

The New Insolvency Act 1967

The Bankruptcy (Amendment) Bill 2016 has finally come into force in Malaysia on **6 October 2017**, renaming the existing Bankruptcy Act 1967 to the **Insolvency Act 1967**. Key amendments include the following:-

MINIMUM THRESHOLD FOR BANKRUPTCY PROCEEDINGS INCREASED

Threshold for commencement of bankruptcy proceedings has increased from RM 50,000 to RM 100,000.

ABSOLUTE PROTECTION FOR SOCIAL GUARANTORS

A creditor will no longer be able to commence bankruptcy action against a “social guarantor”, i.e. a person who provides not-for-profit guarantees for:

- a loan, scholarship or grant for educational or research purposes;
- a hire-purchase transaction of a vehicle for personal or non-business use; and
- a housing loan transaction solely for personal dwelling.

OTHER GUARANTORS

A creditor must obtain leave of the court before commencing any bankruptcy action against other guarantors (not being social guarantors). To obtain leave, the creditor must satisfy the court that he has exhausted all modes of execution and enforcement to recover the debts owed to him by the debtor.

AUTOMATIC DISCHARGE OF BANKRUPTCY

The Act introduced an automatic discharge of a bankrupt upon the expiration of three (3) years from the date of submission of the statement of affairs by the bankrupt, if he has:

- achieves the target contribution of his provable debt; and
- complied with the requirement to render an account of moneys and property to the Director General of Insolvency (DGI).

BANKRUPTS TO BE DISCHARGE WITHOUT OBJECTION

Creditors will no longer be allowed to object to discharge of certain bankrupts, such as:

- a bankrupt with a disability under the Persons with Disabilities Act 2008;
- a social guarantor;
- a deceased bankrupt; and
- a bankrupt suffering from serious illness.

VOLUNTARY ARRANGEMENT

A new pre-bankruptcy rescue mechanism; “voluntary arrangement” was introduced. This provides the debtor the opportunity to negotiate a debt settlement proposal with his creditors before he is adjudged a bankrupt.

Main features of this rescue mechanism are as below:

- Appointing a nominee (“nominee”), who must be a registered chartered accountant, an advocate and solicitor or such other person as prescribed by the DGI to supervise the implementation of the voluntary arrangement;
- The debtor will apply to the court for an interim order of voluntary arrangement (“interim order”), which will be for a period of 90 days that cannot be extended;
- Within the period of the interim order made by the court, no bankruptcy petition and other legal proceedings can be commenced against the debtor except with permission from the court;
- During the period of the interim order, the nominee will hold a meeting with all of the debtor’s creditors to secure their approval for the voluntary arrangement. The nominee will need to secure more than 50% in number and at least 75% in value of the creditors present personally or by proxy and voting on the resolution. The voluntary arrangement will then be binding on all creditors once approval is obtained.
- However, if the proposal is not approved by the creditors, the court may set aside the interim order.