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Five Key Changes to Bankruptcy Law in Malaysia pursuant to Bankruptcy (Amendment) Bill 2016

The Bill for the Bankruptcy Act 1967 was tabled for first reading on 21 November 2016. It proposes to rename the Act to Insolvency Act 1967 (*clause 5 of the Bill*).

Current Bankruptcy Act 1967

New Bankruptcy (Amendment) Bill

1. Rescue mechanism

No rescue mechanism is available before the commencement of bankruptcy proceedings to individuals heavily burdened by debts.

The Bill introduces a rescue mechanism to the debtor prior to the commencement of bankruptcy proceedings, known as voluntary arrangement.

Under the voluntary arrangement, the debtor can apply in court for an interim order restraining any proceedings to be commenced and proceeded against the debtor (unless leave of court has been obtained), for a period of 90 days. This serves as a moratorium for the debtor.

Then, the nominee appointed by the debtor shall summon for a meeting to seek the creditors' approval of the voluntary arrangement. The approval, once obtained, will bind all the unsecured creditors.

(clauses 7 and 8 of the Bill)

2. Amount of debt required to commence proceedings

RM30,000
(s 5(1)(a) of the Act)

RM50,000
(clause 12(a) of the Bill)

3. Bankruptcy Order

The adjudication order is normally granted immediately after the granting of the receiving order, unless the debtor can satisfy the court that he is in the position to offer a scheme of arrangement to the creditors.
(s 24(1) of the Act)

A single bankruptcy order will replace the existing receiving order and adjudication order. The debtor will be adjudicated bankrupt upon the granting of the bankruptcy order. The scheme of arrangement will only be applicable after the debtor has been adjudicated bankrupt.
(clauses 10, 11, 24 and 27 of the Bill)

4. Guarantor

Bankruptcy proceedings can be commenced against social guarantor if the creditor is unable to recover the debt from the debtor. The leave of the court is not required.^[1]
(s 5(3) of the Act)

No bankruptcy proceedings can be commenced against social guarantor.

For other guarantors, leave of the court is required before bankruptcy proceedings can be commenced against them. To obtain the leave, the creditor will need to satisfy the court that all modes of execution and enforcement to recover debts from the debtor himself had been exhausted.

(clauses 12(b) and (c) of the Bill)

5. Discharge

The bankrupt can apply to court for a discharge any time after being adjudicated bankrupt. In hearing the application, the court will consider the report of the Director General of Insolvency (“DGI”) on the bankrupt’s conduct and affairs.

Automatic discharge is available after three years from the date the statement of affairs was submitted, subject to the bankrupt achieving the target contribution determined by the DGI and rendered an account of moneys and property to the DGI.

The DGI also has the discretion to issue the certificate of discharge five years from the date of the adjudication order. The creditors can object to the issuance of the certificate by furnishing a notice stating the grounds of objection.
(ss 33, 33A and 33B of the Act)

Creditors are entitled to object the automatic discharge of the bankrupt under several specific grounds.

(clause 37 of the Bill)

There is no automatic discharge under the Act.

Conclusion

The Bill introduces several similar features as the bankruptcy law in the UK and Australia. Among others, the introduction of pre-bankruptcy rescue mechanism and automatic discharge are models that have been adopted in the UK and Australia. The modern law of bankruptcy has long recognised the need to assist the debtor in making a fresh start in life where the debts have been incurred through no fault of his own.^[2] After all, one must bear in mind that the main purpose of bankruptcy law is never to punish the bankrupt, but to assist in fair distribution of the bankrupt’s assets among the creditors.^[3]

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^[1]

Hong Leong Bank Bhd v Khairulnizam Jamaludin [2016] 7 CLJ 335 (FC)

^[2]

Re John Alexander McMaster Ex Parte Susan May McMaster (1991) 105 ALR 156 (FCA) at 159

^[3]

Re Naspu bin Daud; ex p Affin Bank Bhd [2007] 5 MLJ 767 (HC) at [27]

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