

LEGAL NEWSLETTER

**INSOLVENCY LAW,
BANKRUPTCY THRESHOLD
NOW HAS BEEN
AMENDED**

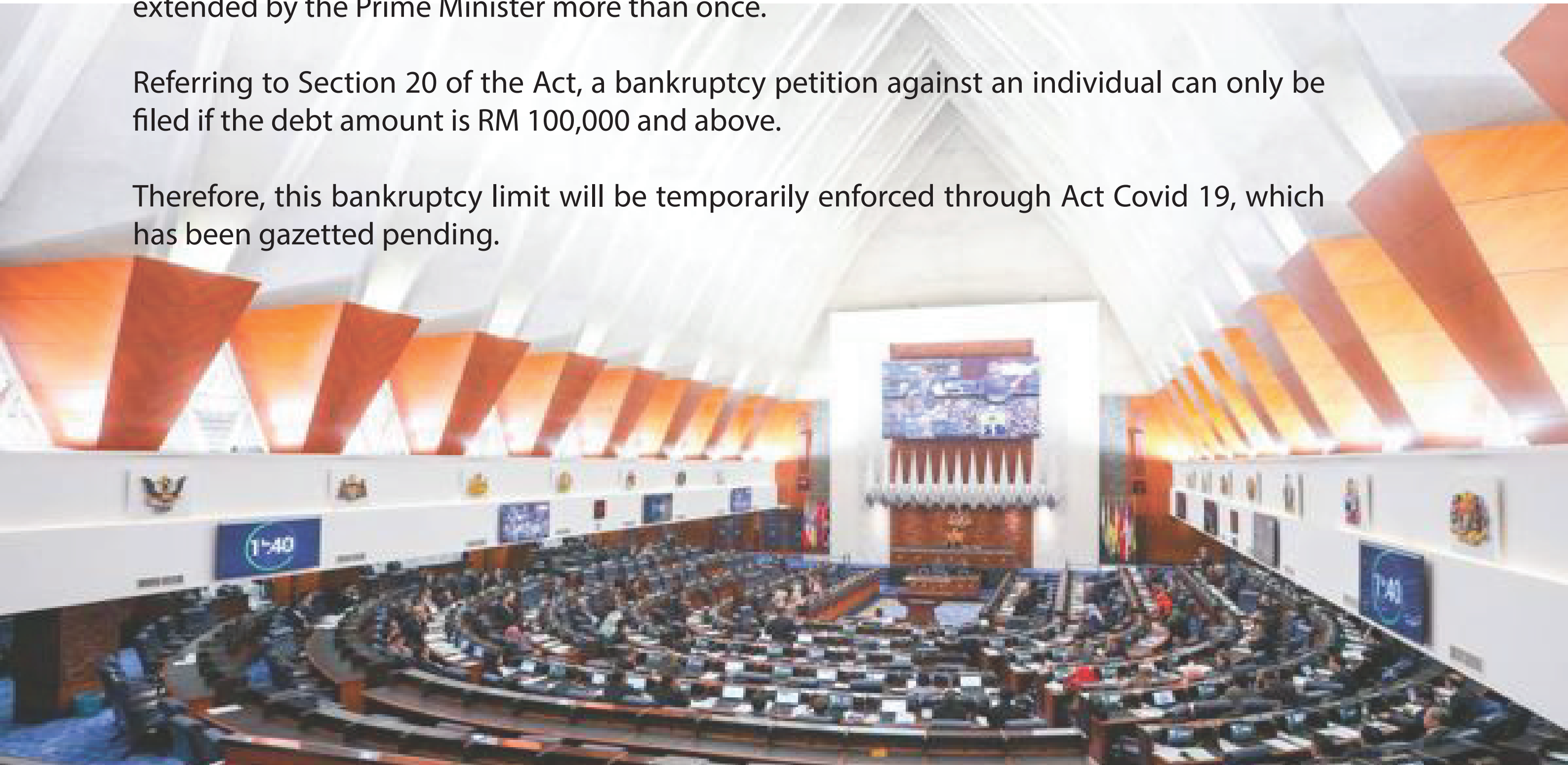


Fundamental point: On 25 August 2020, **Dewan Rakyat** passes amendments to Insolvency Act("Second Reading"), bankruptcy threshold RM100,000 from RM50,000 previously

Please note that this bankruptcy limit has been enforced through the Covid-19 Act (829). According to Section 1(2) of the Covid-19 Act, the Act comes into force on 23 October 2020 and continues in force for two years from the date. Under Section 1(3), this Act may be extended by the Prime Minister more than once.

