# Modernising the Safety Net: Assessing the Efficacy of Voluntary Arrangements (VA) And Automatic Discharge Mechanisms in Malaysia's Insolvency Framework

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## ABSTRACT

Malaysia has reformed its personal insolvency law twice in six years to turn bankruptcy from a debt-collection device into a means of rehabilitation. The Bankruptcy (Amendment) Act 2017 introduced a pre-bankruptcy Voluntary Arrangement (VA) under sections 2A to 2Q and a three-year automatic discharge under section 33C of the Insolvency Act 1967. Neither mechanism worked as intended. VAs remained rare, and in May 2023 Parliament was told that not a single automatic discharge had been recorded. The Insolvency (Amendment) Act 2023 (Act A1695) replaced the debt-based "targeted contribution" with an ability-to-pay test and allowed the Director General of Insolvency (DGI) to suspend discharge. This article asks whether the two mechanisms now provide an effective safety net. It combines doctrinal analysis of the amended provisions with a qualitative content analysis of twenty Malaysian High Court judgments retrieved from LexisNexis Malaysia, read against comparative literature from 2021 to 2026. The case law shows that the VA is judicially workable. Courts treat the interim order as a statutory entitlement once the section 2D conditions are met, and they police the creditors' stage by reviewing for unfair prejudice and material irregularity and by refusing to revive interim orders that have lapsed. Automatic discharge now operates, but its outcome depends on the quality of the DGI's administrative record. In the litigated cases creditors have obtained two-year suspensions, or had discharge notices set aside, where the DGI adopted the bankrupt's own repayment offer without assessing the section 33C(2) factors or left known assets uninvestigated. The article concludes that Malaysia's remaining deficit is administrative and institutional rather than doctrinal. It proposes seven reforms and ranks them by feasibility: steps the DGI can take by direction (a published ability-to-pay methodology, a reasoned discharge record and disaggregated data), changes to the Rules (a clearer VA gateway and a low-cost VA track linked to AKPK), and statutory amendment (a discharge clock that does not depend solely on the statement of affairs, and a debt relief route for debtors below the bankruptcy threshold).

**Keywords:** Voluntary arrangement; automatic discharge; personal insolvency; Insolvency Act 1967; Malaysia

## INTRODUCTION

For most of its history the Malaysian bankruptcy statute served creditors first. Kilborn (2025) shows that almost all petitions are presented by institutional creditors seeking payment rather than by debtors seeking relief. He also shows that the civic, professional and travel disabilities attached to adjudication left large numbers of people in bankruptcy for decades. The statute that began life as the Bankruptcy Act 1967 was renamed the Insolvency Act 1967 (Act 360) in the 2017 reform. The new name signalled a new purpose. Bankruptcy was to become one stage in a wider framework that also offered rescue before adjudication and a predictable route out of it afterwards.

Two mechanisms carried that ambition. The first is the personal Voluntary Arrangement (VA) in sections 2A to 2Q. It allows a debtor who has not been adjudged bankrupt to put a composition or scheme of arrangement to creditors through a registered nominee, under the protection of a ninety-day interim order. The second is the automatic discharge in section 33C, which promised release three years after the bankrupt submits a statement

of affairs. The corporate counterpart, the corporate voluntary arrangement (CVA) under the Companies Act 2016, arrived at around the same time and has had a similar record of low uptake (Chen et al., 2021; Gurrea-Martínez, 2026).

The early results were poor. The 2017 version of section 33C made discharge conditional on paying a "targeted contribution" of the provable debt. When the Minister moved the 2023 amendments, he told the Dewan Rakyat that no automatic discharge had yet been recorded, because bankrupts could not meet that condition. The statement is recorded in the Hansard of 23 May 2023, as quoted in *Malayan Banking Bhd v Pengarah Insolvensi Negeri Johor* [2024] MLJU 1373 at [26]. The personal VA was also little used. It was overshadowed by the free but non-binding Debt Management Programme run by the Credit Counselling and Debt Management Agency (Agensi Kaunseling dan Pengurusan Kredit, AKPK) (Kilborn, 2025). The Insolvency (Amendment) Act 2023 (Act A1695), which received Royal Assent on 5 August 2023, was gazetted on 11 August 2023 and came into force on 6 October 2023, replaced the targeted contribution with a sum fixed by the Director General of Insolvency (DGI) "having regard to the financial ability of the bankrupt". It also allowed the DGI to suspend discharge for non-compliance, and it applied the new rule to persons adjudged bankrupt before the amendment. In parallel, Parliament has narrowed entry into bankruptcy. The minimum petitioning debt rose from RM30,000 to RM50,000 in 2017 (Kilborn, 2025) and to RM100,000 under the Insolvency (Amendment) Act 2020 (Act A1624), which was gazetted on 22 October 2020 and came into force on 1 September 2021 (Allen & Gledhill, 2021). In the Budget 2027 speech of 9 October 2026 the Prime Minister proposed a further increase to RM150,000 from 2027 (The Star, 2026a). At the time of writing this remains a proposal, because the figure in section 5(1)(a) can only be changed by amending the Act or, for a specific period, by ministerial order under section 5(1A).

The literature has documented these statutory changes, but there is little analysis of how they have worked since 2023, and in particular of how the High Court has read them. This article addresses that gap through three research questions. First, how do the amended VA and automatic discharge provisions allocate power among the debtor, the creditors, the DGI and the court? Second, how have Malaysian courts applied those provisions in recent disputes? Third, what do the answers reveal about the efficacy of the two mechanisms as a safety net when they are measured against the comparative literature? To the author's knowledge, the article offers the first structured reading of the post-2023 case law. That reading shows that the main problems have moved from statutory design to administrative practice.

The article is organised as follows. The literature review sets out the theoretical case for debt relief and the comparative evidence on voluntary arrangements and discharge. The methodology section explains the doctrinal approach and the construction of the case corpus. The results and discussion section analyses the statutory architecture, the VA case law and the automatic discharge case law, and then assesses efficacy against five criteria. The final sections propose reforms and conclude.

## LITERATURE REVIEW

### Debt relief as social insurance and the fresh start

Contemporary scholarship divides along the line between creditor wealth maximisation and rehabilitation or social insurance. Spooner (2026) treats personal insolvency law as a mandatory insurance mechanism against income, health and climate shocks. On his account, discharge moves default losses away from households and towards lenders, which are better able to price and diversify the risk. Ntsalaze and Chipunza (2025) map the over-indebtedness literature and conclude that financial literacy campaigns cannot substitute for an accessible discharge, particularly for debtors with no income and no assets. In corporate insolvency, Chen et al. (2021) show that Malaysia transplanted its rescue mechanisms from the United Kingdom and Singapore but kept creditor vetoes inherited from the Companies Act 1965. The resulting statute sits uneasily between contractarian and communitarian theories of insolvency. Chen et al. (2024) trace the same creditor-veto problem in judicial management. Anuar and Atan (2026) find that Malaysian courts apply priority rules formally. Because Malaysia has no public wage-guarantee fund, employees and unsecured trade creditors bear the residual loss.

**Leniency, entrepreneurship and the political economy of discharge**

A methodological advance of the past five years is the measurement of bankruptcy "leniency". Walter and Krenchel (2021) built a 35-indicator index across 25 European Union jurisdictions, grouped into seven dimensions that include eligibility, cost, complexity, discharge conditions and stigma. Using panel data for 2000 to 2019, Walter et al. (2022) report a positive association between leniency-enhancing reforms and self-employment. Walter and Jáki (2026) extend the series back to 1984 and find that market-liberal governments were more likely to shorten discharge periods as a way to encourage entrepreneurial re-entry. The link to small business is direct. Gurrea-Martínez (2021) observes that founders of micro and small enterprises usually sign personal guarantees, so that corporate rescue without a quick personal discharge leaves the entrepreneur bankrupt even when the company survives. Directive (EU) 2019/1023 requires a maximum three-year discharge period for insolvent entrepreneurs but leaves consumer discharge to Member States. Vandenbossche (2023) and Jokubauskas (2023) criticise that split and argue that the case for a three-year fresh start applies equally to consumers, guarantors and sole traders.

