Personal Insolvency Act 2012

The Personal Insolvency Act 2012 was signed by the President on 26 December 2012. The Act can be seen here. A new body, the Insolvency Service of Ireland (ISI) has yet to be established to oversee the new regime.

The new personal insolvency laws have been widely discussed over the last year and it is anticipated that demand for the new arrangements will be significant given the current levels of personal debt in all sections of society.

The Act introduces three specific measures targeted at providing debt management relief on various types of debt. The three mechanisms deal with unsecured personal debt of €20,000 or less (the Debt Relief Notice mechanism), unsecured personal debt of any level (the Debt Settlement Arrangement mechanism), and finally secured debt of up to €3m and unsecured debt of any level (the Personal Insolvency Arrangement). The Department of Finance have issued examples of how the various option work, available here.

The Act also makes amendments to the bankruptcy legislation. The provisions for Irish bankruptcy had been heavily criticised for being far too draconian. The most pointed criticism was on the length of the bankruptcy period, i.e. 12 years. The Personal Insolvency Act has revised the minimum bankruptcy period down to 3 years.

Debt Relief Notice

A Debt Relief Notice (DRN) can be applied for by an individual in order to write-off qualifying debts totalling not more than €20,000. The mechanism applies to individuals with assets of €400 or less and net disposable income of €60 or less per month. Given the low levels of debt involved most DRNs are likely to be handled by the Money Advice and Budgeting Service (MABS).

To qualify for a DRN the individual must be insolvent and have no realistic prospect of being able to pay his debts within the next 3 years. The function of this mechanism is to create an efficient non-judicial process to allow such persons to deal with unmanageable levels of debt.

Debt Settlement Arrangement

A Debt Settlement Arrangement (DSA) is an arrangement between a debtor with total unsecure debts in excess of €20,000 and one or more creditors to repay an amount of unsecured debt over a period of 5 years (with a possible extension to 6 years by agreement between the parties).

There is no cap on the value of the unsecured debt that can form part of the Arrangement.

The DSA is aimed at people who do not have an issue with secured debt; either because they only have unsecured debts, or because they are able to service their secured debts, but are running into difficulties with other debts. A Personal Insolvency Practitioner (PIP) must be appointed by an individual who wants a DSA, to set up and manage the Arrangement.

The Department of Finance has provided the following example of a typical candidate for a DSA:

DSA — Sample Candidate

> *"Mary has a number of unsecured debts such as credit card, personal loans, overdrafts, retail, store catalogues, etc which amount to over €20,000. She has difficulty in repaying her debts in full, perhaps due to reduced income and pressure to maintain mortgage repayments".*

In the example above Mary has secured debts (her mortgage) and she can meet her mortgage repayments but this leaves her short of funds for the other creditors.

Personal Insolvency Arrangement

A Personal Insolvency Arrangement (PIA) is an arrangement between a debtor and one or more creditors to repay an amount of both secured and

unsecured debt over a period of 6 years (with the option of extending the period to 7 years). The PIA is aimed at individuals who have difficulty repaying both secured debt (e.g. mortgage arrears) and unsecured debt (e.g. a credit card).

An individual can seek a PIA if he has secured debts of €3m or less, but this cap can be waived if all of the individual's secured creditors agree. There is no cap on the level of unsecured debts that can be dealt with in a PIA. If there is a high level of secured debt and all the secured creditors do not agree to waiving the €3m cap then a PIA is not an option and the question of bankruptcy should be considered. Again a Personal Insolvency Practitioner (PIP) must be appointed by an individual who wants a PIA to set up and administer the process on his/her behalf.

The Department of Finance gives the following example of an individual who may seek a PIA:

PIA—Sample Candidate:

> *"John has unsecured debts of €50,000 owed on his credit card, and personal loans. He has a mortgage of €300,000 on his principal private residence, which is a house valued at €200,000. John also has a buy-to-let mortgage of €250,000 on an investment apartment, which is currently valued at €150,000.*
>
> *John is self-employed and his income has fallen substantially over the past three years so that he is now unable to meet his debts as payments fall due."*

Revenue Debts & Excluded Debts

The legislation provides for excluded debts (such as maintenance payments, or payments re personal injury claims, which cannot be written down) and excludable debts (such as taxes and rates) which can be written down, with the consent of Revenue or the Local Authority.

> ***"The insolvent debtor will, with the assistance of a personal insolvency practitioner, put forward a realistic offer to his creditors that will restore the debtor to solvency within a reasonable period, thus giving creditors a better financial outcome than the alternative bankruptcy.***
>
> ***The creditors will need to consider carefully the debtor's offer, conscious that if they refuse, the debtor can avail of bankruptcy. Bankruptcy is the ultimate appeal mechanism of the debtor. "***
>
> *Mr Alan Shatter TD,*
> *Minister for Justice, Equality and Defence*

Conclusion

The aim of the new legislation is to provide mechanisms to deal with debts of those who are deemed to be insolvent, but who could manage to repay the bulk of their debts if they could agree some level of debt reduction.

It remains to be seen whether creditors will be willing to co-operate with the new debt relief mechanisms. The fact that certain classes of debt, such as Revenue debt, are not automatically part of the new arrangements could prove problematic and it is not clear if Revenue will be open to having their debts included in the new arrangements.

The ISI will be the regulatory body for the Personal Insolvency Practitioners required to administer the Arrangements and the Minister for Justice indicated in a Press Release on 19 December 2012 that the ISI will become operational in Spring 2013.

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Caveat: *These notes are intended as a general guide to the Personal Insolvency Act 2012 only. Formal advice should be obtained before any steps are taken that involve any provisions of the new legislation discussed above.*

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