



MALAYSIA DEPARTMENT OF INSOLVENCY

MALAYSIA COUNTRY REPORT 2011

**INTERNATIONAL ASSOCIATION OF INSOLVENCY
REGULATORS ANNUAL GENERAL MEETING &
CONFERENCE, JERSEY**

19 - 22 June 2011

IAIR Annual General Meeting and Conference Jersey 2011 Country Update

Introduction

1. This report is to update members on the insolvency trends, performance and recent initiatives undertaken by Malaysia Department of Insolvency (MdI). MdI is headed by Director General of Insolvency (DGI) who also holds the concurrent title of Official Receiver (OR).

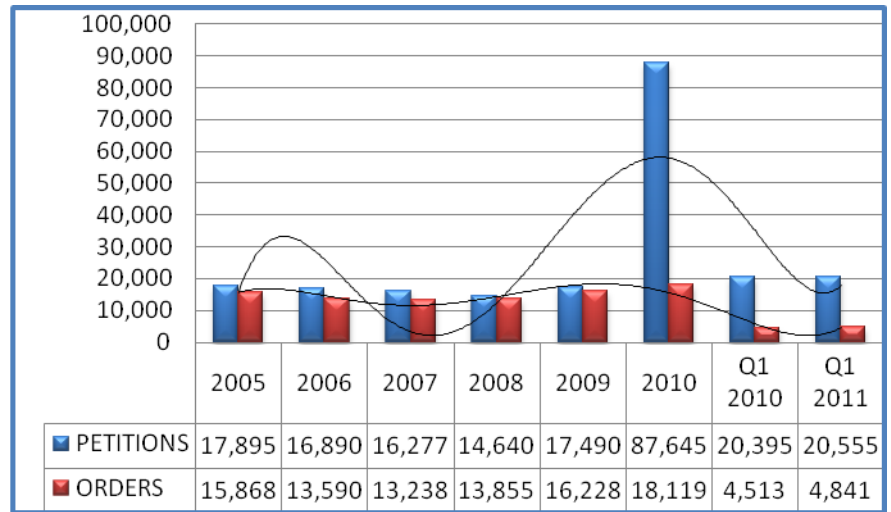
PART I – INSOLVENCY TRENDS AND THE ADMINISTRATION

Individual Bankruptcies

2. As reflected in the **Figure 1**, the total number of individual bankruptcies registered from 2005 to March 2011 is 90,898.

3. In the first quarter of 2011, 20,555 creditors' petitions were filed in court to initiate bankruptcy proceedings and this marks an increase of 0.78% from the first quarter in the previous year where 20,395 creditors' petitions were filed in court.

Figure 1: Yearly Petitions and Orders made from 2005 to 2011

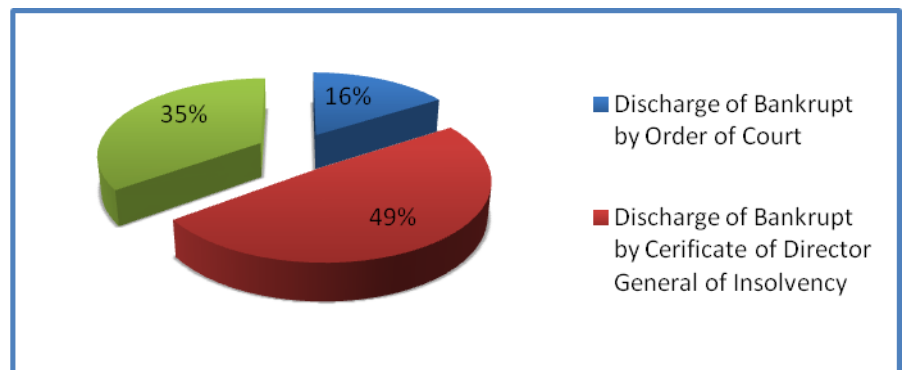


4. Generally, **Figure 1** further indicates a sharp increase of 40.11% in the number of creditors' petitions filed in 2010 in contrast to the number of creditors' petitions filed in 2009. 17,490 petitions were filed by creditors in 2009 whereas as many as 87,645 petitions were filed by creditors in 2010.

5. In consequence to the increased number of creditors' petitions filed in 2010, the ending of 2010 shows an increase of 11.65% in respect of individual bankruptcies registered as compared to the number of individual bankruptcies registered in 2009.

6. A slight increase is shown in the number of Receiving Orders (RO) and Adjudication Orders (AO) made in the beginning of 2011. The first quarter of 2011 denotes an increase of 7.27% number of registered bankruptcy cases as 4,841 RO and AO were made in comparison to 4,513 RO and AO made in the first 3 months of 2010.