**Repayment plans, moratoria and voluntary arrangements**

Evidence on how repayment plans perform is growing. In a file-level study of Belgian collective debt settlement (n = 118), Vandenbossche (2026) finds that each additional year of plan duration is associated with roughly 4.8 percentage points lower creditor recovery, and that a larger share of receipts goes to the mediator's fees. Yung and Blacker (2026) use time-series data to show that the introduction of administrative Debt Relief Orders in the United Kingdom created a structural break that reduced bankruptcy among individual construction traders. Paterson (2023) and Van Zwieten (2023) show that a free-standing moratorium can send an adverse signal if it is entered late and without rescue finance. Kärki (2026) and Cepec and Grajzl (2021) document how holdout creditors and weak screening derail viable plans. Studies of small firms in the European Union, China and Uganda point to the same behavioural barriers: stigma, fear of losing control, a lack of rescue finance and high practitioner fees (Ghio, 2025; Mrockova, 2022; Nsubuga, 2026). Adebola et al. (2025) and Adebola (2026) warn that transplanting United Kingdom-style procedures without building local institutional capacity leaves a lasting gap between the law on the books and the law in practice.

**Discretion, administrative opacity and data**

A further body of work concerns the administration of discretion. André et al. (2026) find that when insolvency statutes call for evaluative judgements without transparent criteria, Portuguese judicial practice tends towards formulaic reasoning and inconsistent outcomes. Olabarrieta et al. (2023) describe how information asymmetry produces adverse selection in Spanish insolvency proceedings. Garrido et al. (2025) and Akintola (2026) argue that reform cannot be evaluated without granular data on recovery rates, costs, time to discharge and recidivism. The Malaysian Department of Insolvency (MdI) publishes aggregate counts, but the publicly reported figures do not separate discharges under section 33A from those under section 33C. Stanescu (2025) adds a regional dimension. Raising the minimum petitioning debt reduces the number of bankruptcies, but without debt-collection regulation or a low-cost relief route it pushes low-value debtors into a "shadow realm" of informal enforcement.

**The Malaysian literature and the research gap**

The most detailed Malaysian study is Kilborn's (2025) review of twenty-five years of personal bankruptcy data. He concludes that the 2017 version of section 33C failed in practice. Ismail (2021), writing before any section 33C case had been reported, found that the provision was being applied without specific procedures or guidelines, so that practice could vary between High Court registries and MdI branches, and compared the Malaysian period with the shorter periods in the United Kingdom, Canada and Australia. Official figures show the scale of the administrative clearance that followed. The Second Chance Policy (*Dasar Peluang Kedua*) began in 2023 with a target of discharging 130,000 bankrupts within a year, and 142,510 discharges had been recorded by July 2024 (Bernama, 2024). MdI later reported 176,851 discharges in 2024 and 204,487 in 2025, more than 381,000 in two years (Berita Harian, 2026; Utusan Malaysia, 2026). In October 2026, however, the Minister told the Dewan Rakyat that 253,457 discharges had been recorded under the policy between 2023 and September

2026 (The Star, 2026b). The two sets of figures cannot both describe the same population, which suggests that they count different things. None of these studies examines the post-amendment judgments on sections 2D, 2L and 33C. As a result, the literature can say what the statute now provides but not how it is being applied. This article fills that gap.

## METHODOLOGY

The study uses doctrinal (black-letter) legal research supplemented by a qualitative content analysis of case law. A doctrinal approach suits questions about the meaning, structure and operation of statutory rules. Content analysis allows the judgments to be compared systematically rather than cited anecdotally. The primary sources are the Insolvency Act 1967 as amended by Act A1534 (2017), Act A1624 (2020) and Act A1695 (2023), in particular sections 2A to 2Q, 5, 33, 33A to 33C, 35 and 86 to 87; the Insolvency (Voluntary Arrangement) Rules 2017; the Insolvency Rules 2017 as amended by the Insolvency (Amendment) Rules 2023 (P.U.(A) 301/2023); and parliamentary and departmental materials as reproduced in the judgments.

The case corpus was assembled from LexisNexis Malaysia (Lexis Advance) in two stages. An initial scoping search on 11 November 2026 used narrower strings with proximity connectors across cases, legislation and secondary materials. The legislation and secondary materials it returned inform the doctrinal analysis: 18 and 19 documents on discharge, 24 secondary documents on the VA and four on the amending Acts. The case corpus was then drawn from three broader Boolean searches run on 17 November 2026, set out in Table 1. They combine English and Malay terms, because many High Court judgments are written in Bahasa Malaysia. All three were run on MY Cases only, as Terms and Connectors searches with Legal Phrase Equivalents excluded, limited to judgments dated from 1 October 2017. They listed 122 case entries (49, 47 and 26). Nine entries appeared under more than one search, and thirteen were second listings of a judgment already counted, in most instances the reported and the unreported version of the same decision. That left 100 distinct judgments, two of which were false hits on other statutes. When the three searches were re-run with the same settings on 18 November 2026, they returned the same counts and every judgment in the corpus. Each judgment was screened against two inclusion criteria. A judgment was retained for close reading if it (a) decided an application under sections 2C to 2L, section 33A or 33B, or section 33C, or (b) addressed the scope of the DGI's discharge powers. Priority was given to decisions after 6 October 2023. Nineteen judgments met these criteria and were analysed in full: seven on the VA, six on section 33C and six on section 33A or related discharge questions. A twentieth judgment, on corporate judicial management, was retained as a comparator because it addresses the abuse of a statutory moratorium. The nineteen personal insolvency judgments come from five High Court registries: Kuala Lumpur (six), Shah Alam (four), Johor Bahru (four), Melaka (four) and Kota Kinabalu (one). All twenty are decisions of the High Court. One of them, *Ahmad Fadhli Zawawi*, was listed by search A but was added to the corpus only after a cross-check on CLJ Prime showed that it applies the Court of Appeal's decision in *Nor Azah*, which is discussed in the Results.

Coding followed a two-stage protocol. In the first stage each judgment was read in full and entered on a coding sheet under five fields fixed in advance from the research questions: the provision engaged; the applicant (debtor, creditor, DGI or other party); the issue for decision; the outcome; and the principal line of reasoning, recorded with paragraph references. This stage was deductive, because the fields come from the structure of the statute and not from the judgments. In the second stage the entries in the reasoning field were compared across cases and grouped inductively into themes. The themes are the run-in headings under which the cases are discussed below. For the VA they are the gateway as an entitlement, threshold scrutiny, the fixed timetable, creditor autonomy and substantive review. For discharge they are the assessment of ability to pay, what the DGI must prove, the supervisory jurisdiction, procedural discipline and the administration of the estate after discharge. The themes were then mapped onto five evaluative criteria taken from the literature (Table 5).

The study has a single author, so agreement between coders could not be measured. Three checks were used instead. First, every coded entry was verified against the full text of the judgment and not against the Lexis case-analysis summary, and each proposition attributed to a court carries a pinpoint paragraph reference so that a reader can check it. Second, the themes were tested against the statutory text and against the parliamentary materials that the judgments reproduce. Third, decisions that cut against an emerging theme were kept and reported. *Bank Islam*, where the discharge stood, is reported alongside the decisions that suspended discharge,

and the Kuala Lumpur decisions on section 2D are set against the Melaka reading. Tables 3 and 4 reproduce the coded fields for every judgment, and the coding sheet is available on request.

