



Debts Relief Order and Administration Order for Debtors in the United Kingdom: What Malaysian Can Learn?

Ruzita Azmi^{*1}, Adilah Abd Razak², Siti Nur Samawati Ahmad³

¹ UUM Kuala Lumpur, Universiti Utara Malaysia

² Department of Marketing and Management, Universiti Putra Malaysia

³ Kolej Profesional MARA Beranang, Selangor, Malaysia

Abstract: Debtor's pre-rehabilitation is a measure given to a debtor in order to avoid bankruptcy once he failed to fulfil his financial commitment with his creditors. The pre-rehabilitation schemes can be obtained through court or out of court's settlement. The most common type of pre-rehabilitation that court based in the United Kingdom (UK) is Individual Voluntary Arrangement (IVA), which usually applicable to debtors with a large number of debts. Meanwhile, for a debtor with a smaller amount of debts, and disqualified from IVA, may resort to Debts Relief Order (DRO) and Administration Order (AO). On the other hand, Malaysian debtors may only resort to Voluntary Arrangement (VA) modelled after the IVA practised in the UK to avoid bankruptcy. Considering the importance to give more options for pre-rehabilitation schemes for Malaysian debtors, this paper examines the provisions on DRO and AO in the UK. The authors collected primary and secondary data from judicial decisions, textbooks, reports and articles from both law and non-law journals. This paper concludes by showing that if Malaysia emulates the UK and introduces DRO and AO, debtors in Malaysia will have two more bankruptcy pre-rehabilitation to complement the VA.

Keywords: Debtors pre-rehabilitation, debts relief, administrative order, country comparison, bankruptcy

JEL Classification: G33, H74, K35 & O57

Paper Type: Research

* Corresponding author: E-mail: zita@uum.edu.my

1. INTRODUCTION

Alternative to bankruptcy in form of pre-rehabilitation measure is very important in helping debtors from bankruptcy stigma that can hinder them from enjoying their routine in business and personal life once they are declared bankrupt. Bankruptcy indeed should be applied as the last resort for creditors to get or collect their money back from the debtors. Debtors' pre-rehabilitation is a measure given to them in order to avoid bankruptcy after they failed to repay or fulfill financial commitment with their creditors. Such pre-rehabilitation measure could be through court or out of court's settlement. It has been pointed out that the bankruptcy pre-rehabilitation scheme is introduced among others aims to solve the economics problems (Beraho & Elisu, 2010).

In the UK, several methods of bankruptcy pre-rehabilitation schemes are available for debtors. Meanwhile, Malaysia finally reformed its bankruptcy law after more than 5 years the Government had been urged to review the country's laws in providing more options for rehabilitation in order to reduce the recourse to bankruptcy. Indeed it has submitted that it gives time and opportunity to creditors and debtors to negotiate a mutual practical settlement scheme (Radikrishna, 2012). Unsurprisingly, when Malaysian Government reformed the country's bankruptcy law that has resulted in renaming of the Bankruptcy Act 1967 (BA 1967) to the Insolvency Act 1967 (IA 1967), which came into force on 6th October 2017 among the changes made by the IA 1967 are provisions relating to pre-rehabilitation scheme via Voluntary Arrangement (VA). As noted the VA is modeled after the Individual Voluntary Arrangement (IVA) practiced in the UK. If one examines the new provisions of the VA under Malaysian IA 1967, such scheme involves court's procedures heavily and it seems right to say it may subject to delays within the court system and debtors may find it a cumbersome process to participate in debt settlement arrangements with their creditors in order to avoid bankruptcy. A comparison of pre-rehabilitation schemes which exists in the UK, demonstrates that two further measures are in existence: Administration Order (AO) and Debts Relief Order (DRO). If AO covers debts not more than £5000, DRO deals for debtors whose amounts of debts do not exceed £20,000. Accordingly, unlike bankrupts in the UK who can resort to IVA, AO and DRO, in Malaysia the VA is the only bankruptcy pre-rehabilitation, statutorily granted and available for debtors regardless of the amounts of the debts owed by the debtors.

