Turning the Tide: Holistic Approaches to Reducing Overindebtedness in Malaysia

Ibtisam @ Ilyana Ilias[1], Mazlina Mahali[1*], Nadzratun Naim Hammad Azizi[2], Noraiza Abdul Rahman[1], Sarah Munirah Abdullah[1]

[*]Corresponding Author

[1]Faculty of Law, Universiti Teknologi MARA, Shah Alam Selangor 40450, Malaysia

[2]Centre for Commercial Law & Justice, Sunway Business School, Sunway University

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ABSTRACT

Overindebtedness impacts not only individual well-being but also the financial stability of nations. This study critically explores the current mechanisms addressing overindebtedness in Malaysia. Utilising a qualitative content analysis approach, the study meticulously examines key resources, including the Annual Reports of the Central Bank of Malaysia and the Credit Counselling and Debt Management Agency, as well as the Guidelines on Responsible Financing, alongside academic articles and media reports. The findings reveal that Malaysia employs a multifaceted approach to combat overindebtedness, striking a balance between preventive measures and post-bankruptcy remedies. These strategies include enhancing consumer financial literacy through comprehensive education programs and providing financial advisory services to consumers. The regulatory framework emphasises responsible lending, mandating assessments of borrowers' suitability and affordability to prevent unsustainable debt accumulation. The Credit Counselling and Debt Management Agency also offer debt management programs, while the Insolvency Act 1967 provides legal recourse for financially distressed individuals, including voluntary arrangement and automatic discharge after three years. This study concludes that the Malaysian government, particularly the relevant regulators, have established numerous strategies to mitigate the adverse effects of overindebtedness, addressing pre- and post-bankruptcy scenarios.

Keywords: Overindebtedness, bankruptcy, insolvency, consumer protection

INTRODUCTION

In the first quarter of 2024, Malaysia's economic outlook appeared promising, with a growth rate of 4.2% driven by robust private expenditure and higher household spending (Bank Negara Malaysia, 2024). However, this positive trend is overshadowed by a growing concern. With modest wage growth and rising living costs, most household spending is only being maintained through higher levels of debt, highlighting the urgent and escalating issue of overindebtedness. By the end of 2023, Malaysian household debt had reached RM1.53 trillion, with a household debt-to-GDP ratio of 84.2% (The Star, 2024). This steep increase in debt should be viewed beyond a mere statistic as it signals an impending crisis with potentially devastating implications. Housing loans, car loans, education loans, and easy access to credit from financial institutions have all fuelled this debt surge. As household debt quickly escalates into a dangerous territory, it risks becoming unsustainable, posing a significant threat to both the financial well-being of Malaysians and the stability of the Malaysian economy.

For individuals, the common legal consequence of being overindebted is being adjudged bankrupt. Figure 1 shows that consumer credit in the form of personal loans, business loans, and hire-purchases were the top three major drivers of Malaysian high number of bankruptcy cases. One cause cited is the ease with which individuals can obtain personal loans and banks' readiness to lend to those who are far over their financial means (Ismail, 2020). Although the statistic on bankruptcy cases demonstrates a downward trend, as depicted in Figure 2, it is likely attributed to the legislative intervention in 2017 through the Bankruptcy (Amendment) Act 2017, in which the minimum debt to commence bankruptcy proceedings was increased from RM30,000 to RM50,000. In addition, another amendment was made through the Insolvency (Amendment) Act 2020, which came into force on 22 October 2020, in which the minimum threshold for the presentation of a bankruptcy petition by the creditor was increased from RM50,000 to RM100,000. As a result, although consumers are delinquent, a bankruptcy proceeding will not be pursued if the debt is less than RM100,000.

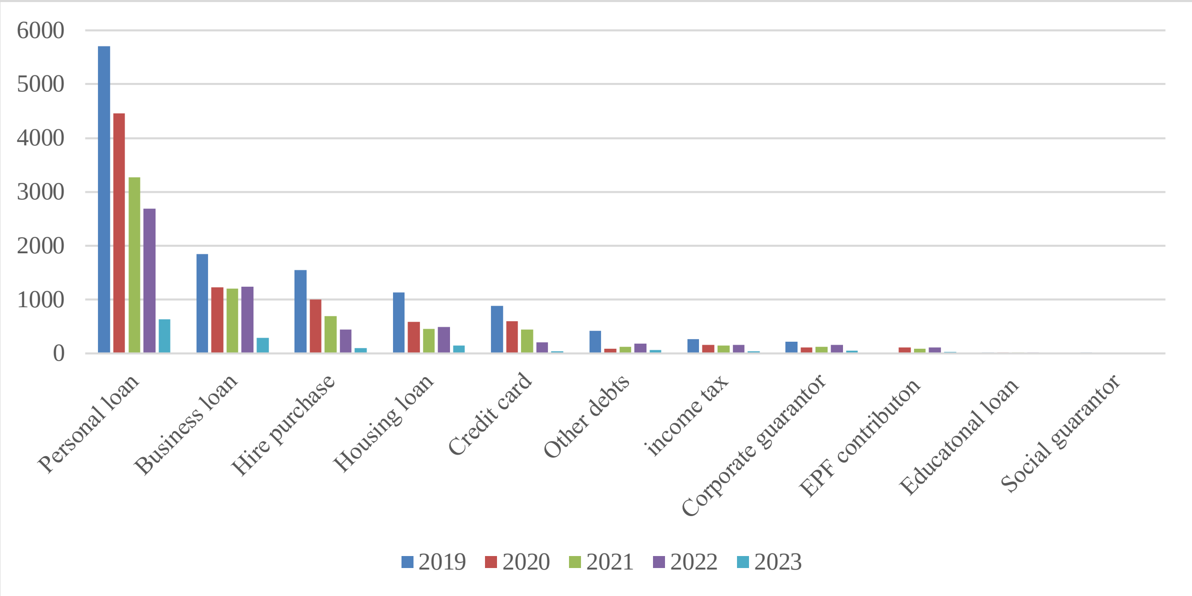

Figure 1 Bankruptcy Statistics according to Debt from 2019-2023

Source: Malaysian Department of Insolvency

Although numerous efforts and strategies have been implemented to curb the incidence of overindebtedness, the number of Malaysians falling into the debt trap is still alarming. A recent report from AKPK reveals an alarming trend whereby over 53,000 young individuals under the age of 30 are grappling with crippling debt (Tan, 2024). This staggering figure reflects a cumulative debt burden of nearly RM1.9 billion within this demographic (Tan, 2024).