Table 1. Search strings and case entries listed by LexisNexis Malaysia (MY Cases, judgments from 1 October 2017; run 17 November 2026 and re-run 18 November 2026)

| Search | Search string (as run) | Content type | Case entries listed |
|---|---|---|---|
| A. Discharge | ("automatic discharge" OR "section 33C" OR "seksyen 33C" OR "section 33A" OR "seksyen 33A" OR "certificate of discharge" OR "sijil pelepasan") AND (bankrupt OR bankruptcy OR insolvency OR insolvensi OR bankrap) AND ("Director General of Insolvency" OR "Ketua Pengarah Insolvensi" OR DGI OR objection OR bantahan) | MY Cases | 49 |
| B. Voluntary arrangement | ("voluntary arrangement" OR "Part IIA" OR "perkiraan sukarela" OR "interim order" OR "perintah interim") AND ("Insolvency Act" OR "Akta Insolvensi" OR bankrupt OR bankruptcy) AND (nominee OR "creditors' meeting" OR "meeting of creditors" OR default OR "section 2D" OR "section 2L") | MY Cases | 47 |
| C. Amending Acts | ("Insolvency (Amendment) Act 2023" OR "Act A1695" OR "Akta A1695" OR "Insolvency (Amendment) Act 2020" OR "Act A1624" OR "Bankruptcy (Amendment) Act 2017" OR "Act A1534") AND (discharge OR "voluntary arrangement" OR threshold OR "RM100,000") | MY Cases | 26 |

The secondary literature consists of a structured synthesis of sources published between 2021 and 2026, most of them open-access articles in journals indexed in Scopus or the Web of Science, together with Malaysian studies, an International Monetary Fund working paper and one Malayan Law Journal article retrieved in the scoping search (Ismail, 2021). Secondary sources are cited in APA (7th edition) style. Legislation and judgments are cited in the form used by the Malaysian courts and law reports, with pinpoint references to paragraph numbers in square brackets.

The study has four limitations. First, most of the judgments are unreported decisions of the High Court. They are not binding precedent and they do not bind other High Court judges. Second, the corpus comes from a single database. Lexis coverage of unreported decisions is incomplete. The search was cross-checked on CLJ Prime on 17 November 2026 by case-name, full-text and section-index searches adapted from the Lexis strings, reading the results lists. Five of the corpus judgments could not be found there by title, which confirms that coverage differs between the two databases. Registries whose judgments are uploaded less often may be under-represented, and five registries cannot stand for all. Third, the study had no access to MdI administrative files. What is said below about how the DGI determines ability to pay rests on the DGI's affidavits as the courts summarise them, not on departmental records. Litigated discharges are also a small and contested fraction of the more than 250,000 discharges recorded since 2023 (The Star, 2026b). The cases therefore show how the process fails when it is challenged, not how the DGI ordinarily decides. Fourth, the corpus supports qualitative, analytical inference about how the provisions are applied, not statistical claims about the population of discharges or arrangements. The study involved no human participants.

# RESULTS AND DISCUSSION

## The statutory architecture after Act A1695

Table 2 traces the routes out of bankruptcy across three statutory eras. Before 2017, a bankrupt could leave bankruptcy through a court order under section 33 or a DGI certificate under section 33A, and the certificate was available only after five years from the bankruptcy order. The 2017 reform added section 33C and a list of protected categories in section 33B(2A) against whose discharge creditors cannot object. The 2023 reform kept the three-year period but changed what the bankrupt must pay and how non-compliance is handled.

Table 2. Discharge routes under the Insolvency Act 1967 across three statutory eras

| **Feature** | **Before Act A1534 (pre-Oct 2017)** | **Act A1534 (2017)** | **Act A1695 (from 6 Oct 2023)** |
|---|---|---|---|
| Routes out of bankruptcy | Court order (s 33); DGI certificate after five years from the bankruptcy order (s 33A) | Adds automatic discharge three years after the statement of affairs (s 33C) | Section 33C retained but recast |
| Payment condition for s 33C | — | "Targeted contribution" of the provable debt | Sum determined by the DGI having regard to financial ability (s 33C(1)(a)(i)), assessed on the factors in s 33C(2)(b)–(g) |
| Accounting condition | — | Render accounts to the DGI (s 38(1)(b)) | Unchanged |
| Consequence of non-compliance | — | No automatic discharge | DGI may suspend discharge for up to two years by notice; bankrupt then discharged automatically (s 33C(1)(b), (8A)–(8C)) |
| Creditor objection | Objection to a s 33A certificate (s 33B) | Court application within 21 days of notice (s 33C(4)) | Grounds limited to an offence, prejudice to administration of the estate, or failure to co-operate; court may suspend for two years (s 33C(4), (7)) |
| Protected categories (no objection, s 33B(2A)) | None | Social guarantor; registered person with disability; deceased; serious illness | Adds mental disorder certified by a government psychiatrist, and age 70 or above where the DGI considers the bankrupt incapable of contributing |
| Transitional reach | — | — | Amended s 33C applies to persons adjudged bankrupt earlier who have filed a statement of affairs (Act A1695, s 16) |
| Administration of the estate | First meeting of creditors mandatory (s 15; Sch A para 1) | Unchanged | Meeting of creditors discretionary (s 15(1)); remote meetings (Sch A para 4; r 210A); electronic service (s 130(2)); notice to the bankrupt stating the sum determined (r |

| | | | |
|---|---|---|---|
| | | | 199); suspension notice in Form 100A (r 200A); exempt tools of trade up to RM20,000 and necessities up to RM10,000 (s 48; r 179A) |
| Minimum petitioning debt (s 5(1)(a)) | RM30,000 | RM50,000 | RM100,000 (Act A1624, in force 1 Sept 2021); RM150,000 proposed in Budget 2027, not yet enacted |

Figure 1 places these routes within the wider set of options available to a debtor in distress. It also shows the two gaps discussed below: the informal AKPK channel, and the absence of any formal route for debtors whose debts fall below the petitioning threshold.

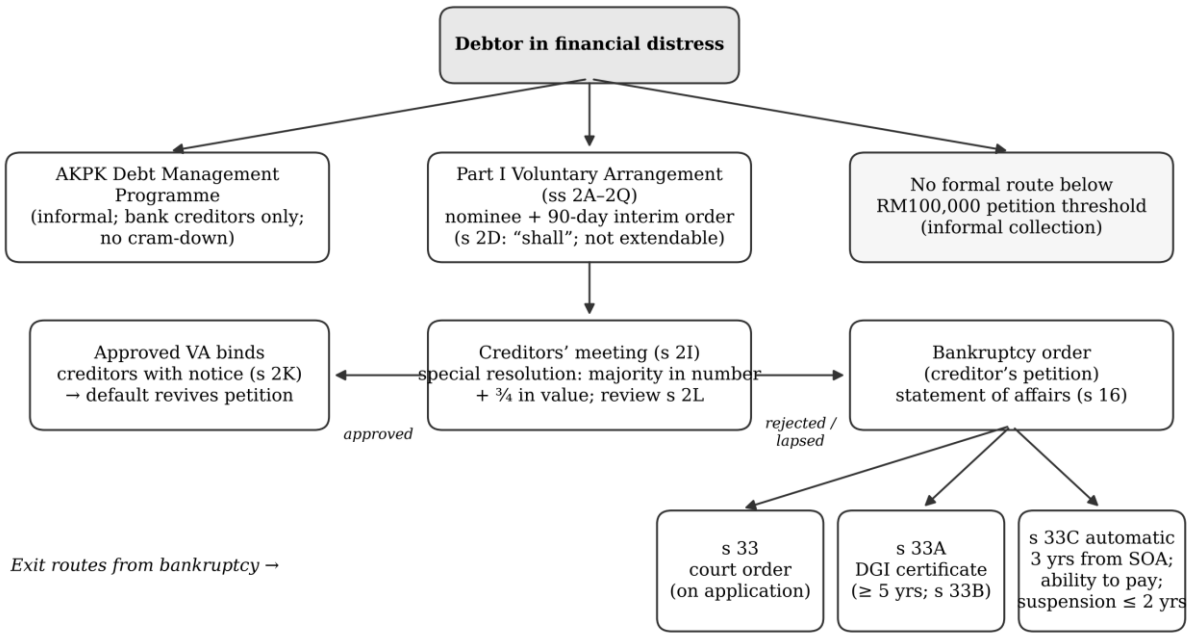



Figure 1. Malaysia's personal insolvency safety net after Act A1695: pre-bankruptcy options and exit routes (author's construction from the Insolvency Act 1967)

