

PERSONAL INSOLVENCY BILL

The Government published on 25 January 2012 the Personal Insolvency Bill.

Insolvency Service

The Bill provides for the establishment of an Insolvency Service.

Debt Relief Certificates

The Bill provides for a Debt Relief Certificate of forgiveness for persons with no assets and no income that are unable to meet qualifying debts totalling not more than €20,000. The purpose is to create an efficient non-judicial means of allowing persons to resolve unmanageable unsecured debt problems.

With the assistance of an approved intermediary the debtor may apply to the Insolvency Service to certify that the qualifying debts be frozen for one year following which if, the person still cannot pay, the Service will certify that the debt is written off.

General conditions for a DRC

- debtors would have qualifying debts of €20,000 or less;
- debtors will have a net monthly disposable income of €60 or less after provision for “reasonable” living expenses;
- debtors would hold assets (separately or jointly) to the value of €400 or less (one vehicle up to value of €1,200 would be exempt from the asset test);
- debts qualifying for inclusion in a DRC are unsecured debts: e.g. credit card, personal loan, catalogue payments, etc;
- debts that will not qualify for inclusion in a DRC include: secured debt, court fines, and family maintenance payments.

Where a DRC has been granted by the Insolvency Service

- it will be formally registered;
- a further DRC cannot be applied for before 6 years has elapsed;
- a DRC may not be availed of more than twice;
- there is a restriction on the debtor from applying for further credit.

Debt Settlement Arrangements

The Bill provides for a system of Debt Settlement Arrangements (DSA) between a debtor and two or more creditors to repay an amount of unsecured debt over a set period. The DSA would assist persons who have an income and assets and debts that exceed the threshold (€20,000) for a Debt Relief Certificate. With the required assistance of a personal insolvency trustee, the debtor may apply to the Insolvency Service for a Protective Certificate in respect of preparation of a DSA. If granted, the Certificate would provide for a standstill period during which creditors may not take action against the debtor. The trustee would then put forward a DSA to creditors for agreement. If approved, the Insolvency Service would provide formal registration of the DSA. At the satisfactory conclusion of the DSA all debts covered by it would be discharged. The Insolvency Service has no role in the negotiation and agreement of a DSA.

General conditions for application for a DSA

- the debtor must normally be resident in the State or have a close connection.
- only one application for a DSA is permitted in a ten year period.
- a Protective Certificate, if granted, will provide a standstill period of 30 working days to allow for a creditors meeting to consider the DSA.
- a DSA will normally run for 5 years.
- the DSA requires the approval of 65% in value of qualifying creditors.
- a DSA if approved, it is binding on all creditors.

When a DSA has been agreed with creditors

- the DSA will come into effect on registration by the Insolvency Service.
- the DSA may be varied or terminated.

- there may be an application for adjudication in bankruptcy on ending, termination or failure of the DSA.
- there are grounds for challenge by creditors to a DSA and a role for the courts on application to have a DSA annulled.

Personal Insolvency Arrangements

The Bill provides for a system of Personal Insolvency Arrangements (PIA) between a debtor and one or more creditors to repay an amount of both secured and unsecured debt over a set period.

General conditions for application for a PIA

- A debtor will only be able enter into a PIA once in his lifetime
- A debtor may only propose a PIA if he or she is cash flow insolvent (i.e. unable to pay their debts in full as they fall due) and it is unforeseeable that over the course of a period of time the debtor will become solvent
- A debtor may only propose a PIA if a DSA would not be a viable alternative to restore the debtor to solvency over a five year period
- It will deal with debts between €20,001 and up to a ceiling of €3m
- A Personal Insolvency Trustee, operating in a manner that is fair to all parties and having considered the full financial circumstances and advised the debtor, will make the PIA proposal to creditors and if accepted by creditors will then administer the PIA for its duration
- A PIA will normally run for 6 years

A PIA must be supported by at least [65%] of creditors and at least [75%] of secured creditors and [55%] of unsecured creditors in terms of value. When a PIA has been agreed with creditors:

- To the extent that they are not provided for in the PIA, all other debt obligations will remain
- Creditor objections to a PIA may be taken to the Circuit Court on stated grounds
- A PIA may be varied or terminated

Bankruptcy

The Bill provides for a number of amendments to the Bankruptcy Act 1988. The main elements are:

- The introduction of a minimum debt amount of €20,001 in respect of a creditor petition for bankruptcy;
- The automatic discharge period from bankruptcy is reduced from the current 12 years to 3 years after the date of adjudication;
- The discharge from bankruptcy could be delayed by the court, up to a maximum of 8 years, for non-compliance, fraudulent or dishonest behaviour by the bankrupt during the process;
- Full disclosure and realisation of all the bankrupt's assets and interests would be required for the benefit of creditors, etc;
- Provision for a court to make a payment order requiring the discharged bankrupt to make certain payments in favour of creditors, allowing for reasonable living expenses, for a period of up to five years
- Extended timeframes in regard to possible fraudulent transfers or settlements of assets by the applicant for bankruptcy.

For further details contact

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