

UNIVERSITI TEKNOLOGI MARA

**A COMPARATIVE LEGAL STUDY
ON DISCHARGE OF BANKRUPTCY
IN MALAYSIA, UNITED KINGDOM,
AUSTRALIA, AND CANADA**

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ABSTRACT

The Malaysian economy is facing another challenging year in 2020 due to COVID-19 pandemic. COVID-19 has exposed financial institutions to an increase in non-performing loan or credit default risk due to a high number of business closures and increase in unemployment. The closure of businesses would lead to cash flow problems which in turn will affect individual's capability to fulfill their financial instalments. Bankruptcy cases are expected to increase tremendously. The effort by Malaysian government in increasing the threshold amount to RM100,000 by virtue of the Insolvency (Amendment Act) 2020 in order to reduce the volume of bankruptcy cases is applauded. However, the other provisions in the Insolvency Act 1967 including automatic discharge of bankruptcy remain unchanged despite the current pandemic situation. This research intends to examine the effectiveness of automatic discharge provision under the Insolvency Act 1967 governing personal insolvency in Malaysia. This research employs a qualitative method in identifying and analysing the existing law and any legal issues and problems derive from the discharge provision in Malaysia and other countries such as United Kingdom, Australia, and Canada to determine the effectiveness of the law and whether it requires legal reform as well. This research will propose recommendation to overcome any legal issues and problems of its implementation.

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There is no wealth like knowledge, no poverty like ignorance – by Ali Bin Abi Talib

Writing is thinking on paper – by William Zinsser

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CHAPTER ONE

INTRODUCTION

1.1 Research Background

The Covid-19 pandemic severely hampered Malaysia's insolvency. Everyone faces a new challenge in the year 2020. The spread of Covid-19 and the implementation of the Movement Control Order since 18 March 2020 have shocked the nation. It has affected our lives, and as a result, we have learned to create a new standard. The economic repercussions of the pandemic are causing debtors to delay unpaid obligations, which is causing creditors problems with debt recovery. The number of bankruptcy cases is anticipated to increase. Bankruptcy is closely associated with debt, and its broader definition refers to a situation in which a person's assets are worth less than their liabilities.¹

In Malaysia, the insolvency laws distinguish individuals become bankrupt (personal insolvency) which is governed by the Insolvency Act 1967. On the other hand, companies go into liquidation or winding up (Corporate Insolvency) are governed by Companies Act 2016 and Companies (Winding Up Rules) 1972. A similar distinction between personal insolvency and corporate insolvency applied in United Kingdom as well as a vast majority of other commonwealth countries. Thus, in Malaysia and United Kingdom bankruptcy or personal insolvency governs the insolvency of natural persons.² The history and development of insolvency laws in the United Kingdom, Australia and Canada are significant to the development of legal principles of insolvency laws in Malaysia.³ Undischarged bankrupt has many disabilities, such as barred from holding any statutory role or forbidden from leaving Malaysia without the permission of the

¹ H. Rajak (2008), *In the Culture of Bankruptcy in Consuming Passions: Benchmarking Consumer Bankruptcy Law Systems* in Paul J Omar in *International Insolvency Law* (Ashgate Publishing Ltd, Surrey)

² Ruzita Azmi *et al* (2016), *The Effect of Discharged and Undischarged Bankrupt Under Bankruptcy Laws in Malaysia, United Kingdom (England & Wales) And Singapore: An Overview Seminar On Law & Society (SOLAS 2016) December 6, 2016, School of Law UUM*

³ B Kamarul, 'Malaysia' in R Tomasic and P Little (eds) *Insolvency Law and Practise in Asia* (FT Law and Tax Asia Pacific, Hong Kong, 1997) pp 171-208. See also B Kamarul '*Insolvency Law in Malaysia* 'in R Tomasic (ed) *Insolvency Law and Practice in East Asia* (Ashgate Publishing Ltd, 2006) pp 321-324