Given the importance of alternative bankruptcy pre-rehabilitation mechanisms for Malaysia besides VA, this paper discusses the provisions and procedures to apply DRO and AO for debtors in the financial dilemma. The discussion continues with the evaluation and follows by the conclusion.

2. ADMINISTRATION ORDER (AO)

AO is only applicable for a debtor or individual whose amounts of debts do not exceed £5,000. However, before application for AO is made a debtor must prove that he is unable to pay the amount of a judgment obtained by a creditor against him as provided under section 112(1) of County Courts Act 1984 (CCA 1984). The court shall also send a notice to notify those creditors whose name is notified in the order.

The debtor upon application for AO must state the amount, which he can pay to his creditor and the court will further making an order for a debtor to pay such an amount agreed by installment (Section 112(6), CCA 1984). Accordingly, it allows the person in debt to make a single monthly payment to the court, which the court distributes to creditors on a pro rata basis (Collard, 2009). This order is, however, is subjected to future earnings or income by a debtor where the court may vary the order based on it.

In order to give a debtor a maximise enjoyment of the AO enforcement, once it is in force no application for bankruptcy against the debtor can be made by the notified creditor without the leave of court (Section 112(4); (114), CCA 1984). Furthermore, any remedy made against person or property of the debtors after AO had been granted was considered as a breach of section 114 of CCA 1984. In *Nolan v Stoke on Trent City Council (2006)* where the court had granted an AO including £1691.45 council tax arrears, the council had no right to claim remedy against person or property of the debtors and any claim made on it was against section 114 of CCA 1984.

Meanwhile, in the case of accrued rent or rent due, a landlord or other person to whom rent is due may at any time either before or after the date of the AO distraint upon the debtor's goods for the rent due to him. However, in order to ensure the equality to all the creditors, the distress for rent is levied or collected after the date of the order, this possibility is only available for the rent, which accrued in the six months before the date of such order (Section 114, CCA 1984). However, where it appears to the registrar of the court at any time while an AO is in force that property of the debtor exceeds in value [£50], he shall, at the request of any creditor, and without fee, issue execution against the debtor's goods (Section 115, CCA 1984).

Finally, once the money paid into court under an AO is sufficient to pay each creditor scheduled to the order to the extent provided by the order; the costs of the plaintiff in the action in respect of which the order was made; and the cost of the administration, the order shall be superseded, and the debtor shall be discharged from his debts to the scheduled creditors (Section 117(2), CCA 1984).

However, there were several weaknesses associated with AO. It only deals with the number of debts which is not more than £5000 (Kempson & Collard, 2004). It means that an individual indebted with more than £5000 has no chance to apply for pre-rehabilitation under this measure. Further, it only deals with specific amounts of debts without explicitly focusing on which types of debts are covered whether involving business debts or non-business debts. It was entirely left to the court to decide on that matter (The Independent, 1995).

In determining debts covered in the making of AO, the court held in the case of *Re Preston Borough Council v Riley (1999)* that liability for unpaid community charge under the Local Government Finance Act 1988 was a "debt" under CCA 1984 and therefore should be calculated as total debts of the debtor. In addition, it was submitted that AO might continue without endpoint since they can continue for many years and consequently this may lead to non-compliance by the debtors due to long commitment (Kempson & Collard, 2004). For this reason, it has been proposed to limit the lifetime of AO to a maximum of five years (Collard, 2009). In term of record, once the AO was granted, it is added to the Register of Judgments, Orders and Fines and will be removed 6 years after the date the order was made. A certificate of satisfaction will be given by the court in a case where a debtor repays his debts in full.