Figure 2: Cases Resolved Based on Categories from 2005 to March 2010



7. Parallel with the Tenth Malaysia Plan and the New Economic Policy introduced by the government, MdI strives to provide an effective administration of bankruptcy cases in ensuring the enhancement of public service delivery system and efficiency.

8. Out of the total number of bankruptcy cases administered, a total of 23,147 cases had been resolved via 3 modes that is, discharge by way of court order, discharge via certificate of Director General of Insolvency and annulment of the Adjudication Orders, in the period between 2005 to March 2011.

9. As indicated in **Figure 2**, majority of cases had been resolved by way of discharge via certificate of Director General of Insolvency made in pursuant to section 33A, Bankruptcy Act 1967 in which 11, 342 (49%) bankruptcy cases were resolved. 8, 101 (35%) bankruptcy cases were resolved by way of annulment of adjudication orders and 16% of cases were resolved when 3,704 bankrupts had obtained their discharge by way of court order.

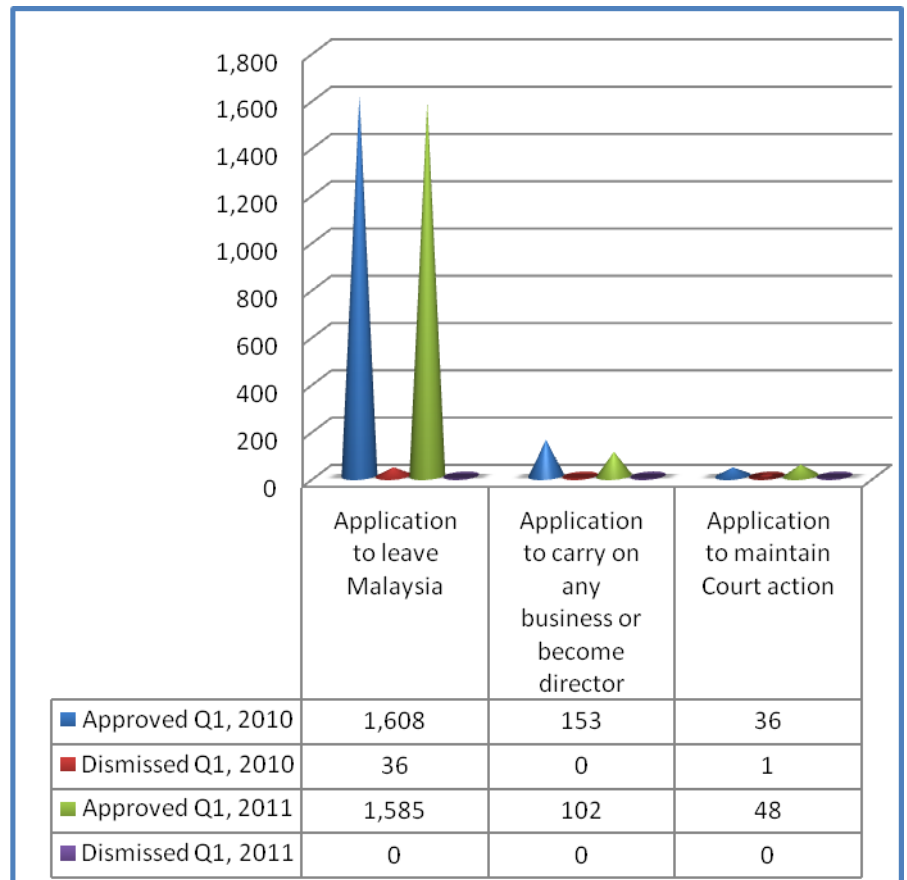
Bankrupts’ Applications in pursuance to Section 38 of Malaysian Bankruptcy Act 1967

10. To recap, Section 38 of the Malaysian Bankruptcy Act 1967 restricts undischarged bankrupts from

inter alia, leaving Malaysia, carrying on any business and maintaining any action in court, without the previous permission of the DGI.

11. Bankrupts can obtain the permission of the DGI against any of those abovementioned restrictions by submitting their applications to the administering branch and it will be processed within 7 days from the date of application, as promised in MdI’s client charter.

Figure 3: Number and types of application made by bankrupts from 2010 to 2011



12. **Figure 3** depicts the number and most common types of applications made by bankrupts. In the first 3 months of 2011, 1,735 applications to obtain the permission of DGI for various reasons were made and 100% of it was approved.

