The Role of Directors in Corporate Rescue in France and United Kingdom: A Lesson for Malaysia

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Abstract

The purpose of this article is to examine the role and duties of directors in corporate rescue process for corporations which are in the zone of insolvency with particular emphasis in the country of France , United Kingdom and Malaysia . In this paper at the outset, I shall outline the directors' duties and their role in the corporate rescue process as provided under the legislation of France and United Kingdom respectively and to see whether Malaysia could learn from the success and failures of the corporate rescue process in those two jurisdiction . In this aspect too , I shall further examine whether the legislation in Malaysia has provided adequate powers for the directors to act in the best interest of the company sufficient to ensure that the interest of creditors is protected and whether the directors would be held liable for any negligence, default or breach of their duties during the corporate rescue process.

Keywords: Corporate Rescue, Company Director and Corporate Insolvency

1. Introduction

There are many reasons why companies become insolvent and one being due to lack of adequate management and financial control and failure to take remedial measures in due time by the board of directors . The importance of corporate rescue and the role of directors in the corporate rescue process is vital to determine whether the directors have a duty to protect the interest of the creditors or the shareholders in implementing corporate rescue plans. In times of insolvency , the duties of directors to take into account the interest of creditors and shareholders have been under the scrutiny recently with major corporate collapses in Malaysia due to the climate of economic uncertainty in the financial and corporate sectors domestically and globally. 'Corporate rescue' is a term first introduced in the United States in the 1960s to describe measures taken for the rescue of companies as an alternative to their dissolution or insolvency .The primary purpose of corporate rescue is to rescue and restore the business viability of the company which is in the vicinity of insolvency. Omar has described corporate rescue as ' *the revival of companies on the brink of economic collapse and the salvage of economically viable units to restore production capacity, employment and the continued rewarding of capital and*

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investment'[1] . This term is now used to mean the revival of companies on the brink of collapse and the rescue of viable units so as to restore the essential elements of these companies to fully functioning status. It is trite that the directors of a company has a crucial role to play in ensuring that the financial health and stability of their company. As a general rule if a company is in a solvent state , the courts had held that the directors generally owe no fiduciary duties to creditors and such a judicial view was proposed in the case of *Multinational Gas & Petrochemical Co v Multinational Gas and Petrochemical Services Ltd & Ors* [2] . However a company upon being insolvent or nearing insolvency , the rights of creditors is expanded because the fiduciary duties of directors entails and includes taking into account the interest the creditors because the creditors become residual claimants as opposed to the shareholders.

2. Role of Directors in the Rescue Process in France

The insolvency laws in France is similar to the common law rule in United Kingdom where it makes provision for criminal and civil liabilities to ensure that the directors are accountable for fraudulent and dishonest acts . In the event of liquidation proceedings , personal liability may be incurred by the company's directors due to the company's insufficiency of assets if the director had committed a fault in the management of the company[3] , which the courts has interpreted to include errors in the management of the company , negligence , breaches of law , regulations or bye-law of the company. It must be established that there is an insufficiency of assets in the company which was caused by the fault of the management by the directors such as carrying out unprofitable business activity , misappropriation of company assets or fraudulently increased the companies liabilities. Under these circumstances the directors could also be subject to personally bankruptcy in the course of insolvency. Under the French law the directors could also be subject to sanction of criminal bankruptcy in respect of fraudulent increase of the debts of the company, misappropriating or concealing all or part of the company assets , keeping fictitious account or causing accounting records to disappear or even kept manifestly incomplete set of accounts in non-compliance with the legal requirements. In respect of criminal bankruptcy , the director if found guilty is liable to imprisonment and fine and in addition the director would also face personal bankruptcy or prohibition on management. However to find the director guilty of criminal bankruptcy, the prosecution would need to prove the element of 'intention to defraud' which also constitute a good defence for the directors facing a criminal prosecution for such an offence . To conclude , the French legislation had also brought about major reforms in its legislation to place more responsibilities upon directors to ensure corporate rescue measures are taken effectively at an early stage to avert a later possibility of failure .

3. Role of Directors in the Rescue Process in United Kingdom

[1] P . Omar , " Thoughts on the purpose of Corporate Rescue" (1997) 4 Journal of International Banking Law 127

[2] [1983] 2 All ER 563

[3] The Role of Directors in Corporate in France and the United Kingdom : An Overview [2015] 3 NIBLeJ 25 by Alexandra KASTRINOU, at 472.

