

## **DEBT MANAGEMENT PROGRAMME (DMP) IN MALAYSIA, THE UNITED KINGDOM (UK) AND SINGAPORE: WHAT CAN WE LEARN?**

Ruzita Azmi\*, Adilah Abd Razak\*\* and Siti Nur Samawati Ahmad\*\*\*

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This study is to highlight the role of DMP organized by Credit Counseling and Debt Management Agency (CCDM) as a form of bankruptcy pre-rehabilitation to debtors in Malaysia and make a comparative analysis of such similar programme and its implementation available in the UK and Singapore. Nowadays, especially during the current economic crisis many entrepreneurs and individuals with financial problems being declared bankrupt. This paper offers an alternative solution for debtors to settle their debts and facilitate them in reorganizing their financial affairs and eventually regain a state of overall solvency through an out of court settlement. This study suggests an out of court pre-rehabilitation scheme to debtors through DMP, the discussions focus on the role of DMP and its implementation, as well as to share the experience of the Malaysian DMP and comparing of such experience with the DMP available in the UK and Singapore in helping the debtors to reorganize their debts so that their financial problems will be addressed. It also examines the ethical philosophy and principles to pay debts. This study adopts a comparative approach. The research data are collected from primary and secondary sources. The primary data are mainly collected using in-depth interviews. Secondary data derived from textbooks, reports and articles from both law and other social science journals. To uncover the ethical principles to pay debts, information is also collected through secondary data analysis. The findings show that the role of DMP is significant in providing an out-of-court pre-rehabilitation scheme in Malaysia. DMP helps debtors who faced difficulty in settling their debts by offering a restructuring of the debts and if the debtors have successfully enrolled, the creditors are to be bound by the moratorium period not to take any action or proceedings during the debtors' enrollment in the DMP.

**Keywords:** Credit Counseling; Debt Management Programme/Plan; Ethics; Malaysia; Pre-rehabilitation

### **I. INTRODUCTION**

The objective of pre-bankruptcy rehabilitation measures is to reduce instances where parties resort to Ministry of Higher Education of Malaysia funds this research bankruptcy proceedings. This option encourages debtors to settle their debts and facilitate them in reorganizing their financial affairs and eventually regain a state of overall solvency (Ismail, 2011). Bankruptcy pre-rehabilitation gives debtors a right to enter into arrangement with the creditors to avoid being adjudicated bankrupt. Pre-habilitation measures can be done through either court proceedings or by way of out of court settlement. One of the mechanisms recognizes as an out of court settlement is known as Debts Management Programme or Plan (DMP)

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\* Associate Professor, School of Law, Universiti Utara Malaysia, *E-mail: Zita@uum.edu.my*

\*\* Senior Lecturer, Department of Marketing & Management, Universiti Putra Malaysia, Malaysia

\*\*\* Lecturer, Kolej Profesional MARA Beranang, Malaysia

and organized by Credit Counseling Agency (CCA) (Collard, 2009). The DMP consists of two schemes namely, free advice or paid for advice programmes. This paper also examines the ethical philosophy and principles to pay debts. Theoretically, it is a debatable issue about principles to pay debts and the duty to keep the promise to pay under certain unforeseen circumstances. Considering the importance of out of court pre-rehabilitation measure in reducing the number of bankrupt, this paper aims to examine the role of DMP organized by the CCA. The discussion starts with reviews of the literature. Then the research methods and data analysis will be explained. The ethical philosophy and principles to pay debt are discussed prior to the discussion on comparative analysis of the law and practice of DMP in Malaysia, the UK and Singapore. Finally the discussion ends with conclusion and recommendation.

## **II. LITERATURE REVIEW**

Currently, there are several debts remedies i.e. formal debts remedies prescribed by legislation and informal debts remedies or known as out of court settlement available to debtors to assist them in dealing with debts (Collard, 2009). One of the commonly available informal remedies offers to the debtors is by enrolling them into a DMP organized by the CCA. Although there is an infinite literature on debts remedies, only a few studies have focused on debts remedies, which deal with DMP. It was submitted that the efficient bankruptcy procedure is determined by having specific provisions like early warning systems and possibilities for out of court settlement (Wymenga, Gloser, Bezegova, & Besseling, 2014). Out of court settlement takes lesser time and less expensive compare to declaration of bankruptcy through court order (Ahmad & George, 2002). Out of court settlement may include the using of professional examiners and mediators in dealing with bankruptcy cases. In such case the use of debt advice service provider through its credit counselor is important (Disney, Gathergood, & Weber, 2014).