3. DEBTS RELIEF ORDERS (DRO)

Since country court AO is not applicable for an individual with debts not exceeds £5000, they may seek for Debts Relief Order (DRO) from the Official Receiver ('OR') rather than going bankrupt. It should be noted that DRO was introduced by the Tribunals, Courts and Enforcement Act 2007 and focus mainly on a debtor whose amounts of debts do not exceed £20,000 with a little surplus income, a few assets and who are unable to repay their debts (GOV.UK; Collard, 2009). It is important to note that previously, the eligibility for a debtor to obtain a DRO was that the amount of debts should less than £15,000.

Once the DRO is granted, the debts included in the DRO being discharged after one year and prevent creditors taking any further action to recover the debt in that time (Collard, 2009). According to section 251B (2) of the Insolvency Act 1986 (IA 1986), an application for DRO must include:

- (a) a list of the debts to which the debtor is subject at the date of the application, specifying the amount of each debt (including any interest, penalty or other sum that has become payable in relation to that debt on or before that date) and the creditor to whom it is owed;
- (b) details of any security held in respect of any of those debts; and
- (c) such other information about the debtor's affairs (including his creditors, debts and liabilities and his income and assets) as may be prescribed.

Once an application for DRO has been made under section 251C (2), 251C (3) (a) and 251C (3) (b) of the IA 1986, the OR may take the following action:

- a) put on hold or stay consideration of the application until he has received answers to any queries raised with the debtor about anything connected with the application
- b) refuse the application
- c) making a DRO in relation to the specified debts he is satisfied were qualifying debts of the debtor at the application date

It is stated under section 251C (4) of the IA 1986, an application for DRO may be refused by the OR due to the following reasons which include:

- (a) the application does not meet all the requirements imposed by or under section 251B;
- (b) any queries raised with the debtor have not been answered to the satisfaction of the official receiver within such time as he may specify when they are raised;
- (c) the debtor has made any false representation or omission in making the application or on supplying any information or documents in support of it.

Meanwhile, section 251C (4) of IA 1986 mentions that the OR must refuse to grant the DRO if he is not satisfied that:

- (a) the debtor is an individual who is unable to pay his debts;
- (b) at least one of the specified debts was a qualifying debt of the debtor at the application date;
- (c) each of the conditions set out in Part 1 of Schedule 4ZA is met.

In the event where an application for DRO was granted, section 251E (3) of IA 1986 provides that the order must include a list of the debts which the OR is satisfied were qualifying debts of the debtor at the application date, specifying the amount of the debt at that time and the creditor to whom it was then owed. Further, the copy of the order must be given to the debtor, and the order must be registered (Section 251E (4), IA 1986). In addition, each creditor to whom a qualifying debt specified in the order is also owed may be notified with regards with the making of the order, the grounds on which a creditor may object under section 251K, and any other prescribed information as provided under section 251E(6) of IA 1986.

Interestingly, DRO also has a moratorium effect for one year from the date of making an order but subject to extension and termination period (Section 251H (1) (2), IA 1986). During the moratorium, the creditor to whom a specified qualifying debt is owed (Section 251G (2), IA 1986):

- (a) has no remedy in respect of the debt, and

- (b) may not commence a creditor's petition in respect of the debt, or otherwise commence any action or other legal proceedings against the debtor for the debt, except with the permission of the court and on such terms as the court may impose.

In *R (Cooper and Payne) v Secretary of State for Work and Pensions [2010]*, Ms Cooper suffered health problems and was in receipt of incapacity benefit and disability living allowance. She began working part time which had the effect of disqualifying her from incapacity benefit during that period. On 6th August 2009 a decision-maker, acting on behalf of the Secretary of State, determined that she had been overpaid 1,195.07 pound of incapacity benefit and demanded the overpayment to be recovered from her. On 4th December the Secretary of State began to recover the overpayment by making deductions of 128.44 pound every four weeks from her benefits. With the assistance of a Citizens Advice Bureau she applied for a DRO and listed the Department of Work and Pensions as a creditor in her application. Eventually, a DRO was granted and the overpayment was listed as a qualifying debt. The Secretary of State refused to cease the deductions made. It was held that the grant of the DRO barred the Secretary of State from pursuing the recovery of payment by taking into consideration the effect of moratorium itself.

