

SECTION P – FOREIGN/CROSS-BORDER ELEMENTS

P1. Claims of foreign creditors

- (a) There is no discrimination under Malaysian law as to recognition of claims of foreign creditors and local creditors.
- (b) Claims by foreign creditors are not subject to particular rules in relation to priority of payment. Foreign creditors do not have to satisfy special or additional rules for their claims to be admitted. The only special provision that applies to foreign creditors is the Exchange Control Act 1953, and even then only in relation to taking out the fruits of the claim when the claim is satisfied, in that permission of the Controller of Exchange Control (i.e. Bank Negara Malaysia) is required, but in practice rarely refused.
- (c) As to what law is applied to establish the validity of foreign claims, Malaysian insolvency law would, under normal conflicts of laws principles, apply the law that governs the debt or claim under such principles.

P2. Jurisdiction over foreign assets

- (a) In so far as the liquidation under Malaysian legislation of a Malaysian incorporated company is concerned, a Malaysian liquidator would be regarded under Malaysian law and under conflicts of law principles as having jurisdiction over assets of the corporate debtor situated abroad. It would be expected that by comity, under the rules of private international law, a foreign court within whose jurisdiction the assets are situate, would recognize the status of the Malaysian liquidator.

P3. Foreign Insolvency Procedures

- (a) Although there is hardly any specific case law authority, on first principles, the rules of private international law applied in Malaysia would recognise foreign insolvency procedures commenced in foreign jurisdictions, such as a foreign liquidator appointed in the country of

- (b) In so far as these assets may be situated outside Malaysia, these rights are recognised if the rights are valid under the governing law of the security assuming the governing law to be other than Malaysia.

P6. International Conventions

- (a) There are no international conventions with some bearing on insolvency that Malaysia appears to be a party to.

P7. Cross-Border Insolvency

- (a) To the best of the writer's knowledge, there are no particular issues or special problems in the field of cross-border insolvency that have presented themselves before the courts of Malaysia.

P8. UNCITRAL Model Law on Cross-Border Insolvency

- (a) The government of Malaysia is aware of the UNCITRAL model law on cross-border insolvency.
- (b) The writer is not aware of any proposals to enact the terms of the model law within the very near future.