DMP involves an agreement between debtors and creditors, for the debtors to pay all of their debts by installments based on an assessment of the individual's income and expenditure (Collard, 2009). Accordingly, DMP is defined as a structured working proposal for a debtor to restructure his or her repayment of debts that is agreed by a creditor which using a CCA as an intermediary (Steve, 2009). However, to ensure the success of the DMP, a debtor must agree to a term or clause for not opening or utilizing any new or existing credit lines (Weinstein & Clower, 2009). It is reported that debt advice has given a financial benefits among others reduction in the amount owed by a debtor to their creditors (Hartfree & Collard, 2014). The reduction caused through repayment arrangements or debt write-off negotiated by debt advice services (Evans & McAteer, 2011). Also debtors have a chance to start fresh in life and indeed they have improved financially as it was reported some improvements in debt write off, as well as

their understanding towards their finances enhanced after getting debt advice as compared to those who was not given such advise (Pleasence, Buck, Balmer, & Williams, 2007). The DMP's implementation can be said to support a fresh start to a debtor where it is intended to a lower interest rates and fees, allowing the consumer to make progress on paying off the overall debt owed to each creditor (Weinstein & Clower, 2009). Accordingly, many creditors who participate in a DMP agree to a lower payments, reduce interest rates, waive fees, and re-age accounts although not all creditors will offer for consensus (SteiniSch, 2016). However, it is not a compulsion for a creditor to agree with DMP and accept the arrangement (The United States Organizations for Bankruptcy Alternatives, 2008). Practically when the creditors reduce or eliminate interest rates and penalty fees so the maximum amount of money goes toward the principal (Consumer Credit Counseling Service of San Francisco, 2010). Consequently, when the implementation of DMP is going well it will enable the debtors to avoid being declared bankrupt.

Meanwhile, it is considered unethical behavior if one promised to pay a debt while knowing that he or she will not pay it (Kilpi, 2002). Furthermore, it is morally and ethically wrong for an individual (promisor) after giving promise to another (promisee) who expects the promisor to perform the promise, yet the promisor then breaks it (Kilpi, 2002). Even if the duty to keep promises is given the strictest possible interpretation, to the effect that promises must always be kept, there are circumstances when the duty simply becomes void (Kilpi, 2002). Therefore, the duty requires the party to the contract to perform impossible acts; it would be absurd to say that the contracting party has to perform them (Kilpi, 2002). However, Barry (2006) sees certain considerations are relevant for evaluating issues that frequently arise in the debt context; if due to unforeseen circumstances (for instance the debtor involved in an accident and being unemployed) it may reasonably be maintained that the debtor is obliged to repay the full amount, yet it may not be plausible to claim that the debtor is obliged to repay according to the original schedule (Barry, 2006).

### **III. METHODS**

This study adopts a comparative approach to examine the implementation, similarities and dissimilarities of DMP's application in the commonwealth countries i.e. Malaysia, UK and Singapore. The research data are collected from primary and secondary sources. The primary data are mainly collected using in-depth interviews with the Malaysian Credit Counseling and Debt Management Agency whom introduced the DMP. Secondary data derived from textbooks, reports and articles from law journals and reviews as well as other social sciences journal. To uncover the ethical principles to pay debts, information is also collected through secondary data analysis.

#### IV. DATA ANALYSIS

This paper aims at assessing qualitatively the DMP to protect debtors against bankruptcy and comparing its implementation in Malaysia, the UK and Singapore. Comparative approach may involve the examination of the similarities and dissimilarities between situations within the same legal system (Yaqin, 2007). The approach may also be used to compare and contrast views, ideas, concepts, rules, principles, theories that has some bearing on law and its institutions (Yaqin, 2007). It is submitted that practically the comparative approach is often adopted when a smaller number of countries involved (Hantrais, 1995). A comparative approach is believed to be necessary as it allows a detailed examination of the procedures and avenue provided under the implementation of DMP used in these jurisdictions. 'Comparative law' is one of the ways for anyone to analyze/see the law or system of his/her country. Of 'comparative law' Lepaulle (1922) long ago stated that "to see things in their true light we must see them from a certain distance as strangers, which is impossible when we are studying phenomenon of our own country. That is why comparative law should be one necessary elements in the training of all those who are to shape society" (Lepaulle, 1922: p.858). Moreover, Walker (2001) reaffirmed that by applying a comparative method of analysis, it allows for an observation of: "...how other societies at a similar stage of civilization face up to the same and corresponding problems" (Walker, 2001: p.21).

Primary data from face to face interview is employed in this study. The advantages of primary data are in terms of its originality and reliability, as well as the data collected are current. For interview it is conducted to gather opinions and perceptions on the law of bankruptcy itself particularly in term of DMP's implementation in Malaysia. The interview is done with Mr. Mansor Ali Head of Branch Operations Department, *Agensi Kaunseling dan Pengurusan Kredit* (hereinafter AKPK). In this study, structured interview (via personal or face-to-face interview which is structured) used as a primary sources in supporting the data collection in order to complete this study. All questions for the above mentioned interview is arranged according to the specific themes that recorded. However the questions asked were open statement questions for the interview session to go into depth in order to collect a precise and an accurate answer from the interviewee. The interview is conducted in a formal meeting and the questions asked were put according to the theme order. Interview was carried out in March 2016. It was recorded, fully transcribed and analyzed. The structured interview is selected, as it is very convenience to be used, as the researcher knows the questions to be asked based on the information needed. Further it is very important for the interview sessions to be run competently.

One can not denies the important of the secondary sources like journals, articles, reports, books, statistics and newspaper, and indeed such sources that can explain primary sources (Yaqin, 2007). In this study, the secondary data are collected

from written documents consist of various journals, articles, reports, books and newspaper. In order to achieve the objectives of the research both primary data and secondary data are employed. Primary and secondary data are very important in assessing the position of law and practice concerning DMP as well as the role of CCA and the ethical philosophies and principles to pay debts. Although the weightage of the data used are different, both are needed in completing this research.

