

MALAYSIA'S PROPOSED NEW BANKRUPTCY RULES ALLOW EASIER DISCHARGE



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Q1

I have 2 housing loans from Bank A, credit card and overdraft facilities from Bank B, and I am a guarantor for my company loan at Bank C. Total outstanding is RM400K from Bank A for both housing loans, RM45K and RM40K from Bank B, and RM500K from Bank C. Since a year ago, I have been having cash flow issues due to the slow economy in Malaysia. The banks are now chasing me for payment. My only income is from my business which is, plainly speaking, in the red. My other income is my rental income which is not sufficient to pay off the housing loan.

I understand the new rules allow only bankruptcy proceedings for outstanding principal of above RM50K. As such, can Bank B sue me for bankruptcy since each facility is less than RM50K? Or, can Bank B combine all the outstanding facilities (making the total above RM50K) and sue me bankrupt?

A1

Currently, in order to present a bankruptcy petition, the debt or aggregate amount of debts owing by the debtor to the petitioning creditor(s) must exceed RM30,000. Under the proposed amendments to the Bankruptcy Act, this threshold will be increased to RM50,000. It is therefore possible for a single creditor with multiple debts owing by the same person, to combine all outstanding debts in order to meet the threshold. It is also possible for multiple creditors to come together in order to meet the minimum threshold.

Q2

As guarantor to the loan to my business from Bank C, will the bank desist from suing me bankrupt? But if they exhaust all other avenues, they can still sue me bankrupt, right?

A2

First of all, it is important to distinguish between two types of guarantors. Social guarantors are people who provide, not for the purpose of making profit, guarantees for scholarship/education loans, or loans for hire-purchase of vehicles for personal or non-business use, or housing loans solely for personal dwelling. Under the proposed amendments to the Bankruptcy Act 1967, social guarantors will be immune from bankruptcy proceedings. Other guarantors can still be made bankrupt provided the petitioning creditor first obtains leave (or permission) from the Court.

Currently, social guarantors do not have immunity and can still be made bankrupt provided the petitioning creditor first proves to the satisfaction of the court that he has exhausted all avenues to recover the debts owed.

In the scenario above, a guarantor for business loans is not a "social guarantor" and as such has no immunity from bankruptcy whether under the existing law or the proposed amendments.

**Q3**

Can I preempt the banks and declare myself bankrupt? What would be the implications? Or should I try to sell off my 2 properties and my business and propose a scheme of arrangement with a 2-year moratorium on repayments?

A3

Individuals may declare themselves bankrupt by submitting a debtor's petition. However, the effect of bankruptcy is the same whether it is initiated by the creditors or the debtor himself.

The proposed amendments to the Bankruptcy Act will allow a debtor to have the option to propose a voluntary payment arrangement at any time before he is adjudged a bankrupt. When proposing a voluntary payment arrangement, the debtor can apply to the Court for an order whereby no bankruptcy petition or legal proceedings can be commenced against the debtor for a period of 90 days without permission from the Court. The voluntary arrangement will be presented to the creditors at a creditors' meeting and if approved by special resolution (i.e. by at least 50% in number and at least 75% in value of creditors present), the arrangement will bind all creditors.

Q4

When will the proposed new Bankruptcy rules be enforced? Will it have retrospective effect? What is the time period from service of bankruptcy notice to the bankruptcy order?

A4

The proposed amendments were tabled through the Bankruptcy Amendment Bill 2016 for first reading in Parliament on 21 November 2016. The Bill must first be passed by Parliament and its effective date will be the date as notified in the government gazette.

The Bill provides that the amendments shall not apply to a person who was made a bankrupt before the coming into operation of the Bill. All bankruptcy proceedings which are still pending before the coming into operation of the proposed amendments will continue as if the Bankruptcy Act had not been amended. However, the Bill provides that a person who is made a bankrupt before the coming into operation of the amendments will be entitled to obtain a discharge from the DGI without objection if



he is a social guarantor, a person with disability, deceased, or a person suffering from serious illness certified by a government medical officer (provided a minimum of 5 years has lapsed since the bankruptcy order).

There is no fixed time period from the service of bankruptcy notice until the bankruptcy order. The time taken will depend on each individual case and different variables such as whether the bankruptcy proceedings are being disputed and the court's schedule.

Q5

If I can't be a director of my company after being made a bankrupt, can I be re-designated as an employee and be allowed to travel overseas if the job requires it?

A5

A bankrupt can still be an employee. However, if he is to be employed by his spouse, sibling or family member, permission from the Director-General of Insolvency (DGI) is required. A bankrupt is also prohibited from leaving the country without permission of the DGI or the court. Permission to travel for work may be granted by the DGI at its discretion and/or subject to any conditions that the DGI deems necessary.

Q6

The proposed new rules provide for automatic discharge. What are the conditions that would allow this? What would constitute a medical condition that would let the bankrupt off the hook - life-threatening diseases such as cancer, physical disabilities, etc?

A6

The proposed amendments to the Bankruptcy Act provide for an automatic discharge after 3 years from the date of the submission of the statement of affairs (to be submitted after a bankruptcy order has been made). In order to qualify for an automatic discharge, the bankrupt must satisfy 2 conditions, namely: (a) the bankrupt has achieved the target contribution amount of his provable debt; and (b) the bankrupt has complied with the requirement to render an account of moneys and property to the DGI.

For bankrupts that don't meet the conditions above, they can still apply for discharge from the DGI after a minimum of 5 years from the bankruptcy order. The discharge will be at the discretion of the DGI. However, the proposed amendments state that in such a situation, no objection shall be made if the bankrupt is a social guarantor, a person with a disability, deceased or suffering from a serious illness certified by a government medical officer. There is no definition of what amounts to "a serious illness", but the assumption is that it would most likely include critical and life-threatening illnesses. ■