Insolvency/bankruptcy

Irland

Personal Insolvency Law in Ireland is governed by the Bankruptcy Acts 1988 to 2015 and the Personal Insolvency Acts 2012 to 2021 (the PI Act). The PI Act provides three methods of debt resolution, and introduces amendments to bankruptcy legislation.

All personal insolvency proceedings, including bankruptcy, are administered by the Insolvency Service of Ireland (ISI), which is an independent statutory body established in 2013 operating under the aegis of the Department of Justice.

Personal insolvency proceedings, which are governed by the PI Act, comprise the following three arrangements:

Debt Relief Notice (DRN): for debts of up to €35,000 for people with virtually no assets and very low income.

Debt Settlement Arrangement (DSA): for the agreed settlement of unlimited unsecured debts over a period of up to five years (extendable to six years in certain circumstances).

Personal Insolvency Arrangement (PIA): for the agreed settlement or restructuring of secured debt of up to €3 million (which can be increased by creditor agreement) and unlimited unsecured debt over a period of up to six years (extendable to seven years in certain circumstances).

A DSA and a PIA both share a three stage process:

Stage 1: A **Protective Certificate (PC)** is issued by the relevant court, which on issue precludes certain named or "specified" creditors from taking or bringing action against the debtor, including bankruptcy petitions, to recover their debt. When granted by the relevant court, a PC will apply for 70 days, but can be extended for a further 40 days on certain grounds.[i]

Stage 2: This involves the negotiation by a Personal Insolvency Practitioner (PIP) or (someone requested to do so by the PIP in accordance with Part 3 of the Personal Insolvency Act 2012 on behalf of the debtor with their specified creditors and the approval of the proposal by way of a vote at a statutory creditors' meeting. Recent legislation has provided for, in the case of a PIA only, the opportunity for the debtor to seek a court review of their proposal where the creditors have rejected the PIA proposal at the creditors' meeting.[ii]

Stage 3: Implementation of Arrangements, including periodic distributions to creditors by the PIP and annual reviews by the PIP where appropriate.

A debtor may enter into a DRN, DSA or PIA only once.

Bankruptcy is an option for debtors who, due to their circumstances, do not meet the eligibility criteria for the abovementioned three debt solutions, or who have previously entered into one of the debt solutions but the arrangement with the creditors failed.

Where an individual has shown that their financial situation cannot be solved by an Insolvency Arrangement, and has a letter from a PIP to that effect, they may apply to the High Court to be made bankrupt. The individual must file an application for an Order of Adjudication (Bankruptcy Order) with the Examiner's Office of the High Court and pay an initial fee of €200. Applicants will be heard before the High Court; after an individual is declared bankrupt, they are obliged by law to co-operate with the Official Assignee in Bankruptcy and his office (the Bankruptcy Division of the ISI), who are responsible for administrating the bankruptcy estate.

As soon as a debtor is made bankrupt their unsecured debts are written off in full, however, all of their assets become the property of the Official Assignee in Bankruptcy, who is the High Court appointed administrator of the bankruptcy estate.

Bankruptcy proceedings may be brought in the following two circumstances:

By a Petitioning Creditor, who brings an application to the High Court in order to bankrupt an individual who owes them debts, proving that they are a creditor of the individual and that the individual has not made satisfactory attempts to settle their debts.

By the individual themselves, termed a Self-Adjudicating bankruptcy.

A bankrupt is automatically discharged from bankruptcy on the first anniversary of the date of adjudication, providing that they have not been subject to a Bankruptcy Extension Order (taken by the Official Assignee in cases of non-compliance).

The PI Act creates a profession regulated by the ISI, which falls into two categories:

1. Approved Intermediaries (AIs): a person or corporate body authorised by the ISI to support debtors who wish to make an application for a DRN.

2. Personal Insolvency Practitioners (PIPs): a person authorised by the ISI to act as liaison between the debtor and their creditor(s) for the purposes of securing a DSA or PIA. A PIP is legally obliged to act in compliance with the PI Act and associated regulations. A PIP may also request any person employed by them, in a common partnership with them, or having a common employer with them to perform certain functions of a PIP.[iii]

1 Who may insolvency proceedings be brought against?

In Ireland, individuals (including partnerships of individuals) initiate personal insolvency proceedings through the procedures set out in the PI Act. Creditors may initiate bankruptcy proceedings against a debtor, or a debtor may file for bankruptcy on their own initiative.