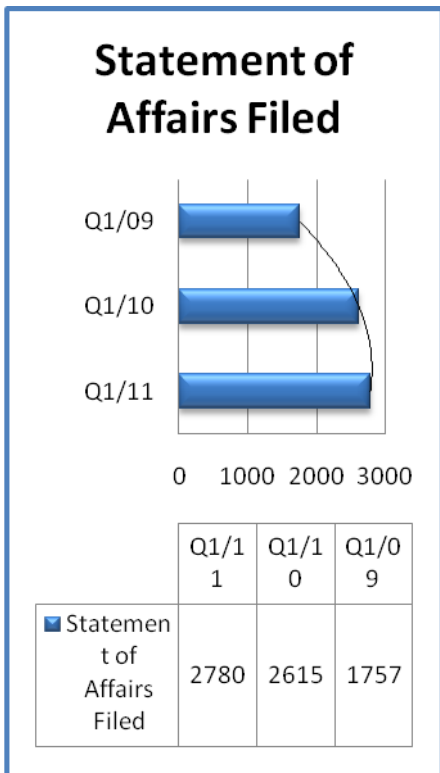
13. Applications made to leave Malaysia in the first quarter of 2011 shows a slight decrease of 3.7% when only 1,585 applications were made, as compared to the 1,644 applications made in the first quarter of 2010.

14. 102 applications made by bankrupts to obtain the permission of DGI to carry on any business were approved in the first quarter of 2011 in contrast to 153 similar applications made in the first quarter of 2010, which marks a decrease of 33.33%.

15. Nevertheless, applications made by bankrupts to obtain the permission of DGI to maintain court action indicates an increase of 30.6% whereby 48 bankrupts made the application within the first 3 months of 2011 in comparison to only 37 applications made in the first 3 months of 2010.

Bankrupts' Cooperation

Figure 4: Statement of Affairs filed by bankrupts from 2009 to 2011

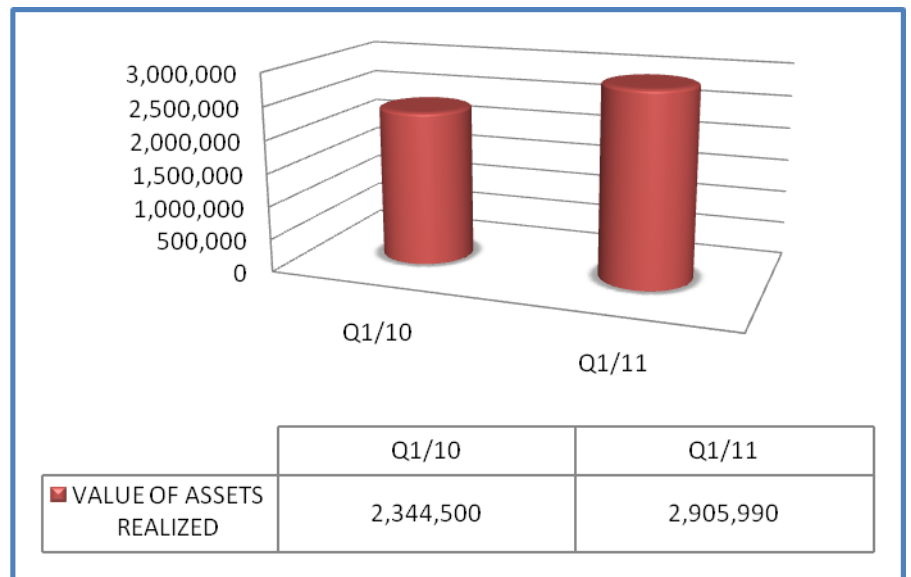


16. The level of bankrupts' cooperation can mainly be indicated in the number of Statement of Affairs filed, as against the number of individual bankruptcies registered in a year. A bankrupt's cooperation in filing the Statement of Affairs

is imperative in ensuring an efficient administration of each bankruptcy case. It is also essential in considering any of the applications made by the bankrupt during his/her period in bankruptcy.

17. As shown in **Figure 4**, between first quarters of 2009, 2010 and 2011, a noticeable steady increase in filing of Statement of Affairs by bankrupts is recorded in each quarter. 48.8% increase in filing of Statement of Affairs is shown from the first quarter of 2010 in which 2, 615 bankrupts had filed their Statement of Affairs in the first as compared to only 1,757 who did so in the same period of 2009. The cooperation given by bankrupts continues to increase by 6.3% when 2, 780 bankrupts had filed their Statement of Affairs in the first quarter of 2011.

