areas concerning Shariah compliance and its integration into the current legal framework.

D. Recommendations for Enhancing Protection for Unsecured Creditors

SSM and MDI proposed several recommendations for improving the protection of unsecured creditors in Malaysia. A key suggestion was the necessity for a comprehensive legislative review to better align Malaysia's insolvency laws with international best practices, such as those in the UK's Insolvency Act. They recommended establishing a specialized framework for protecting unsecured creditors, particularly SMEs, as these entities are the most vulnerable during winding-up processes.

Moreover, MDI proposed that the government could implement mandatory credit insurance or establish a guarantee fund for unsecured creditors. This fund, potentially managed by either state entities or private institutions such as Takaful operators, would function analogously to deposit insurance for bank clients, providing compensation in corporate insolvency cases.

Takaful Ikhlas advocated developing a pilot project to test the Takaful indemnity scheme. This initiative would involve a select group of companies and creditors to evaluate its practicality, allowing for real-world application and refinement before broader implementation. Furthermore, there was a consensus regarding collaboration between regulatory bodies, such as Bank Negara Malaysia, and industry stakeholders to ensure that any new mechanism, including Takaful indemnity, is legally and operationally viable.

VII. Conclusion

The purpose of this project on the societal structure is to offer unsecured creditors a means to collect their debt in the event of a company's compulsory winding up and to decrease disparities in society by ensuring equal legal protection. In addition, it is intended to protect the company's obligation to clear its debts with unsecured creditors. This study is anticipated to contribute to the evolution of the current legislative framework regulating the rights of unsecured creditors. Its findings will apply to efforts to enhance unsecured creditors' position.

Based on the abovementioned facts and studies, introducing a takaful scheme to protect the unsecured creditors may enhance the situation of unsecured creditors, who are exposed to the related risks following the company's insolvency and have less legal protection. The semi-structured interviews with stakeholders yielded valuable insights into the challenges faced by unsecured creditors during compulsory winding-up proceedings in Malaysia. The current legal framework places unsecured creditors at a significant disadvantage, often resulting in substantial financial losses. While introducing Takaful indemnity through a Waqf fund presents a promising solution, its implementation necessitates further investigation, particularly concerning regulatory compliance and operational feasibility. Collaboration among governmental bodies, financial institutions, and industry stakeholders will be crucial to enhance the protection of unsecured creditors and ensure the sustainability of such a scheme. Ultimately, these efforts could provide a much-needed financial safety net for unsecured creditors, fostering greater stability and confidence within Malaysia's business environment.

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