



## Summary of the Personal Insolvency Bill

### Overview

The Personal Insolvency Bill was signed into law on 26 December 2012. Some key points are as follows:

- The period of automatic discharge from bankruptcy is reduced from 12 to 3 years.
- Bankruptcy will only be available where a debtors' liabilities are over €20,000.
- An independent body, The Insolvency Service (IS) has been established, which will oversee the three new debt settlement arrangements contained in the Act (1) Debt Relief Notices (DRN), (2) Debt Settlement Arrangements (DSA) and (3) Personal Insolvency Arrangements (PIA).

The Bill provides for the establishment of an Insolvency Service which will oversee the proposed non-judicial personal debt settlement system.

### **1. Debt Relief Notice (DRN)**

An insolvent individual may apply, through an approved intermediary, to the Insolvency Service for a Debt Relief Notice ("DRN") if they have:

- unsecured debts of €20,000 or less;
- and very limited means (eligibility criteria include having a net disposable income of €60 or less a month, having assets of €400 or less, and having no likelihood of becoming solvent within a period of 5 years).

Once the IS is satisfied that the DRN is in place it will issue a certificate to that effect, and furnish the certificate and the application to the circuit court, which, if satisfied that the appropriate criteria have been met, will issue a DRN.

The effect of a DRN:

- Provides a three year "protection period" during which creditors cannot pursue the debtor in respect of debts specified in the DRN.

- Following the protection period, if the debtor is unable to pay the qualifying debts, they will be deemed to be discharged, but provision has also been made for a debtor to be removed from the register of Debt Relief Notices during the period if a repayment of at least 50% of the value of the specified debts is made to the IS.
- A further DRN cannot be applied for within 6 years.
- A DRN may not be availed of more than twice.
- A DRN has no effect on secured debt.

## **2. Debt Settlement Arrangement (DSA)**

The Bill proposes a system of Debt Settlement Arrangements (DSA) between a debtor and two or more creditors to repay an amount of unsecured debt over a defined period of 5 years. The debtor may apply to the IS for a Protective Certificate in respect of the preparation of a DSA. A Protective Certificate, if granted, will provide a standstill period of 30-40 working days to allow for a creditors meeting to consider the DSA. The Personal Insolvency Practitioner (PIP) proposes the DSA to the creditors and if approved by creditors representing 65% of the value of qualifying creditors, all debts covered by the DSA would be compromised.

### **2.1 Requirements of a DSA:**

- The debtor has unsecured qualifying debts in excess of €20,000.
- The DSA requires the approval of 65% in value of qualifying creditors.
- Only one application for a DSA is permitted in a ten-year period.

### **2.2 The effect of a DSA:**

- A DSA if approved, is binding on all qualifying creditors.
- The DSA will come into effect on registration by the Insolvency Service.
- At the end of the DSA the creditor is deemed to be repaid in full and the debtor is discharged from the remainder of his/her debts covered by the arrangement.
- In certain circumstances, with creditor approval, the DSA may be varied or terminated.
- Creditors may challenge a DSA in the Circuit Court on specified grounds including where the DSA unfairly prejudices the interests of a creditor or where there is a material inaccuracy in the debtor's Statement of Affairs which causes a material detriment to the creditor.
- A DSA does not affect the rights of secured creditors.

## **3. Personal Insolvency Arrangements**

The Bill proposes a system of Personal Insolvency Arrangements (PIA's) between a debtor and one or more creditors to repay an amount of both secured and unsecured debt over a six year period. A Personal Insolvency Provider (PIP), operating in a manner that is fair to all parties and having considered the full financial circumstances of the debtor, will make the PIA proposal to creditors. If it is accepted by creditors (see below), it will be binding and will be administered by the personal insolvency trustee.

### **3.1 Requirements for a PIA:**

- The debtor has debts between €20,001 and up to a maximum of €3m.
- The debtor is cash flow insolvent (i.e. unable to pay their debts in full as they fall due) and it is unforeseeable that over a 5 year period the debtor will become solvent.
- A DSA would not be a viable alternative to restore the debtor to solvency over a five year period.
- The PIA must be approved by at least 65% of creditors in value and at least 50% of secured creditors and 50% of unsecured creditors in value.
- A debtor will only be able to enter into a PIA once in his lifetime.

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### 3.2 The effect of a PIA:

- An approved PIA will be binding on all relevant creditors and will provide for payment of debt over a 6 year period.
- To the extent that they are not provided for in the PIA, all other debt obligations will remain.
- A PIA may be varied or terminated in certain circumstances.
- Creditor objections to a PIA may be taken to the Circuit Court on specified grounds including where the PIA unfairly prejudices the interests of a creditor and where there is a material inaccuracy in the debtor's Statement of Affairs which causes a material detriment to the creditor.

### 3.3 The effect of a PIA on secured creditors:

- A "claw-back" is permitted in certain circumstances where a sale of a secured asset is achieved at a value greater than that attributed to the secured creditor in the PIA. Any uplift is to be paid to the secured creditor
- There are other provisions that allow a PIA to provide for changes in the payment terms of a loan to include deferral of payment and changes to payments of capital and interest. The proposed legislation does not elaborate on the grounds for alterations to the payment terms.

### 3.4 The Principal Private Residence in a PIA

A PIA may not include terms that would require a debtor to cease to occupy his or her principal private residence unless (a) the debtor confirms in writing to the personal insolvency trustee that the debtor does not wish to remain in occupation for the duration of the PIA; or (b) the costs to the debtor of remaining in occupation of his principal private residence are in the opinion of the personal insolvency trustee disproportionately large relative to the debtors income and other financial circumstances and the reasonable accommodation needs of the debtor and his dependents. A PIA cannot contain terms providing for a disposal of the debtor's interest in the principal private residence unless the debtor has obtained independent legal advice or has been advised to obtain such advice and the requirements of the Family Home Protection Act 1976 are satisfied to the extent possible.

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