## **V. RESULTS**

The findings show that the role of DMP is significant in providing an out-of-court pre-rehabilitation scheme in Malaysia, UK and Singapore. DMP helps debtors who faced difficulty in settling their debts by offering a restructuring of the debts and if the debtors have successfully enrolled, the creditors are to be bound by the moratorium period not to take action or proceedings during the debtors' enrollment in the DMP. Yet only under the Malaysian DMP no action or proceedings can be taken by the creditors during the moratorium period. Meanwhile in the UK and Singapore the debtors are prone to creditors' legal action. On the other hand, debtors in UK and Singapore gained the advantage of the abundance of debt advice in the free-to-client and fee charging that provides credit counseling and assist them in planning debt repayment. It is shown that theoretically a promise to pay debt renders the duty to keep the promise and unless such duty requires the party to the contract to perform impossible acts then such contract is void. If a debt is incurred and a contract has stipulated the schedule on the payment there is an ethically valid claim to repayment of the debt under which it was incurred. If due to unforeseen circumstances the debtor's ability to pay according to the original schedule is affected it may be considered to reschedule or reorganize the debt owed in order for the debtor to repay the debt.

## **VI. DISCUSSIONS**

### **(A) Debt Management Programme or Plan (DMP) in Malaysia**

Prior to 2006 the only pre-rehabilitation scheme available under Malaysian bankruptcy law to help debtors to avoid being declared bankrupt was found in section 18 of Bankruptcy Act 1967. Under the instant provision the debtors have the right to enter into a scheme of arrangement or composition with their creditors. This right exists for a short period of time between the issuance of a receiving order but before adjudication order is made by the court. This right is however of limited benefit since in practice both orders are given at the same time. As a result, debtors are deprived of the right to enter into an arrangement with their creditors (Ismail, 2011). Opportunity for debtors to enter into debt arrangement with the creditors are improved in 2006 when free-to-client advice through the DMP was introduced by the Credit Counseling and Debt Management Agency (CCDM) or

commonly known as *Agensi Kaunseling dan Pengurusan Kredit* (hereinafter AKPK). AKPK is an agency set up by Central Bank of Malaysia Bank (CBOM) in April 2006 to help individuals take control of their financial situation and gain peace of mind that comes with wise financial management (AKPK, 2016). In terms of factors that caused financial problem to the debtors prompting them to come to AKPK for debt management programme, it has been pointed out that the root cause is poor financial planning. Other than that it is mostly due to unforeseen circumstances. Examples of such unforeseen circumstances are the failure of business, unemployment and high medical expenses. It was reported as at end of February 2016 the percentage by reason for debts problem are as the following: Poor financial planning 52.5%; Failure/slowdown in business 18%; High medical expenses 14.4%; Lost job/retrenched 11.6% and Others 3.5%

Through AKPK's DMP, the counselors played an active role to develop a debt management plan in consultation with creditors involved, usually financial providers. In fact there is no specific qualification to become a counselor with AKPK. Generally, a counselor must have working experiences with banking industry and he or she must at least attained the age of 35 years old (Jamaludin, 2016). The intention is to help lower the debtors' total loan repayment instalments to a manageable level of their net monthly income in order to regain sufficient cash flows to meet daily expenses (AKPK, 2016). It means that by enrolling into DMP,

TABLE 1: TWO MATRIXES OF DMP'S APPROVAL

<i>Subject</i>	<i>Matrix I-Creditor's blanket approval</i>	<i>Matrix II- Require creditor's approval</i>
Type of facility and Tenure	Restructuring or rescheduling of unsecured loans where repayment, inclusive of proposed interest, is within 10 years	Restructuring or rescheduling of secured loans (housing loan and hire-purchase) and unsecured loans that do not fall under Matrix 1
Restructure /Reschedule Monthly Payment	Installments to cover at least proposed interest and can be stepped up during repayment tenure - minimum of 1% of total unsecured loan exposure or RM30, whichever is lower, per credit provider	Installments to cover interest at least. Other criteria; amount and months in arrears; value of property; cost and date of auction
Waiver Consideration	Waivers on interest-in-suspense (IIS) & penalty interest (PI)/ Late Charges (LP), where applicable. No waiver on loan principal and other charges.	Waivers on IIS, PI/LP & other charges / principal (for deserving cases) Housing Loan waiver subject to: i. value of property charged to credit provider; ii. applicant's net worth
Payment Mode	Installments paid via AKPK or direct to credit providers	Installments paid via AKPK or direct to credit providers

the repayment of debts is arranged tailored with debtor's available cash flow to give a second chance to the debtors to move on with life without being stressful about their debts (AKPK, 2016). The DMP may inhibit a declaration of bankruptcy since the creditors are to be bound by the DMP. DMP approval can be divided into 2 matrices of approval; first is the blanket approval and second, the approval or consent from the bank (Ali, 2016).

