

A Short Talk:

Recover Your Debts in 6 Months Through The Courts!

by

Alex Chang Huey Wah

M/s Alex Chang & Co
C-3A-8 Megan Avenue 1
189 Jalan Tun Razak
50400 Kuala Lumpur

Tel: 03-21667899 Fax: 03-21669328; H/P +6012-6289928

alex@AlexChangLaw.com; acc@tm.net.my

www.AlexChangLaw.com

Recover Your Debts in 6 Months Through The Courts!

A Short Talk by Mr Alex Chang

- 1 Why is it NOT possible to get my money in 6 months?
 - 1.1 There are many reasons why the creditors cannot do that.
 - 1.2 If you start the legal proceedings by way of a summons in 6 months' time, you will be in the process of settling the documents.
 - 1.3 In Malaysia we call it Mentions, that means, we just bring the files before the Judges and have it Mentioned and informed the court what is the status of the matter. Only when the case is ready for hearing a hearing date will be given. Therefore it is almost impossible to do a recovery in 6 months through the courts.
- 2 Basically there are 2 types of commercial debtors.
 - 2.1 Companies and Natural Persons.
 - 2.2 Are legal actions the same for these 2 types of debtors?

- 3 The difference between a summons & a Section 218 notice
- 3.1 The Summons Procedure, a Summary: To obtain a judgment, in the Sessions Court or High Court (with slight differences)

Letter of Demand

7 days

File Summons

2 to 4 months

Service/ Substituted Service

(By Hand, AR or advertisement)

2 weeks before First Mention Date, Defendant enters Appearance

First Mention Date

2 weeks

Summary Judgment

Defence

Exchange of Affidavits

6 to 12 months

3 to 6 months

First Hearing

Hearing

Second Hearing

Length of hearing depending on facts of each case

Judgment

After Obtaining a Judgment You Need to

Execute the Judgment by

Winding Up, Writ of Seizure and Sale, Bankruptcy, Garnishee etc.

3.2 Companies Winding Up Petition filed in the High Court Without Judgment

218 Notice

21 days

Companies Winding Up Petition

(Optional: Provisional Liquidator)

Serve the petition on the Registered Address of the Company

Serve the petition on the Companies Commission of Malaysia

(formerly known as the Registrar of Companies)

Serve the petition on the Director General of Insolvency

(formerly known as the Official Receiver)

Advertise in the Newspapers

Advertise in the Government Gazette

Registrar Certificate

Affidavit in Opposition (if the debtor wish to challenge)

Reply by Petitioner (creditor)

4-5 months from filing

Hearing

Companies Winding Up Order

Private Liquidator or the Official Receiver as the Prov Liquidator

Advertise in the Newspapers

Advertise in the Government Gazette

Note: Companies Winding Up is not a mode of debt recovery. Recovery is done by the act of the liquidator selling the assets of the wound up company and thereafter distributing the proceeds to all classes of the creditors of the debtor.

4 Freezing bank account

4.1 A debtor can go on having a case with you for 200 years if you allow him; 500 years is even better.

4.2 A debtor will not last 2 months if you *can* freeze his bank account.

4.3 Once the account is frozen, he cannot pay his supplier and most important of all, he cannot pay himself.

5 Can unsecured creditors appoint Receivers & Managers:

Appointment of a Provisional Liquidator.

5.1 Normally only secured creditors like the banks can appoint Receivers & Managers to take over the assets and manage the affairs of the debtors company.

5.2 Through the Companies Winding Up proceedings, you as an unsecured creditor may also appoint your version of Receivers & Managers by appointing a Provisional Liquidator.

5.3 The difference is: Receivers & Managers is only working for one creditor, the Provisional Liquidator has to work for all creditors.

Why would a debtor settle? Uncover the secrets.

6 The Unless Order: Pay up or Wind Up

6.1 ***KTL Sdn Bhd v Azrahi Hotels Sdn Bhd [2003] 5 MLJ 503.***

6.2 *Petro-Pipe Industries (M) Sdn Bhd v FW Industries Berhad* (unreported) where Unless Order was used to wind up a Berhad.

6.3 The Question is how you put your debtors in such a position?

Bonus Chapter

- 7 How do lawyers work? No lawyer is able to do all the types of works.
 - 7.1 A simple classification of ‘court’ works would be:
 - 7.2 Banking: Foreclosures, Loans, Credit Cards
 - 7.3 Bankruptcy
 - 7.4 Building Contracts
 - 7.5 Companies Winding Up/ Liquidation
 - 7.6 Defamation
 - 7.7 Family: Divorce, Custody of Children
 - 7.8 Medical Negligence
 - 7.9 Insurance: Accident Claims
 - 7.10 Intellectual Properties: Copyrights matters
 - 7.11 Shipping
 - 7.12 General Litigation

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