Three design features recur in the analysis that follows. First, the three-year period runs from the submission of the statement of affairs under section 16(1), not from the bankruptcy order. A bankrupt who never files does not start the clock. Second, the ability-to-pay determination is a decision of the DGI, but section 33C(2) lists the matters the DGI "shall take into account". These include current and expected income, the spouse's contribution, reasonable living expenses, realisable property and the provable debt. That list gives creditors a measure against which to challenge the DGI's decision. Third, the Insolvency (Amendment) Rules 2023 already require the DGI to give the bankrupt a notice stating the sum determined (rule 199, as amended), and a separate prescribed notice when discharge is suspended (rule 200A and Form 100A). Neither the Act nor the Rules, however, requires the notice to explain how the section 33C(2) factors produced the figure. That omission becomes important in the case law discussed below.

**Voluntary arrangements: from dormant provision to contested procedure**

The VA procedure is a pre-bankruptcy device. Section 2B excludes undischarged bankrupts, and under section 2C(1) a debtor may propose an arrangement "at any time before he is adjudged bankrupt". The debtor must appoint a nominee registered with the DGI (sections 2F and 2G) and apply to the court for an interim order,

sending a copy to the DGI. Under section 2D(1) the court "shall" make the order once it is satisfied of the two matters in section 2D(2): that the debtor has made no application in the preceding twelve months, and that the nominee is willing to act. The order lasts ninety days and "shall not be extended" (section 2D(3)). While it is in force, no bankruptcy petition may be made or proceeded with, and other proceedings require leave (section 2E). The nominee must summon the creditors before the order expires (section 2I(1)). A proposal is approved by special resolution, which section 2 defines as a majority in number and at least three-fourths in value of the creditors present and voting, and secured and preferential creditors keep the protections in section 2I(3). An approved arrangement binds every person who had notice of the meeting and was entitled to vote (section 2K). The decision can be reviewed for unfair prejudice or material irregularity (section 2L), and default revives the creditors' right to petition (section 2O(1)) (*Re Nor Azzam bin Abdul Jalil* [2026] MLJU 3872 at [11]–[16]; *Re Datuk Wira Mohd Yusoff bin Hj Mahadi* [2026] MLJU 4426 at [10]–[13]). Table 3 summarises the seven VA judgments.

Table 3. Judicial treatment of personal voluntary arrangements, 2020–2026

| **Case** | **Provision and issue** | **Outcome** | **Principal reasoning** |
|---|---|---|---|
| *Re Lim Cheng Pow; ex parte Maybank Investment Bank Bhd* [2021] 8 MLJ 517 (HC Kuala Lumpur, 12 May 2020) | ss 2C, 2D, 2I; r 11 VA Rules: creditors' intervention after an ex parte interim order | Intervention allowed; creditors' meeting not permitted | No full and frank disclosure of pending bankruptcy litigation; nominee missed the r 11 timeline; "meticulous compliance" required given the 90-day order; proposal would force a creditor to sell its own notes to a third party |
| *Andy Farouk Muhamad Nasim v SME Bank* [2021] MLJU 2146 (HC Kuala Lumpur) | ss 2C(2), 2D(2)(b), 2F: nominee and interim order | Applications dismissed | Nominee requirements mandatory and non-compliance not curable under s 131; unexplained delay in substituting nominee showed lack of bona fides; speculative turnaround proposal; three objecting creditors owed about RM50 million |
| *Re Chong Boon Heng* [2024] MLJU 3415 (HC Shah Alam) | s 2L(1)(a), (b): review of an approved VA | Approval revoked; VA set aside | Repayment of 0.0041 sen per RM1 a year over 25 years was illusory and unfairly prejudicial; proofs of debt of allegedly connected creditors, whose votes were decisive, were never exhibited |
| *Re Abdul Kadir bin Haji Sheikh Fadzir* [2026] MLJU 322 (HC Kuala Lumpur) | ss 2D(3), 2I: approval after the interim order lapsed | Bankruptcy order upheld | Interim order expired after 90 days and cannot be extended; meeting held after expiry had no effect despite 91% creditor approval; AKPK had acted as nominee |
| *Re Fok Wai Mun; ex parte Ambank* [2026] MLJU 1072 (HC Kuala Lumpur) | s 2I and s 6(3): creditor's non-attendance | Petition restored | Creditor not obliged to attend; proposal of RM65,000 a month against income of RM17,950 and assets of RM296,743 was "hollow"; non-attendance not "sufficient cause" |
| *Re Nor Azzam bin Abdul Jalil* [2026] MLJU 3872 (HC Melaka) | ss 2C, 2D: interim order | Interim order granted | "Shall" is mandatory; low threshold because merits belong to creditors; court is not a rubber stamp; fifteen institutional creditors owed RM877,813.41 |

| | | | |
|---|---|---|---|
| *Re Datuk Wira Mohd Yusoff bin Hj Mahadi* [2026] MLJU 4426 (HC Melaka) | ss 2C, 2D, 2E: single creditor, petition pending | Interim order granted | Pending petition is the situation the Act contemplates; a single creditor controls the vote; abuse is addressed by the statutory safeguards, not by an added good-faith test |

The gateway is an entitlement. The two Melaka decisions read section 2D(1) as a command. In *Nor Azzam* the court held that Parliament had chosen a low threshold at the interim stage because the merits of a proposal are for the creditors, not the court ([25]). It added that the court does not act as a rubber stamp and must be shown a genuine use of the procedure ([26]). In *Datuk Wira Mohd Yusoff* the same court applied that reasoning to harder facts. The debtor had one creditor, applied three weeks before that creditor's petition was to be heard, and had not formulated a proposal. The court still granted the order. It reasoned that a pending petition is exactly the situation the Act contemplates, that a sole creditor cannot be outvoted, and that Parliament has already addressed tactical use through the twelve-month bar, the fixed ninety days and leave under section 2E(b) ([25]–[27], [34]). On this reading the VA is accessible in law to any debtor not yet adjudged bankrupt who can find a registered nominee.

The Melaka approach is not the only line of authority. Two earlier decisions of the Kuala Lumpur High Court, both by Nadzarin Wok Nordin JC, examined applications far more closely. In *Re Lim Cheng Pow; ex parte Maybank Investment Bank Bhd* [2021] 8 MLJ 517, decided on 12 May 2020, an interim order had been granted ex parte. The court then allowed the debtor's bank creditors to intervene and refused to let the creditors' meeting proceed. It found three defects: the debtor had not disclosed pending bankruptcy litigation, the nominee had not called for the proposal within the time in rule 11 of the Voluntary Arrangement Rules, and the proposal would have compelled one creditor to sell its own secured notes to a third party at a discount. The court stressed that "there must be meticulous compliance with the law" because the interim order lasts only ninety days ([94]). In *Andy Farouk Muhamad Nasim v Small Medium Enterprise Development Bank Malaysia Bhd* [2021] MLJU 2146 the same court dismissed applications for interim orders outright. The nominee requirements in sections 2D(2)(b) and 2F were mandatory and their breach could not be cured under section 131. The unexplained delay in substituting a registered nominee showed a lack of bona fides. And a turnaround plan that depended on an uncertain supply agreement, opposed by all three creditors owed some RM50 million, would make a meeting a futile exercise ([13]–[17], [22]–[27]). The two lines agree that the statutory conditions must be met strictly. They differ on whether the court may weigh viability and creditor opposition before a meeting is held. *Nor Azzam* and *Datuk Wira Mohd Yusoff* leave those questions to the creditors and to review under section 2L. *Lim Cheng Pow* and *Andy Farouk* address them at the threshold through the duty of full and frank disclosure and the court's refusal to order a futile meeting. The Melaka reading fits the mandatory language of section 2D(1) better, but the disclosure duty that attends an ex parte application gives creditors a legitimate route to set aside an order obtained on an incomplete picture.