Practically, under Matrix 1 of blanket approval the creditors are bound to accept the proposal made by AKPK. Bank may contest provided they have justifiable reason to contest. In case of Matrix 2 where bank's approval is required, bank has to agree or the bank may come out with a counter proposal, yet the counter proposal must not be much difference with the AKPK's proposal. For instance, AKPK proposed a new repayment of Ringgit Malaysia (RM) 500 per month but the bank's counter proposed it by suggesting RM1000 per month. This counter proposal is unreasonable as it is a huge fluctuation compared to the AKPK proposal. In the case where the bank wishes to reject the proposal, it must give justification. This reason may include for example a failure by the customer who was given a new repayment plan to follow and is seeking a new repayment proposal by AKPK (Ali, 2016). Debtors who wish to enter a DMP with the AKPK must satisfy the following conditions: i) the debts are owed to financial service providers regulated by Bank Negara Malaysia; ii) have a positive net disposable income after meeting all expenses; iii) total debt exposure does not exceed RM2 million and iv) not adjudged bankrupt. It should be noted that the debtors could still enter into DMP with blanket approval even the bankruptcy notice has been filed on them. Indeed if the bankruptcy petition has been filed, the DMP also can be proceeded but the creditor may have option whether to agree or not (Ali, 2016). An application to enroll into DMP will usually go through the following steps: i) the borrower are encourage to attend 20 minutes public briefing on question and answer at AKPK's premises or branches; ii) the borrower shares his or her financial predicament with AKPK's counselor; iii) a review of the borrower's monthly expenses is done with a view to identify potential savings; iv) all loan facilities and latest loan balances are declared by the borrower; v) negotiations take place between AKPK and creditors on behalf of the borrower and v)issuance of DMP confirmation letter by AKPK and the borrowers may opt to pay direct to their financial institutions or pay via AKPK.

Once AKPK completed its assessment of customer actual capability to pay, it will negotiate with the lenders to lower the monthly payment as a new repayment commitment. AKPK will distribute the payment to the lenders after getting their consents and the payment has been credited to AKPK's account. Interestingly, under the DMP scheme, the customers do not have to go to the bank to make payment. If, previously the payment is on monthly basis, currently, the disbursement is made in two weeks' time and indeed it is the ultimate objective of AKPK to

disburse the payment daily. The customers may check the disbursement record online (Ali, 2016). It has been pointed out that dishonest customer who is not transparent while declaring their income and monthly commitment, may affect or jeopardize this scheme (AKPK, 2016).

In order to minimize the risk of DMP failure, AKPK provides Central Credit Reference Information System (CCRIS) kiosk for all customers to print their CCRIS report and submit it to AKPK or require them to submit their bank statement or statutory declaration of income and liability together with a utility bill (Ali, 2016). CCRIS is a database system contains credit information about borrowers in Malaysia. Enrollment in a DMP acts as a moratorium that protects the debtors against creditors' legal action including filing of bankruptcy. The moratorium runs for 30 days and continues for as long as the DMP is successfully entered (Ali, 2016). It is stated that the grace period during moratorium may give a time and space for the debtors to enter into a negotiation with the creditors and subsequently forward proposals to the creditors (Plainer & Ball, 2007). On the other hand, it has been criticized, where debtors using moratorium in order to delay all the legal proceedings that might be taken by the creditors against them since they failed to pay their debts (Plainer & Ball, 2007). When debtors joined the DMP programme, the interests on the amount due to the creditors will not be frozen. Nevertheless, it is normal for the interests to be reduced, usually between the ranges of five percent (5%) to nine percent (9%) based on the debtors' income. The decision to lower the interests is influenced by debtors' specific condition such as severe illness; disability as a result of work related accident and retirement. Fortunately, no interest will be charged on a debtor that suffers severe illness (Ali, 2016). Meanwhile, a retiree or recipient of Social Security Organisation benefits for disability is entitled to a reduction of four percent (4%) in interest if he/she is enrolled under AKPK's DMP. SOCSO was established in 1971 under the Ministry of Human Resources to implement and administer the social security schemes under the Employees' Social Security Act 1969. It is to provide social security protection to all employees and their dependants through social security schemes. In case of debtors who have a very high interest in suspense, usually AKPK will recommend to the bank to waive the old interest and charge a new interest in the DMP (Ali, 2016). Looking at the AKPK's DMP as a whole, it appears that it has played an important role in helping debtors who faced difficulty in settling their debts by offering a restructuring of the debts. This programme helps debtors to keep out of financial difficulty with bankruptcy looming ahead (Hasim, 2013).

It should be noted that from 2007 till 2016 about 409,338 debtors had received a counseling from AKPK. However, only 146,659 debtors had successfully enrolled in DMP. This number represents 35.8% of the total number of debtors who received counseling from AKPK since its establishment in 2006 (AKPK, 2016). The rest number of debtors who is not eligible for the DMP since they failed to comply



with the criteria's to be enrolled in the DMP will remain in their former position to pay the debts and subsequently being declared bankrupt if they failed to meet their financial commitment. Interestingly, it was reported that as at 29 February 2016, a total of 9687 cases successfully exited from the DMP with a total outstanding of RM401.1 million (AKPK, 2016). Accordingly it is unsurprised that AKPK in order to ensure a continuing success of DMP has, from time to time, taken measures to improve the implementation of DMP from its starting point until the debtor's obligations are fully discharged.