2 What are the conditions for opening insolvency proceedings?

Insolvency Proceedings

The primary condition for opening personal insolvency proceedings is that the debtor is insolvent, i.e. they are unable to meet their debts as they come due. The nature and extent of the debts and the debtor's income then determines which of the three arrangement types is appropriate.

In order to ensure that an individual who is subject to an Insolvency Arrangement can still maintain a reasonable standard of living, the ISI formulated guidelines (following an extensive consultation process) called the Reasonable Living Expenses (RLEs). These guidelines, as well as ensuring the sustainability of the Insolvency Arrangement, also help to safeguard the debtor's statutory right to a reasonable standard of living, ensuring a fair and transparent method for standardising day-to-day living costs for distressed debtors. A debtor's RLEs, based on the template set out by the ISI, are calculated by their AI or PIP when they are applying for their Insolvency Arrangement.

1. Debt Relief Notice (DRN)

To apply for a DRN, the debtor must:

Be unable to pay their debts in full as they fall due;

Have a net monthly disposable income of €60 or less after RLEs;

Have assets of €1,500 or less. Debtors are also allowed:

One item of jewellery not exceeding a value of €750;

One motor vehicle worth a value of €5,000 or less, and;
Household equipment or tools, provided that their combined value does not exceed €6,000;
Be domiciled in the Republic of Ireland or must have, within the past year, ordinarily resided or had a place of business within Ireland;
Have completed and signed a Prescribed Financial Statement (PFS) and made a Statutory Declaration that it is true and accurate.
Typical examples of debts included in DRNs are credit card debts, overdrafts, personal loans, Credit Union loans, utility bills, and store cards.

2. Debt Settlement Arrangement (DSA)

A debtor is eligible to seek a DSA if he or she:
Is unable to pay their debts in full as they fall due;
Has one or more unsecured creditors;
Is domiciled in Ireland or, within the past year, ordinarily resided or had a place of business within Ireland;
Has completed a Prescribed Financial Statement (PFS) and made a signed Statutory Declaration that the information provided is true and accurate;
Has obtained a statement from a PIP which confirms that the PIP is of the opinion that:
The information in the PFS is true and accurate;
The debtor is eligible to make a proposal for a DSA;
Having considered the debtor's PFS there is no likelihood of the debtor becoming solvent in the next 5 years;
If the debtor enters into a DSA there is a reasonable prospect they will become solvent within the next 5 years.
In addition to the debts listed for a DRN, the debts in a DSA may typically include loans and personal guarantees.

3. Personal Insolvency Arrangement (PIA)

A debtor is eligible to seek a PIA if he or she:
Is unable to pay their debts in full as they fall due;
Owes debts to at least one secured creditor who holds that security over Irish property or assets;
Has secured debts of less than €3m (if all the secured creditors consent, this limit may be increased);
Has co-operated under a mortgage arrears process (e.g. the Mortgage Arrears Resolution Process (MARP) governed by the Central Bank of Ireland) for a period of 6 months with the secured creditor in respect of the principal private residence and -
the result was that no alternative repayment arrangement was agreed, or;
the secured creditor confirmed it would not put in place such an arrangement, or
the debtor has entered into an alternative repayment arrangement and has endeavoured to comply with that arrangement, to which the PIP has provided confirmation;
Is domiciled in Ireland or has, within the past year, ordinarily resided or had a place of business within Ireland;
Has completed and signed a Prescribed Financial Statement (PFS) and made a Statutory Declaration that it is true and accurate;
Has obtained a statement from the PIP confirming that the PIP is of the opinion that:
The information in the PFS is true and accurate;
The debtor is eligible to make a proposal for a PIA;
Having considered the PFS, there is no likelihood of the debtor becoming solvent in the next 5 years;
If the debtor enters into a PIA, there is a reasonable prospect they will become solvent within the next 6 years.
In addition to the debts listed for a DRN and DSA, the debts typically included in a PIA will include principal private residence housing loans, investment property loans, buy-to-let mortgages/loans.