Figure 5: Value of bankrupts' asses realized in 2010 and 2011

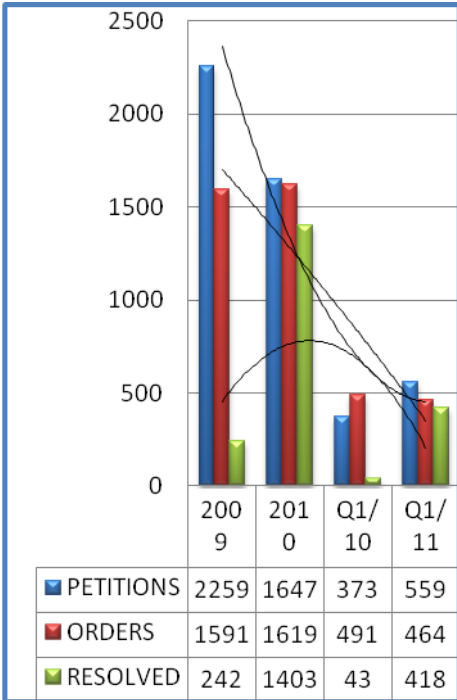


18. In achieving Mdi's top *Key Performance Indicator* set for 2011 on 60% of dividend declaration from declarable cases, emphasis has been given to the first and second core activities in the bankruptcy administration that is on discovery and realization of property. Hence, among the primary mode of realization is by way of private treaty.

19. **Figure 5** shows the progress made in the first 3 months of 2011 in terms of value when 9 assets of bankrupts had been realised at the total amount of RM2, 905,990.00. This indicates an increase of 24% in value from the first quarter of 2010 as only RM2, 344,500.00 was generated in the first quarter of 2010, even though there were 11 properties of bankrupt which was realised. This may be due to the fact that the properties sold in year 2011 were at a higher value than compared to those sold in year 2010.

Corporate Insolvency

Figure 6: Companies Winding Up: Yearly Petitions, Orders and Cases Resolved from 2009 to 2011



20. In the first quarter of 2011, 559 winding up petitions were made by creditors which marks an increase of 49.9% in comparison to 373 winding up petitions filed in the same period in the previous year.

21. Nevertheless, the number of companies wound up in the first 3 months of 2011 shows a decrease of 5.5% when only 464 winding up orders were made, in contrast to 491 winding up orders which were granted by the court in the first quarter of 2010.

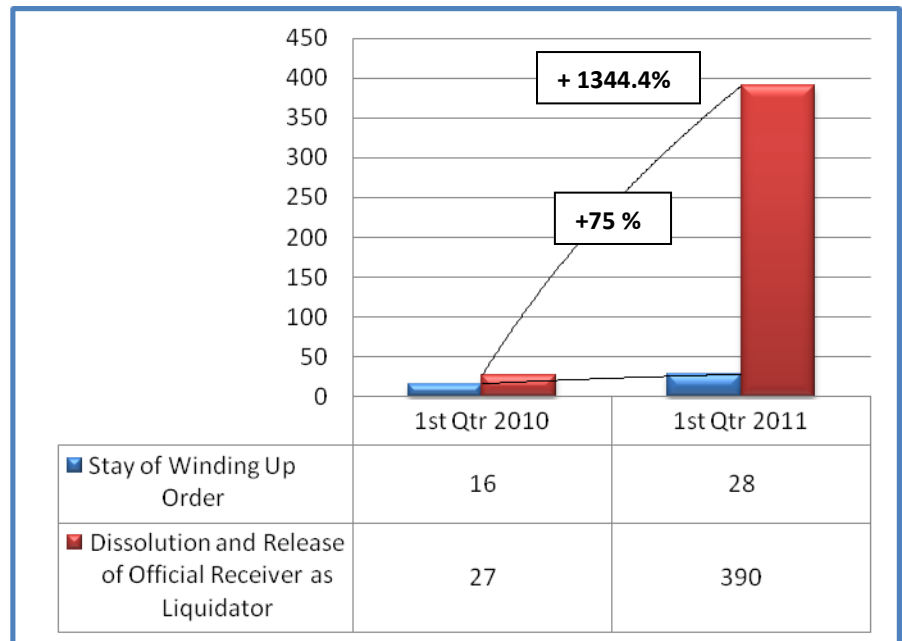
22. As a result of the new mechanism and initiatives

undertaken by MdI to expedite the administration of wound up companies and resolve winding up cases, a positive sharp increase of 872% in the number of winding up cases resolved is shown in the first 3 months of 2011 as compared to the same period in the first 3 months in 2010.

23. 418 winding up cases had been resolved in the first quarter of 2011 in contrast to only 43 cases of winding cases resolved in the first quarter of 2010.

24. Overall, as of 31 March 2011, 2,866 winding up cases had been resolved from year 2005.

Figure 7: Resolved winding up cases based on categories from 2010 to 2011



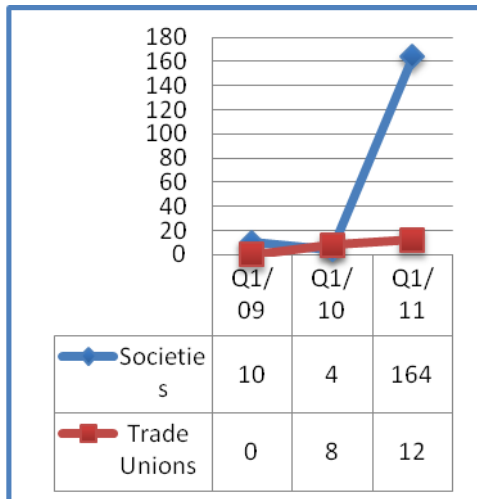
25. There are mainly 2 methods of solving a winding up case as prescribed in the Companies Act 1965, that is by way of obtaining a stay of winding up order under section 243 and dissolution and release of OR as Liquidator under section 239.