### **(B) Debt Management Programme or Plan (DMP) in the United Kingdom**

Debt Management Plan (DMP) in the UK is usually used when debtors fall into a state where they can only afford to pay creditors a small amount each month or will be able to make repayments in a few months. However, it should be noted that a DMP could only be used to pay 'unsecured' debts. Free-to-client or fee-charging advice provider through online service, phone service or face-to-face advice service in fact manages UK's DMP. Free-to-client advice provider on DMP will charge no payment on a client. Such advice is mainly divided into four categories. Firstly, advice provider funded by public bodies i.e. Citizens Advice Bureau and Advice4Debt Northern Ireland. In fact, the government has given full support to free advice provider since 1930s (Cabinet Office Report, 2016). Secondly, advice provider funded by private sector i.e. Consumer Credit Counseling Service (CCCS), Payplan, Money Advice Trust and Christian against Poverty. Thirdly, advice provider funded by Housing Associations. Finally, advice provider funded by other bodies like legal advice and financial institution (Department for Business, Innovation and Skills London (DBISL), 2011). It is reported that one of the DMP free-to-client debt advice provider that have the largest share in the market in UK is CCCS which represents 65-70% market of the debt advice provider (DBISL, 2011). Further it was found by the survey made by BIS or YouGov Debt Tracker that CCCS is the second most commonly contacted debt advice provider (DBISL, 2011). In general, CCCS also together with Citizens Advice, Payplan and National Debtline (NDL) had together made up 90% of all individuals seeking free-to-client debts advice per year (Gatherhood, 2010). The creditors who participated in the UK's DMP can still bring a legal action to recover the debts even if the debtors keep up their payment. This means that enrolling in a DMP will not give moratorium advantage to the debtors. The debtors can still be subject to bankruptcy actions. In the UK's DMP the creditors are not legally required by law to freeze the interest and charges related to the debts (Thornton, 2012). However, the DMP's company may negotiate for that advantage to be given to the debtors since the company had arranged many DMP's cases and they are often in a better position to negotiate with the lender (Lawther, 2011). In case of free to client DMP's provider in UK, it was claimed that consumer's demand for free-to-client debt advice is greater than

offered in the market (Muller, Trier-Damgaard, Devnani, & Stonehouse, 2012). However it was submitted that the increase in the demand for free-to-client debt advice should not stop it from publicly funded since many debtors are benefited from it (Citizens Advise, 2015). Moreover, there were also advisers of fee-charging providers, which failed to inform to its client that they could receive free advice, and some advisers even attempted to discredit the services provided by free-to-client sector (Office of Fair Trading Review, 2010). Apart from the free-to-client DMP advice, there is also a rise in the numbers of fee-charging companies that offer DMP.

One of the largest financial solutions companies in UK is The Paymex group that include Baines and Ernst, a specialist in Debt Management. However, all the DMP companies' provider must get authorization from the Financial Conduct Authority (FCA) (Muller et al, 2012). Despite providing advice for fees, the fee-charging companies will not bill the debtors for the advice until the DMP is agreed upon. It was estimated that 95% of the debtors that seek advice through telephone calls do not end in a solution. As such the companies do not receive fees from such clients (Muller et al, 2012). It seems right to say that fee-charging debt management companies offer valuable services to consumers. Indeed it has been claimed that the fee-charging debt management companies filling the gap which results from the scarcity of resources in the free-to-client sector since consumer's demand for free-to-client debt advice is greater than offered in the market (Parker, Bookallil, Meekings, & Rahman, 2010). Although fee-charging DMP in the UK is claimed to be effective in its implementation, there are several criticisms against it. The charging fees have been criticized are being too expensive, and not all debtors can afford to demand for paid for advise (Citizens Advise, 2015). Charging fee is a fee charged for professional service given by the DMP's company which include their services negotiate payments with creditors, and distribute the payments to creditors each month.

In Baines and Ernst's, the amount of charge fees is equivalent to 17.625% of the monthly payment of DMP, which include the service charge for financial information given to the debtors in the DMP's application process and for their services every month in administering payments to creditors, dealing with queries and the professional services (Muller et al, 2012). This indicates that fees charging DMP companies are focusing more on making profits and reducing cost (Muller et al, 2012). Moreover, in 2010, Office of Fair Trading (OFT) discovered that 92% of the fee-charging providers failed to inform their clients that other than receiving debts advice from the fee-charging company, they could also receive it from free-to-client sector. The failure to explain the choices to the client is considered by OFT as an attempt by the fee-charging companies to discredit the services of free-to-client providers (Muller et al, 2012). Another complaint made against the DMP service providers is on issue of trust. It was reported that there were cases where

the DMP companies held the money paid into their accounts by the clients as a monthly repayment to the creditors without disbursing it. As a result, there were clients who cancelled the DMP with the fee-charging company since their creditors had not been paid or the payments made to their creditors were late (Collard 2009). Despite these criticisms, it was reported that 94% of the clients of one of the fee-charging DMP's companies were very satisfied with the company's services; as the services are considered honest/truthful and gave positive impact on the client's lives (London Economics, 2010). In 1991 the Money Advice Trust was formed as a charitable organization to increase the availability and ensure the quality of money advice in the UK (Gathergood, 2010). Then the Debt Resolution Forum was established in 2006 to promote professional standards and effective debts advice to customer debtors in resolving debtors' financial problems (Collard, 2009). In 2009 the Debt Managers Standard Association (DEMSA) was set up to protect the interest of the public in borrowing money from the lenders as well as the lenders itself (Collard, 2009). Another measure taken to assist consumers to manage financial problem is the new Debts Management Plan Protocol established by Financial Conduct Authority (FCA), which was introduced in February 2013.