MEANING, FACTORS, AND IMPACTS OF OVER-INDEBTEDNESS

According to a Khazanah Research Institute survey, Malaysians have a significant monthly debt commitment, with borrowings up to seven times their yearly income for households earning less than RM 3,000 (Choong et al, 2020). As a point of departure, it is pivotal to define and measure what constitutes "over-indebtedness." Debt is generally not deemed a threat, provided it is effectively and adequately managed. It sets out to become a burden when debt grows unsustainable and exorbitant, making it tough to make ends meet. There is currently no evidence in the literature regarding the definition of over-indebtedness or how to quantify it, despite attempts to define an 'over-indebtedness status' threshold (Idris NH, 2018). However, the European Commission study identifies some features common to all countries in the wide variety of official national definitions of over-indebtedness: the economic dimension (the amount of debt to repay), the temporal dimension (the relevant horizon is the medium-long term), the social dimension (the basic expenses that must be met prior to debt repayment), and the psychological dimension (the stress that over-indebtedness causes) (Ferreira MB et al, 2021). Over-indebtedness is thus defined as a situation "where households or individuals are in arrears on a structural basis, or at a significant risk of getting into arrears on a structural basis" (European Commission, 2008).

There are numerous reasons why an individual may accrue more debt than he can repay. According to Azma et al (2019) and Muñoz-Murillo et al (2020), identifying and comprehend the determinants of individual indebtedness through behavioural variables is critical. The literature has identified four determinants affecting indebtedness: financial literacy, risk perception, materialism, and emotion. Apart from the determinants through behavioural variables as drivers of over-indebtedness, the growing body of knowledge on over-indebtedness also addresses four other main criteria of overindebtedness (Lusardi, 2015). These are relatively known as (i) making higher repayments relative to income, comparatively known as a high debt ratio, (ii) being in arrears in bills or loan repayments, (iii) finding debt as a burden, and (iv) bankruptcy (Zainol, 2016).

Financial literacy, in general, substantially impacts an individual's present debt condition, whereby individuals with a higher level of financial literacy have a lower rate of excessive debt (Kurowski, 2021). Despite previous studies verifying that financial knowledge and debt literacy can prevent individuals from having financial problems and thus over-indebtedness, Idris (2019) had a seemingly contradictory result in this study, which shows that individuals with sound financial knowledge and debt literacy are also prone to being over-indebted.

Over-indebtedness is a severe issue that negatively affects borrowers, financial institutions, and society. Researchers have long focused on over-indebtedness and its detrimental impact. The question of how significant of an impact over-indebtedness can leave is a severe and vital concern to discuss. In a study by Nieto (2016), the researchers conducted detailed research on over-indebtedness, focusing on the causes and consequences that follow, and proposed an explanatory model. The explanatory model was tested through surveys on financial experts and over-indebted entities whilst the outcome was analysed using multivariate methods. It was found that there is a strong link between the causes of over-indebtedness and the negative impacts specifically on three significant dimensions namely the borrower, the lender (financial institutions), and the society. In furtherance, both categories of respondents agreed that poverty growth in the society and declining borrower's welfare are two important impacts of over-indebtedness. Interestingly, it was also emphasized in the research that not only does over-indebtedness stigmatize the delinquent borrower, but it also reduces social trust and mutual support in the community, eroding social networks. This clearly shows that over-indebtedness impacts society.

Based on IMF Working Paper, the impact of over-indebtedness was categorically divided into enterprises, households, and corporates with the specific legal framework to deal with it (Garrido et al, 2020). Notably under a different lens, Cuesta MB & S. Budria (2020) underlines the relationship and impact of domestic over-indebtedness and age-related self-assessed health, where it indicates that the poor health of middle-aged and old individuals is directly impacted by over-indebtedness mostly involving mortgage responsibilities. In the meantime, for the younger generation, such impact only happens under certain circumstances such as non-mortgage debts.

Likewise, this is strongly supported by the latest study by Ferreira MB et al (2021) where a comparison was made on the impact of over-indebtedness and well-being between over-indebted individuals vs. individuals not being over-indebted. The study narrows down the impact of over-indebtedness and its mechanisms influencing health, sleep quality, and life satisfaction. The thought-provoking study also extends to the most important and timely but seldom discussed aspect, the aspect of emotional well-being. Consistently, the findings reveal that over-indebted individuals display an overall lower level of satisfaction categorically. Findings from this research are key in demonstrating that over-indebtedness does not only affect the financial standing of individuals but at the same time, it impacts holistic well-being. Considering the efforts in literature to discover the direct impact of over-indebtedness, while the results vary, most findings suggest that the impact of over-indebtedness is dangerous, damning and damaging.

FINANCIAL EDUCATION

Financial education is pivotal in empowering consumers to take greater responsibility for their financial well-being. It significantly enhances market discipline, drives efficiency, fosters competition, and spurs innovation among service providers (Aziz ZA, 2011). The Organisation for Economic Co-operation and Development (OECD) defines financial education as the process through which financial consumers and investors better understand financial products, concepts, and risks (OECD Report, 2005). This education, delivered through information, instruction, and objective advice, enables individuals to develop the skills and confidence needed to become more aware of financial risks and opportunities, make informed decisions, seek appropriate assistance, and take practical actions to enhance their financial security.

A lack of basic financial knowledge leaves consumers vulnerable to aggressive marketing tactics, undermining their ability to make sound financial decisions (Ahmad M, 2010). Therefore, consumer empowerment and competent financial decision-making are closely linked to financial literacy (ANZ Survey, 2017). Beyond relying on legal protections, financial consumers must be educated and equipped with the necessary knowledge to improve their financial literacy, which enables them to make informed judgments and effective decisions regarding the use and management of money (Azreen Hani, 2019).