Then in the case of *Secretary of State for Work and Pensions v Payne and Another [2011]*, the court reaffirmed that the effect of DRO order shall not be distinguished by the bankruptcy order in which it precluded Secretary of State for Work and Pensions to recoup Social Fund loans and overpayment of benefits "moratorium" period after the making of a DRO and indeed DRO which listed the overpayment as one of qualifying debts.

As provided under section 251I (1) of IA 1986 at the end of the moratorium applicable to a DRO the debtor is discharged from all the qualifying debts specified in the order (including all interest, penalties and other sums which may have become payable in relation to those debts since the application date) unless if the moratorium terminates early or the qualifying debt which the debtor incurred in respect of any fraud or fraudulent breach of trust to which the debtor was a party (Section 251I(2) & 251I(3), IA 1986).

Under section 251J (2) of IA 1986, after the making of an application for DRO the debtor has duties to:

- (a) give to the OR such information as to his affairs,
- (b) attend on the OR at such times, and
- (c) do all such other things, as the OR may reasonably require for the purpose of carrying out his functions in relation to the application or, as the case may be, the debt relief order made as a result of the application.

The debtor also has duties under section 251J (3) of IA 1986 to notify the OR as soon as reasonably practicable if he becomes aware of:

- (a) any error in, or omission from, the information supplied to the OR in, or in support of, the application;
- (b) any change in his circumstances between the application date and the determination date that would affect (or would have affected) the determination of the application.

After the DRO was granted, the debtor has a duty to notify the OR as soon as reasonably practicable if:

- (a) there is an increase in his income during the moratorium period applicable to the order;

- (b) he acquires any property, or any property is devolved upon him during that period;
- (c) he becomes aware of any error in or omission from any information supplied by him to the official receiver after the determination date.

The granting of the DRO was not absolute as it was subject to the objection by the creditors under section 251K (1) of IA 1986. Statutorily the creditor has the right to:

- (a) the making of the order;
- (b) the inclusion of the debt in the list of the debtor's qualifying debts; or
- (c) the details of the debt specified in the order.

However, under section 251K (2) of IA 1986 in order for the objection becomes valid it must be:

- (a) made during the moratorium period relating to the order and within the prescribed period for objections;
- (b) made to the OR in the prescribed manner;
- (c) based on a prescribed ground;
- (d) supported by any information and documents as may be prescribed, and the prescribed period mentioned in paragraph (a) must not be less than 28 days after the creditor in question has been notified of the making of the order.

Upon receiving the objection, the OR has a discretionary power under section 251K (4) of IA 1986 to carry out an investigation of any matter that appears to him to be relevant to determine whether:

- (a) the order should be revoked or amended under section 251L;
- (b) an application should be made to the court under section 251M; or
- (c) whether any other steps should be taken in relation to the debtor.

Despite having the power to grant DRO, the OR also has the power to revoke or amend a DRO (Section 251K (2), IA 1986). Under section 251L (2) of IA 1986, the revocation or amendment can be made where:

- a) any information supplied to him by the debtor in support of, the application, or after the determination date was incomplete, incorrect or otherwise misleading;
- (b) the debtor has failed to comply with a duty under section 251J;
- (c) a bankruptcy order has been made in relation to the debtor; or
- (d) the debtor has made a proposal to the official receiver of his intention to do so.

As stated under section 251L (3) of the IA 1986, the revocation may be made on the ground that the OR has not been satisfied:

- (a) that the debts specified in the order were qualifying debts of the debtor as at the application date;
- (b) that the conditions specified in Part 1 of Schedule 4ZA were met;
- (c) that the conditions specified in Part 2 of that Schedule were met or that any failure to meet such a condition did not prevent his making the order.