Referring to Section 20 of the Act, a bankruptcy petition against an individual can only be filed if the debt amount is RM 100,000 and above.

Therefore, this bankruptcy limit will be temporarily enforced through Act Covid 19, which has been gazetted pending.





Does it have retrospective effect?

Clause 3 of the Insolvency Bill mentions that this new amendment will not apply to debtors who have pending proceedings, actions, or matters under the Insolvency Act 1967 before the publication of the Act. Further, once the Insolvency Bill is passed and comes into force, any judgment debt below RM100,000 cannot be the basis of a bankruptcy action against a judgment debtor anymore unless a judgment creditor has presented a bankruptcy petition against a judgment debtor prior to the amendment

The positive effects of increasing the threshold:

To strengthening the economy while allowing individuals to better manage their finances during these uncertain times brought by the Covid-19 pandemic.

To be in line with the development and advancement of international law on insolvency, corporate governance, and best bankruptcy practices.

To prepare the country to face any outbreak in the future or any disaster which may cause an economic crisis

It gives individuals the chance to strengthen their current financial standing without constraints arising from bankruptcy actions and boost economic growth and national development.





Now, what is Bankruptcy?

Bankruptcy is a form of execution against an individual who owes a financial obligation to a successful party that has obtained an order or judgment.

In 2017, the Bankruptcy Act 1967 has been renamed to the Insolvency Act 1967. Therefore, bankruptcy proceedings and its procedures are now governed by the implemented Insolvency Act, 1967.

Bankruptcy has often been referred to as the last step, the be-all, and end-all in execution proceedings. The implications and severity of a bankruptcy order shall not be downplayed, which is why it is imperative to fully appreciate the processes in a bankruptcy proceeding.

How does someone become a bankrupt?

There are two methods in which the court order for bankruptcy may be granted.

Creditor's petition – A creditor may commence bankruptcy proceedings against an individual by serving them with a bankruptcy notice.

Debtor's Petition – An individual may voluntarily seek a court order to be made a bankrupt. (No minimum amount of debt required)