According to studies by the OECD International Network on Financial Education, the Credit Counselling and Debt Management Agency (AKPK), and the Malaysian Financial Planning Council between 2015 and 2018, Malaysians' financial literacy level has yet to reach a satisfactory standard. In addition, the AKPK Financial Behaviour and State of Financial Wellbeing of Malaysian Working Adults Survey 2018 found that the financial well-being among Malaysian working adults is dismal, which warrants immediate intervention. One suggested way is to enhance financial knowledge to achieve better financial well-being. This accentuates the significant role of BNM as a regulator in designing and implementing practical and comprehensive financial education and consumer awareness programs. The initiatives benefit all Malaysians from all walks of life, including Islamic bank consumers.

BNM is entrusted with developing consumer education programmes and materials and designing outreach programmes for all Malaysians. BNM collaborates with various stakeholders, government agencies and non-governmental organisations (NGO) to improve consumer awareness, financial literacy and financial capability. A one-stop platform called *bankinginfo* providing necessary information, tools and tips about banking has been set up to enhance financial literacy. There is specific information on Shariah concepts and applying Islamic house financing under the heading "discover Islamic banking". Other useful tools include a glossary explaining banking terms, frequently asked questions, and a calculator to plan monthly expenses.

Moreover, Consumer Education Programme (CEP) was initiated in alliance with the then Financial Mediation Bureau (now the Ombudsman for Financial Services), AKPK, the Malaysia Deposit Insurance Corporation and the Securities Commission Malaysia (Di Castri, 2011). Outreach programmes with NGOs, road shows, school adoption programmes, and measuring financial literacy are among the core projects under the CEP (Di Castri, 2011). BNM also collaborates with the Ministry of Education to integrate financial education into the school curriculum. (Bank Negara Malaysia Report, 2015).

One commendable initiative was the establishment of the Financial Education Network (FEN) in November 2016 to increase financial literacy (Bank Negara Malaysia Report, 2016). The members comprise BNM, the Securities Commission, the Ministry of Education, Employees Provident Fund, the Malaysian Deposit Insurance Corporation, AKPK, and Permodalan Nasional Berhad (Bank Negara Malaysia Report, 2016). The FEN aims to raise the impact of financial education initiatives and identify new opportunities to improve financial literacy through greater inter-agency alignment, closer collaboration as well as a strong focus on impact assessments. To achieve the said objective, the FEN will work with relevant government ministries, industry associations, and consumer groups to deliver, monitor, and measure financial education initiatives under a coordinated national strategy. For example, in 2019, AKPK successfully conducted five (5) financial education public programmes that were well-received by the public based on the various topics as follows:

- Women in Finance (collaboration with IKIM FM)
- Making Millennials Millionaires (collaboration with PRO Millennial UKM)
- Menuju Destinasi Persaraan 5 Bintang (collaboration with CUEPACS)
- Let Us Guide You Home (collaboration with the Star)
- Be a Money-maker (collaboration with Bursa Malaysia)

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During the same year, AKPK also collaborated with HSBC Bank (Malaysia) Bhd to conduct the Kembara Bijak Wang programme to empower Malaysian youth with money management knowledge and skills and to inculcate good financial values in young adults. Universiti Kebangsaan Malaysia (UKM) also supported the programme. A variety of financial education and awareness programmes indicates the strong commitment of BNM to intensifying financial literacy among Malaysians (The Star, October 3, 2017).

The FEN successfully launched the National Strategy of Financial Literacy in July 2019. Figure 2 provides an overview of this five-year-plan which outlines five strategic priorities areas as follows:

Figure 2 Overview of the Malaysian National Strategy for Financial Literacy

Source: Financial Education Network

Strategic Priority 1:

- Nurture values from young
- Expand financial education fundamentals into the curriculum for pre-school, primary, and secondary schools
- Reinforce financial education through co-curriculum activities
- Introduce capacity development and support for teachers
- Encourage financial education advocates among students, parental groups, and the community

Strategic Priority 2:

- Increase access to financial management information, tools, and resources
- Make basic financial education information easily understood, available and accessible to all
- Heighten awareness and intensify financial education initiatives through national outreach campaigns

Strategic Priority 3:

- Inculcate positive behaviour among targeted groups
- Impart financial knowledge to promote positive financial behaviour among the youth
- Encourage financial education at the workplace to promote financial resilience, which will have a positive impact on employees' productivity
- Foster good money management practices through community-based financial education
- Equip the self-employed with financial knowledge to encourage self and business sustainability

Strategic Priority 4:

- Boost long-term financial and retirement planning
- Promote the use of innovative guides and tools to improve long-term financial planning
- Create awareness and promote the benefits of seeking professional advice on financial planning
- Promote voluntary savings channels and platforms to encourage income diversification
- Educate Malaysians to make long-term financial plans for retirement

Strategic Priority 5:

- Building and safeguarding wealth
- Promote a better understanding of risks and returns to build wealth
- Improve awareness of the innovation of financial products and services and its implications
- Raise awareness of financial scams and fraud
- Develop and publish materials relating to sophisticated financial products and services

FINANCIAL ADVISORY SERVICES

Comprehending financial behaviour and the status of financial well-being is critical. These insights could aid the development and refinement of initiatives to encourage fiscal responsibility and promote cautious financial management. Financial advisory service plays a crucial function to accomplish this goal by providing knowledge and direction concerning personal financial management (Bueh, 2017).

AKPK offers advice on how to effectively manage one's finances and accomplish one's desired financial outcomes budgeting, credit-related issues, and money management. Currently, this service is made available across the country through the branch network of commercial and Islamic banks, which comprises 11 branches and more than 20 counselling offices. In addition, AKPK draws on the resources of its strategic partners, which include both government agencies and non-governmental organisations, to provide counselling services to employees in their places of employment.