Three points bear on how deep this division runs and how it may be resolved. First, it is narrower than it looks. *Andy Farouk* can be explained on the footing that a condition in section 2D(2) was not met, because the nominee requirements had not been complied with. *Lim Cheng Pow* can be explained on the footing that an order obtained ex parte without full disclosure may be revisited. Neither footing is inconsistent with the Melaka reading. The real disagreement is confined to one question: whether the court may weigh the viability of a proposal, or the strength of creditor opposition, before the creditors have met. Second, the division is between judges of coordinate jurisdiction. One High Court judge is not bound by the decision of another, so the Kuala Lumpur decisions of 2020 and 2021 and the Melaka decisions of 2026 can stand side by side until an appellate court chooses between them. Third, no appellate guidance was found. When the searches were re-run on 17 November 2026 they returned no decision of the Court of Appeal or the Federal Court on section 2D, and no reported appeal from any of the four judgments. A cross-check on CLJ Prime the same day, by full-text search and through the section 2D index, gave the same result. Lexis does not record notices of appeal, so the article cannot say whether an appeal is pending. Until the Court of Appeal settles the matter, debtors and nominees face uncertainty about how much evidence of viability they must file at the outset.

The corporate case law shows a risk that the personal VA has so far largely avoided. In *Novabrite Lighting Sdn Bhd v Emrail Sdn Bhd* [2025] 11 MLJ 275 the High Court struck out, of its own motion, the sixth judicial

management application filed for the same company in four years. The application was filed three days after a creditor's winding-up notice, contained no rehabilitation proposal and did not properly nominate an insolvency practitioner. Its predominant purpose was to obtain the statutory moratorium, and the court barred any further judicial management or restraining-order application without leave. The personal VA has a structural safeguard against serial use, because section 2D(2)(a) bars a second application within twelve months. *Novabrite* nonetheless explains why Parliament placed that bar in the Act, and why the courts in *Lim Cheng Pow* and *Andy Farouk* were alert to tactical filings.

The timetable is unforgiving. *Abdul Kadir* shows the other side of a fixed timetable. AKPK accepted appointment as nominee, an interim order was granted on 9 October 2024 and it expired on 7 January 2025. One creditor could not attend the meeting proposed for December and asked for January. The debtor sought a thirty-day extension. The notice for the meeting issued only on 21 January, and the meeting on 4 February 2025 approved the proposal by 91 per cent. The court held that the approval had no effect because the interim order had already lapsed, and it upheld the bankruptcy order made on 13 March 2025 ([18]–[23]). Two lessons follow. AKPK can act as a nominee, so the separation between AKPK and Part I that the literature describes (Kilborn, 2025) is one of practice and resourcing rather than legal eligibility. And the rule that the interim order "shall not be extended" can defeat an arrangement that most creditors support, simply because of a scheduling delay.

Creditors keep their autonomy. In *Fok Wai Mun* the debtor, a guarantor of a company loan that was itself 70 per cent guaranteed by Credit Guarantee Corporation, obtained an interim order and convened three meetings that the bank did not attend. The Registrar struck out the bank's petition. The High Court reinstated it. Nothing in section 2I or rule 12 compels a creditor to attend, and a proposal to pay RM65,000 a month on an income of RM17,950 was "hollow" ([19]–[26]). The decision confirms that a VA cannot be used to turn a creditor's non-participation into a ground for dismissing a petition. It also shows the guarantor problem identified by Gurrea-Martínez (2021): the company had been wound up, but the founder's personal exposure continued.

The court can also review an approved arrangement for substance. *Chong Boon Heng* is the most significant VA decision in the corpus. The proposal offered creditors 0.0041 sen per ringgit a year for twenty-five years and depended on speculative proceeds from a company in liquidation. Creditors with alleged links to the debtor, claiming about RM10.5 million, provided the decisive votes, but their proofs of debt were never exhibited. The court revoked the approval on both statutory grounds, holding that the nominee is a gatekeeper who must verify claims ([9]–[13]) and that an illusory return is unfairly prejudicial ([17]–[20]). The court also set out the purpose of the scheme. In its view the VA is "not merely a tool for debtors to delay enforcement or escape liabilities but a mechanism to promote financial recovery" ([26]). The comparative literature usually worries about holdout creditors (Cepec & Grajzl, 2021; Kärki, 2026). *Chong Boon Heng* shows the opposite risk: connected creditors who vote an arrangement through. Vandenbossche's (2026) finding that long plans erode recovery gives empirical support to the court's scepticism about a twenty-five-year term.

Taken together, the VA judgments show a broadly coherent structure: a gateway that is open in law but scrutinised to different degrees, a strict timetable, creditor autonomy and judicial review for fairness. Two further statutory features protect creditors. An approved arrangement bars the debtor from new credit facilities without the creditors' agreement (section 2K(4)), and on default the amount already paid is deducted from any petition (section 2O(2)). What the case law cannot supply is volume. Where the judgments disclose the debts, they range from about RM0.7 million to RM50 million. None of the cases involves the ordinary consumer debtor for whom a low-cost, standardised arrangement would matter most. That pattern is consistent with the cost and nominee barriers described by Kilborn (2025). It also fits the United Kingdom finding that administrative Debt Relief Orders, rather than negotiated arrangements, reduced bankruptcy among individual construction traders (Yung & Blacker, 2026).

**Automatic discharge after 2023: operational but contested**

Act A1695 achieved its first aim, which was to make section 33C usable. The courts have confirmed that creditors can no longer insist on a targeted contribution (*Malayan Banking v Pengarah Insolvensi Negeri Johor* at [24]–[27]). They have also confirmed that section 33C does not require full payment or any minimum dividend (*Alliance Islamic Bank Bhd v Ketua Pengarah Insolvensi* [2024] MLJU 2613 at [30]; *Perbadanan Usahawan*

*Nasional Bhd v Ketua Pengarah Insolvensi* [2024] MLJU 1324 at [24]; *Bank Islam Malaysia Bhd v Ketua Pengarah Insolvensi* [2024] MLJU 3570 at [32]). Notices of automatic discharge are now issued in numbers that generate litigation. That litigation is the clearest evidence of how the mechanism actually performs. Table 4 summarises it.