In the United Kingdom ('UK') there is no single bankruptcy legislation for the whole of UK. In England and Wales , the bankruptcy proceedings are governed by the Insolvency Act 1986 and the Insolvency Rules 1986, which covers both personal as well as corporate insolvency. Amendments to the Insolvency Act were introduced by the Enterprise Act 2002 with further amendments in 2004 . The Insolvency Act 1986 had experience a long history but the effect of it in the area of corporate rescue was highly disappointing which led to the incorporation of the insolvency elements in the Enterprise Act 2002 to develop the 'rescue culture' [4]. The Enterprise Act 2002 has laid a list of objectives available to the Administrator or the Insolvency Practitioner presiding over the insolvency proceedings where one of these objectives is an attempt either to rescue the company as a going concern or the liquidation of that business for distribution to creditors. It is now settled in most common law jurisdictions that directors have a duty to take into account the interest of creditors at times of impending insolvency. The duty seems to go against the basic rules of company law on the principle of separate legal entity and limited liability which are inconsistent to the creditors' right to maintain separate actions against directors who breached their duties . The relevant legislation and case laws decided in UK gives importance to creditors' interest , hence allowing for restructuring so that the businesses might avoid insolvency liquidation . In UK , there is a judicial presumption that in determining whether directors have fulfilled their fiduciary duties, courts generally apply the ' best interest of the company' rule [5] . It has come to a situation where the courts have held that when the company is insolvent or approaching insolvency , the directors in discharging their duties to act in thee best interest of the company must regard predominantly to the interest of creditors who have a primary interest in the proper application of the company's assets [6]. Directors duty include the duty to act within his powers , the duty to exercise reasonable care and skill and fiduciary duties of a kind similar.[7] In making such business decisions, directors should act in good faith, and in the honest belief that the decision or action taken was in the best interests of the company . To prove that a director has breached a fiduciary duty means first overcoming the business judgment rule by establishing that the director was grossly negligent in failing to inform himself or herself of the relevant facts, failed to act in good faith or had an improper self- interest [8]. Therefore where a director has acted honestly and reasonably and that having regard to all the circumstances of the case , he ought fairly to be excused , the court may relieve him either wholly or partly from his liability on such terms as it thinks fit[9] .Further where a director of a company makes an unauthorised profit by the use of his position as a director, he is liable to account for that profit to the company, whether or not he acted in good faith[10]. Under s.214 Insolvency Act 1986 which relates to wrongful

[4] Mei Yang & Xiaobing Li , The History of Corporate Rescue in the UK , 2012

[5] Smith and Fawcett Ltd [1942] 1 All ER 542 .

[6] Roy Goode : Principle of Corporate Insolvency Law , 2011 p.657

[7] Principles of Corporate Insolvency Law, 2nd Edition , Prof R M Goode ,1997

[8] Item Software (UK) Ltd v Fassihi [2004] EWCA Civ. 1244

[9] Companies Act 2006 s.1157

[10] Regal (Hastings) Ltd v Gulliver [1942] 1 All ER 378

trading where it reflects the standard of a director's duty of care, skill and diligence at common law so as to require him to take the steps that would be taken by a reasonable diligent person having the general knowledge ,skill and experience that may be reasonably be expected of a person carrying out same function as well as the general knowledge , skill and experience which the director in fact possesses[11] . Proceeding for wrongful trading is purely civil where requiring the director concerned to contribute to the company's assets Wrongful trading are designed for the protection of past as well as future creditors. Whereas s. 213 of the Insolvency Act 1986, provides for contribution to the company's assets by directors for fraudulent trading in the course of a winding up that any business of the company was carried on with intent to defraud creditors of the company or for any fraudulent purpose in allowing a company to incurring debts when it was clear it would never be able to satisfy its creditors or even if they had some expectation that ultimately all debts would be paid [12].

4. Comparison of the Role of Directors in the Corporate Rescue Process Between UK and France

In UK a rather strict approach is adopted where a director is held liable and disqualified merely on the ground of negligence even where he has not been dishonest whereas in France a director would only be disqualified where he has been convicted of a criminal offence where the element to defraud has to be established. In France , dishonest directors are even not held accountable and disqualified or liable for a contribution because the judges in the Commercial Court are individual elected among the business community [13]. However the common factor in both the legislation in UK and France are to ensure that directors are criminally liable for failure to file for insolvency within a period of time as well as civil measures which are intended to compensate the creditors [14]. As for civil liabilities, both the legislation had made provisions for personal liabilities against incompetent directors where at time of crisis they continue trading and furthering the indebtedness of the company .

