

PETITION FOR WINDING UP
UNDER SECTION 218 OF COMPANIES ACT 1965

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PETITION FOR WINDING UP
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requirements for the award of the degree of
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DEDICATION

To my beloved mother, father, brother and sister.

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I am truly grateful to everybody who has helped me throughout the research. This research would not be successful without the great support, sacrifice and generous contribution from everybody who involved.

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ABSTRACT

In resolving the problem of non-payment, contractor may take court action as provided in Section 218 of Companies Act 1965, provided that if an employer does not pay the sum of exceeding RM 500.00 which is certified within three weeks after it receives the contractor's claim, the unpaid contractor may petition for the employer's company to be wound up. An examination to related law cases showed that the courts were very strict in granting the petition, which caused most of the contractors lost in their winding up petitions. By observing the law cases, it seemed that compliance with requirements those are set out in Section 218 of Companies Act 1965 is not sufficient for High Court in completely making a company to be wound up in final. Most of judges also tended to put extra requirements to the contractors in issuing a winding up petition. Therefore, this research was done to identify the strategies which are required to be prepared by contractors to wind up their employers. In this research, law cases were studied to understand in detail on the reasons which had been given by the learned judges in accepting and rejecting the contractors' petition of winding up against their employers. The research result showed that a contractor will be able to wind up an employer when the employer is insolvent; the employer is not successful to establish a bona fide dispute between it and the contractor; the remedy of winding up is applied as the last resort; and the objective to wind up a company is to settle the debts by selling its assets. This research finding hopefully may enlighten or at least give contractors a guide in preparing their strategies before petitioning for winding up against their employers.

ABSTRAK

Dalam menyelesaikan masalah ketidakbayaran, kontraktor berhak mengambil tindakan mahkamah dengan memfailkan petisyen untuk menggulungkan syarikat majikan di bawah Seksyen 218, Akta Syarikat 1965 jika majikan gagal membayar hutang melebihi nilai RM 500.00 yang telah disahkan dan diperakui selepas tempoh tiga minggu dituntut oleh kontraktor. Kajian terhadap kes-kes mahkamah yang berkaitan menunjukkan mahkamah amat tegas dalam membenarkan petisyen tersebut dan menyebabkan banyak kontraktor tewas dalam petisyen pengulungan. Dalam pengamatan kes-kes tersebut, pematuhan Seksyen 218, Akta Syarikat 1965 kelihatan tidak memadai untuk Mahkamah Tinggi menjatuhkan perintah penggulungan terhadap syarikat majikan secara muktamad. Mahkamah juga cenderung meletak syarat-syarat tambahan terhadap kontraktor dalam petisyen tersebut. Oleh itu, kajian ini dilaksanakan untuk mengenalpasti strategi-strategi yang diperlukan para kontraktor untuk menggulungkan syarikat majikan mereka. Dalam kajian ini, kes-kes mahkamah diamati untuk memahami alasan penghakiman yang diberi oleh para hakim yang bijaksana dalam menerima dan menolak petisyen penggulungan yang difailkan oleh pihak kontraktor. Hasil kajian menunjukkan bahawa kontraktor berjaya menggulungkan majikan apabila:- majikan adalah solven; majikan gagal membuktikan ada pertikaian bona fide di antara majikan dan kontraktor; petisyen penggulungan diambil sebagai jalan terakhir; dan objektif penggulungan syarikat majikan adalah untuk melangsaikan hutang dengan menjual aset-aset syarikat tersebut. Hasil kajian ini diharap dapat memberi panduan kepada kontraktor sebagai persediaan asas dalam memfailkan petisyen penggulungan terhadap syarikat majikan.

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LIST OF ABBREVIATIONS

ABBREVIATION	-	FULL NAME
a/p	-	anak perempuan (daughter of)
All ER	-	All England Law Reports
Anor	-	Another
BNM	-	Bank Negara Malaysia
CA	-	Court of Appeal
CA (Eng)	-	Court of Appeal, England
Ch App	-	Chancery Appeal
Ch D	-	Chancery Division of the High Court (England)
CIDB	-	Construction Industry Development Board
CIDB 2000	-	CIDB Standard Form of Contract for Building Works 2000 Edition
cl.	-	clause
Co.	-	Company
Corp.	-	Corporation
d/o	-	daughter of
Eq	-	Equity Case
ex p	-	ex parte
FJ	-	Federal Judge
HC	-	High Court
J.	-	Justice
JC	-	Justice Commissioner
JCA	-	Justice of the Court of Appeal
LJ	-	Lord Justice

Ltd	-	Limited
M&E	-	Mechanical and Electrical Engineering
MLJ	-	Malayan Law Journal
NSWLR	-	New South Wales Law Reports
NZLR	-	New Zealand Law Reports
Ors	-	Others
p.	-	page
pp.	-	pages
PAM	-	Pertubuhan Akitek Malaysia
PAM 1998	-	Agreement and Conditions of Building Contract 1998
PAM 2006	-	Agreement and Conditions of PAM Contract 2006 (With Quantities)
Pte	-	Private
Pty	-	Proprietary
PWD 203A	-	Public Work Department Form 203A
r.	-	rule
s.	-	section
s/o	-	son of
Sdn Bhd	-	Sendirian Berhad (Private Limited)
the Act	-	Companies Act 1965
UTMIC	-	Universiti Teknologi Malaysia International Campus
WLR	-	Weekly Law Reports

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CHAPTER 1

INTRODUCTION

1.1 Background of Study

There are many grievances from contractors about severe non-payment difficulty in Malaysian construction industry which are encountered by contractors, where payment difficulty becomes a critical issue in this country¹. In a survey which had been done by CIDB Malaysia about problems of non-payment in Malaysian construction sector in year 2006, it was found that 33.3% of contractors in Malaysia experienced non-payment by private employers². In this situation, contractors are in problems confronting employers who simply do not pay³. As illustration, in *Teknik Cekap Sdn Bhd v Villa Genting Development Sdn Bhd*⁴, the respondent employer declined to fulfil interim payment certificate which had been certified to the contractor, which forced the contractor to make claim against the employer.

