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Corporate Recovery & Insolvency

New Bankruptcy Rules

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New Bankruptcy Rules

Introduction

The Bankruptcy (Amendment) Act 2015 (the “Act”), came into effect on 29 January 2016. It provides welcome reform to the Bankruptcy process. Key reforms introduced by the Act are:-

Reduction of the Bankruptcy Term

Reduction of the normal term of bankruptcy from 3 years to 1 year. This now mirrors the duration of a normal bankruptcy term in the UK and should make bankruptcy a more attractive option.

Bankruptcy Payment Orders

Except in cases of no-cooperation and/or concealment, the maximum duration of a bankruptcy payment order is reduced from 5 years to 3 years.

Non-Cooperation & Concealment by a Bankrupt

In cases of no-cooperation and/or concealment the Court may now extend a bankruptcy term to 15 years.

The Family Home

Subject to certain exceptions, the family home will re-vest in the Bankrupt on the 3rd anniversary of the bankruptcy. This will not affect any mortgage on the property.

Removal of the High Court Sitting

The Act removes the requirement for a High Court sitting following bankruptcy. This is to be welcomed as the requirement was entirely unnecessary.

Disclaimer of Onerous Property

With the permission of the Court, the Act will permit the Official Assignee to disclaim onerous property.

Electronic Records

The Act clarifies that the Official Assignee is entitled to request the electronic records of a Bankrupt.

Existing Bankruptcies

All existing bankruptcies will also enjoy the benefits of these new changes, subject to a 6 month transition period to allow the Official Assignee to take appropriate measures in cases of suspected concealment or non-cooperation.

Conclusion

The Act will provide for significant reform of bankruptcy law. The reduction in the term of bankruptcy and payment orders will ease the impact of adjudication on a bankrupt. The provisions for the family home will provide greater certainty in relation to the status of a bankrupt's family home. Furthermore, the Act will streamline the process while at the same time provide stronger penalties and deterrents to those who seek to abuse the bankruptcy process or cheat their creditors.

For further information on this topic, please contact Doug Smith, Partner E: dsmith@efc.ie or Lorcan Moylan Burke, Solicitor, Corporate Recovery & Insolvency Department E: lburke@efc.ie