The purpose of the protocol is to protect the interest of consumers who enrolled in the DMP in term of services given in accordance with standards and statutory requirements (Collard, 2009). The protocol provides that: a) Consumers will not be charged any fees before signing any contracts with debts management companies; b) Consumers who seek paid-for advice will be made aware that free debt advice options are available before signing any contracts with fee charging DMP's companies and c) The DMP Protocol, which is voluntary, will be independently monitored to ensure firms meet the standards and spirit required of the protocol. Since the introduction of such protocol, the Harrington Brooks, the UK's biggest debts management companies, had at the request of the FCA compensated £185,000 to its 4,500 clients for its delay in contacting the creditors causing them extra interest and charges on their debts. The company had also failed to inform its clients quickly of the outcome of its negotiations with creditors, leaving them unaware of the interest and charges on the debts, which had not been frozen (Evans, 2014). Interestingly, three firms that include Sterling Financial Security Limited, Haydon Associates Debt Management Consultants Limited and Clear View Finance Limited had been stopped from offering any debt management services to clients since the firms have failed to comply with the requirements to provide written debts statements to their client and charged their client with unnecessary fees (Financial Conduct Authority, 2015).

### **(C) Debt Management Programme or Plan (DMP) in Singapore**

In Singapore, the clients who intend to participate in the DMP also have the choice of free debt advice and paid-for advice. The programme allows clients to gradually

repay his unsecured consumer debts to all his creditors over a reasonable period of time. In Singapore, free debt advice DMP is mainly provided by Credit Counseling Singapore (CCS) while paid-for advice DMP is offered by other credit counseling agencies. CCS helps clients to recover from serious debt problems by providing general credit management information, credit counseling and where applicable, assist them in planning debt repayment (Khim, 2005). CCS was established on 14 October 2004 in response towards the concern of State Courts judges about escalating rate of consumer indebtedness in Singapore. It is a non-government-link organization and a charity registered with the Commissioner of Charities. Despite its status as a charitable body, its clients are still required to pay certain charges towards its services but not as high as compared with other debt consultancy firms (Credit Counseling Singapore Society (CCSS), 2016). Many sponsors including Subordinate Courts of Singapore, which first came out with the idea for CCS has funded CCS (CCSS, 2016). Since August 2003 to December 2005 CCS has organised DMP for over 600 individuals. (Khim, 2005). Those who had received helps from CCS praised the efforts of the agency to help them to overcome serious debt problems (Shanmugaratnam 2014). Currently, under its latest DMP development, CCS offers centralized repayment solution whereby it will coordinate payments across all the creditors and work out a centralized repayment plan by considering the borrower's income, expenditures, and loan obligations (Shanmugaratnam, 2014).

An application to enroll into DMP will usually go through the following steps: 1) The individual is requested to attend a compulsory 2 hours free Info Talk on debt management conducted on a weekly basis; ii) The individual needs to submit his request for counseling appointment; iii) CCS will call the individual to set up a one-to-one counseling appointment to discuss his situation in details with a credit counselor in reference to the information and documents that he has submitted earlier on. He must also submit all relevant documents and be honest about his assets, liabilities, income and other available resources; iv) At the counseling session, the credit counselor will assist the individual to work out a monthly budget, explore and explain the options and identify the most appropriate solution for his debt problem at the moment; v) If at the end of the counseling session, both the counselee and his credit counselor concurred that the DMP is the most suitable option, upon the request of the counselee, CCS will prepare a DMP proposal and vi) The DMP proposal is drawn up based on the information and documents provided by the counselee and the debt information provided by the creditor banks.

Subject to an approval by the DMP Review Committee, CCS will send out the DMP proposal for the creditors' review and approval. CCS will also notify all stakeholders on the outcome of the consolidated creditors' replies. CCS can only intercede with the banks after understanding the debtor's financial situation and ascertaining that the debtor is suitable for the debt management plan (CCSS, 2016).

Therefore, the debtors are not immune from creditors' legal action to recover the debts. The data of individuals who have entered into DMP will not be publicly published but is registered with Credit Bureau Singapore whose data is accessible to its members, mainly the financial institutions (CCSS, 2016).