5. The Role of Directors in the Corporate Rescue Process in Malaysia

In Malaysia , the directors not only owe a common law duty but also statutory duties as specified under the Companies Act 1965 where subsection 135(5) of the Companies Act 1967 [15] states that the duty under section 132 is in addition to and not in derogation of any other written law or rule of law relating to the duty and liability of directors of the company . The directors of a company has a crucial role to play in ensuring the financial health of their company. In a solvent corporation, directors generally owe no fiduciary duties to creditors. However, upon insolvency, the rights of creditors is extended because the fiduciary duties of directors entails and includes taking into interest the creditors. Thus, directors owe a duty to act in the creditors' interests at the moment a

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11 Re D' Jan of London Ltd (1993) B.C.C. 646

12 Re Gerald Cooper (Chemical) Ltd [1978] 2 Ch 262

13 P. Omar ." The European Initiative on Wrongful Trading " (2003) 6 Insolvency Lawyer , at 239

14 The Role of Directors in Corporate in France and the United Kingdom : An Overview [2015] 3 NIBLeJ 25 by Alexandra KASTRINOU , at 467

15 Company Act 1965

company is in the vicinity of insolvency. When a company becomes insolvent, creditors become residual claimants as opposed to the shareholders compared to when a company is solvent. Should a director breach one or more of these fiduciary duties, he or she could become personally liable to persons owed fiduciary duties is still in unanswered positively ? Nonetheless there is an increase in judicial recognition that the directors' duties owed to the creditors interest is of paramount consideration as oft-quoted dictum of Mason J in *Walker v Wimborne* [16] . In determining whether directors have fulfilled their fiduciary duties , courts generally apply the common law rule that directors are under a duty to act in the best interest of the company requiring the directors to exercise their discretion in the interest of the company and not for a collateral purpose [17]. . The statutory duty under the Company Act 1965 embodies the fiduciary duty under the common law that the directors owe the duty to act *bona fide* in the best interest of the company, to exercise powers for a proper purpose and to avoid conflict of interest.[18]

In Malaysia, there are few cases which had considered the common law authority on directors' duties to creditors by reference to legal principles enunciated in leading English cases. The few Malaysian cases, however, have not provided a sound analysis of the rationale , basis or extent of the duty. Therefore the common law position regarding the duty of directors to take into account the interests of creditors is not really settled or developed area of company law in Malaysia. In addition, there is no effective back up armoury of statutory weapons that can reinforce directors' duties to creditors at common law. The judicial decisions in Malaysia tend to show that the courts had accepted the common law duty of directors just to take into account creditors' interests but does not penalize nor make the directors personally liable except for statutory liability for the debts of the insolvent company . There are two leading Malaysian cases which have considered the issue of whether directors owe duties to creditors in times of insolvency . In *New Kok Ann Realty Sdn Bhd v. Development & Commercial Bank Ltd* [19] the Supreme Court adopted the common law principle and said that 'It is a well established principle of the English common law that when money had been received by one person which in justice and equity belongs to another, under circumstances which render the receipt by the defendant to the use of the plaintiff, the latter may recover as money had and received to his use.' This case involved a 'company group' scenario where, as is typically the case, the appellant company , a member of the group had borrowed money from the respondent bank , which was later wound up in insolvency. Through its liquidator, the respondent brought an action against the appellant for repayment of two loans which had been paid by way of bank drafts. It was not in dispute that the funds had been placed into the appellant's account by the bank, but the appellant denied requesting the sums by way of loans or that it had promised to repay the sums advanced. Essentially, the appellant's argument was the money had not been advanced by way of loan. It further alleged that in any event the sums advanced were not for its benefit but for the use or benefit of other companies in the group, of which both the appellant and

[16] (1976) 137 CLR 1 , at 6-7

[17] Smith and Fawcett Ltd [1942] 1 All ER 542

[18] Low Tien Sang & Sons Holding Sdn Bhd & Ors v How Kem Chin & Ors [2002] 2 MLJ 334

