

Client Alert

October 2017

For further information,
please contact:

Kherk Ying Chew
+603 2298 7933
KherkYing.CheW@WongPartners.com

Dato' Mohd Arief Emran bin Arifin
+603 2298 7925
AriefEmran.Arifin@WongPartners.com

Eddie Chuah
+603 2298 7939
Eddie.Chuah@WongPartners.com

Insolvency Act 1967 Comes into Force in Malaysia

After receiving the Royal Assent on 10 May 2017, the Bankruptcy (Amendment) Bill 2016 (Bill) has finally come into force in Malaysia on 6 October 2017, marking the dawn of the new Malaysian Bankruptcy regime.

As highlighted in our previous November 2016 Client Alert, the Bill will rename the existing Bankruptcy Act 1967 to the Insolvency Act 1967 and will also have important implications, specifically to financial institutions and corporates whose loans / debts are secured by personal guarantees.

Also worth noting is that coming into force of the new Insolvency Act 1967 will not affect any pending Court proceedings commenced under the previous Bankruptcy Act 1967.

Premised upon the background set out above, this alert aims at providing a refresher of some of the key amendments which may affect you.

Increase in Threshold for Bankruptcy Proceedings

The threshold for commencement of bankruptcy proceedings is now RM 50,000 instead of RM 30,000.

Exemption of Social Guarantors from Bankruptcy Proceedings

Creditors will no longer be able to commence any bankruptcy action against social guarantors, i.e. persons who provide, not for profit guarantees for:

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

More Protection for Other Guarantors

Creditors will not be able to commence bankruptcy proceedings against guarantors (other than social guarantors) without leave (permission) of the Court. To obtain leave, the creditor must show that he has exhausted all modes of execution and enforcement to recover the debts owed to him by the debtor.

More Stringent Requirements for Service of Bankruptcy Papers

The Bill will require personal service of the bankruptcy notice. Substituted service will only be allowed where the creditor is able to factually show that the debtor:

- has the intention to defeat, delay or evade personal service; and
- leaves or stays away from Malaysia, or absents himself from his house or place of business.



A New Rescue Mechanism: The Voluntary Arrangement

There will now be a pre-bankruptcy rescue mechanism called the "voluntary arrangement" whereby a debtor can negotiate a debt settlement proposal with his creditors to avoid the effects of bankruptcy, for example, through a five-year repayment plan. This can be done anytime before a debtor is adjudged a bankrupt.

The main aspects of the new mechanism are as follows:

- **Appointment of a nominee** - The debtor will appoint a nominee to oversee and supervise the implementation of the voluntary arrangement. The nominee must be either a chartered accountant, an advocate and solicitor, or such other person as prescribed by the Director General of Insolvency.
- **Application for an interim order** - The debtor will then apply to the court for an interim order for voluntary arrangement, which will be for a period of 90 days that cannot be extended.
- **Protection from legal actions** - Within the period of the interim order, no bankruptcy petition and legal proceedings can be commenced against the debtor except with permission from the court.
- **Meeting with creditors** - 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.
- **Approval by special resolution** - The nominee will need to secure more than 50 percent in number and at least 75 percent in value of the creditors present personally or by proxy and voting on the resolution.
- **Secured creditors' rights** - The rights of the secured creditors cannot be affected, however, without their consent.
- **Effect** - The voluntary arrangement will then be binding on all creditors once approval is obtained.

Automatic Discharge of Bankruptcy

Upon the expiration of three years from the date of submission of the bankrupt's statement of affairs, a bankruptcy will be automatically discharged provided that the debtor:

- achieves the target contribution of his provable debt; and
- renders an account of moneys and property to the Director General of Insolvency.

Certain Bankrupts to be Allowed Discharge without Objection

Creditors will no longer be allowed to object to the discharge of certain bankrupts, including:

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

www.wongpartners.com

Wong & Partners
Level 21
The Gardens South Tower
Mid Valley City
Lingkaran Syed Putra
59200 Kuala Lumpur