Since the DMP is a voluntary arrangement between the individuals and creditors it is the creditors' discretion to agree to installment plans and specify the terms of the repayment. It is submitted by the creditors that the DMP benefits them by facilitating communication with debtors who they had lost contact with. However, it can cause long time plan starting from the plan is set up until contributions are being made to the plan (Thornton, 2012). The creditors also have the freedom to decide to lower the rate of interests on the debtors' debts (CCCS, 2016). However, since enrolling in DMP is an indicator of clients' willingness to pay back 100% of their debts, the creditors usually agreed to offer interest rate reductions (Bright, 2013). It is important to note that many of the paid-for credit counseling agencies in Singapore are non-profit organizations. The charge imposed by the organization might be high, hidden and can cause the clients to fall deeper into debts. In worst cases there are certain CCA misrepresent to the client that the DMP is the only option available to the debtors in managing their debts (Federal Trade Commission for Consumers, 2005).

## VII. ETHICAL PHILOSOPHY AND PRINCIPLES TO PAY DEBTS

It has been pointed out that there are some distinctions between ethical and unethical behavior: "intentions behind an ethically sound course of action should be non-contradictory in the sense that they should be consistent with a set of non-contradictory ethical principles" (Kilpi, 2002: p.55). Accordingly, it is considered unethical behavior if one promised to pay a debt while knowing that he or she will not pay it (Kilpi, 2002). Furthermore, insecure promising is wrong; indeed a reason to "morally condemn fraud because it is irrational to act on two contradicting principles at one moment of time" (Kilpi, 2002: p.55). Kilpi (2002) agrees with the basic Kantian principles of trust and respect that it is morally and ethically wrong for an individual (promisor) after giving promise to another (promisee) who expects the promisor to perform the promise, yet the promisor then breaks it (Kilpi, 2002). It has been stated that such moral grounds cover contracts as well: "since a contract is first of all promise, the contract must be kept because a promise must be kept..." (Kilpi, 2002: p.17). It is further argued "the moral force behind contract as promise is autonomy: the parties are bound to their contract because they have chosen to be" (Kilpi, 2002: p.57). Yet, question arise: if the contract is binding just due to the parties have chosen to commit themselves then why cannot any of the parties at any time make a new choice and set aside the responsibilities and duties under such contract? One can put forward Kantian philosophy to tackle on this matter: "to act morally one must act in obedience to the law that a rational being would

freely choose as the measure of its own action” (Kilpi, 2002, p.57). Therefore, Kant’s formulation of ‘categorical imperative’ to which all moral action must conform: one must act by those rules that one could at the same time will that it become a universal law (Kilpi, 2002). Kant’s ethics said promises are binding because one could not will, as a universal law, that promises should be broken and this argument supported by Wolff, Hobbes and Lockes that “promises are binding because they have been defined to be” (Kilpi, 2002).

In order to justify public enforcement of contractual debts, the utilitarian theory has pointed out that the debts should be paid because it is in the interest of the parties involved and therefore, society should support such aim (Kilpi, 2002). On the other hand laws should adhere to the Kantian theories that our autonomy supports the moral duty to keep our promises and as a result law should enforce duty to pay debts (Kilpi 2002). Kilpi (2002) also has emphasized arguments on debt by Warren and Shuchman, as Warren sees a debt contract requires us to pay, or to discharge the promise to pay through bankruptcy. In effect, meaning that a contract as a promise includes implicit side conditions which stipulate the revoking of the promise. While Shuchman, considers promising in terms of actions defined by rules, which are a set of constitutive conventions. These rules may have a moral element when the promising parties in a contract are natural persons. As far as debts are concerned, a promise to pay tells that one is to pay unless certain excusing conditions are present. Having said that one has duty to keep promises to pay debts and even if the duty to keep promises is given the strictest possible interpretation, to the effect that promises must always be kept, there are circumstances when the duty simply becomes void (Kilpi, 2002). If the duty requires the party to the contract to perform impossible acts, it would be absurd to say that the contracting party has to perform them (Kilpi, 2002). Barry (2006) says that one can distinguish between the ethical status of debt and the ethical status of particular claims regarding the terms on which the debtor is obliged to repay it.

According to Barry (2006) “a distinction can be made between the general obligation to repay a debt and a specific obligation to repay it on certain terms (according to a particular schedule)” (Barry, 2006: p.3). Barry (2006: p.3) says, “after all when a debt is incurred a contract typically stipulates the schedule on which it is to be repaid and insofar as there is an ethically valid claim to repayment of the debt at all, it might be argued, there ought therefore to be an ethically valid claim to repayment on the terms under which it was incurred”. However, if for instance the debtor involved in an accident and unable to work for some period, certain considerations are relevant for evaluating issues that frequently arise in the debt context; like it may reasonably be maintained that the debtor is obliged to repay the full amount, yet it may not be plausible to claim that the debtor is obliged to repay according to the original schedule (Barry, 2006). Bankruptcy is generally considered to mark a financial failure and frequently an ethical failure as well, and

ethical bankruptcy should be one that can provide greatest benefits and least harm to the various stakeholders (Boettcher, Cavanagh & Min Xu; 2014). Bankruptcy as an institution is ethically justified as an attempt to give the honest debtor a second chance (Boettcher et al, 2014). Bankruptcy remains the last option many financially distressed consumers will choose and personal ethics may well be the reason (Baylor Business Review (BBR), 2007). “Just ethics are central to giving individuals the right to wipe a financial page clean and enjoy a new start at life, so too should ethics factor into one’s acting responsibly so as to avoid bankruptcy court in the future” (BBR, 2007: p.5).