¹ Noushad Ali Naseem Ameer Ali (2007). "Disputes-Malaysian Legislation." *Construction Journal*. Nov/Dec 2007, pp. 18-21. CIDB Malaysia.

² A Report of a Questionnaire Survey on Late and Non-Payment Issues in the Malaysia Construction Industry 2006. Kuala Lumpur: CIDB Malaysia, cited in Ooi Poh Poh (2010). "*Profile of Construction Payment Dispute*." MSc Construction Contract Management, Universiti Teknologi Malaysia, Skudai. p. 23.

³ Lee Shih Yin (2007). "*A Repudiatory Breach in the Construction Industry – Non-Payment*." MSc Construction Contract Management, Universiti Teknologi Malaysia, Skudai.

⁴ [2000] 6 MLJ 513.

According to Asniah⁵, non-payment or payment dispute is a common occurrence in the construction industry which forms 51% of cases reported in MLJ from year 1997-2007, while another 49% were related to other disputes. The payment dispute also included unpaid for further payments, claim of payment for work done and others⁶. To resolve the problem of non-payment, contractors may exercise remedies as are stipulated in contract or take court action.

As expressed clauses those are provided by the contract, the contractor has right to claim for interest⁷ in case of non-payment by the employer at a rate stated in respect of any sums which are due until the date of actual payment is made. Besides, contractors may suspend⁸ construction works until the employer pays the amount which is due to the contractor. The contractor may also opt to make its employment to be determined⁹ as provided in contract in case of it faces the problem of non-payment from its employer.

In addition, the contractor may bring its claim to arbitration¹⁰ if any claims are arising in respect of the contract in any occurrences of non-payment, where the contractor reserves its right to claim.

Contractors may also take court action in case of non-payment. In case law of *Syarikat Mohd Noor Yusuf Sdn Bhd v Polibina Engineering Enterprise Sdn Bhd (in liquidation)*¹¹, it was held that a contractor may file for writ against the employer if it occurs that the contractor is not paid by the employer. Any contractors may also

⁵ Asniah Abidin (2007). "Profile of Construction Dispute." MSc Construction Contract Management, Universiti Teknologi Malaysia, Skudai.

⁶ Ibid.

⁷ PAM 2006 cl. 30.17; CIDB 2000 cl. 42.9(b); Contract Act 1950 s. 74 illustrations (n).

⁸ PAM 2006 cl. 30.7; CIDB 2000 cl. 42.10; Housing Grants, Construction and Regeneration Act (HGCRA) 1996 s. 112(1).

⁹ PAM 1998 cl. 26.1(i); PAM 2006 cl. 26.2; CIDB 2000 cl. 45.1(a)(i); Contract Act 1950 s. 40.

¹⁰ PWD 203A cl. 65.1; PAM 1998 cl. 34.1; PAM 2006 cl. 34.5(c); CIDB 2000 cl. 47.3; Contract Act 1950 s. 29 Exception 1.

¹¹ [2006] 1 MLJ 446, CA.

apply a summary judgement to High Court under Order 14¹² on the ground that the employer has no defence. In addition, a contractor might also exercise the remedy which is provided under Section 218 of Companies Act 1965¹³ if an employer is not able to make payment.

Specifically s. 218(2)(a) of the Act, this provision describes that if an employer does not pay the sum which is certified within three weeks after it receives the contractor's claim, the unpaid contractor may petition for the employer's company to be wound up provided that the sum which is certified exceeds RM 500.00¹⁴. Accordingly, s. 218(1)(e) of the Act describes which the employer's company can be also ordered for winding up if the company could not settle its indebtedness by considering its future expected liabilities. The non-payment by employer makes the unpaid contractor a creditor and the defaulted employer a debtor¹⁵. As illustration, in *Sum-Projects (Brothers) Sdn Bhd v Bina Jati Sdn Bhd*¹⁶, the contractor determined its obligation because of non-payment which amount RM 6,992,831.95. Then, the contractor took court action based on s. 218 of the Act because of the same reason.

However, any contractors should only consider s. 218 of the Act as the last resort from all alternatives available¹⁷, because it is a procedure that dissolves a company and causes its operation to end¹⁸.

¹² Rules of High Court 1980 Order 14.

¹³ Companies Act 1965 s. 217.

¹⁴ Companies Act 1965 s. 218(2)(a).

¹⁵ Jamaludin Yaakob (2010a). "Winding-Up. Contractor's Remedies for Non-Payment." *A Workshop on Current Issues on Construction Contract Management Practices*. 3 April. UTMIC Kuala Lumpur, p. 1.

