



Shearn Delamore & Co.

Winding-Up a Company — It  
Now Takes More to Wind-Up a  
Company, in the Same Amount  
of Time

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## Background

Section 466(1)(a) of the **Companies Act 2016** (“CA 2016”) provides that a company is deemed unable to pay its debts if it is indebted in a sum exceeding an amount prescribed and neglects to pay the sums stipulated in the notice of demand within 21 days of being served with the said notice.

Through the issuance of the Prescription of Amount of Indebtedness of Company published on 26 January 2017 (“2017 Threshold Order”), this amount was fixed at RM10,000.

## The Effect of Covid-19

As a result of Covid-19, on 22 April 2020, the Companies (Exemption) (No. 2) Order 2020 (“Exemption Order”) was gazetted.

The effect of this Exemption Order was to extend the timeline of 21 days as prescribed under Section 466(1)(a) CA 2016 to six months. This would only be applicable for notices of demand served between 23 April 2020 and 31 December 2020.

Aside from the Exemption Order, the Direction of the Minister under Paragraph 466(1)(a) was gazetted on 21 April 2020 (“Direction”). The purpose of this Direction was to increase the threshold of indebtedness to RM50,000 with effect from 23 April 2020 to 31 December 2020. Presumably, this was a measure meant to address the effects of the Covid-19 pandemic.

## Latest Developments

As at the time of writing, the Exemption Order has not been extended. This means that the period to respond to notices of demand has now

reverted to 21 days as provided for under Section 466(1)(a) of the **Companies Act 2016**.

Similarly, the Direction has not been renewed. Notwithstanding this, a new gazette has been issued on 30 December 2020 (see the [Federal Government Gazette Notification No. 21841 dated 30 December 2020](#) (which increases the threshold of indebtedness) and [Federal Government Gazette P.U.\(B\) 711/2020 dated 29 December 2020](#) (which revoked the 2017 Threshold Order)) to increase the threshold of indebtedness to RM50,000, with effect from 1 January 2021 to 31 March 2021.

In brief, a creditor may now commence winding up proceedings in respect of a company’s inability to pay debts if a notice of demand has been served, demanding sums exceeding RM50,000 and there has been a failure by the debtor company to respond within 21 days.

It is unclear whether the RM50,000 threshold of indebtedness will be extended post-31 March 2021 but for now, creditors no longer have to wait six months to commence winding-up proceedings.

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