In the case of an amendment, it can be made for the purpose of correcting an error in or omission from anything specified in the order (Section 251L (8), IA 1986). However, the amendment cannot be made in order to add any debts that were not specified in the application for the DRO to the list of qualifying debts (Section 251(9), IA 1986). Although the power to grant DRO is under the discretionary of the OR, to ensure the check and balance in exercising power given, the court has the power to hear the dissatisfaction of

the debtor and the creditor on the OR act, omission or decision as provided under section 251M(1) of IA 1986.

In contrary, the OR can make an application to the court for directions or an order in relation to any matter arising in connection with a DRO or an application for such an order. The matters referred to section 251M (2) of IA 1986 include, among other things, matters relating to the debtor's compliance with any duty arising under section 251J of IA 1986. On an application under section 251M (6) of the IA 1986 the court may dismiss the application or do one or more of the following:

- (a) quash the whole or part of any act or decision of the official receiver;
- (b) give the official receiver directions (including a direction that he reconsider any matter in relation to which his act or decision has been quashed under paragraph (a));
- (c) make an order for the enforcement of any obligation on the debtor arising by virtue of a duty under section 251J;
- (d) extend the moratorium period applicable to the debt relief order;
- (e) make an order revoking or amending the debt relief order;
- (f) make an order under section 251N; or
- (g) make such other order as the court thinks fit.

Despite the above procedures, a debtor is also subjected to rules known as DRO Restriction; after the DRO has been granted usually such restrictions will last for 12 months and will be extended for a certain period of time in case of dishonest behaviour. According to the DRO Restriction, a debtor cannot borrow more than £500 without informing a lender about his DRO, act as the director of a company, create, manage or promote a company without the court's permission and manage a business without telling a person who does business with a debtor about his DRO. In the case where a debtor intends to open a bank account, he also has to inform the bank about his DRO. Procedurally, the approved DRO is added to the Individual Insolvency Register and will be removed 3 months after the DRO ends. However, the DRO will stay on a debtor's credit record for 6 years.

After all, as DRO is claimed as playing a vital part in assisting a debtor, it is suggested that the thresholds of debt and asset for DRO should be increased so more individuals who have no significant assets can benefit from DRO (Association of Business Recovery Professionals: Rescue, Recovery, Renewal (R3), 2013).

4. EVALUATION

In the UK, AO and DRO are available for debtors with certain threshold or amount of debts indebted to their creditors. If AO is available for a debtor whose amount of debt does not exceed £5,000, DRO is available for a debtor who owed the creditors less than £20,000. The administration of AO will involve the court's discretion. Meanwhile, under DRO, the OR played a vital role to grant or not to grant the order. The exciting features of both AO and DRO are in term of the moratorium effect attached to them in which the bankruptcy order cannot be petitioned against a debtor once AO and DRO were successfully granted.

On the other hand, the effect towards the granting of the AO and DRO will put the name of a debtor in the debtor's credit record that may carry negative stigma on a debtor in dealing with the public. For AO, a debtor is subjected to certain restrictions. Besides, those two pre-rehabilitation schemes are also subjected to being revoked due to the debtor's failure to give commitment towards the contributions to his creditor. As mentioned earlier, the one and only statutory bankruptcy pre-rehabilitation procedure

offer to a debtor is VA which came into existence in October 2017 and is provided under Malaysian IA 1967. Unlike debtors in the UK, regardless of the amount of debts Malaysian debtors owed to their creditors, VA is the only chance or 'lifeline' to be rescued and to avoid bankruptcy. Sadly, if the creditors reject the proposal for the debt settlement arrangements under VA, eventually bankruptcy petition will be served on the debtors. Perhaps, the Malaysian authority should learn from the experience of DRO and AO in the UK. In the event that Malaysia introduces DRO and AO, the debtors will have two more pre-rehabilitation schemes to complement the VA. Each procedure has its advantages and disadvantages. Nevertheless, with all three schemes as the options available for debtors it could cater for their needs along with the chance given to be rehabilitated financially when they are facing financial difficulties.