### **VIII. CONCLUSION AND RECOMMENDATION**

DMP is a debt repayment plan organized by the credit-counseling agency in country like Malaysia, UK and Singapore. It is one of the out-of-court pre-rehabilitation schemes available that may shield debtors from creditors’ legal action including bankruptcy petition if the programme is successfully applied. Nevertheless, there are differences in the DMP’s application and implementation in Malaysia, UK and Singapore. In the UK and Singapore there is only one category of DMP namely creditors’ approved DMP. In these countries the creditors are not obliged to agree with the DMP organized plan and it is only available for unsecured debts. However in Malaysia the DMP is divided into two classes or matrices namely, a DMP that requires creditors’ consents and another category where creditors’ consent is not needed. These matrices are drawn according to agreed code of practices between Malaysian AKPK and the financial providers for facilitation purpose. Moreover, DMP in Malaysia is available to clients with unsecured and secured loan of not more than RM2 million. In Malaysia, only one type of DMP is offered to clients namely, free- for advice DMP. Meanwhile, in the UK and Singapore clients can choose to engage in the free-for advice or fee-charging DMP.

Perhaps, Malaysia may learn from UK and Singapore to open for fee-charging DMP industry in case where it free for advice DMP cannot meet the consumer’s demand for free-to-client debt advice. On the other hand, Malaysia’s DMP differs from the DMP in the UK and Singapore because once debtor is enrolled to such plan, the moratorium period takes into effect to protect the debtors/clients from the creditors’ bankruptcy action. Meanwhile under the DMP in the UK and Singapore, the creditors are free to commence bankruptcy proceeding against them even after the DMP have been agreed upon by both parties. Accordingly, it seems right to suggest for the DMP in UK and Singapore to include moratorium effect to its plan in order to give a fair chance to a debtor to restructure their debts without interference from the creditors. Perhaps, UK and Singapore and even other countries can learn from the experiences of Malaysian DMP. As noted DMP in Malaysia DMP was introduced by the CCDM or commonly known as AKPK which is an agency set up by Central Bank of Malaysia (CBOM). AKPK could use its persuasive power

to influence the creditors to get their consensus to restructure the debtors' loan and not take action once the debtors are enrolled under the DMP. Perhaps, in reality who wants to go against the AKPK, which formed under the auspices of the CBOM? It could be the strength of such agency under patronage of CBOM.

It is important to note that ethical philosophy advocated by Kant emphasizes on the notion that promise to pay debts are binding because one could not will, as a universal law, that promises should be broken. Indeed Kant sees it is the moral duty to keep promises and as a result law should enforce duty to pay debts. While utilitarian theory believes that the debts should be paid because it is in the best interest of the parties involved and therefore, society should support such aim. Nevertheless, the duty under debt contract that renders the debtor to pay will become absurd if such duty requires the debtor to perform impossible acts. Accordingly, in the event of debtor has experienced unforeseen circumstances that has made him or her disabled to follow the terms of the debts as stipulated under the schedule of the debt contract, rescheduling of the debt is necessary so that that the debtor can still repay what he or she owed. Perhaps the concept of DMP in Malaysia, UK and Singapore seems to conform to the ethical philosophy or principles for one to pay debts. Under such plan (like in Malaysia and Singapore) only eligible debtors who fulfill the requirements set by the CCA and they are having financial predicament including the failure of business, unemployment as well as high medical expenses are entitled to be offered some solution to settle their debts and facilitate them in reorganizing their financial affair. The DMP includes rescheduling of the debt as well as low interest rate that varies from the original debt contract agreed between the debtors and their creditors. Perhaps for debtors who are on the brink of bankruptcy and managed to reorganize their debts and repay their debts can avoid from being made bankrupt. Interestingly, as pointed out previously, "just ethics are central to giving individuals the right to wipe a financial page clean and enjoy a new start at life, so too should ethics factor into one's acting responsibly so as to avoid bankruptcy court in the future" (Baylor Business Review 2007: p.5).

It is recommended that out of court settlement through consultation with credit counseling agency by offering DMP can be said as a shield to protect debtors against bankruptcy. Furthermore, it is a good avenue for the financial provider to recover back their money from debtors. On the other hand for debtors, DMP is an important platform to give them a second chance for to manage their financial to pay back the money borrowed from the financial provider according to their capability to pay. Yet, there must be a check and balance between these two parties interests, therefore, the relevant authorities in those three jurisdictions should ensure that DMP's implementation in term of services given complied with the legal requirements in order to protect the right of the debtors as well as the creditors or financial providers. As a result, the debtors in those jurisdictions who faced difficulty in settling their debts, and after fulfilled certain requirements may engaged in the



DMP that offers among others restructuring of the debts. Such DMP is commendable as it facilitates repayment of debts and most importantly is able to protect debtors against the creditors' legal action and ultimately prevents bankruptcy. Yet one cannot disagree that eventually debtors who are unable to overcome their debts and fail to manage the repayment of their debts deserve to face bankruptcy order.

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