¹⁶ [2000] MLJU 235.

¹⁷ *Weng Wah Construction Co. Sdn Bhd v Yik Foong Development Sdn Bhd* [1994] 2 MLJ 266.

¹⁸ Jamaludin Yaakob (2010b). "Winding-Up. Contractor's Remedies for Non-Payment." *A Workshop on Current Issues on Construction Contract Management Practices*. 3 April. UTMIC Kuala Lumpur, pp. 11-12.

An examination of law cases which are related to contractors' petitions according to s. 218 of the Act as to wind up employers' company for non-payment of interim certificate showed that the courts were very strict in granting the petitions. Out of eleven law cases on the issue, only three or 27% were successful in the petitions, i.e.

- (1) Weng Wah Construction Co. Sdn Bhd v Yik Foong Development Sdn Bhd¹⁹
- (2) Mascon Sdn Bhd v Kasawa (M) Sdn Bhd²⁰
- (3) BMC Construction Sdn Bhd v Dataran Rentas Sdn Bhd²¹

Most of the contractors, i.e. eight of eleven cases, or 73% of them were not successful or lost in the petitions against their employers, i.e. in

- (1) Ng Ah Kway v Tai Kit Enterprise Sdn Bhd²²
- (2) Jurupakat Sdn Bhd v Kumpulan Good Earth (1973) Sdn Bhd²³
- (3) Pilecon Engineering Bhd v Remaja Jaya Sdn Bhd²⁴
- (4) Kemayan Construction Sdn Bhd v Prestara Sdn Bhd²⁵
- (5) Sri Binaraya Sdn Bhd v Golden Approach Sdn Bhd (Poly Glass Fibre (M) Bhd as Applicant)²⁶

¹⁹ [1994] 2 MLJ 266.

²⁰ [2000] 6 MLJ 843.

²¹ [2001] 1 MLJ 356.

²² [1986] 1 MLJ 58.

²³ [1988] 3 MLJ 49.

²⁴ [1997] 1 MLJ 808.

²⁵ [1997] 5 MLJ 608.

- (6) Molop Corp. Sdn Bhd v Uniperkasa (M) Sdn Bhd²⁷
- (7) Syarikat Mohd Noor Yusof Sdn Bhd v Polibina Engineering Enterprise Sdn Bhd (in liquidation)²⁸
- (8) Westform Far East Sdn Bhd v Connaught Heights Sdn Bhd²⁹

1.2 Statement of Problem

Most of contractors failed in their winding up petitions against their employers. Below are two main reasons given by the courts when rejecting the petitions.

- (1) Public interest prevailed over contractor interest³⁰.
- (2) Contractor did not use other remedies, such as writ³¹ before applying winding up petition as the last resort³².

In case law of *Sri Binaraya Sdn Bhd v Golden Approach Sdn Bhd*³³, a Shah Alam High Court case, the respondent employer, a housing developer appointed the petitioner contractor, to develop a *sell and build* housing development project in

²⁶ [2002] 6 MLJ 632.

²⁷ [2003] 6 MLJ 311.

²⁸ [2006] 1 MLJ 446, CA.

²⁹ [2010] 3 MLJ 459, CA.

³⁰ *Sri Binaraya Sdn Bhd v Golden Approach Sdn Bhd (Poly Glass Fibre (M) Bhd as Applicant)* [2002] 6 MLJ 632; *Pilecon Engineering Bhd v Remaja Jaya Sdn Bhd* [1997] 1 MLJ 808.

³¹ *Syarikat Mohd Noor Yusof Sdn Bhd v Polibina Engineering Enterprise Sdn Bhd (in liquidation)* [2006] 1 MLJ 446, CA.

³² *Weng Wah Construction Co. Sdn Bhd v Yik Foong Development Sdn Bhd* [1994] 2 MLJ 266.

³³ [2000] 3 MLJ 465.

Perak. The employer had been indebted to the contractor for RM 2,108,820.22 under the project. Therefore, the contractor filed for winding up petition against the employer. The learned judge, Chin Fook Yen J., as he then was, then ordered for winding up. Dissatisfied with the court decision, the employer immediately applied to stay the winding up order under s. 243 of the Act, that reads:-

At any time after an order for winding up has been made, the court may, on the application of the liquidator or of any creditor or contributory and on proof to the satisfaction of the court that all proceedings in relation to the winding up should be stayed, make an order staying the proceedings either altogether or for a limited time on such terms and conditions as the court thinks fit.

Accordingly, in further development of the case³⁴, after considering the application for stay, the same court but the different learned judge, i.e. Zulkefli J., as he then was, decided to grant a stay, by giving reasons that the employer involved in large scale of *sell and build* housing development, therefore, if the stay's application was not approved, it would affect the public interest which the house purchasers would be in trouble.

The above court followed the decision of the learned judge, Mohamed Dzaidin FJ, as he then was in Kuala Lumpur Federal Court for the case law of *Vijayalakshmi Devi d/o Nadchatiram v Dr Mahadevan s/o Nadchatiram & Ors*³⁵, where the appellant and respondents were shareholders in a company.

In year 1989 before the above case, the High Court Seremban had wound up the company by petition of Inland Revenue Department, in satisfying for non-payment of the company's income tax. Concurrently, the appellant also sued one of

³⁴ *Sri Binaraya Sdn Bhd v Golden Approach Sdn Bhd (Poly Glass Fibre (M) Bhd as Applicant)* [2002] 6 MLJ 632.