26. As indicated in **Figure 7**, a total of 390 cases were resolved by way of dissolution and release of OR as Liquidator in the first quarter of 2011. This is in pale comparison to the number of cases resolved via the same method in the first quarter of 2010.

27. 28 cases were also resolved by way of obtaining stay of winding up order in the first quarter of 2011 whereas only 16 cases were resolved via the same method, in the same period of 2010.

Deregistered Societies and Trade Unions

Figure 8: Deregistered Societies and Trade Unions referred to DGI



28. In the first quarter of 2011, 164 deregistered societies were referred to the DGI as shown in **Figure 8**. The figure depicts an increase of 4000% cases involving deregistration of societies referred to DGI as compared to the first quarter of 2010 where only 4 deregistered societies were referred to DGI.

29. Similarly, in the first quarter of 2011, an increase of 50% of cases involving deregistration of trade unions were referred to MdI in comparison to the corresponding period of 2010. The Registrar of Trade Union referred 12 cases to MdI in the first quarter of 2011 in contrast to 8 cases which were referred to MdI in the first 3 months of 2010.

Enforcement

Table 1: First Quarter Statistic on Prosecution Against Defaulting Bankrupts and Contributories from 2010 to 2011

Provision in Relevant Acts (Section)	Offences	Year	
		Q1/2010	Q1/2011
16 (3) Bankruptcy Act 1967	Failure of bankrupt to fill in and submit to the DGI his/her Statement of Affairs	43	17
28 (1) (a) Bankruptcy Act 1967	Debtors absconding or hiding himself to avoid service	62	103
38 (1) (bb) Bankruptcy Act 1967	Bankrupt, failing to submit statement of earnings and acquisition every six months	-	-
38 (1) (d) Bankruptcy Act 1967	Bankrupt, enter into or carry on any business either alone or in partnership, or become director of any company or take part in the management of the company without the permission of Official Assignee	2	-
38 (1) (e) Bankruptcy Act 1967	Bankrupt, engage in management or control of any business carried on by or on behalf of the family members without the permission of the Official Assignee	-	-
91 (2) Bankruptcy Act 1967	Bankrupt, defaulting to comply with the order or direction given by the Official Assignee	93	41
251 Companies Act 1965	Power to arrest absconding contributories	-	1
TOTAL		200	162

30. MdI has introduced an **Integrated Enforcement for Insolvency** which focuses on issues relevant to the interest of the society and the country's economy, with the objective of continuously minimizing the impact of financial mismanagement.

31. The integrated enforcement for insolvency incorporates the conventional and modern aspect of enforcement. The new approach places emphasis on:

- (a) Ensuring collaboration between MdI and its stakeholders/enforcement agencies;
- (b) Focusing on high risk insolvency cases that gives impact on the society and economy; and
- (c) Creating awareness on insolvency laws.

32. The new approach would critically enable the reintegration of individuals into the economy, post bankruptcy as intended in the Tenth Malaysia Plan and New Economic Model policy imposed by the government. With the reintegration of individuals into the economy, it would catalyze the creation of a private-sector led economy and create the environment conducive to unleash the economic growth.

33. In the first quarter of 2011, 162 cases were filed in court against various offences committed by bankrupts and contributories of wound up companies, as indicated in **Table 1**. This marks a slight decrease of 19% in the enforcement activity as there were 200 cases filed in court the same corresponding period of 2010.