[19] [1987] 2 MLJ 57

respondent were members. The Supreme Court, approving the reasoning of the trial judge, dismissed the appellant's submission that there was no loan agreement, holding that the two sums were clearly advanced to the appellants as loans and that the appellants had therefore undertaken a contractual liability. The Supreme Court's decision was clearly based on the principles of contract law, although the court referred to and acknowledged the principle that each company in a 'group' is still a separate and independent legal entity, whatever the degree of control or capacity to control that company may be. However, Gunn Chit Tuan J, in his judgment at first instance, made some obiter comments concerning the argument that even if the advance could be considered a loan, the borrower could not be held liable on it as it was advanced for the benefit of other companies in the group relying on the authority of the Australian High Court decision of *Walker v Wimborne* said that Australian case shows that even where companies, such as the plaintiff and the defendant, are members of a so-called 'group' each company was a separate and independent legal entity and the directors, in discharging their duty to the company must take account of the interests of its shareholders and its creditors who may be prejudiced by the movement of funds between companies in the event that the companies become insolvent or are wound up as in this case. Therefore the movement of funds from one company to another group member may prejudice the interests of creditors of the transferring company.

In another case of *Ng Pak Cheong v Global Insurance Co Sdn Bhd* [20], the issue in this case touched more directly upon the duties of directors to the company and the scope of the phrase ' *best interests of the company*'. The case concerned an agreement to sell certain assets and property owned by Global Insurance Co Sdn Bhd to the plaintiff's now deceased father, who at the time was Global' s chairman and principal officer. The plaintiff sought specific performance of the agreement to sell the property. At the time of the agreement Global, the defendant, was under investigation by the Malaysian Director General of Insurance on the ground that it was likely to become insolvent. The Director General had issued a directive that none of Global's assets were to be disposed of without his permission. Global alleged that the sale of the assets was done in contravention of this directive and was therefore void. Further, it claimed that the whole agreement was also void and unenforceable since it was the product of an asset-stripping operation designed to defraud creditors. As such, the deceased, acting in concert with other family members who were also directors of Global, had breached his fiduciary duty by acting to defraud the company, its shareholders and creditors. Mohamed Dzaiddin FCJ found in favor of Global and held that the whole transaction was a sham , effected by a round-robin transaction which purported to show on paper that money had been paid out for the assets, when in fact no money had passed. His Lordship said that a director owes a duty to the company which he directs to act honestly and with a reasonable degree of care in the performance of his functions as a director. The court was influenced by the strong element of fraud in this case. The finding of fraud enabled it to declare the agreement void and unenforceable against the defendant on principles of equity. This decision clearly supports the existence of a duty to take into account creditors' interests as a principle of law in Malaysia .

6. Pre –Insolvency Procedure

[20] [1995] 1 MLJ 64

The development of corporate rescue has led to a consequential evaluation of the role of directors during insolvency. The aim of corporate rescue is to provide for an alternative to pure liquidation of companies. Insolvency is no longer thought of as being a final measure but as one which in the form of corporate rescue could occur at any point in the life of a business and provide an opportunity for the business to re-consolidate. Under the Companies Act 1965 , a scheme of arrangement was provided and governed by s.176 -180 of the Act between a company and its creditors where the company which is in financial distress will be still allowed to continue its business with the directors still in control of the management . This scheme of arrangement like any other voluntary arrangements have been adopted in most major insolvency jurisdictions. The general purpose of the procedures which have been instituted permitting restructuring so that businesses might avoid insolvency liquidation. The onus is placed firmly on the company to act in time so as to enable an arrangement with creditors , with any moratorium granted either by the creditors or agreed by a court which will permit the company to continue business[21] . In principle, this voluntary arrangement is there to obtain breathing space for the company in order to consolidate its affair which may be seen as an excellent opportunity to install a pre-insolvency culture, leading companies to seek help at an earlier stage when their situations are not irremediable.