³⁵ [1995] 2 MLJ 709.

the respondents for misconduct and breach of trust. Then, in year 1994, the respondents applied to stay the order of winding up in accordance to s. 243 of the Act, justifying that the company was solvent and the court granted the order of stay. However, the appellant was dissatisfied with the order of stay, claiming that the learned judge misdirected in applying correct principles as provided in s. 243 of the Act. Then, the appellant appealed in Kuala Lumpur Federal Court in the year of 1995. The learned judge, Mohamed Dzaidin FJ, as he then was, allowing the appeal, and then clarified which an order should not be stayed where misconduct was alleged which to be looked into. He further explained that according to s. 243 of the Act, the court can use its discretion to make an order of winding up to be stayed by considering the following basis:-

- (1) Attitude of creditors, contributories and liquidator.
- (2) Creditors' interests.
- (3) If it affects business principle.
- (4) Public interest.

In this case, the Federal Court stayed the winding up order by considering the respondent's misconduct which was against business principle. In *Sri Binaraya* case, the High Court followed and adopted the criteria of public interest as was held in *Vijayalakshmi* case.

Shortly, obtaining judgment for the winding up according to s. 218 of the Act cannot be said as always final. Any respondents in such order may fall back to s. 243 of the Act that permits them to submit to High Court to make an order of winding up to be stayed by court's discretion.

As provided in s. 218(1)(e) of the Act, any companies can be ordered for winding up by High Court if they could not settle their indebtedness; and based on s. 218(2)(a) of the Act, a company can be also given an order of winding up if it owes an amount in excess of RM 500.00 then it does not pay the debts over three weeks. By observing the case of *Sri Binaraya*, it is clear that the provisions under s. 218 of the Act were struck easily. It seemed that compliance with requirements those are set out in s. 218 of the Act is not sufficient for High Court in completely making a company to be wound up in final. On what ground the court took consideration on public interest? Is that the petitioner must not merely file for petition of winding up on basis of s. 218 of the Act? Are there still any other criteria to be adhered by petitioner to fully and successfully wind up respondent?

Moreover, in case law of *Syarikat Mohd Noor Yusof Sdn Bhd v Polibina Engineering Enterprise Sdn Bhd (in liquidation)*³⁶, the appellant main contractor employed the respondent subcontractor for a private construction project. Before this case, the subcontractor alleged that the main contractor was indebted to the subcontractor for RM 896,378.18 as a figure which was due under the project. Therefore, the subcontractor filed for winding up petition in Kuala Terengganu High Court. In main contractor's defence, it alleged that the works under the project were done by other subcontractors and was even paid. However, the court allowed the petition on the basis of s. 218(2)(a) of the Act. Unhappy with what had been decided by the court, the main contractor appealed to Putrajaya Court of Appeal. The learned judge, Mohd Ghazali JCA, as he then was, allowed the appeal and further held that, the subcontractor had not used all remedies available under the contract. The dispute should be brought to arbitration. Concurrently, the learned judge put extra requirement to the subcontractor that it may file for writ against the main contractor if everything else fails before issuing a winding up petition. Why the subcontractor cannot take the court action under s. 218 of the Act but first should file for writ? Why the court seemed unreasonably strict against the petition of winding up which consequently made the petitioner failed in its petition? According to the s. 218 of

³⁶ [2006] 1 MLJ 446, CA.

Companies Act 1965, there is nothing provided as was clarified by the learned judge. Was this case *per incuriam*?

The same scenario can be observed in *Weng Wah Construction Co. Sdn Bhd v Yik Foong Development Sdn Bhd*³⁷, which the petitioner contractor was employed by the respondent housing developer for a private construction project. The employer was indebted to the contractor for RM 2,284,627.94 under the project. The contractor therefore petitioned in Kuala Lumpur High Court for the purpose to get the employer to be wound up, so the contractor could get back its debt and successfully to prove the employer's liabilities exceeded its assets. The learned judge, Abdul Malek J., as he then was, found that the employer was insolvent and granted the petition. The learned judge further enunciated that even though s. 218 of the Act is considered to be used as the last resort, which it is not applied where there is another less extreme solution. On what basis the court held that winding up to be taken as the last resort? Why a petitioner must take other less extreme remedies before petitioning for winding up? Again, s. 218 of Companies Act 1965 provides nothing as being clarified by the court. Was the decision *per incuriam*?

It seems that most courts have given its judgment not totally according to the statutory provisions under s. 218(1)(e) and s. 218(2)(a) of the Act. The judges' powers which are provided in s. 218 of the Act are discretion, they have used their views of justice in interpreting the provision. In exercising their discretions, they were very strict in granting the order to wind up companies. They imposed various conditions, i.e. public interest; to apply other remedies before petitioning for winding up; and to apply winding up as the last resort.

It can be said that, in some cases, the courts have decided in petition of winding up out of range of s. 218 of the Act, but applied its discretionary powers and might make interpretation on the provision, which might be out of contractors'

³⁷ [1994] 2 MLJ 266.

knowledge and consequently caused many of them failed in their winding up petitions against their employers.

Therefore, this research was done to identify the strategies which are required to be prepared by contractors to wind up their employers through analysing the reasons which were given by the learned judges in accepting and rejecting the contractors' petition of winding up against their employers.