The provision of free services by AKPK has been favourably received by the general public, enticing people to seek financial advisory services not only to manage debt but also to improve financial wellness by acquiring the skills necessary to manage one's own financial resources. As a direct consequence of this, its outreach program has swiftly increased, and an increasing number of customers are flocking in droves to seek financial counselling. In accordance with AKPK Annual Report 2021, AKPK continued to focus more on providing financial advice to affected borrowers throughout 2021 amounting to 53,460 cases in total. Cumulatively, the total financial advisory cases grew by 4.6% (2020:12%) from 1,155,042 cases in 2020 to 1,208,502 cases in 2021. A total of 1,500 SMEs also sought AKPK's services throughout 2021 (AKPK Annual Report, 2021).

Based on BNM Annual Report 2020, a Financing Advisory Services (MyKNP) has been established which acts as an advisory unit under AKPK and Credit Guarantee Corporation Malaysia Berhad (CGC) which has been set up by Bank Negara Malaysia. KNP is an acronym for Khidmat Nasihat Pembiayaan (Financing Advisory Services) which aims to provide a better understanding to homebuyers and entrepreneurs of why financing applications get rejected; provide essential tips on how financing eligibility can be improved; and advice on what other alternative sources of financing are available (Bank Negara Malaysia (2019). By bridging the information gap between customers and financial institutions, it was anticipated that the effort would raise the level of awareness among financial users as well as boost their credibility.

According to a case study by the Asian Finance Institute in 2017, although AKPK was pleased with its growth rate of outreach, it was aware that the increase in the number of people seeking financial counseling cases not only indicated greater awareness of the services provided by AKPK, but it could also indicate an increase in the number of people who are experiencing financial distress (Asian Financial Institute, 2017). One of the most important elements in efficiently dealing with one's debt is developing a management strategy and a payment plan that is both well-structured and effective. Regardless of the severity of one's financial commitments, with the assistance of a skilled professional, one will be able to manage his financial burden with ease.

SUITABILITY AND AFFORDABILITY ASSESSMENT

In Malaysia and globally, responsible lending is a mechanism introduced to protect financial consumers from the trap of over-indebtedness. However, this term has no rigid definition, and various regulatory approaches are used to determine the concept of responsible lending (Financial Stability Board, 2011). Some scholars enumerated the concept of due diligence to define responsible lending which requires the borrower to provide information to the creditor. According to Tuffin (2009), the term responsible lending can be defined to cover a wide range of predatory lending practices which not only comprise affordability and the likelihood of repayment but to the extent advertising and marketing technique.

The concept of responsible lending is one of the palpable consequences of the global financial crisis. This crisis has seen the disastrous impact of reckless lending on many consumers of credit markets, such as the United States of America (USA), the United Kingdom (UK), and Australia (Tuffin, 2009). Although consumers are expected to borrow responsibly, there is a serious obligation on credit providers to avoid over-indebtedness on the part of consumers. In many instances, the marketing strategies adopted by credit providers override consumer rationality, thus psychologically forcing consumers to purchase products or services outside their necessities.

Credit is given arbitrarily without a meticulous evaluation of creditworthiness (Mahmood, 2012). Correspondingly, while customers do not know or appreciate entirely the conditions on which they borrow, credit is easily granted. In certain cases, if they can make more profit, credit providers do not consider whether consumers are borrowing beyond their limits. Furthermore, certain financial institutions are in an advantageous position to charge extra charges if consumers are eventually caught in financial distress (Finlay, 2009). Regrettably, the vast majority of consumers default on their repayment and suffer the negative effects of over-indebtedness, particularly in the face of unforeseen critical events such as illness or unemployment (Parker (1990). In some cases, other than critically, it worsens the financial health of individual consumers.

The importance of responsible lending or financing is demonstrated by sections 123(2) of the Financial Services Act 2013 (FSA), section 135(2) of the Islamic Financial Services Act 2013 (ISFA), and section 42C of the Development Financial Institution Act 2002) (DAFIA), which empower BNM to establish standards and provide recommendations or advice relating to assessments of the suitability and affordability of financial services or products offered to financial consumers. In fact, before the implementation of the FSA and the

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IFSA, BNM proactively introduced measures to protect financial consumers against over-indebtedness via Guidelines, which were issued on 18 November 2011 and came into effect on 1 January 2012. The Guidelines apply to entities regulated by BNM, including conventional and Islamic banking institutions as well as prescribed DFIs. Apart from evaluating consumers' suitability and affordability, there are five other policy requirements provided in the Guidelines which are; marketing and disclosure, fees, and charges, monitoring and recovery and avenue for redress and compliance. Nevertheless, this paper only scrutinizes the policy requirements relating to the suitability and affordability assessment of consumers.

Thus, one of the vital regulatory mechanisms provided in the Guidelines is the mandatory suitability and affordability assessment. The Guidelines require all financial service providers, regardless of new or extra credit facilities, to complete a suitability and affordability evaluation for each financing facility they offer. Similarly, the intermediaries of financial service providers are required to follow the Guidelines and any non-compliance would result in appropriate action. Before approving consumer applications for home financing products, personal financing products, including overdraft facilities, vehicle financing products, credit, and charge card products, and financing products for the purchase of securities (with the exception of share margin financing, which is governed by Bursa Malaysia's rules), banks are tasked to conduct the assessment.

The Guidelines elaborates the meaning of 'affordable' as referring to 'reasonably meet the repayment obligations in full throughout the financing without recourse to debt relief or substantial hardship'. The Guidelines describe numerous factors to consider when deciding whether a product is appropriate for certain consumer's financial circumstances in order to ensure affordability. The factors are discussed below:

1. Prospective consumer's repayment history and credit scores.

The Guidelines do not provide a detailed explanation of these two elements, namely repayment history and credit scores. It is submitted that these two elements are incorporated in the credit risk policy of each bank or PDFIs (BNM Policy Document on Credit Risk (BNM/RH/PD 029-22)). Thus, financing applications submitted by consumers with lousy track records including late payments, missed payments, and adverse information such as bankruptcy suits, legal action, collection, and delinquencies will be likely rejected. On the contrary, consumers who demonstrate good payment history would obtain smooth financing approval.

Another paramount factor in assessing suitability and affordability is by looking at the credit score. According to a report published by Experian (2021), a credit score is a number between 300–850 that depicts a consumer's creditworthiness. Consumers with higher credit scores will generally be regarded as suitable and can afford the financial obligation arising from the financing application in a timely manner. Factors that may affect one's credit score are, among others, credit history, number of open accounts, total levels of debt, and repayment history.