Table 4. Judicial review of automatic discharge (s 33C) and DGI certificates (s 33A), 2020–2026

| Case | Provision | Outcome | Principal reasoning |
|---|---|---|---|
| *Malayan Banking v Pengarah Insolvensi Negeri Johor* [2024] MLJU 1373 | s 33C(4), (7) | Discharge suspended two years | DGI relied on the bankrupt's own offer of RM200 a month; no s 33C(2) factor shown to have been considered; no "offence" without charge and conviction; no DGI report needed under s 33C |
| *Perbadanan Usahawan Nasional v Ketua Pengarah Insolvensi* [2024] MLJU 1324 | s 33C(4), (7) | Discharge suspended two years | Same defect (RM150 a month offered in the statement of affairs); 21 days run from actual receipt of the notice |
| *Alliance Islamic Bank v Ketua Pengarah Insolvensi* [2024] MLJU 2613 | s 33C(4), (7) | Discharge suspended two years | Same defect (RM850 a month; 7.61% dividend); DGI must state the s 33C(2) factors in his affidavit; low dividend alone is not a ground |
| *Bank Islam Malaysia v Ketua Pengarah Insolvensi* [2024] MLJU 3570 | s 33C(4), (5) | Objection dismissed; discharge stands | Objection filed four days late is deemed no objection; full repayment not required |
| *RHB Bank v Ketua Pengarah Insolvensi* [2025] MLJU 2109 | s 33C(1)(a); ss 86, 87, 91 | Notice set aside as void | No documentary proof of payments or six-monthly statements; "good conduct and co-operation" are not statutory criteria; a s 33C(7) stay cannot cure an invalid notice |
| *RHB Bank v Ketua Pengarah Insolvensi* [2025] MLJU 3787 | ss 86, 87 and s 33C(4) | Notice set aside; DGI directed to investigate | Supervisory jurisdiction available in exceptional cases of clear illegality: notice issued while known assets, including sums found by the Court of Appeal, were uninvestigated |
| *Public Bank v Ketua Pengarah Insolvensi* [2024] MLJU 73 | ss 33A, 33B(4), (6) | Certificate barred two years | Estate unadministered for 16 years; no first creditors' meeting or tracing; DGI did not follow its own Guideline No 13/2016 on dormant cases |
| *Chan Chee Chiu v Director General of Insolvency* [2025] 9 MLJ 886 | ss 33A, 33B(4) | Suspension upheld on appeal | Bankruptcy not "spent": debts of RM16.25 million, estate of RM500,409 and further dividends expected |
| *TA Securities Holdings v Ketua Pengarah Insolvensi* [2020] 10 MLJ 370 | ss 33A, 33B(2A); judicial review | DGI decision quashed | DGI cannot use the no-objection category for a deceased bankrupt to override courts' refusal of discharge and their direction to investigate assets |

| | | | |
|---|---|---|---|
| *Ahmad Fadhli Zawawi v Bank Kerjasama Rakyat Malaysia* [2026] MLJU 4010 | ss 33A, 33B(4), (6)(b) | Two-year suspension set aside on appeal; creditor's application dismissed | Objecting creditor bears the burden; following *Nor Azah* (CA), review under s 33B is supervisory and the creditor must show illegality, irrationality or procedural impropriety; unpaid balance and a 3.15% dividend are not grounds; the maximum period needs evidence of purpose |

The DGI must actually assess ability to pay. Three decisions of the Johor Bahru High Court in 2024 turn on the same defect. In each, the bankrupt had paid a modest monthly instalment, without default, for several years. In each, the DGI's affidavit showed only that the bankrupt had "agreed" to pay the sum the bankrupt had proposed in the statement of affairs. The court held that the bankrupt's agreement is not one of the factors in section 33C(2), that the DGI must state which factors were considered, and that a discharge based on the debtor's own figure ignored the creditor's rights. Discharge was suspended for two years in all three cases (*Malayan Banking* at [32]–[35]; *Perbadanan Usahawan Nasional* at [31]–[41]; *Alliance Islamic Bank* at [15]–[23]). The courts drew on the older principle that the DGI must strike "a delicate balance between the interests of the bankrupt to free himself from the chains of bankruptcy and the right of the judgment creditor" (*Mayban Finance Bhd v Lee Kee Sen* [2014] 10 CLJ 543, as quoted in *Malayan Banking* at [34]). The outcome is uncomfortable. Bankrupts who did everything asked of them remained bankrupt for two more years because of an administrative omission by the DGI. The cost of a thin administrative record falls on the debtor.

Courts disagree on what the DGI must prove. The Johor court held that the DGI need not exhibit the bankrupt's six-monthly statements or receipts, because a creditor who doubts the DGI's sworn statement can inspect the file under section 135(2) or request accounts under rule 260 of the Insolvency Rules 2017 (*Malayan Banking* at [21]–[24]; *Alliance Islamic Bank* at [24]–[28]). The Shah Alam High Court took a stricter view in *RHB Bank* [2025] MLJU 2109. Without documentary proof that the revised contribution had been determined and paid and that the statements had been filed, the court could not be satisfied that the preconditions in section 33C(1)(a) were met, and it declared the notice void ([5]–[13], [25]). The court added that "good conduct and co-operation", the DGI's stated reason, are not statutory criteria ([14]–[15]). It also held that a two-year stay under section 33C(7) does not cure a notice that was invalid from the start, because section 33C(8) would otherwise discharge the bankrupt by lapse of time ([17]–[20]). The divergence matters. The same administrative record may survive in one registry and fail in another. Ismail (2021) anticipated this variation when she observed that section 33C operated without specific procedures or guidelines. It is also the kind of inconsistency that André et al. (2026) associate with discretionary standards that lack transparent metrics. This division, too, is between courts of coordinate jurisdiction. No appellate decision on what the DGI must prove under section 33C(1)(a) was found. The one Court of Appeal decision in this field, *Nor Azah*, decided after these judgments, concerns section 33B but applies its principles of review to the DGI's decisions under section 33C as well. Its effect on this division is discussed below.

The supervisory jurisdiction reaches beyond section 33C(4). The DGI has argued that section 33C(4) is the creditor's exclusive remedy. In *RHB Bank* [2025] MLJU 3787 the court agreed that it is the primary route but held that sections 86 and 87 remain available in exceptional cases of clear illegality or failure of duty. The DGI had issued a notice without investigating or realising known assets, which included sums the Court of Appeal had found to have been diverted. The court set the notice aside and directed the DGI to investigate, to consider a creditors' meeting and to consider a public examination ([13]–[22], [31]–[34]). The decision fits an earlier line of authority on section 33A. In that line the court quashed a DGI decision that would have reversed the courts' own refusal to discharge (*TA Securities*). It barred a certificate where an estate had been left unadministered for sixteen years without a first creditors' meeting or any attempt to trace the bankrupt, contrary to the DGI's own guideline on dormant cases (*Public Bank Bhd v Ketua Pengarah Insolvensi* [2024] MLJU 73 at [20]–[38]). And it upheld a suspension where future dividends meant that the bankruptcy was not "spent" (*Chan Chee Chiu* at [38]–[44], [50]–[51]).

The Court of Appeal has set a supervisory threshold for the DGI's discharge decisions. The only appellate authority found in this field is *Nor Azah bt Awin v Small Medium Enterprise Development Bank Malaysia Bhd*

[2026] 4 MLJ 941, decided on 18 March 2026 on appeals from orders made on creditors' applications under section 33B. The High Court summarised the decision in *Ahmad Fadhli Zawawi v Bank Kerjasama Rakyat Malaysia Bhd* [2026] MLJU 4010 at [24] and [47]. On that summary the Court of Appeal held three things. The bankrupt is a necessary party under section 33B(5) and has standing to appeal. The court's role under section 33B is supervisory, and it is an error to reassess the merits as if the application were for a court-ordered discharge under section 33. A creditor who seeks to displace the DGI's intended discharge must first show illegality, irrationality in the *Wednesbury* sense or procedural impropriety. The Court of Appeal also relied on section 35A, under which realisation may continue after discharge, to hold that unrealised assets do not by themselves meet that threshold (*Ahmad Fadhli* at [48], [57]). The Court of Appeal traced the purpose of sections 33A, 33B and 33C to the 1998 parliamentary debates and described sections 33A and 33C as rehabilitative ([33]–[35]). It then applied the same principles of review to challenges to the DGI's decisions under section 33C ([65]).