1.3 Objective of Research

To identify the strategies which are required to be prepared by contractors to wind up their employers.

1.4 Previous Research

Previous research was done in determining the contractors' awareness and willingness to adopt the remedy as is provided in Section 217 of Companies Act 1965. In that research, the finding was those contractors were not sure about this remedy. It might be the reason why most of them failed in their winding up petitions against their employers. Therefore, it is hoped that this research will enlighten contractors on strategies of petitioning for winding up order before applying it.

1.5 Significance of Research

The magnitude of a case has to be given a mindful thought from its facts by the learned judges in giving their reasons in reaching their decision. Full of care has to be concentrated in judging the material facts by applying the relevant statutory provisions to avoid *per incuriam*. It is hoped that this research will be able to identify the strategies which are required to be prepared by contractors to wind up their employers through analysing the reasons which were given by the learned judges in accepting and rejecting the contractors' petition of winding up against their employers. Every judgment has to be considered as essential to case decision because it forms *ratio decidendi* and creates binding precedent. Even if a judgment which is given to be considered as not important to case decision and not becoming *ratio decidendi* in any cases and not creating binding precedent, however, it can be *obiter dictum* and may be applied afterwards. Therefore, it is essential for contractors to be knowledgeable in this subject matter and take deliberate preparation before issuing a winding up petition.

1.6 Scope of Research

This research is limited to the following:

- (1) To construction cases which were reported by Malayan Law Journal between year 1965-2012.
- (2) Cases those are in Malaysia only.
- (3) Cases which are specifically related to s. 218 of Companies Act 1965.

1.7 Research Methodology

It is essential to design a research methodology for the purpose of developing and accomplishing objective of study. Basically, there are five stages of research, i.e. raising up and demonstrating statement of problem, determining research objective, studying and collating secondary data, analysing data and finally, drawing up research conclusion. This research was based on qualitative research strategy in obtaining better comprehension³⁸ on the strategies which are required to be prepared by contractors to wind up their employers through analysing the reasons which were given by the learned judges in accepting and rejecting the contractors' petition of winding up against their employers those may have not been known by the contractors. Qualitative research uses words or text as research equipment, instead of quantitative research which uses numbers³⁹.

Specifically, this research applied legal research as basic track. According to McKie, S.⁴⁰, the hope at the beginning is to get relevant law cases to answer the research objective, the more the relevant cases, and the higher will be the chance to get a solid answer. After literature review was done, key words were identified and used to obtain the relevant cases⁴¹. Generally, brainstorm can be applied to identify related key terms⁴². In another way, the cartwheel⁴³ method can be used to generate more key words. The subject matter or key word of winding up produced more key words which were based on eight categories using the aforesaid cartwheel method, i.e.:-

³⁸ Strauss, A. and Corbin, J. (1998). *Basics of Qualitative Research, Grounded Theory Procedures and Techniques*. Newbury Park: Sage Publications.

³⁹ Flick, U. (2007). *Designing Qualitative Research*. London: SAGE Publications.

⁴⁰ McKie, S. (1993a). *Legal Research: How to find and understand the law*. London: Cavendish Publishing Ltd. pp. 6-7.

⁴¹ Bast, C.M. and Hawkins, M. (2006a). *Foundations of Legal Research & Writing*. (3rd ed.) USA: Thomson Delmar Learning.

⁴² Ibid.

⁴³ Ibid. p. 246.

- (1) Broader words → Insolvency, insolvent
- (2) Narrower word → Liquidation
- (3) Antonym → Establishing
- (4) Synonym → Bankruptcy
- (5) Closely related words → Section 217 and 218 of Companies Act 1965
- (6) Long shots → Debts, three weeks, exceed RM 500.00
- (7) Agencies → Developer, contractor, subcontractor, employer, company
- (8) Related procedural terms → Petition, stay of proceeding, liquidator, official receiver, asset, liability

The above key words were used to search for relevant text books in library and law cases in MLJ, which is a tool to search for case law. The law cases were looked into to have better understanding about courts' interpretation on the statutes which were involved. There were total of eleven law cases found by using those key words. When one case or statutory was found discussing about the research related matter, other cases or statutory which were crossed reference or had relation were usually found promptly discussing the same matters, so, the additional reference was pulled and checked to get more information about the subject matter.

Figure 1.2 shows the basic legal research method as was suggested by McKie⁴⁴ which was used in this research to get an open-ended research finding. When action

⁴⁴ McKie, S. (1993b). *Legal Research: How to find and understand the law.* London: Cavendish Publishing Ltd.

started in a court because of a broken contract, then civil law would involve⁴⁵. As for this research, the broken contract is derived from non-payment by employers to contractors. After classifications of laws were identified, statutory law, rules and relevant law cases were reviewed.

1.7.1 Statement of Problem

Before conducting a research, a would-be researcher should identify any current issues or problems. Subsequently, a research area or topic was identified and brought forward to be discussed with lecturer. Through consultation with lecturer, more ideas were developed. In this stage, further reading was done on textual explanation of related area of law. Generally, a legal textbook that covers the related area of law is a good tool to start⁴⁶. Simultaneously, statement of problem was drawn up from reading.

1.7.2 Objective of Research

As statement of problem was identified, the objective of research was subsequently developed. The objective for this research focused to identify the strategies which are required to be prepared by contractors to wind up their employers.