2. Debt Service Ratio

A complementary method of assessing affordability provided in the Guidelines is to observe the prudent Debt Service Ratio (DSR) computed using the following formula (section 6.6 of the Guidelines): -

$$\frac{\textit{all outstanding debt repayment obligations from banks and non-banks (including those not covered by Central Credit Reference Information System)}}{\textit{Income after statutory deductions (i.e. tax, Employees Provident Fund, Social Security Organization)}}$$

The Guidelines emphasize the need to determine DSR prudently to screen consumers' eligibility for a financing application. To accomplish this goal, two factors must be considered: total outstanding debt repayment from banks and non-bank creditors, as well as income after statutory deductions. Given that there are various income categories, the Guidelines accentuate the need for verification by a credible party to ensure the consumers furnish reliable documents to the credit providers.

3. Income Assessment

Regarding income assessment, the financial service provider must inquire with the financial consumers on its sources of income and the amount to determine the DSR. If consideration is given to various sources of income such as overtime, allowance, commission, and contractual bonus payment; variability of such income for at least three months, which only includes a prudent portion of the average amount, should be regarded as the financial consumers' income in assessing affordability. The financial service providers must also consider a month-to-month income variance (section 6.10 of the Guidelines).

If a high month-to-month variance is observed, a longer period of proof of variable income should be obtained to establish the amount that should be regarded as the financial consumer's stable income. One-off variable income such as bonuses should be excluded in the assessment of income. In respect of financial consumers who are not permanently employed or self-employed, evaluation should be conducted on the stability of the primary sources of income by requiring them to provide proof of income for at least six months. Verification of income is also important to ensure the authenticity of the evidence of sources of income. Income should be verified using reliable sources independent of the financial consumers, such as an Employees Provident Fund statement, bank statement or tax return. Sole reliance on financial consumers' self-certification of income is not allowed.

4. Debt Repayment Obligation

As stipulated in the DSR formula, the banks must extensively examine consumers’ overall indebtedness, including secured and unsecured financing from all financial service providers, including non-bank entities that provide credit facilities in determining debt repayment obligations. For this purpose, reference must be made to the Central Credit Reference Information System (CCRIS). In respect of financial obligations arising from credit transactions with entities that CCRIS does not capture, the bank must obtain such information directly from the consumers. Consumers should be informed of their responsibility to reveal relevant and error-free information during the respective financing application. Besides that, the consequences of providing inadequate or false information must be made known to the customer.

The amount included in the debt repayment obligations should reflect the scheduled repayment of both principal and interest/profit including any fees and charges included in the financing amount. In respect of instalment payable for home financing during the construction period of a new housing development project where the customers are only required to serve the interest/profit, the amount to be considered for calculation of debt repayment obligations shall include both the principal and interest/profit applicable at the end of the interest/profit-only period.

Discounted interest/profit rates may apply in the early stages of a financing arrangement in some cases. In this instance, the maximum appropriate rate of interest/profit should be adopted (based on the applicable base lending rate/base financing rate at the time of assessment). Even with the collateral promised by financial consumers, the DSR must be used to ascertain affordability. Financing should not be granted to financial consumers who are deemed unqualified without collateral. High net-worth financial consumers, on the other hand, can be afforded more flexibility than vulnerable financial consumers, with their deposits or assets being taken into account when determining repayment capacity (section 6.14 of the Guidelines).

5. Buffer for Expenditures

It is a prerequisite that adequate buffers for expenditures and contingencies for the purpose of determining a prudent level of DSR to consider several circumstances of the financial consumer. The circumstances include the nature of employment, number of dependents, the location of residence, and other factors which may affect expenditure amount of the financial consumer (section 6.14 of the Guidelines).

6. Financing tenure

A more extended financing tenure merely provides a short-term benefit to financial consumers as it may expose them to higher risks due to the overall debt burden in the long run. The Guidelines specify the maximum loan tenure for vehicle financing, which is nine years. In addition to the Guidelines, another measure adopted by BNM to strengthen prudent lending practice is by restricting the loan tenure for the purchase of residential properties and personal financing to 35 years and ten years, respectively.

Once a proper evaluation has been conducted, the banks are required to prepare adequate documentation regarding financing decisions. The reason for financial decisions must be properly recorded and supported by information. The grounds for approval or rejection must be stated not only to justify the decision made but also to assist internal risk management and supervisory inspection of the banks' compliance with the Guidelines by the regulator (section 6.15 of the Guidelines).

To comply with the Guidelines, the banks are obligated to reflect on the effectiveness of existing programs and procedures, including risk management and internal control review mechanisms. The Senior Management, as well as the Board of Directors of the financial institutions, are mandated to ensure proper procedures are in place. Therefore, any non-compliance must be reported to them for rectification based on the prescribed action plans. Finally, the Board is accountable for ensuring that appropriate steps have been taken to address any non-compliance in the conduct of retail finance that could expose them to financial and reputational risks.

At the outset of the introduction of the Guidelines, various concerns were raised by consumers, relevant industries, and banks. A rigorous evaluation process prior to approval may substantially affect the financing application and the risk of rejection (Isa & M Hussin, 2016). Nevertheless, it is submitted that the accumulated debt liability may affect the borrower's ability to repay in the long run due to changes in interest rates or profit rates in the case of floating rates for Islamic financing or unpredicted events such as loss of job. Hence, there is a critical need to find a middle ground between the short-term benefits of credit availability and the long-term consequences of failing to assess financial consumers' suitability and affordability to obtain credit.

DEBT MANAGEMENT PROGRAMME

Brown et al (2021) described DMP as a voluntary repayment plan which can be opted as an alternative to bankruptcy. Dellande et al (2016) state that the debt management service offers a way where the facilitator or the counselor can help the debtor in negotiating the repayment structure and this is regarded as one of the tools to pay the debt to the creditor. Xiao and Wu (2008) further contended that DMP would definitely favour both customers and creditors. This is particularly true because customers can escape the intimidation of debt collection agencies or legal action while enjoying a reasonably low-interest rate and a lower monthly commitment (Zakaria, 2017).