*Ahmad Fadhli* shows the framework at work. A Senior Assistant Registrar had barred a certificate for the maximum two years on a bank's application. The bankrupt, acting in person, appealed. After more than six years of administration a dividend of 3.15 per cent had been declared, and the DGI's officer deposed that no realisable assets of value remained. The High Court in Melaka allowed the appeal and dismissed the bank's application. It held that the objecting creditor bears the burden of proof ([40]–[41]), that the DGI's assessment can be displaced only by evidence of comparable cogency ([43]), that an unpaid balance cannot by itself justify suspension because every discharge under section 33A presupposes unpaid debt ([44]), and that the choice of the maximum period must rest on evidence of a purpose the suspension would serve ([45], [59]). The court declined to follow *Mayban Finance* in so far as that case places on the DGI, in every contest under section 33B, a burden of justifying the discharge ([42]). It also found that the DGI's affidavit had never been served on the bankrupt, which was a breach of natural justice cured only by the rehearing ([34]–[38]).

Two consequences follow for this study. First, the division between the Johor Bahru and Shah Alam registries on section 33C must now be read through the supervisory threshold. Those decisions were given before *Nor Azah*, which applied the same principles of review to the DGI's decisions under section 33C. Some of their reasoning sits uneasily with that framework. The Johor Bahru decisions drew on the "delicate balance" passage from *Mayban Finance*, the case that *Ahmad Fadhli* declined to follow on the burden of proof, and *RHB Bank* [2025] MLJU 2109 declared a notice void because the DGI had not produced documentary proof. Their outcomes may nonetheless survive as findings of illegality. In the Johor cases the DGI had not addressed factors that section 33C(2) requires him to consider, and in *RHB Bank* the preconditions in section 33C(1)(a) were not shown to be met. That reading is offered as a hypothesis and has not been tested in court. What *Nor Azah* does not settle is how much the DGI's record must show, which is the point on which the registries divided. Second, the two routes point the same way on the administrative record. Under section 33B the DGI prevailed in *Ahmad Fadhli* because his affidavit exhibited the dividend notice and recorded the feedback of the relevant agencies. Under section 33C the DGI failed where his affidavit showed only the debtor's offer. In both, the outcome turned on what the DGI had put on record.

Procedural discipline binds creditors as well. The Act protects debtors against late objectors. In *Bank Islam* an objection filed four days after the twenty-one-day period was treated as no objection under section 33C(5), and the discharge stood ([12]–[21]). In *Perbadanan Usahawan Nasional* the court calculated the period from actual receipt of the notice and accepted the creditor's evidence of the delivery date because the DGI produced no postal tracking record ([5]–[19]). The scheme is therefore strict with creditors on time but, until these decisions, had no equivalent standard for the DGI's own record.

Discharge does not end the administration of the estate. Section 35(1) releases the bankrupt from provable debts but has no effect on the DGI's remaining functions. In *Mohd Sofi bin Abdul Ghafar v Ketua Pengarah Insolvensi* [2021] 11 MLJ 813 the High Court refused to strike out a claim challenging the DGI's plan to distribute about RM1.67 million left in the estate after discharge. It described the question whether the DGI's administrative power ends on discharge as "novel and complex" ([28]–[30]). Conditional discharge is also fragile. In *Jivol @ Edmund bin Doudilim v Director General of Insolvency* [2023] 10 MLJ 140 a discharge granted under section 33(10), subject to monthly payments, was treated as ineffective once the bankrupt stopped paying and stopped reporting income. The bankrupt learnt of this on nomination day for a state election ([29]–[35]). Both cases show that the "fresh start" in Malaysian law is less clean than its name suggests.

**Assessing efficacy**

Table 5 brings the findings together against five criteria drawn from the literature: accessibility, predictability, creditor protection, administrative quality and data feedback (Adebola, 2026; Garrido et al., 2025; Walter & Krenchel, 2021).

Table 5. Efficacy assessment of the two mechanisms after Act A1695

| Criterion | Voluntary arrangement (ss 2A–2Q) | Automatic discharge (s 33C) |
|---|---|---|
| Accessibility | Legally open but unevenly scrutinised: mandatory order once s 2D(2) is met (*Nor Azzam*; *Yusoff*) versus threshold review of disclosure and viability (*Lim Cheng Pow*; *Andy Farouk*). Practically narrow: nominee costs; corpus shows only high-value debtors | Open to all bankrupts who file a statement of affairs; retrospective; but the clock never starts for non-filers |
| Predictability and timeliness | Low tolerance for delay: 90-day order cannot be extended; meeting after expiry is void (*Abdul Kadir*); rule 11 timeline strictly enforced (*Lim Cheng Pow*) | Three years from the statement of affairs, up to five with suspension; outcome depends on the registry's evidentiary standard (*RHB* 2109 v Johor line) |
| Creditor protection | Strong: special resolution; review for unfair prejudice and irregularity (*Chong Boon Heng*); no duty to attend (*Fok Wai Mun*) | Strong in court: s 33C(4) objections, ss 86–87 supervision (*RHB* 3787); strict 21-day limit (*Bank Islam*) |
| Administrative quality | Depends on nominee verification of proofs of debt; no public standards | Weakest link in the litigated cases: DGI adopted debtor offers, omitted s 33C(2) reasoning, left assets uninvestigated (Johor cases; *RHB* 3787) |
| Data and feedback | No published statistics on VA filings, approvals or completion | No published split between s 33A and s 33C discharges or suspensions; reported totals do not reconcile (Berita Harian, 2026; The Star, 2026b) |

Three conclusions follow. First, the 2023 reform cured the doctrinal defect that made automatic discharge impossible, and the courts have given both mechanisms a coherent interpretation. Second, the efficacy deficit has moved downstream to administration. The DGI's determination of ability to pay is the hinge of section 33C, yet in the litigated cases, as the courts summarise the DGI's affidavits, it was made by default, by adopting the debtor's offer, rather than by assessment. How often this happens in uncontested discharges cannot be known without access to MdI files. Creditors have learnt to attack that weakness where it exists, and the result is a two-year delay for compliant debtors and inconsistent standards between High Court registries. The Court of Appeal has now supplied a supervisory standard for both routes in *Nor Azah*, but no appellate court has yet said what the DGI's record under section 33C must contain. Third, both mechanisms still leave out the debtors who most need a safety net: the passive bankrupt who never files a statement of affairs, the low-value debtor below the RM100,000 petitioning threshold, possibly RM150,000 if the Budget 2027 proposal is enacted, who cannot reach formal relief (Stanescu, 2025), and the consumer for whom a nominee-led VA is too expensive. The scale of discharges since 2023 shows that the administrative clearance has been large. None of the published figures, however, is broken down by statutory route, and the totals reported in early and late 2026 do not reconcile (Berita Harian, 2026; The Star, 2026b). It is therefore impossible to tell from public data how much of the clearance came through section 33C and how much through the DGI's discretion under section 33A. That gap is itself one of the findings of this study.

Compared with other systems, Malaysia's discharge period remains long. England and Wales discharge after twelve months, Canada after nine months unless the discharge is opposed or surplus income is payable, and Australia after three years (Ismail, 2021; Yin, 2022). Directive (EU) 2019/1023 caps the period for entrepreneurs at three years (Jokubauskas, 2023). In Malaysia the period runs from the statement of affairs rather than the order, and it may extend to five years. The Minister himself described it in Parliament as "tiga tahun hingga lima tahun" (three to five years) (Hansard, 23 May 2023, as quoted in *Malayan Banking* at [26]).

## RECOMMENDATIONS FOR REFORM

The analysis supports seven reforms. They are set out below in the order in which the problems arise in the analysis. Table 6 then ranks them by feasibility: what the DGI can do by direction, what needs an amendment to the Rules or a ministerial order, and what needs an Act of Parliament.