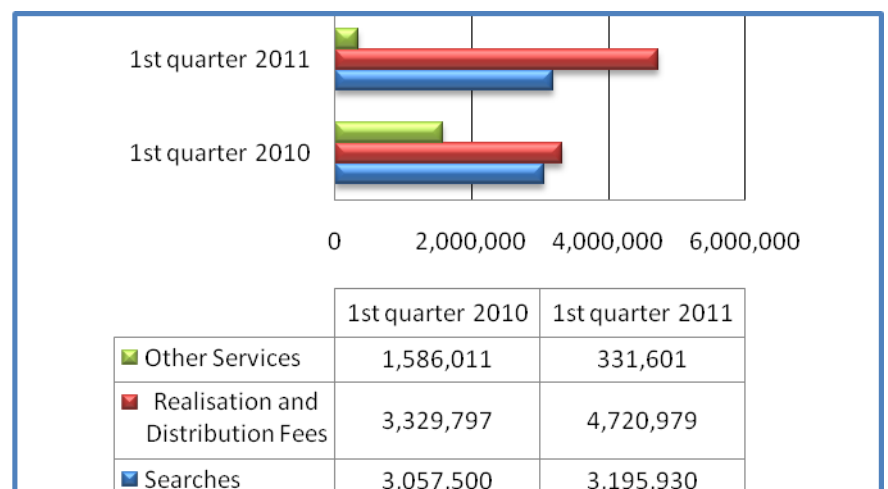
34. However, the trend in prosecution had significantly varied in the first quarter of 2011, from mainly prosecuting offences relating to bankrupts' failure to comply with the order or direction given by DGI in the

first quarter of 2010, to prosecuting offences relating to debtors' act of absconding or hiding himself to avoid service.

35. In the first 3 months of 2011, 103 cases were filed in court for the offence of debtors absconding or hiding to avoid service as compared to only 62 cases in the same period of 2010. Meanwhile, in the first 3 months of 2011, 41 cases were filed in court for the offence relating to bankrupts' failure to comply with the order or direction given by DGI as compared to 93 cases filed in the same period of 2010.

Fees Collection Performance

Figure 8: MdI's Quarterly Performance in Fees Collection from 2010 to 2011



36. MdI's fees collection shows a significant increase in the fees collection within the first 3 months of 2011, comparing to the total fees collected in the first 3 months of 2010. Overall, as reflected in **Figure 8** quarter one of 2011 signified an increase of 103.45% from the collection made within the same period of 2010. It is to be noted that the increase is a result of the emphasis given to the first and second core activities in the bankruptcy administration that is on discovery and realization of property.

PART II – RECENT DEVELOPMENTS IN MdI

New Insolvency Landscape

37. Pursuant to MdI's Strategic Direction Plan, 2011 is themed as the *New Insolvency Landscape*. MdI strives to realise the government's aspirations and provide outcome set by the government via the new Government Transformation Plan (GTP), Economic Transformation Programme (ETP), New Economic Model (NEM) and Tenth Malaysia Plan (RMK10).

38. In its annual planning strategy, MdI laid emphasis on the creation of an environment to unleash the economic growth. Among the initiatives endeavoured by MdI is as follows:

- (a) Reform of the Insolvency law;
- (b) Rebranding of MdI's image; and
- (c) Providing ease of doing and closing business in Malaysia.

Insolvency Law Reform – An update

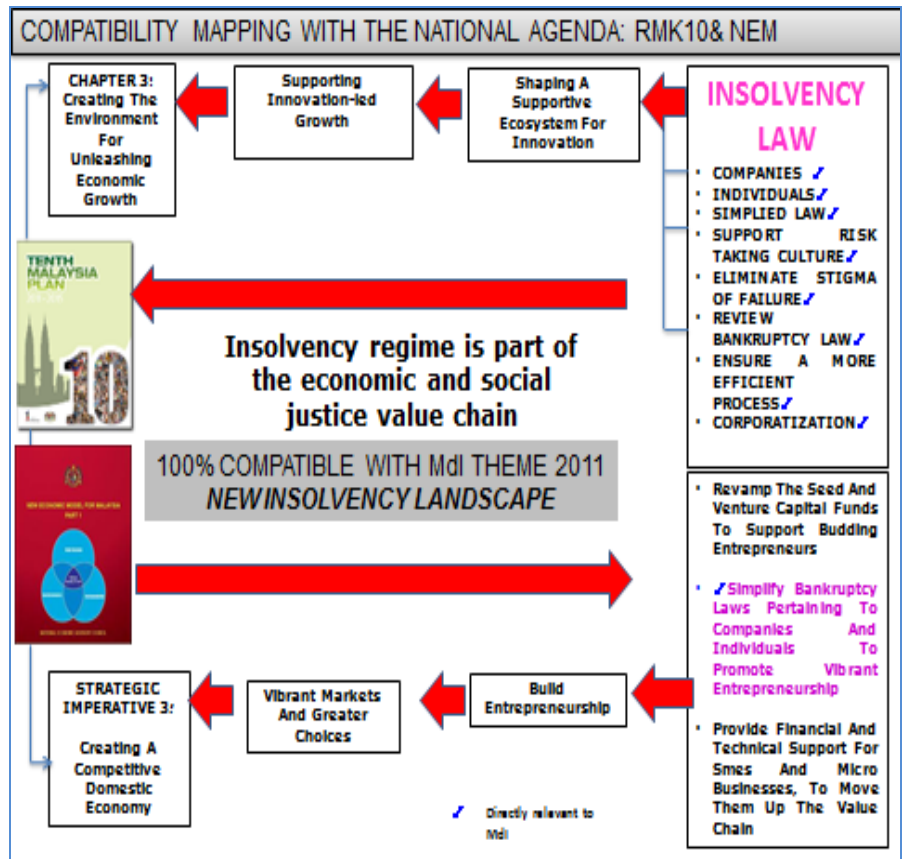
39. As previously reported, the insolvency law in Malaysia is undergoing reform which will result in the repeals and revisions of respective legislations into a single insolvency law.