⁴⁵ McKie, S. (1993c). *Legal Research: How to find and understand the law.* London: Cavendish Publishing Ltd. p. 34.

⁴⁶ Bast, C.M. and Hawkins, M. (2006d). *Foundations of Legal Research & Writing.* (3rd ed.) USA: Thomson Delmar Learning. p. 249.

1.7.3 Literature Review

In this stage, reading was done on related facts and previous studies to gain information and knowledge about the research. Data which were appropriate were collected, extracted and collated. These data were the basic before doing case law analysis.

As for this research, sources of reading were searched from books, previous studies and legislation of Companies Act 1965. Whilst reading on these sources, any potentially relevant citations were noted and further looked up for the sources according to each citation. Usually, the citations refer to other statutes or relevant law cases those are useful in further analysis.

1.7.4 Case Law Content Analysis

Usage of documents generally involves the approach of particular analysis which is known as content analysis⁴⁷. In this research, case law documents which were obtained from MLJ database were studied to understand in detail⁴⁸ on the reasons which had been given by the learned judges in accepting and rejecting the contractors' petition of winding up against their employers in order to identify the strategies which are required to be prepared by contractors to wind up their employers. Content analysis entails systematic examination of communication forms on document patterns objectively⁴⁹, therefore, in this research, it is the strategies which are required to be prepared by contractors to wind up their employers.

⁴⁷ Othman Lebar. (2007a). "*Penyelidikan Kualitatif, Pengenalan kepada Teori dan Metod.*" Tanjung Malim: Penerbit UPSI.

⁴⁸ Ibid.

⁴⁹ Marshall, C. and Rossman, G.B. (1995). "*Designing Qualitative Research.*" (2nd ed.) California: Sage Publications.

This analysis illuminated the decisions of the learned judges, on what disposition, why they were made and how they were given⁵⁰. As for each case law, the analysis indicated why and how a court's decision had been demonstrated⁵¹, every court's judgment by the learned judges was presented neutrally, and therefore, reader will be able to conclude independently, whether the interpretation in analysis is acceptable⁵². Specifically, every case was briefed in a summary, this involved synthesizing by focusing on how the cases dealt with specific situation, and then drew out the rule of law from those cases⁵³, where the format of case brief as was suggested by Bast, C.M. and Hawkins, M.⁵⁴ is shown in Figure 1.3. During the analysis, the priority was given on the message of documents⁵⁵, i.e. the reasons which were given by the learned judges in accepting and rejecting the contractors' petition of winding up against their employers, those would transform into the strategies which are required to be prepared by contractors to wind up their employers.

1.7.5 Conclusion

Whenever cases analysis was done, conclusion was drawn to show research result. In this stage, research finding was concluded based on research objective. Furthermore, relevant recommendations were made where appropriate and based on occurrence of problems during research in order to solve the problems in future research.

⁵⁰ Schramm, W. (1971). "Notes on case studies of instructional media projects." Working paper for the Academy for Educational Development, Washington, DC.

⁵¹ Yin, R.K. (1984). "Case Study Research, Design and Methods." California: Sage Publications.

⁵² Ibid.

⁵³ McKie, S. (1993d). "Legal Research: How to find and understand the law." London: Cavendish Publishing Ltd.

⁵⁴ Bast, C.M. and Hawkins, M. (2006e). "Foundations of Legal Research & Writing." (3rd ed.) USA: Thomson Delmar Learning.

⁵⁵ Othman Lebar. (2007c). "Penyelidikan Kualitatif, Pengenalan kepada Teori dan Metod." Tanjung Malim: Penerbit UPSI.

1.7.6 Research Flow Chart

Figure 1.1 below shows research flow chart.