Get Started



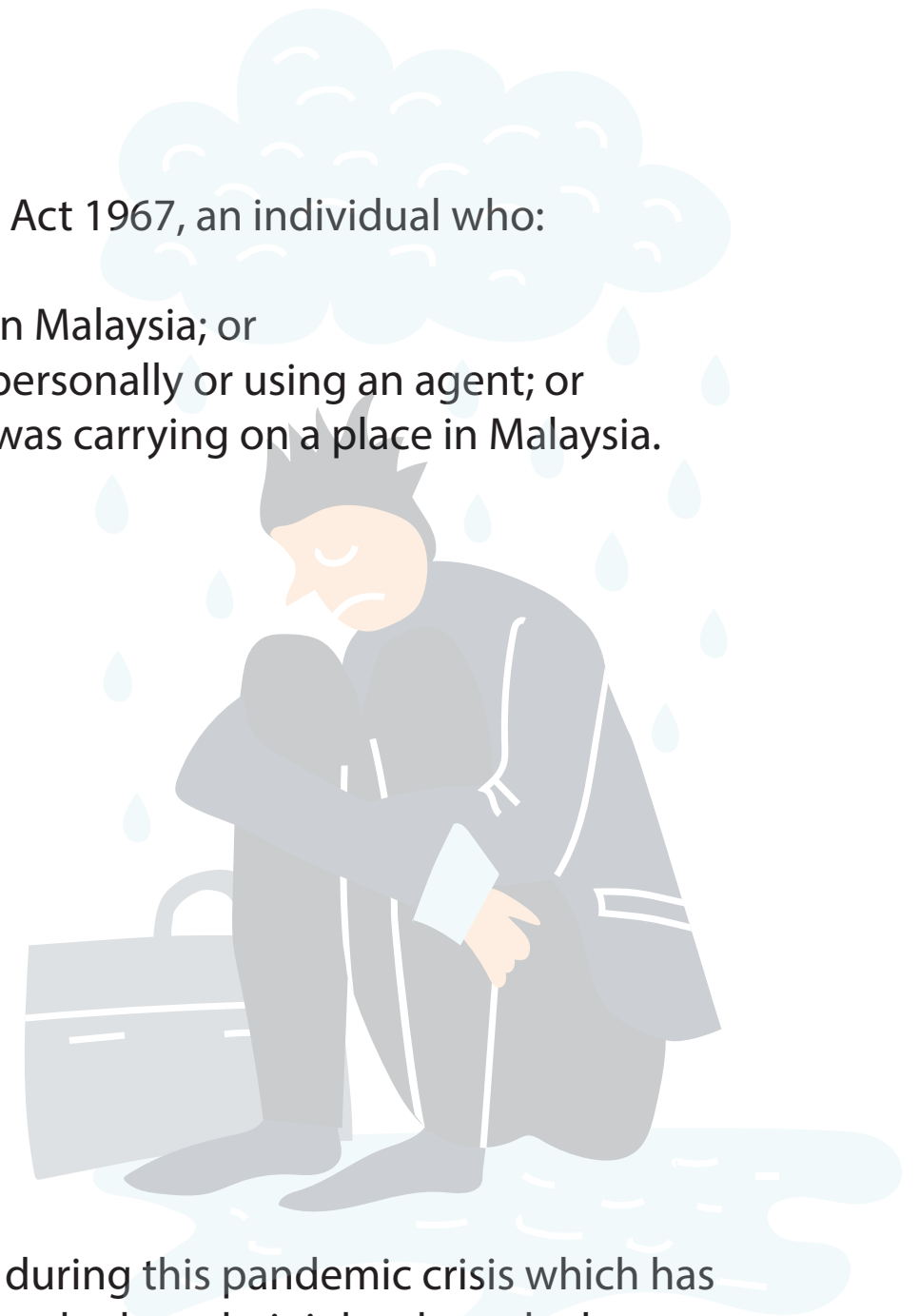
Generally, a person can only be bankrupt if they have first committed an act of bankruptcy. There are different types of acts of bankruptcy. Still, the most common situation is when a person has a final judgment ordered against him, and he fails to comply with a bankruptcy notice requiring him to settle the decision. (The bankruptcy notice is a demand for the debtor to pay the debt within 7 days from service of the bankruptcy notice) If the debtor does not settle the payment in the specified timeframe, he would then commit an act of bankruptcy. Following an act of bankruptcy, a creditor petition may be presented to the court. If the court grants the petition, they will give an Adjudication Order, which means the debtor is officially adjudged a bankrupt. The court will also present a Receiving Order to empower the Director-General of Insolvency to take over the bankrupt property and assets.





Who can be made bankrupt in Malaysia?

According to Section 5(1)(D) of the Insolvency Act 1967, an individual who:
was personally present in Malaysia; or
ordinarily resided or had a place of residence in Malaysia; or
was carrying on a business in Malaysia either personally or using an agent; or
was a member of a firm of partnership which was carrying on a place in Malaysia.



Key Takeaways

It is a commendable move by the government to increase the bankruptcy threshold especially during this pandemic crisis which has caused a significant impact on the economic situation with the increasing number of Malaysian who lose their jobs abruptly due to the Covid-19 pandemic. The proposed amendments will surely reduce the number of people qualified to be bankrupt and the workload of the Department of Insolvency.

However, on a serious note about addressing the core issue behind bankruptcy, authorities and financial institutions need to look further whether there should be more initiatives on financial awareness, financial planning and legal knowledge. Finding out why people are getting into debt without the means to repay it should be the focus to make sure the root problem is being treated and not the symptoms.