40. In recapitulation, laws of individual and corporate insolvency are presently regulated by various and separate legislations, namely, the Bankruptcy Act 1967 and Part X of the Companies Act 1965 respectively, the Trade Union and the Society Act.

41. MdI has set the Key Performance Indicator (KPI) for the draft of Insolvency Act 2011 to be tabled in Parliament before the end of 2011. The insolvency law reform initiative has been in the works since May 2009 and is a result of MdI's strategic planning. It is one of the main projects developed to close the gaps in insolvency administration.

42. The insolvency law reform is compatible with the National Agenda, that is the RMK10 and NEM and in line with MdI's theme for 2011. The insolvency law reform would incorporate elements that would lead to the shaping of a supportive ecosystem for innovation and result in an innovation-led growth. Eventually, it would be able to create an environment which would unleash the economic growth attuned to the RMK10.

43. The insolvency law reform would also support the NEM in creating a competitive domestic economy as it would provide, among others, financial and technical support for Small Medium Enterprises (SMEs) to be moved up the value chain, and promote vibrant entrepreneurship through its simplified insolvency laws. This would encourage and build entrepreneurship in Malaysia and promote vibrant markets with greater choices.



MdI's Image Rebranding

44. Consistent with the notion of corporate social responsibility observed in the private sector, MdI aims to adopt a similar concept and implement its values in MdI's approach towards engaging the public's attention.

45. Being the premier insolvency regulator in Malaysia, MdI's significant roles and functions are insufficiently exposed to the public and in effect, dampen the efforts made by MdI to increase

the efficiency in insolvency administration due to the lack of awareness.

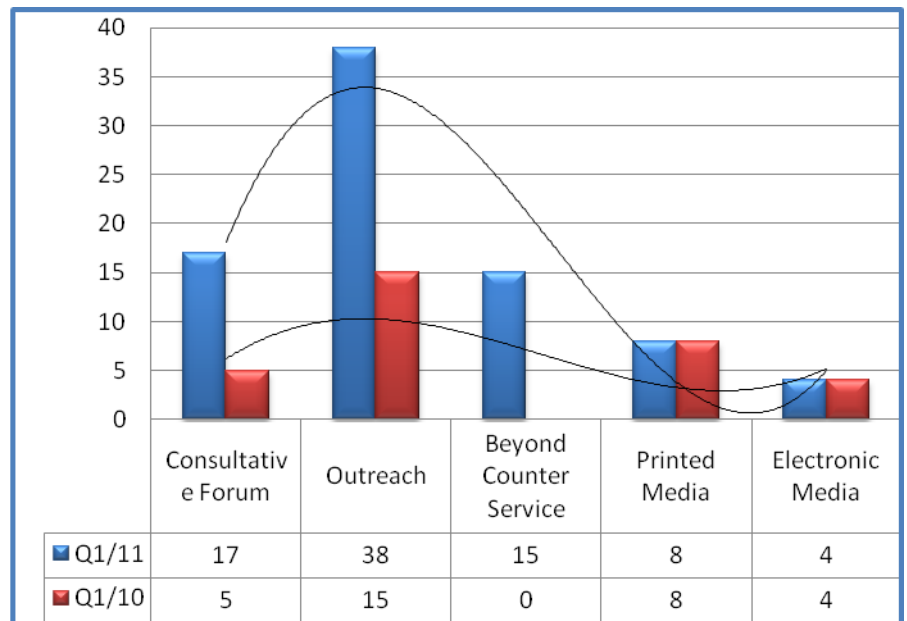
46. Public’s perception towards MdI is also key to ensuring the sustainability of the economic growth since the efficiency in insolvency administration creates an impact upon foreign investors to invest in the country.

47. MdI has developed 4 main programs as a vehicle to boost the image of the department and to dispel the misconceptions of the public towards the roles and functions of MdI as the insolvency administrator. The 4 main programs are as follows:

- (a) Consultative Forums;
- (b) Outreach programs (including innovative initiatives in respect of ‘beyond counter’ services);
- (c) Promotion of MdI via electronic medias; and
- (d) Promotion of MdI via printed media.