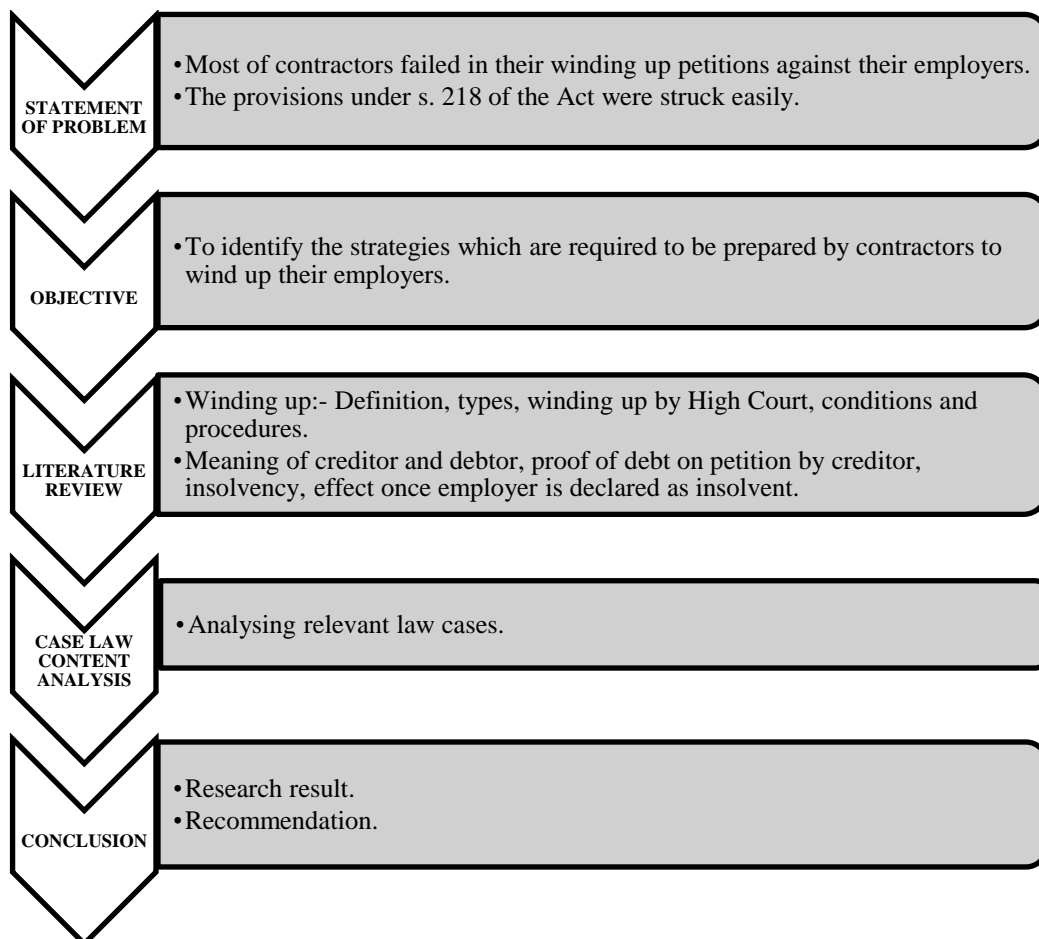


Figure 1.1 Research flow chart.

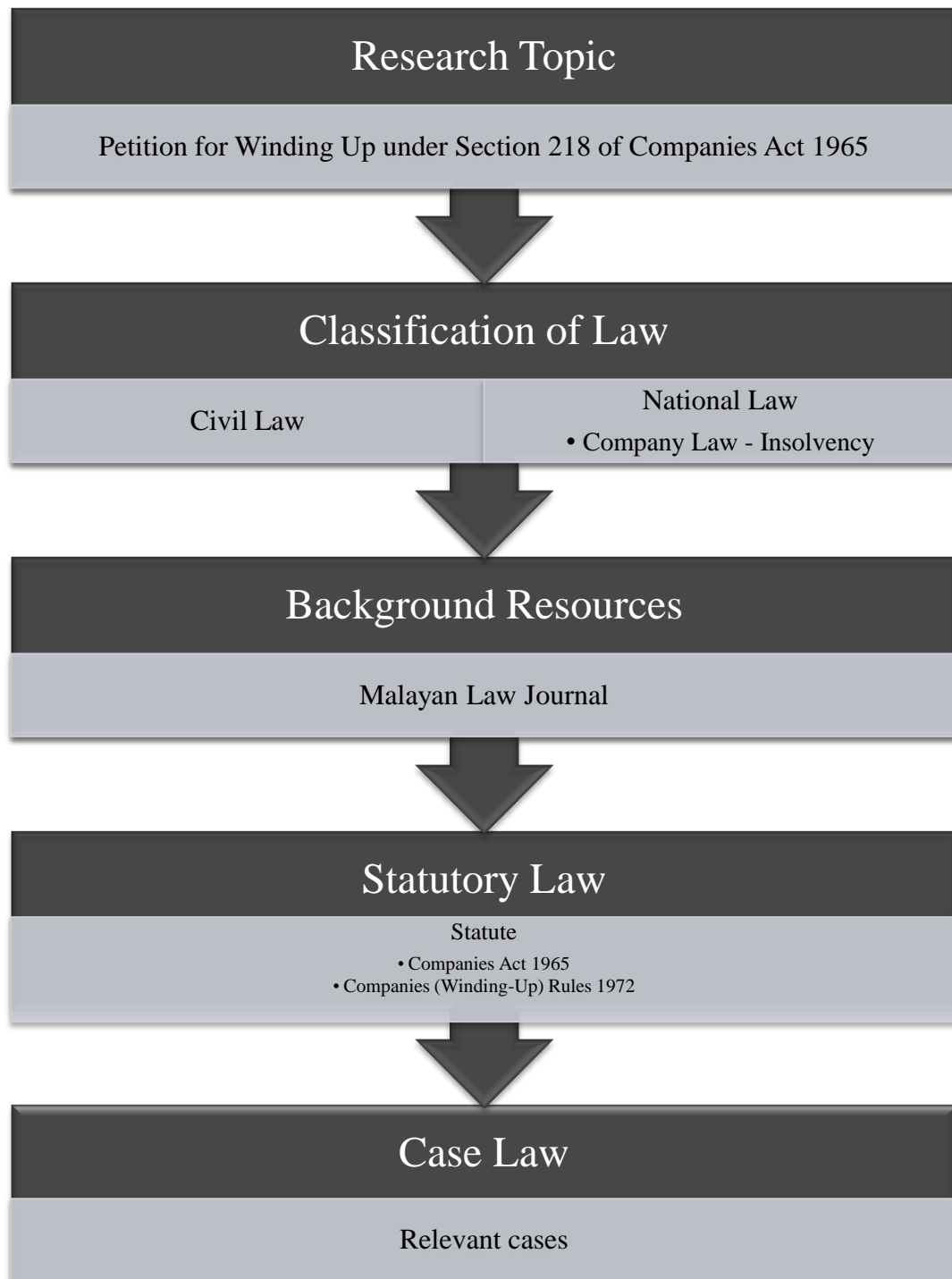


Figure 1.2 Legal research process⁵⁶.