In Malaysia, BNM, through the Financial Sector Blueprint 2011 - 2020, aims to provide consumers with sufficient financial information to make informed decisions about their financial lifestyles. The responsible organization, AKPK, through the DMP, is one of BNM's initiatives to protect the welfare of consumers.

The ultimate objective of DMP is to guarantee peace of mind, which is achievable when looking at the benefits of this program. The goal is to help debtors reduce their overall loan repayment instalments to a tolerable percentage of their net monthly income so that they may reclaim sufficient cash flow to fulfil their daily obligations (Azmi et al, 2017). It means that by enrolling in a DMP, debt repayment is adjusted to the debtor's available cash flow, giving them a second chance to move on with their lives without worrying about their debts (Azmi et al, 2017). Since the creditors are bound by the DMP, a declaration of bankruptcy may be prevented. In summary, DMP helps to restructure cash flow, postpone bankruptcy proceedings, allow sensible repayment periods according to the latest cash flow and ensure no more harassment from debt collectors.

It is pertinent to note that individual debtors who wish to enter a DMP with the AKPK must fulfil prescribed conditions (Asian Financial Institute, 2017). Firstly, the debts are owed to financial service providers regulated by BNM. Secondly, the debtor must have a positive net disposable income after paying all expenses. Thirdly, the total debt exposure does not exceed RM2 million, and lastly, the applicant is not adjudged bankrupt. However, AKPK also extends its services to consumers who borrow from non-bank financial institutions such as credit cooperatives and National Higher Education Fund Corporation (Perbadanan Tabung Pendidikan Tinggi Nasional) (PTPTN) based on separate individual arrangements. This expansion of service was done beginning in 2014 to provide comprehensive and inclusive solutions for borrowers. In line with that, AKPK was appointed as a nominee of the Voluntary Arrangement Schemes in 2017 under the Insolvency Act 1967 (AKPK Annual Report, 2018). The scheme is a pre-bankruptcy rescue mechanism that allows individuals to restructure and/or reschedule their debt before they are declared bankrupt.

There are two categories of approval for DMP, which are blanket approval and approval with consent from the bank (Azmi et al, 2017). The summary of this approval is described in Table 1.

Table 1 Two Matrixes of DMP’s Approval

Subject	**Matrix I-Creditor’s Blanket Approval**	**Matrix II-Require Creditor’s Approval**
Type of Facility and Tenure	Restructuring or rescheduling of unsecured loans where repayment, inclusive of proposed interest, is within 10 years	Restructuring or rescheduling of secured loans (housing loans and hire-purchase) and unsecured loans that do not fall under Matrix 1
Restructure/Reschedule Monthly Payment	Instalments to cover at least proposed interest and can be stepped up during repayment tenure-minimum of 1% of total unsecured loan exposure or RM30, whichever is lower per credit provider	Instalments to cover at interest at least. Other criteria: amount and months in arrear, the value of property, cost and date of auction
Waiver Consideration	Waiver of interest-in-suspense and penalty interest, late payment charges, where applicable. No waiver on loan principal and other charges	Waiver of interest-in-suspense and penalty interest, late payment charges, principal (for deserving cases) where applicable. For housing loan, waiver is subject to i) Value of property charged to credit provider ii) Applicant’s net worth
Payment Mode	Option to pay the instalments either via AKPK or directly to credit providers	Option to pay the instalments either via AKPK or directly to credit providers

Source: Azmi et al. 2017

The indispensable role of AKPK to aid financial consumers is highlighted in the BNM Guidelines on Product Transparency and Disclosure and Guidelines for Responsible Financing. The financial service providers must inform their customers of the services of AKPK by inserting the note below in the product disclosure sheet and reminder notices sent to customers:

English version:

“Agensi Kaunseling dan Pengurusan Kredit has been established by Bank Negara Malaysia to provide free services on money management, credit counselling, financial education and debt restructuring for individuals. For enquiry, please call 1-800-88-2575”.

Malay version:

"*Agensi Kaunseling dan Pengurusan Kredit telah ditubuhkan oleh Bank Negara Malaysia untuk menyediakan perkhidmatan pengurusan kewangan, kaunseling kredit, pendidikan kewangan dan penstrukturan semula pinjaman secara percuma kepada individu. Untuk membuat pertanyaan, sila hubungi talian 1- 800-88-2575".*

In 2017, AKPK published the profile of its DMP participants. A total of 73% of the DMP are from B40 groups, 64% live in urban areas such as Kuala Lumpur and Johor Bahru, 40% are between the age of 30 and 40 years old, 64% works in the private sector, and 93% have unsecured debts consisting of credit cards and personal loans (Hashim S & Syazana, 2018). The statistics also revealed the top reasons for accumulative debt excess in Malaysia. The main reasons are poor financial planning (43%), unexpected shocks such as loss of employment or death of a breadwinner (18%), limited savings (185%), lifestyle spending (7%), and financial scams (4%) (Hashim & Syazana, 2018).

The efficacy of the AKPK system in Malaysia is evident from the number of cases that have been resolved successfully. In 2015, AKPK reported that 10,480 individuals had settled their unpaid debts through the assistance of the DMP (AKPK Annual Report, 2015). Such individuals managed to pay off RM427.1 million collectively. In 2018, DMP helped 3,906 Malaysians fully settle their debts involving the full settlement of 31,754 credit/loan facilities (AKPK Annual Report, 2018). This indicated the success of AKPK and demonstrated that the AKPK system is essential in helping people with financial problems.

RELEVANT PROVISIONS PRESERVING THE WELFARE OF BANKRUPT INDIVIDUAL UNDER THE INSOLVENCY ACT 1967

The Insolvency Act 1967 (IA1967) is Malaysian primary legislation governing individual and firm bankruptcy. The act was first enacted as the Bankruptcy Act 1967 and has undergone several amendments to improve and enhance insolvency laws in Malaysia. In 2017, it was renamed the (IA1967). Over the years, significant changes to the law have been made, and the latest one was via the Insolvency (Amendment) Act, 2023 (IA 2023), which took effect on 6 October 2023. This section highlights provisions under the (IA1967) that improve the effectiveness of the administration of the bankruptcy system and preserve the welfare of the bankrupt without compromising the interest of the creditors.

