

UNDERSTANDING BANKRUPTCY IN MALAYSIA

WHAT IS BANKRUPTCY?

Bankruptcy is a mode of execution against an individual who owes a financial obligation debt to a successful party that has obtained an order or judgment from the Court of Malaysia

Bankruptcy proceedings and the procedures are governed by the Insolvency Act 1967 (Act 360) and the Insolvency Rules, 2017 which will hereinafter be referred to as (the 'Act') and (the 'Rules').

BANKRUPTCY NOTICE.

Whilst bankruptcy proceedings can arise from a multitude of scenarios as listed down in Section 3 (1) of the Act, the focus of this article will be on the situation most commonly faced which is Section 3 (1)(i) of the Act.

Section 3 (1)(i) of the Act reads as follows:

"if a creditor has obtained a final judgment or final order against him for any amount and execution thereon not having been stayed has served on him in Malaysia, or by leave of the court elsewhere, a bankruptcy notice under this Act requiring him to pay the judgment debt or sum ordered to be paid in accordance with the terms of the judgment or order with interest quantified up to the date of issue of the bankruptcy notice, or to secure or compound for it to the satisfaction of the creditor or the court; and he does not within seven days after service of the notice
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WHAT ARE THE REQUIREMENTS TO FILE A CREDITOR'S PETITION :

Below are the requirements to file a Creditor's Petition:-

- **The debt owing must be RM50,000.00.**
- **Under Temporary Measures for Reducing The Impact of Corona Virus Disease 2019 (Covid-19), Act 2020 under Section 20 of the Act prohibited a creditor or creditors from presenting a Bankruptcy Notice against a debtor under Section 20 or Section 5 of the Insolvency Act 1967, unless the debt owing by the debtor amounts to RM100,000.00 (Ringgit Malaysia One Hundred Thousand). The said modification of the provisions on insolvency of individuals come into operation on the date of publication of the Act and will remain in force until 31st August 2021.**
- **The debt owing must be a liquidated sum and owing immediately or at some future time.**
- **The petition must be presented within 6 months from the Act of Bankruptcy.**
- **The debtor is domiciled in Malaysia or in any State or within one year before the date of the presentation of the Petition**

Every Petition must be verified by an affidavit verifying the contents of the Petition to be affirmed by either the creditor or someone on the creditors' behalf who has knowledge of the facts

A BANKRUPTCY NOTICE MUST CONTAINS THE FOLLOWINGS:

- 1. A sealed copy of the judgment or order on which the bankruptcy notice is based.**
- 2. A sealed copy of the relevant writ or originating summons on which the claim is based.**
- 3. If the claim is premised on an agreement/contract. A copy of the agreement/contract needs to be enclosed.**

WHAT ARE THE CONSIDERATIONS THAT NEED TO BE TAKEN INTO ACCOUNT IN PREPARING BANKRUPTCY NOTICE

- 1. The bankruptcy notice must be based on a final order or judgment (execution should not been stayed).**
- 2. Under the Act, no bankruptcy proceedings can be commenced against a social guarantor.**
- 3. Ensure that all sums reflected in the bankruptcy notice are accurately and expressly quantified including the interest which must.**
- 4. Be quantified up to the date of issue of the bankruptcy notice.**

HOW TO SERVE THE BANKRUPTCY NOTICE

A Bankruptcy Notice is valid for 3 months from the date of issuance by court. The creditor then must ensure that the bankruptcy notice is personally served on the debtor. Upon service of the bankruptcy notice, the debtor then has 7 days to respond to the bankruptcy notice, failing which would have committed an Act of Bankruptcy under the rules

In the event that a creditor is unable to serve the bankruptcy notice personally on the debtor, they required to file a Notice of Application (NOA) to seek for an order for substituted service of the bankruptcy notice to the Debtor.

What is the consideration of the court in granting a substitute order

- it is practically impossible to serve the Bankruptcy Notice by personal service.
- substituted service is the effective mode to bring the bankruptcy proceedings to the debtor's knowledge.

Considering the above issues the court will grant a substituted service order to serve the Bankruptcy Notice. Upon serving the Bankruptcy Notice by substituted service the debtor would then have 7 days to respond to the Bankruptcy Notice and a failure to do so would result in an Act of Bankruptcy.

ie: Advertising the Bankruptcy Notice in Newspaper (s) and pasting at last known address of the Debtor

CREDITOR'S PETITION.

Upon the expiry of the 7-day period to respond to the bankruptcy notice and in the event that the Debtor failed to file an application, to oppose the Bankruptcy Notice the creditor may proceed to file the Creditor's Petition against the debtor.

THE CREDITOR'S PETITION HEARING

At the hearing, the Court may require proof of the debt owing to the creditor, the existence of the Act of Bankruptcy, and that the Creditor's Petition was properly served on the debtor (and if the Debtor fails to attend the hearing). Court will make the following orders:

- Grant a Bankruptcy Order pursuant to Section 4 of the Act;
- If the Debtor to appear in court and proof to the court that he/she can satisfy the debt, the court will dismiss the Creditor's Petition hearing.
- Stay the Petition pending any appeal of the judgment or order relied on upon the bankruptcy proceedings.

Flow Chart For Bankruptcy Proceeding In High Court.