⁵⁶ McKie, S. (1993e). *Legal Research: How to find and understand the law.* London: Cavendish Publishing Ltd.

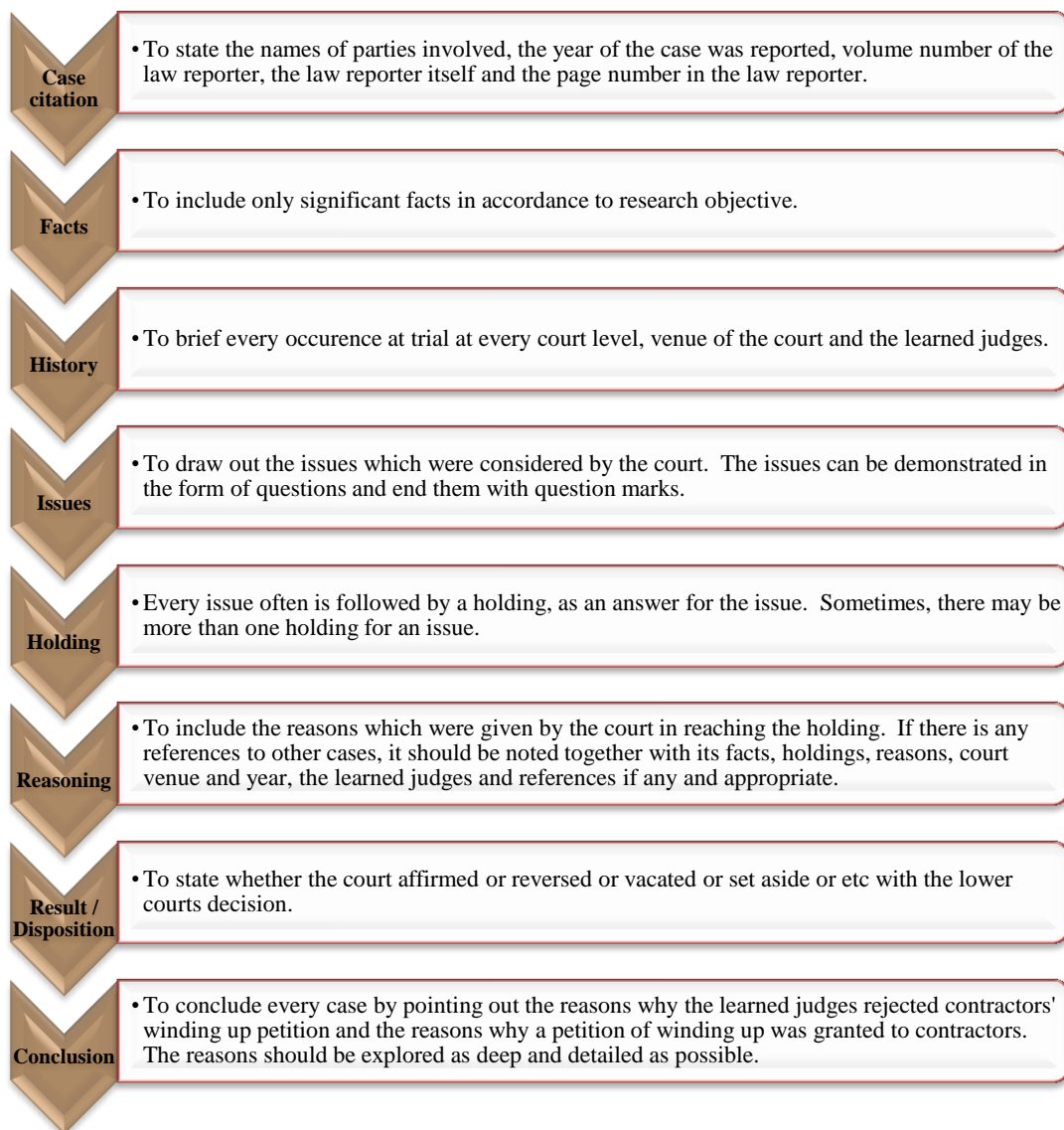


Figure 1.3 Case brief⁵⁷ format.

⁵⁷ Bast, C.M. and Hawkins, M. (2006f). *Foundations of Legal Research & Writing.* (3rd ed.) USA: Thomson Delmar Learning.

1.8 Organisation of Thesis Chapter

The outline for this research includes:-

1.8.1 Chapter 1 - Introduction

This chapter developed the background of study, statement of problem, objective, scope, significance of study and research methodology.

1.8.2 Chapter 2 - Winding Up

This chapter focused and examined on remedy for winding up which is provided under s. 217 and also s. 218 of the Act. The conditions and procedures of winding up were also touched in this chapter.

1.8.3 Chapter 3 - Strategies to Wind up Employer by Contractor

All relevant law cases as which were guided by the scope of this research were analysed based on research objective in order to identify the strategies to be prepared by contractor to wind up its employer.

1.8.4 Chapter 4 - Conclusion and Recommendation

The conclusion of this research provided summary of major finding, which concluded corresponding to research objective. Furthermore, relevant recommendations were then addressed.

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