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HERCULEAN TASK FOR JIM

Despite the staggering number of bankruptcies and companies winding-up, the administration of bankrupts and companies that have been wound up is being handled by a mere 489 insolvency officers in the country.

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Although Jabatan Insolvency Malaysia (JIM) may be one of the most understated government departments, they are currently administrating almost 226,000 bankruptcy cases and company dissolution cases respectively with a large number of bankrupts who defaulted on hire purchase loans and credit card facilities.

Despite the staggering number of bankruptcies and companies winding-up, the administration of bankrupt estates and companies that have been wound up is being handled by a mere 489 insolvency officers throughout the country.

From 2005 to June this year, JIM has registered 64,072 new bankruptcy cases that was ordered to be under its administration by the court, bringing the number of current bankruptcy cases to 225,055.

According to the statistics revealed by JIM, 23.69% of bankruptcies in the country was caused by a person's inability to pay for credit facilities such as hire purchase loans for a car or a home financing loan, while nearly 32.45% was due to reasons that were still being identified.

Other reasons of bankruptcy were due to one's failure to make payment for business loans, credit card facilities, and from being social guarantors for family members or friends who defaulted on their payments.

JIM was first established in 1924. The Department was then staffed with only one official assignee officer to administer the seized property of the bankrupt.

In 1949, a Bankruptcy Office was formed but it was then merged with the Public Trustee Office in 1966.

Due to the rising economic development and legal complexities that came about, the administration of the Bankruptcy Office and the Public Trustee Office were later separated in 1969.

The Official Assignee Department (OAD) was established in 1974 and under a re-organisation exercise in 2003 the OAD was renamed as JIM.

According to JIM director-general Datuk Abdul Karim Abdul Jalil, the



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DATUK ABDUL KARIM
ABDUL JALIL

department plays a significant role in the administration of bankruptcy and company winding-up cases in the country.

JIM's premier function was to administer the assets and property of a bankrupt.

"Upon being adjudged as a bankrupt by the court, the property of that person will be vested in the director-general who will then administer the bankrupt estate by realising (selling) the property with the intention to declare and distribute dividends amongst the creditors who have proved their debts.

Abdul Karim further explained that the paramount importance of

this process was to see that justice is done not only to the bankrupt but also to the creditors.

"A person can be said to be insolvent if he is not able to pay the debt that he is supposed to pay to any creditor of his when it is due for him to pay.

"However, a person can only be called bankrupt if a court order has been made against him upon a petition presented by himself or his creditor for not being able to pay his debt amounting to RM30,000, or more.

"Pending the appointment of a liquidator by the court or the committee of creditors, the director-general in the capacity of Official Receiver will be appointed as a provisional liquidator.

"However, if there is no liquidator being appointed in the winding up of a company, the director-general will be automatically appointed as a liquidator," he said.

The third significant role performed by JIM under the insolvency law is the enforcement of all the Acts in which the Department had been given the supervisory powers – the Bankruptcy Act, the Companies Act, the Trade Unions Act and the Societies Act.

"We need to supervise and ensure that the bankrupts or the former directors of the wound-up companies comply with all the obligations stipulated under the Bankruptcy Act

and the relevant laws.

"This means, we have the duty to investigate the conduct of the bankrupt or the former directors and submit a report to the court if we have any reason to believe that they have committed any offence under the Bankruptcy Act, Companies Act or in some cases the Penal Code," he said.

He gave an example where bankrupts may have transferred his property to another person's name within two years from the date in which he was adjudged as a bankrupt.

Under such situation, he said the director-general had all the powers under the Bankruptcy Act to avoid any such transaction and apply to the court for the property to be surrendered back to the bankrupt estate which is under the administration of the director-general.

On the manner in which a bankrupt person could be discharged, Abdul Karim said: "Firstly, a bankrupt person may be discharged through a court order.

"Secondly, the DGI may on his discretion issue a certificate discharging the bankrupt if the person has been adjudged a bankrupt for more than five years subject to an objection made by the creditors upon the intention of the DGI to discharge the bankrupt being communicated to them," he said.

As both methods of discharge requires good conduct to be shown by the bankrupt, Abdul Karim urged

bankrupts to maintain good conduct and to report to the department at the stipulated times because it was one of the sure-fire ways of getting themselves out of the stigma of being bankrupt.

"If they (the bankrupts) had shown better conduct we are more than willing to help them. We are here to offer counselling and advice but they need to cooperate with us," he said.

Abdul Karim said there are many restrictions imposed on a person who has been adjudged as a bankrupt.

Amongst others, he said an undischarged bankrupt may not leave the country without the approval of the director-general.

"They cannot start or carry on a business, either alone or in association with partners without prior approval from the director-general.

"They cannot become a director of a company without the approval of the director-general.

"Furthermore, bankrupts need to declare their income every six months to the director-general, and state how much is needed for the maintenance of himself and his family and also how much is the surplus," he said.

Should there be any surplus, he said it will be credited into his bankruptcy account.

For the purpose of receiving his salaries or wages, a bankrupt will normally be allowed to open a savings account by the director-general.

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