EUGENE F COLLINS

Personal Insolvency Act 2012

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On 26th December 2012, the Personal Insolvency Act was signed into law by the President of Ireland.

On Friday 1 March 2013, the Insolvency Service of Ireland (ISI) was formally established. The ISI will embark on an information campaign to inform the public of the manner in which the law will operate. In addition, the ISI will publish guidelines on reasonable living expenses.

The Act is a radical transformation of Irish personal insolvency law. It has been introduced to address the personal debt problems which have been encountered by individuals as a result of the financial crisis.

The two major constituents of the Act are:-

1 The introduction of alternatives to bankruptcy.

2 Reform of existing bankruptcy law.

1 ALTERNATIVES TO BANKRUPTCY:-

Three "arrangements" have been introduced by the Act:-

1 Debt Relief Notice ("DRN")

2 Debt Settlement Agreement ("DSA")

3 Personal Insolvency Arrangement ("PIA")

2 COMMON FEATURES OF ALL ARRANGEMENTS:-

The three types of arrangements will involve some common features:-

(a) The Court will be involved.

(b) The ISI ("the Insolvency Service") will be involved.

(c) There will be an "intermediary".

(d) PIAs and DSAs shall not release the debtor from certain liabilities unless the relevant creditor agrees. These liabilities are mainly debts due to the State, such as, taxes, duties, etc.

(e) The debtor must be insolvent and unlikely to become solvent within five years.

3 PERSONAL INSOLVENCY ARRANGEMENTS:-

The most significant aspect of a PIA is that at least one of the creditors must be a secured creditor. The process is only available where the aggregate of the "secured debts" of the debtor is less than €3million. If all secured creditors agree, the €3million cap can be waived. There is no upper limit on the amount of unsecured debt in a PIA.

The PIA will allow the debtor to restructure his or her liabilities over a six or seven year period.

The majority of creditors, representing 65% in value of the debtor's obligations, must vote in favour of the arrangement. Within the 65% vote, 50% of the value of the secured creditors and 50% of the value of the unsecured creditors must vote in favour of the arrangement.

A PIA can be availed of once only in the lifetime of the individual.

Central to the proposal for the arrangement and its implementation will be a Personal Insolvency Practitioner ("PIP").

There will be a rigorous assessment of every debtor's assets and liabilities before the process can commence.

If the debtor qualifies for a PIA, then a protective certificate is granted which will allow 70 days during which the PIP will try to obtain the agreement of the creditors to the proposals. The 70 days can be extended for a further 40 days.

During the protective period, the creditors can effectively take no action against the debtor.

However, creditors may take action against guarantors.

In general, the PIP can propose solutions from a vast range of concepts which will allow the debtor to discharge his or her revised liabilities.

It's important to note that the arrangement must take into account the reasonable living standards of the debtor and his or her dependants. Guidelines as to "reasonable living standards" are expected to be published before 31 March 2013.

A PIA shall not require the debtor to sell his or her principal private residence unless the debtor agrees to the sale or the PIP is of the opinion that the home should be sold. The PIP can reach this conclusion on the grounds that the home is too big for the relevant family or the running costs of the home are excessive.

In certain circumstances, creditors can apply to the Court to object to an arrangement.

Where a PIA is being implemented, it will bind the debtor and the creditors. It must be reviewed at least annually. If the debtor's circumstances change, those changes must be taken into account in the annual review.

If the debtor fails to meet his or her obligations under the PIA for more than six months, the PIA is terminated. When the PIA has been successfully concluded, all unsecured debts of the debtor are discharged although secured debts are not discharged unless that is provided under the terms of the PIA.

4 DEBT SETTLEMENT ARRANGEMENTS:-

The DSA will apply to debtors who have unsecured debts over €20,000. There is no limit on the amount of the unsecured debts.

The debtor may use the DSA once only in his/her lifetime.

When the PIP has finalised the details of the arrangement, the arrangement will be submitted to a meeting of creditors and will be approved if 65% in value of the creditors present and voting vote in favour of the terms of the arrangement.

If the proposals are rejected, the protection period comes to an end and leaves the debtor under a threat of bankruptcy.

The DSA will be implemented over a period of five years (extending to six years in certain circumstances). However, if the debtor defaults for six months during, then the DSA is terminated.

5 DEBT RELIEF NOTICE:-

This procedure will allow for the write off of certain debts up to €20,000 in circumstances where the debtor has little or no assets.

The eligible debtors must have net disposable income of €60 or less per month and/or assets or savings of €400 or less.

The debtor must have no realistic prospect of being able to discharge their debts within five years.

Qualifying debts will include credit card debt, rent debts, utility bills, unsecured bank loans, overdrafts.

Taxes and other state related debts cannot be subject to a DRN.

Only one DRN is permitted in the lifetime of the debtor.

The DRN remains in effect for a period of three years. During that period, the creditors cannot take action to recover their debts.

The debtor must acknowledge any material improvement in his or her circumstances during the three year period.

The DRN can be terminated if it has been proved that the debtor has been dishonest or there has been non-compliance by the debtor.

When the three year period has expired, the debtor is discharged from all the unsecured debts specified in the DRN.

6 BANKRUPTCY:-

The Act introduces a number of significant changes to the existing bankruptcy law.

However, the most significant change relates to the period when the bankrupt will be discharged from his or her bankruptcy status. Under the Act, the period will be three years (previously twelve years). The three year discharge period will apply where the bankrupt has co-operated fully and disclosed his or her assets. Failing co-operation, the three year period can be extended by the Court up to eight years.

In general, the Act will have a profound effect on the current status of many individuals in Ireland.

For further information on this topic please contact: Doug Smith, Partner, Head of Corporate Recovery Group, E: dsmith@efc.ie