

CLIENT UPDATE
28 APRIL 2020

FAQs: RECENT CHANGES TO THE WINDING UP OF COMPANIES

As part of measures taken to ease the financial burden on companies, the Companies Commission of Malaysia (*Suruhanjaya Syarikat Malaysia*) recently announced certain changes to the winding up regime. These changes have since been gazetted by the Minister of Domestic Trade and Consumer Affairs pursuant to the ***Companies (Exemption) (No. 2) Order 2020*** and the ***Direction of the Minister under Paragraph 466(1)(a) of the Companies Act 2016***.

We have compiled a list of frequently asked questions (FAQs) in relation to the above changes and what they mean to your business.

1. What is the Companies (Exemption) (No. 2) Order 2020 (“**Order**”)?
 - It is essentially an order which provides that a company shall be deemed to be *unable to pay its debts* only if it fails to pay a demanded sum to the creditor within **6 months** after a statutory notice of demand has been served on the company.
 - Prior to the Order, the period was much shorter *ie.* 21 days instead of 6 months.
2. What is the Direction of the Minister under Paragraph 466(1)(a) of the Companies Act 2016 (“**Direction**”)?

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- It is a Ministerial direction which provides that the debt threshold to wind up a company shall be **above RM50,000**.
 - Prior to the Direction, the debt threshold stands at above RM10,000.00.
3. When did the Order and Direction come into operation?
- Both came into operation from **23 April 2020** and will be effective until **31 December 2020**.
4. What then is the effect of the Order?
- A creditor may commence winding up proceedings against the debtor company if the debtor company was *unable to pay its debts* to the creditor.
 - However, the creditor will **not** be able to commence winding up proceedings against the debtor company until **6 months** have lapsed from the date the statutory notice of demand was served.
 - Prior to the Order, that period was only 21 days (see Question 1 above).
5. Is there a minimum threshold sum for commencement of winding up proceedings?
- Yes. Pursuant to the Direction (see Questions 2 and 3 above), from 23 April 2020 until 31 December 2020, winding up proceedings can only be commenced if the debt **exceeds a sum of RM50,000.00**.
 - Prior to the Direction, that amount was RM10,000.00.

6. Will my company be totally protected from winding up proceedings until 31 December 2020?
 - No. So long as a debt remains unpaid after 6 months from the date the statutory demand is served on the debtor company, a creditor may still commence winding up proceedings against the debtor company, even if it is before 31 December 2020.

7. What if a statutory notice of demand was served on the debtor company on 22 April 2020, just 1 day before the Order came into operation?
 - The debtor company will have the usual 21 days to pay the amount demanded, failing which winding up proceedings may be commenced against the debtor company. In other words, it is as if the said Order did not come into effect

8. What if a statutory notice of demand is served on the debtor company on 31 December 2020, which is on the last day of the Order?
 - As long as the statutory notice of demand is served in between 23 April 2020 and 31 December 2020, the 6 months period would apply.
 - For example, if the statutory notice of demand is served on 31 December 2020, the debtor company has 6 months to make payment.
 - However, if the statutory notice of demand was served on 1 January 2021 (which is after the expiry of the Order), the debtor company would have 21 days to make payment. In such a situation, it may be more beneficial for a creditor to wait until 1 January 2021 to serve the statutory notice of demand, if it plans to do so towards the end of 2020.

9. Does this Order affect ongoing winding up proceedings?

- No, it does not.

10. Does this Order prevent creditors/other parties from commencing other legal proceedings against the debtor company?

- No. The Order concerns only winding up proceedings commenced by reason of a company being *unable to pay its debts*.
 - A creditor may still obtain judgment against the debtor company and execute it in a variety of ways (such as garnishee proceedings or having the debtor's company assets seized through a court order).
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