5. CONCLUSION

In the UK, court-based bankruptcy pre-rehabilitation procedures do take into consideration the amounts of debts as well as the financial conditions of a debtor. As noted unlike Malaysia, under DRO and AO, debtors in the UK can benefit from these two schemes. It is timely for Malaysian authority to learn from UK's experience and to introduce DRO and AO or its equivalent in order to complement the VA as provided under IA 1967. Nevertheless, several factors need to be crucially examined in implementing DRO and AO, for instance to include the eligibility criterias for debtor to be covered under the schemes. This is vital in order to balance the right of debtors and their creditors as well as to prevent debtors from abusing the schemes. This can happen if debtors intend to apply for DRO simply to obtain a moratorium in respect of their indebtedness to creditors to avoid bankruptcy. Meanwhile for AO possible exploitation occurs if debtors apply such scheme to avoid paying their debts since once it is enforced no application for bankruptcy against the debtor can be made by the notified creditor without the leave of court.

ACKNOWLEDGEMENT

This work is funded by the Ministry of Higher Education, Malaysia (Fundamental Research Grant Scheme) and managed by the Research and Innovation Management Centre (RIMC), Universiti Utara Malaysia.

REFERENCES

- Association of Business Recovery Professionals: Rescue Recovery Renewal (R3) (2013). Debt Relief Order. A Bankruptcy Update. Association of Business Recovery Professionals. Retrieved from: https://www.r3.org.uk/media/documents/policy/policy_papers/personal_insolvency/R3_Debt_Relief_Orders_Paper.pdf
- Beraho, E. K., & Elisu, R. (2010). Influence of country culture on bankruptcy and insolvency legal reform management. *International Journal of Management and Information Systems*, 14(2), 39-49.
- Collard, S. (2009). An Independent Review of the Fee-Charging Debt Management Industry, Personal Finance Research Centre, University of Bristol. Retrieved from: <http://www.adviceuk.org.uk/wp-content/uploads/2013/06/1droguide.pdf>
- County Courts Act (CCA) 1984. Retrieved from <https://www.legislation.gov.uk/ukpga/1984/28/contents>
- GOV.UK. (n.d.). Options for paying off your debts. Retrieved from: <https://www.gov.uk/options-for-paying-off-your-debts/debt-relief-orders>

- Insolvency Act 1986 (IA 1986)*. Retrieved from <https://www.legislation.gov.uk/ukpga/1986/45/contents>
- Insolvency Act 1967 (IA 1967)*. Retrieved from <https://http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20360%20-%20Reprint%202017.pdf>
- Kempson, E., & Collard, S. (2004). Managing Multiple Debts Experiences of County Court Administration Orders among debtors, creditors and advisors. DCA Research Series 1/04. University of Bristol. Page 64.
- Nolan v Stoke on Trent City Council* (2006) Stoke on Town Country Court, 11 August 2006; Adviser Issue 128: Dispute Resolution, <http://content.yudu.com>
- R (Cooper and Payne) v Secretary of State for Work and Pensions* (2010) EWHC 2162
- Radhakrishna, G. (2012). Winds of Change In Malaysia's Insolvency Laws Part 1: Bankruptcy, 3 MLJ clxvii.
- Re Preston Borough Council v Riley* (1999). B.P.I.R. 284
- Secretary of State for Work and Pensions v Payne and another* (2011) UKSC 60
- Stoke on Town Country Court* (2006). Adviser Issue 128: Dispute Resolution. Retrieved from: <http://content.yudu.com>.
- The Independent (1995). Law Report - Case Summaries. Retrieved from: <https://www.independent.co.uk/news/world/law-report-case-summaries-1621741.html>