48. Accordant to the Government’s plan to adopt a more consultative approach and proactively seeking input and feedback from multiple stakeholders from within government, the private sector and non-government organisations (NGOs) in the development of government policies, plans and programmes, MdI has embarked on a continuous series of consultative forums held with various agencies.

Figure 9: MdI’s Quarterly Performance in the Rebranding Programme from 2010 to 2011



49. As seen in **Figure 9**, MdI’s rebranding activity in the first quarter of 2011 had increased 228% as compared to the first quarter of 2010.

50. MdI had aggressively pursued its Outreach program, to go **Above and Beyond the Counter**, to dissipate information, create awareness, provide continuous education and create a platform to approach specifically individual bankrupts and the public in general.

51. As many as 38 outreach programs had been conducted in the first quarter of 2011 and the following are among the targeted audience involved:

- (a) Government agencies- 7 programs;
- (b) Police/Army - 1 program
- (c) Private Agencies- 4 programs;
- (d) Higher Education Institutions/Students- 1 program;
- (e) Combination/Others- 17 programs; and
- (f) With the bankrupt - 8 programs.

Ease of Closing a Business in Malaysia

52. In further support to the RMK10’s plan to create an environment to unleash the economic growth, MdI has been chosen to be the focal point in improving Malaysia’s ranking in World Bank’s closing a business report.

53. On 4th November 2010, MdI's initiatives were proven fruitful when World Bank announced that Malaysia's position had improved from being ranked 57 to 55, opposite other countries.

Risk Management

54. A Risk Management Unit (RMU) has been set up in MdI to identify risks and provide a support system to manage it systematically and efficiently. The policy will provide a framework for risk management typically involve identifying particular events or circumstances relevant to the organization's objective (risks), assessing them in terms of likelihood and magnitude of impact or consequences, determining response strategy, and monitoring progress.

55. Conventionally, an insolvency system has five elements: substantive and procedural law; courts; government agencies; out-of-court mechanisms for liquidation or re-organization; and professions, usually lawyers, accountants and insolvency practitioners.

56. In practice a total insolvency risk management system embraces much more than these five elements for it must encompass risk to creditors, risk to the financial system, and the risk taking of debtor corporations.

57. Subsequent to the **Integrated Enforcement**

for Insolvency introduced which among others, highlights high risk insolvency cases that gives impact on the society and economy, the risk management system seeks to identify and minimize such impact and promote vibrant market for economic growth.

58. In risk categorization, all the possible risks that had been identified are divided into 6 categories which encompass strategic, compliance, system, operational, financial and systemic risks. Primary risks relating to ICT as the enabler of insolvency searches and risks relating to human resources are given greater emphasis as it would create potential collapse of MdI's functions and operational due to unexpected events that can cause cascading failure and total loss of confidence on MdI. This is the most serious risk as it can cause a total failure of MdI's functions and MdI's existence can be potentially put in jeopardy if systemic risk occurs and not managed systematically.

59. By identifying and proactively addressing risks, MdI will be able to protect and create value for its stakeholders, including employees, clients, regulators, and society overall.

60. It is to say that economic development may benefit when government takes a macroscopic and long-term view of the risk management problem and acts holistically to design a comprehensive, integrated system to solve that problem.

Forum For Asian Insolvency Reform (FAIR)

61. Malaysia has been chosen to be the organiser for FAIR 2011 with the theme **Current Insolvency Issues and Challenges**. Among the topics which will be discussed in the meeting this year includes **Islamic Finance and Insolvency, UNCITRAL-Current Issues, Different Path: Insolvency Systems for Particular Enterprise Categories, Financial Institutions, Small and Medium Enterprises (SMEs) dan Closing the Implementation Gap**.

62. FAIR has been set up by the Organization for Economic Co-operation and Development (OECD) in co-operation with the Asia-Pacific Economic Co-operation Forum (APEC) and the Asian Development Bank (ADB), with assistance from the governments of Japan and Australia, as a platform to gather key policy makers, members of the judiciary, academics, insolvency practitioners and other private sector participants who meet on a regular basis.

63. Invitation was sent out to members of FAIR on 3rd May 2011 at as to date we have received 10 confirmed participants from UK, Hong Kong, China, Singapore, Taiwan, Hawaii, Nepal and Australia, and MdI is expecting more delegates from member

countries to confirm their attendance in the immediate future as the targeted participants is 250 from all over the world.

Conclusion

64. MdI acknowledges the importance of a dynamic insolvency landscape in creating the environment for unleashing economy growth as well as to encourage a vibrant market in attracting foreign investors. To meet such expectation, MdI will continue to strengthen its core competencies and will continue embracing new ways of doing thing. It is hoped that this forum will be an effective platform to gain further knowledge and experience in assisting MdI in realizing the aspiration.

Malaysia Department of Insolvency

3 June 2011