

Essential goods, work equipment cannot be seized by creditors once Insolvency Act amended

By Suzalina Halid - March 12, 2023 @ 7:01am

KUALA LUMPUR: Essential goods as well as work equipment belonging to those facing bankruptcy will be exempted from the list of items creditors can seize when the Insolvency Act 1967 (Act 360) is amended.

Minister in the Prime Minister's Department (Law and Institutional Reform), Datuk Seri Azalina Othman Said, said the exemption was among six policy changes expected in the amendment, which is expected to be tabled by next month.

Should the amendment be passed, essential items and work equipment can no longer be seized by creditors via the Insolvency Department, as practiced before.

Essential items refer to important equipment in a bankrupt's daily affairs such as refrigerator, cooking appliances and the like, with the exception of luxury goods.

Equipment such as motorcycles for ice cream sellers and freezers for traders are also classified as essential items, necessary for a bankrupt to continue seeking an income.

Azalina said six policy shifts are being given focus, with an emphasis on the welfare of a bankrupt individual, due to the rising cost of living.

She said among the suggested amendments include systemic improvements to make it easier for bankrupts to be released from insolvency automatically.

"For now, Section 33C of the Insolvency Act 1967, which came into power on Oct 6, 2017 via the Bankruptcy (Amendment) Act 2017, enables bankrupts to be released from insolvency three years after filing a Statement of Affairs (PHE).

"However, there have been no automatic discharges done to date. This mechanism will be improved to make it easier for bankrupts to be discharged from insolvency status," she told Berita Harian.

During the tabling of the 2023 Budget last month, Prime Minister Datuk Seri Anwar Ibrahim had announced that the Insolvency Act would soon be amended to enable bankrupts to be discharged from insolvency automatically.

The government had previously stated that the amendment to Act 360 will enable at least 130,000 people from 260,000 bankruptcy cases to be discharged.

CURRENT CHALLENGES

Azalina said the Insolvency Department also faces a problem as currently, there are no legal provisions on online meetings or the submission of notices and documents electronically when it comes to management of bankruptcy assets.

She said as such, the proposed amendments would also introduce a provision on the use of information technology in the administration of bankruptcies.

"The suggested amendments also involve expanding the application of the discharge certificates issued by the Insolvency Director-General (KPI) under Section 33A of Act 360 to help bankrupts get discharged from insolvency.

"This can be implemented by increasing the category of bankrupts whose right to a discharge cannot be challenged by creditors via the KPI certificate, under Section 33B(2A) Act 360.

"This will include bankrupts who suffer from mental illness as well as those aged 70 and above," she said.

AUTOMATIC DISCHARGE FROM INSOLVENCY

On overseas travel restrictions for those declared insolvent, Azalina said this will still apply as no amendments are being done on that for now.

"The same applies to rules related to property of bankrupts, this is still subject to the authority of KPI.

"As a whole, the proposed policy changes via the amendment to Act 360 places emphasis on automatic discharge from bankrupt status and expediting the administration of bankruptcies.

"There is also greater focus on the use of information technology on the administration of bankruptcies and the welfare of bankrupt individuals," she said.

On the claim that as many as 130,000 people from 260,000 cases could be freed from bankruptcy, Azalina said this would involve cases in accordance with the amendment to Section 33C of the Insolvency Act 1967, where those insolvent can be automatically discharged in a short period of time.

She said through this provision, bankrupt individuals can apply to be discharged from their status within three years of filing a PHE, subject to certain conditions such as determining a monthly repayment scheme.

Azalina was also asked if the discussions with Bank Negara Malaysia (BNM) and the Finance Ministry had included tightening loan conditions to ensure that the ease of discharge facilities are not used by debtors to treat their debts lightly.

She said the discussions between the stakeholders on the issue will be continued.