1. Publish an ability-to-pay methodology and give reasons in the rule 199 notice. The DGI should issue a standard method for applying the section 33C(2) factors, based on a surplus-income formula and recognised living-expense allowances. Rule 199 already requires a notice to the bankrupt stating the sum determined. That notice should also set out the factors applied and the calculation, and it should be served on creditors who have proved, at the start of administration rather than inferred from the statement of affairs at the end. This responds directly to the Johor decisions and needs only an amendment to the Rules.

2. Require a reasoned discharge record. A short statutory statement should accompany every notice under section 33C(3). It should set out the determination, the payments received, the section 38(1)(b) statements filed and the factors considered. That would settle the divergence between *RHB Bank* [2025] MLJU 2109 and the Johor line, and it would reduce the incentive to litigate.

3. Stop making the discharge clock depend solely on the statement of affairs. The three-year period could run from the bankruptcy order where the DGI has obtained the bankrupt's information from public agencies, as the DGI's own guideline on dormant cases already envisages. Tracing should become an express duty, so that passive bankrupts are not left outside section 33C.

4. Make the VA gateway workable and predictable. The Act should allow one court-sanctioned extension of the interim order on proof that a creditors' meeting has been fixed. The Rules should state what the debtor must disclose at the interim stage and require minimum proposal content, including an income and asset statement verified by the nominee, before the meeting. This would reconcile the *Lim Cheng Pow* and *Nor Azzam* lines of authority. *Abdul Kadir* and *Chong Boon Heng* illustrate the cost of the present gaps.

5. Create a low-cost consumer VA track. Section 2Q already allows the Minister to prescribe a scale of nominee fees. That power should be used, and AKPK's demonstrated willingness to act as nominee should be formalised through fee-capped appointments and standard forms. Consumer debtors would then have a binding alternative to the non-binding Debt Management Programme (Kilborn, 2025).

6. Provide relief below the threshold. An administrative debt relief order for no-income, no-asset debtors who cannot be petitioned because of the RM100,000 threshold would close the gap identified by Stanescu (2025). Debt collection is now partly regulated. Under the Consumer Credit Act 2025 (Act 873), harassment, coercion and threats in obtaining payment from a credit consumer have been prohibited business conduct since 1 March 2026 (section 87 and Schedule 6, paragraph 3). Since 1 June 2026, anyone who collects debts under a credit agreement on behalf of a credit provider must register with the Consumer Credit Commission (section 57 and Schedules 3 and 4). The coverage has limits. Collection by advocates and solicitors falls outside the definition, and the Act does not apply to credit provided by the Government, statutory bodies or government-linked companies (Schedule 1, paragraph (b)). Regulating collectors does not release the debtor, however, so the relief gap remains. The United Kingdom experience with Debt Relief Orders points in the same direction (Yung & Blacker, 2026). The need will grow if the RM150,000 threshold proposed in Budget 2027 is enacted, because a larger group of over-indebted individuals will then sit outside formal insolvency altogether.

7. Publish disaggregated data. The MdI should publish annual figures on VA filings, approvals and completions, and on discharges under sections 33, 33A and 33C, including suspensions and the reasons for them (Garrido et al., 2025). Without such data no future reform can be evaluated.

Table 6 ranks the reforms by how they can be implemented. Four steps need no change to the law and could be taken within months. The DGI can publish an ability-to-pay methodology, attach a reasoned record to each discharge notice as a matter of practice, apply its existing guideline on dormant cases to trace passive bankrupts, and publish VA and discharge figures by statutory route. These steps answer the weakness that the cases expose most directly, so they should come first. A second group needs subsidiary legislation: reasons in the rule 199 notice, disclosure and minimum-content rules for VA proposals, and a nominee fee scale under section 2Q. A third group needs Parliament: a discharge clock that runs from the bankruptcy order, one permitted extension of the interim order, and a debt relief order for debtors below the threshold. The first tier does not wait on the third. If the administrative steps are taken and the published data show their effect, the case for each statutory amendment can be judged on evidence.

Table 6. The seven reforms ranked by implementation feasibility

| **Horizon** | **Reform (number in the list above)** | **Instrument** | **Responsible actor** |
|---|---|---|---|
| Short term: administrative direction | Publish an ability-to-pay methodology (1)<br><br>Attach a reasoned record to each discharge notice as a matter of practice (2)<br><br>Trace passive bankrupts under the existing guideline on dormant cases (3)<br><br>Publish disaggregated data on VAs and discharges (7) | DGI direction, guideline or practice note; no change to the law | DGI and MdI |
| Medium term: subsidiary legislation | State the factors and the calculation in the rule 199 notice and serve it on proving creditors (1)<br><br>Prescribe the discharge record as a form (2)<br><br>Prescribe interim-stage disclosure and minimum proposal content (4)<br><br>Prescribe a nominee fee scale and formalise an AKPK track (5) | Amendment to the Insolvency Rules 2017 and the Insolvency (Voluntary Arrangement) Rules 2017; ministerial prescription under s 2Q | Minister; DGI; AKPK |
| Long term: statutory amendment | Run the discharge clock from the bankruptcy order where the DGI holds the bankrupt's information (3)<br><br>Allow one court-sanctioned extension of the interim order (4)<br><br>Create a debt relief order for debtors below the threshold (6) | Amendment to ss 33C and 2D(3) of the Insolvency Act 1967; new provisions for debt relief orders | Parliament |

A final point concerns small businesses. *Fok Wai Mun* illustrates the case of a director-guarantor whose company was wound up while his personal liability continued. Coordinating corporate rescue with personal relief for guarantors, as Gurrea-Martínez (2021) proposes, would extend the reform logic to the MSME sector, where most Malaysian personal guarantees originate.

# CONCLUSION

This article set out to assess whether Malaysia's two principal safety-net mechanisms, the personal Voluntary Arrangement and automatic discharge, now work as intended. The answer is qualified. Act A1695 removed the targeted-contribution condition that had made automatic discharge a dead letter, and the High Court has given both mechanisms a coherent and largely principled reading. The VA gateway is open as a matter of law, its timetable is strictly enforced, and approval is reviewed for substance. Automatic discharge now operates, and creditors can contest it on defined grounds.

The remaining deficit is administrative and institutional. The decisive variable in section 33C is the quality of the DGI's ability-to-pay determination and of the record behind it, and in the cases that have reached the courts both were found wanting, by standards that differ between registries. The VA is accessible in law but not in cost, and neither mechanism reaches the passive or low-value debtor. The contribution of this article is to show, through a structured reading of the post-2023 judgments, that the next phase of reform should concentrate on administrative standards, institutional channels and data rather than on further redrafting of the core provisions.

The study is limited to judgments retrievable from LexisNexis and to the documentary record. Future research should run the full search on a second database, examine MdI administrative files on ability-to-pay determinations, interview nominees and AKPK officers on the cost and timing of arrangements, and apply the Walter and Krenchel (2021) leniency index to the 1967, 2017 and 2023 versions of the Act in order to test the link between discharge reform and small-business formation in Malaysia.

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**Ethics Statement**

This study is based exclusively on publicly available legislation, published and unreported judgments and published literature. It involved no human participants or animals, and ethical approval was therefore not required.

**Conflict Of Interest**

The author declares no conflict of interest.

**Data Availability Statement**

The judgments and legislation analysed are available through LexisNexis Malaysia (subscription required) and the official portal of the Malaysian Department of Insolvency. The search strings used are reported in Table 1. The coding sheet is available from the author on reasonable request.

**Declaration Of Generative Ai Use**

During the preparation of this manuscript the author used Claude (Anthropic), a generative AI tool, to help retrieve and organise legislation and case materials from the author's own LexisNexis downloads, to produce draft text and tables, to edit language and formatting to the journal's style, and to check references against Crossref and publisher records. The research questions, the selection of materials and the arguments are the author's. The author reviewed and revised all content, verified every statutory provision, judgment and citation against the primary sources, and takes full responsibility for the content of this article. No AI tool is listed as an author.

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