Voluntary Arrangement Before Being Adjudged Bankrupt

Currently, a rescue mechanism known as a voluntary arrangement allows the debtor to suggest a settlement plan to all his creditors. Section 2A defines "voluntary arrangement" as a composition in satisfaction of a debtor's debt or a scheme of arrangement of a debtor's affairs. However, the settlement plan may only be done before the debtor is adjudged bankrupt [Section 2C (1)].

Section 2C(2)(a) provides that if the debtor intends to propose a settlement plan, he must appoint a nominee to supervise the implementation of this voluntary arrangement. The nominee must be a registered chartered accountant, an advocate and solicitor, or an officer of a corporation established under the Central Bank of Malaysia Act 2009 [Section 2G(1)(a)]. The appointed nominee must follow the proper procedure to register themselves as a nominee with the Director General of Insolvency under Section 2G and must not be an undischarged bankrupt [Section 2G (1)(b)].

Once a nominee has been appointed, the debtor must apply to the court for an interim order [Section 2C (2)(b)]. The interim order serves as a stay from all legal proceedings and execution process, and no bankruptcy petition shall be filed against the debtor during such interim order period (Section 2E). The interim order is effective for 90 days and shall not be extended [Section 2D (3)]. The court must also satisfy itself that the debtor did not file a similar application during the 12 months preceding the date of filing such application.

After obtaining the interim order from the Court, the nominee appointed by the debtor must notify all the creditors within seven days after the order was made [Section 2D (4)]. The nominee shall then convene a meeting with the creditors to approve the debtor's proposal for a voluntary arrangement. Before the meeting, the nominee must obtain all the necessary documentation from the debtor, such as a statement of his/her affairs containing particulars of the debtor's assets, creditors, debts, and other liabilities [Section 2I (2)]. According to section 2I (3), the meeting summoned, or any subsequent meeting may, by special resolution, resolve to approve the proposed voluntary arrangement with or without modification. Upon conclusion of the meeting, the nominee shall then report the decision of the meeting to the Court and shall serve the same to the debtor and all his creditors [Section 2J (1)].

However, through the IA 2023, the meeting of creditors is no longer a mandatory requirement. The creditors may choose to hold the meeting only when they consider it as necessary for the scheme of arrangement or the mode of dealing with the bankrupt's property as reflected through the amended Section 15 of the Insolvency Act 1967. This provision can save time and cost of administration, especially when the bankrupts or the creditors are absent in the meeting of the creditors.

If the creditors decline to approve the debtor's proposal, the Court may set aside any interim order regarding the debtor [Section 2J (2)]. In the circumstances, if the creditor or the debtor believes that the meeting's decision needs to be reviewed, they may apply to the court for a review of the decision of the meeting [Section 2L (1)(a)]. However, the application for review must be made within 30 days of the decision being reported to the court [Section 2L (3)]. A decision to review the voluntary arrangement can only be made if the debtor's or creditors' interests have been unfairly prejudiced or if there were material irregularities in the conduct of the earlier meeting [Section 2L (1)(a)]. After the revision application is heard, the court may revoke or suspend any approval given by the meeting. It may also direct any person to summon a further meeting of the creditors to consider the debtor's revised proposal or reconsider the debtor's original proposal [Section 2L (6)].

Immunity of Social Guarantor from Bankruptcy Proceeding

According to section 2 of the IA 1967, a social guarantor is a person who offers a guarantee not for profit-making purposes, such as an education loan, scholarship, grant for research purposes, hire-purchase transactions for personal or non-business use, or housing loan for personal dwelling. Prior to the 2017 amendment bankruptcy action may be commenced against a social guarantor when the court is satisfied that the creditor has exhausted all means of recovering the sum owing. Under the 2017 amendment, the position has been changed, and the social guarantor now enjoys immunity from any bankruptcy action [Section 5(3)]. In relation to social guarantors, creditors will only be able to enforce the guarantees through other modes of execution provided under the Rules of Courts 2012, and bankruptcy proceedings are no longer an option. According to Akil and Carvalho, there have been many cases where social guarantors were made bankrupt, and the improvement is fair, taking into consideration the rights of social guarantors (Yunus & Carvalho, 2017).

Protection of Non-Social Guarantor from Bankruptcy Proceeding

Guarantors (other than those specified as social guarantors) also enjoy protection under the 2017 amendment. It must be noted that in the past, bankruptcy proceedings may be commenced against a guarantor when the statutory requirements under section 5(1) of the Insolvency Act 1967 are fulfilled. Pursuant to the amendments, a creditor now will have to obtain permission, in the form of leave of the court before commencing bankruptcy proceedings against a guarantor. In the application for leave, a creditor has to satisfy the court that he has exhausted all modes of execution and enforcement to recover debts owed to him by the debtor. The modes of execution and enforcement include seizure and sale, judgment debtor summon, garnishment and bankruptcy or winding up proceedings against the borrower [Section 5(6)]. As decided by the case of *Hong Leong Bank Berhad v Ong Moon Huat* [2018] 1 LNS 1612, the word 'debtor' appearing in section 5(3) means the principal borrower.

According to Salleh Buang (2017), requirement of leave from the court renders the commencement of bankruptcy proceedings more difficult, but offers better protection to other guarantors. It certainly entails additional expenses to a creditor, especially to investigate the debtor's finances, assets and viability of recovery. In the case of *Re Malaya Sibuku; ExP. Kaya Karisma Sdn Bhd* [2021] 5 CLJ 403, the court reaffirms the position of granting leave to commence bankruptcy proceedings against guarantors. It was held that a creditor must show that it has exhausted all available avenues of recovering debt, as provided by section 5(6). On this point, the authors wish to highlight that this can be easily satisfied once the principal borrower is wound up or adjudicated bankrupt by other creditors.