7. Statutory Duties of Directors under Companies Act 1965

Section 132 of Companies Act 1965 (CA) imposes several statutory duties on officers and directors. Section 132 (1) of CA [22] states that a director of a company shall at all times exercise his powers for a proper purpose and in good faith in the best interest of the company. Further a director of a company shall exercise reasonable care, skill and diligence with the knowledge, skill and experience which may reasonably be expected of a director having the same responsibilities; and any additional knowledge, skill and experience which the director in fact has. Firstly, a director must act in what he honestly considers to be the company's interests and not in the interests of some other person or body. This is a director's main and overriding duty at common law . Secondly, a director must employ the powers and assets that he is entrusted with for proper purposes and not for any collateral purpose. Thirdly, a director must not place himself in a position whereby his duty to the company and his personal interests may conflict [23] . In addition S.132(1B) of the CA states that a director who makes a business judgment is deemed to meet the requirements of the duty under subsection (1A) and the equivalent duties under the common law and in equity if the director-

(a) makes the business judgment in good faith for a proper purpose ;
(b) does not have a material personal interest in the subject matter of the business judgment ;
(c) is informed about the subject matter of the business judgment to the extent the director reasonably believes to be appropriate under the circumstances; and
(d) reasonably believes that the business judgment is in the best interest of the company.

Therefore based on this provision a director has three broad categories of duties , namely fiduciary duties , duties of skill , care and diligence and statutory duties.

[21] Insolvency Law in Malaysia: A case for reform , Paul J.Omar ,[1998] 4 MLJ xix

[22] Companies Act 1967

[23] Company Law , Walter Woon , 1996 , at

Section 132(1) imposes a broad duty on directors at all times to act honestly and exercise reasonable diligence in the exercise of their powers and the discharge of the duties of their office. The meaning of honesty under s 132 (1) is not entirely clear. There has been controversy in other jurisdictions, including Australia, as to whether equivalent provisions may be breached even though a director may have no fraudulent intent. In *Pioneer Haven Sdn. Bhd. v Ho Hup Construction Co Bhd. & Anor and other appeals*[24], the Court of Appeal held that s.132(1A) only enhance the common law duty of care and equitable fiduciary duties . The current s .132(1) of the Act requires a director to act in good faith in the best interests of the company. It is accepted that for all intents and purposes, the scope of the directors' duties to act honestly under the old s.132(1) and the new s. 132(1) are the same.

Section 132(2) makes it an offence for officers or agents of a corporation to make improper use of information acquired by virtue of their position as officers or agents to make a gain for themselves or any other person or to cause detriment to the corporation. In Malaysia, the ability of s 132(2) to apply in cases where directors disregard the interests of creditors of financially troubled companies is as yet an untapped source of law compared to the situation in Australia where the equivalent provision has been applied in cases of transfers of corporate assets to directors and to other companies in a group of companies. . Section 132 does not as yet incorporate a statutory rule prohibiting the misuse of position . The inclusion of a 'twin' provision to s. 132(2) into the Act is to be welcomed as a wide provision which should bolster the ability of the liquidator to commence action in a number of situations which do not fall within very specific provisions such as those dealing with insolvent trading, preferential treatment of creditors and recovery of excess profits. The significance of s 132 is that it also imposes criminal liability where the general law duties are breached. The penalties for breach of the duties imposed by s.132 are severe. Under s.132(3) an officer who commits a breach of s.132 is liable to the company for any profit made; in addition he or she will also incur criminal liability. These provisions are criminal and therefore the onus of proof will rely on the liquidator. This creates difficulties in its use as an effective remedy for creditors in the insolvency context.

Section 295 of the Act appears to be a widely drafted from which the liquidator of an insolvent company may recover funds from, inter alia, its directors for the purpose of distribution to its creditors and members. This provision evidently reinforces the fundamental common law principle that directors are subject to the duty to avoid conflicts of interest. Its objective is, within the context of insolvency, to prevent directors abusing their position by making improper personal profits. Section 295 therefore allows the liquidator to recover excess profits from the sale or acquisition of property for cash consideration owned by the company within a two-year period before the commencement of winding up. However this section only allows transaction for cash consideration and as such it had failed to achieve its objective can no doubt be accounted for by a number of serious drafting deficiencies which create obvious loopholes for directors and related parties. For example, the provision catches only transactions involving 'cash consideration' and it provides no guidelines for the objective valuation of the particular assets or property in question and only covers assets which have technically been sold.