The nominee shall supervise its implementation once the voluntary arrangement has been approved [Section 2N (1)]. If, in any circumstances, the debtor or any of the creditors are dissatisfied with the nominee's conduct under his supervision, they may apply to the court to review that act, omission, or decision [Section 2N (2)]. According to section 20(1), any creditor bound by the voluntary arrangement may file or proceed with a bankruptcy petition against the debtor if the debtor fails to comply with any of his obligations under the voluntary arrangement. Before initiating any petition, the creditor must deduct any amount of debt settled during the voluntary arrangement [Section 2O (2)]. A voluntary arrangement shall cease upon the death of the debtor (Section 2P).

Automatic Discharge after Three Years

The provisions concerning the automatic discharge of bankruptcy have been in existence before the 2023 amendment. The original position of automatic discharge of bankruptcy is provided under Section 33C of the IA 1967:-

A bankrupt shall be discharged from bankruptcy under this section on the expiration of three years from the date of the submission of the statement of affairs under subsection 16(1)—

a. *if the bankrupt has achieved amount of target contribution of his provable debt; and*
b. *if the bankrupt has complied with the requirement to render an account of moneys and property to the Director General of Insolvency under paragraph 38(1)(b).*

However, it is difficult to comply with the requirements, particularly for achieving the amount of target contribution of his provable debt. Thus, to assist the bankrupt to be released automatically in a short period of three to five years, the terms of payment under Section 33C of the IA 1967 had been eased by replacing the first condition of achieving the amount of the targeted contribution of his provable debt with a requirement for him to pay "the sum of money determined by the DGI for the purposes of the administration of the bankrupt's estate, having regard to the financial ability of the bankrupt". Nevertheless, the interest of the creditors is also taken into consideration by amending Section 33C(1)(b) of the IA 1967 to include the suspension of automatic discharge if the debtor has failed to perform his duties and obligations.

Restriction to Object Discharge of Bankruptcy for Specified Categories of Bankrupts

The legal stance on creditors' objections to the discharge of a bankrupt has been subtly revised. Section 33A of the Insolvency Act grants the Director General of Insolvency the discretion to issue a certificate discharging the bankrupt under S33B of IA 1967. However, creditors are afforded the right to object to the issuance of this certificate. Nevertheless, Section 33(2A) of the IA 1967 restricts creditors from raising objections in certain specified categories of bankrupts.

a. a bankrupt who was adjudged bankrupt by reason of him being a social guarantor;
b. a bankrupt who is registered as a person with disability under the Persons with Disabilities Act 2008;
c. a deceased bankrupt; and
d. a bankrupt suffering from a serious illness certified by a Government Medical Officer.

Two additional categories of bankrupts are included under the 2023 amendment namely:

e. a bankrupt who is *incapable of managing himself and his affairs due to any mental disorder*,as certified by a psychiatrist from any government hospital; and

f. a bankrupt *aged seventy years and above*and in the opinion of the Director General of Insolvency, is incapable of contributing to the administration of his estate.

It is viewed that the amendments are made because these specific bankrupt individuals are no longer capable of cooperating or contributing to the administration of their bankruptcy, and there is a need to optimise the use of public funds. Additionally, the IA 2023 specifies that these amendments will apply retrospectively to individuals who were declared bankrupt before the amendment.

Establishment of Insolvency Assistance Fund

Section 77A of the IA 1967 establishes the Insolvency Assistance Fund to streamline the administration of a bankrupt's estate in terms of payments of fees and costs. The fund shall consist of profits from surplus investments derived from dividends to facilitate effective administration of the bankrupt person's estate.

Section 77A allows "investment" to go directly to the Insolvency Assistance Fund and operate as a separate account from the consolidated funds. The Director General of Insolvency has conferred the power to apply the fund to pay the cost and expenses of advocates in any proceeding related to the bankrupt's estate as well as the expenses in the administration of the estate [Section 77A (3)].

Remote Communication Technology

Insolvency matters can now be communicated online through video conferences etc. The definition of "remote communication technology" has been included namely "a live video link, a live television link or any other electronic means of communication". Section 130 of IA 1967 is also amended to allow the service of notices through electronic communication, provided that consent has been given by the person to whom the notice or document is to be served. Furthermore, Schedule A of the IA 1967 was also amended to allow the meeting of creditors through remote communication technology. It is submitted that this amendment aims to save costs and time in the administration of bankruptcy matters.

RECOMMENDATIONS

The government has devised various strategies to curb overindebtedness. However, there is still room for improvement to enhance the effectiveness of those measures. Since the financial education plays a crucial role to empower the individuals, a more extensive financial education and awareness program should be conducted to reach wider audience especially young generations.

Interactive and engaging methods, such as online financial games and in-class activities, have shown promise in improving financial literacy among primary school children (Murugiah et al, 2023). Additionally, awareness programs targeting high school students are crucial as they currently exhibit low financial literacy levels (Ghazali et al, 2017). Special attention should be given to young men earning below RM1500 and those with certificate qualifications, as they are identified as needing the most improvement in financial literacy (Murugiah, 2016). Leveraging digital tools and platforms can significantly enhance financial literacy. These tools can provide accessible and engaging financial education, particularly for young adults (Hishamudin et al, 2024).

Furthermore, non-bank credit providers, such as moneylenders and buy-now-pay-later service providers, must be legally obligated to assess prospective borrowers' financial standing. This evaluation ensures that borrowers can comfortably meet their financial commitments without experiencing undue difficulty.

CONCLUSION

The preceding discussion exposes numerous approaches designed by the government to prevent Malaysians from falling into the trap of overindebtedness. The primary measure is to equip society, especially the younger generation, with financial literacy skills, including prudent spending, sound financial management and proper debt management through financial education programs and financial advisory services. Moreover, evaluating prospective borrowers' ability to make new financial commitments through mandatory suitability and affordability assessment prevents them from facing financial hardship in meeting their monthly obligations due to over-commitment in the future. For those on the brink of bankruptcy, a debt management program or voluntary arrangement enables the restructuring of loans or financing payments in accordance with the debtors' financial standing. For those adjudged bankrupt, amendments made in 2017 and 2023 have provided more "debtor-friendly" provisions such as automatic discharge after three years, restriction to object discharge of bankruptcy for specified categories of bankrupts and adoption of remote communication technology.

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