[24] [2012] 3 MLJ 616

Section 303(3) of CA deals with wrongful trading where it states that an officer of a company who was knowingly a party to the company contracting a debt, at the time the debt was contracted , had no reasonable or probable ground of expectation of the company being able to pay the debt is guilty of an offence . In respect of directors' personal liability for the debt incurred due to wrongful trading section 214 of CA provides that the directors may be personally liable for the debt subject to the limitations under subsection (3) of section 214 CA . In respect of fraudulent trading , section 304 CA imposes specific criminal sanctions and unlimited personal liability upon directors who are engaged in fraudulent trading . In practice, there have been very few instances where either the wrongful or fraudulent trading provisions have been enforced in Malaysia and it is well-recognized that Malaysia's insolvent or wrongful trading provisions are ineffective and indeed is the main obstacle for recovery of losses by creditors in Malaysia. The fact that these provisions are based on a penal philosophy rather than on the premise of civil recovery limits their scope in the context of creditor protection.

Section 250 is a provision which applies when the company is being wound up in insolvency. The power of s.250 to allow the court, at its discretion, to order a public examination of directors following a report of the liquidator is of limited assistance in this area. The interests of creditors can readily be defeated by their inability to obtain and utilize information from the company. The usual information available from the Registrar of Companies such as financial statements, annual accounts, directors' and auditors' reports will often not be sufficiently up to date, or inclusive of all material information, to be of use to creditors when the company is in the process of being wound up. When a company is verging on insolvency, the creditors are often the last to find out. The provision gives the court wide discretionary powers. It can order a director or officer to be called up for public examination where the liquidator believes that fraud, dishonesty or any impropriety occurred in relation to the affairs of the company. The person called up need not be the alleged defaulting officer, but any officer 'who the court deems capable of giving information concerning the affairs of the company' . The examinees may include any banker, lawyer or auditor who has material information in his or her possession. Section 250 is one of the few provisions in the CA which specifically recognizes that creditors have a direct and tangible interest in the company at a time of insolvency. It does this by according a creditor standing to appear and examine any relevant person who may provide information concerning the affairs of the company.

Section 305 CA provides a creditor with the right to apply to the court to have a company officer examined where that officer has engaged in wrongdoing which has caused loss to the creditor. The aim of s.305 CA is to enable the court to examine the delinquent officer and compel him or her to repay or restore any money or property which is due to the creditor. The application may only be made in the course of a winding-up and at this stage there may be no salvageable assets or property in the hands of the company or the directors. Where the company is still a going concern it may be subject to inspection by an inspector appointed by the minister who may compile a report indicating that in the public interest, civil proceedings for the recovery of damages or recovery of any property ought to be brought against a person or persons in respect of any fraud, misconduct or misfeasance in connection with a company's affairs. While in theory this provision should assist creditors by enabling the return of funds to the company, it is a cumbersome procedure requiring ministerial intervention upon the satisfaction of a 'public interest' test .

8. Conclusion

It could be concluded that the laws in Malaysia albeit clearly outlining that the directors owe a duty to act in the best interest of the company and to take into account the interest of creditors in the corporate rescue process but it could be seen that the directors default in exercising the duties has hardly been enforced personally against the directors who had been negligent or carried out fraudulent trading. Although there is already a well-established principle of law to say that the ' ‘interests of the company' may at times mean 'interests of creditors' especially where a company is insolvent or approaching insolvency but the directors are usually not personally held liable .The difficulties the creditors would face in making the directors personally liable is when it incumbent upon the creditors to prove that the directors were negligent in wrongful trading or intended to defraud in the case of fraudulent trading when the company was in the verge of insolvency. The moratorium allowed under the scheme of arrangement as provided under s.176-180 CA further poses a hindrance to the creditors to hold the directors personally liable for any debt . The directors could easily rely on the presupposition that the continuation of business was done in the best interest of company and as such any debt incurring during the insolvency stage was reasonable . The provision under CA in respect of directors' duties when insolvency besets the company such as those concerning wrongful and fraudulent trading , recovery of excess profits and public examination of officers are merely meaningless since no enforcement of the law against the directors are taken in protecting the rights of creditor. In addition s.354 o CA 1965 provides relief for the directors or excuse the directors from liabilities against proceedings for negligence , default of duty or breach of trust against a prescribed person as it appears to court that the director had acted honestly and reasonably having regard to all the circumstances of the case . Presently there are laws and further reforms being introduced or undertaken under the new legislation but whether these reforms will go far enough to protect the interests of creditors is still unanswered positively when there is no strict enforcement of the law.