Bankruptcy

In Ireland, individuals have the right to apply for a Self-Adjudicating bankruptcy, i.e. they may bring an application to the High Court to have themselves declared bankrupt. The conditions for bringing such an application are:
The individual, or debtor, must be unable to pay their debts as they fall due;
The debtor's debts must exceed the value of their assets by €20,000 or more;
The debtor must have made a reasonable attempt to use either a DSA or PIA to settle their debts. This must be evidenced before the courts by reference to a letter from a PIP.
A creditor may also petition for bankruptcy proceedings. If the creditor is petitioning for bankruptcy, he/she/it must not have unreasonably refused to accept a proposal for a DSA or for a PIA.
An application for a bankruptcy order is by way of Petition, which obligates the applicant to submit various High Court prescribed documents and affidavits to the Examiners Office of the High Court. Once granted, the bankruptcy order takes effect from the actual time of the order itself; there is no retrospective effect back to the date of issuance of the petition for bankruptcy as there may be in some jurisdictions.
Until the bankruptcy adjudication order is made there is no specific remedy for a creditor under the Bankruptcy Act to appoint an interim administrator – Section 23 of the Bankruptcy Act allows a bankrupt to be arrested post adjudication if he/she is about to leave the jurisdiction with the intention of avoiding bankruptcy.
A debtor or creditor can object to a bankruptcy order by filing a High Court motion and affidavits setting out their grounds of objection.

3 Which assets form part of the insolvency estate? How are the assets treated which are acquired by or which devolve on the debtor after the opening of the insolvency proceedings?

The general aim underpinning the PI Act is to protect, as far as is practicable, the debtor's Principal Private Residence and the relevant provisions of the legislation are structured with that in mind.

Assets under Insolvency Proceedings

In the case of a DSA or a PIA, the PIP does not usually take physical possession or ownership of the debtor's assets – rather the PIP takes control of a debtor's income stream over the term of the arrangement and satisfies creditor claims from this income stream based on the terms of the arrangement. The income stream available is after deduction of RLEs, rent or mortgage repayments and other payments for special circumstances, such as medical expenses. Secured loan payments are usually paid direct by the debtor to their creditor as per the terms of their arrangement. If an asset is to be sold within an Arrangement, it is usually sold by the Debtor directly.

Assets under Bankruptcy

Under Bankruptcy Legislation, all assets belonging to the bankrupt on the date of adjudication immediately vest in the Official Assignee (this means that the Official Assignee now owns all assets in the bankruptcy estate). For sake of clarity, these assets include:
Cash;
Accounts with financial institutions, including current, savings, investment accounts etc.;

All land and buildings, including those considered to be family homes;
Machinery, equipment, tools of the trade, furniture, household goods and appliances;
All vehicles;
Pensions (with some exceptions), investment products, stocks and shares;
Stock on hand of any business the bankrupt holds in their own name or as part of a partnership;
Debts owed to the bankrupt.
There are exceptions to the above:
Debtors may claim excepted personal assets of a value of up to €6000, and may apply to the High Court to have this limit increased;
Assets arising from infringement of personal rights are excluded from the bankruptcy as these are not entitlements that should vest in the administrator for creditors because they are personal to the individual;
Certain pension entitlements (refer to legislation for further clarification).
A bankrupt is under obligation to inform the Official Assignee if they are in receipt of any assets during their bankruptcy term, regardless of how they came into possession of these assets. Such assets vest in the Official Assignee, when claimed by him, and enter into the bankruptcy estate.

4 What powers do the debtor and the insolvency practitioner have, respectively?

Insolvency Proceedings

A PIP, when engaged by a debtor, will act as a negotiator between the debtor and their creditors. PIPs are bound by legislation to act in the best interests of both the debtor and the creditor(s), therefore they are obliged to formulate the best possible arrangement for all parties concerned in an insolvency arrangement.
The role and functions of a PIP include:
Engaging with a debtor who is contemplating making a proposal for an insolvency arrangement;
Accepting the appointment to act as insolvency practitioner;
Reviewing the Prescribed Financial Statement (PFS) prepared by the debtor and providing advices to the debtor on options and their eligibility to make a proposal for a debt settlement or personal insolvency arrangement;
Satisfying themselves that the financial information provided to them by the debtor is accurate and complete;
Providing an opinion, based on the criteria set out in legislation, as to which type of insolvency arrangement (DSA or PIA) best suits the debtor's situation;
Providing information relating to the procedure chosen, the general effect of, and the likely costs of becoming a party to an insolvency arrangement;
Applying on behalf of the debtor for a Protective Certificate (PC);
Notifying all creditors of the PC, PIP appointment, enclosing a copy of the debtor's PFS;
Preparing a proposal to creditors and convening a statutory meeting of creditors to consider and vote upon the proposal;
Where a proposal is approved, notifying the ISI and all creditors of the outcome;
Once approved by court or on a court review, operating the terms of the arrangement including the collection of funds from the debtor and payment to creditors over the duration of the arrangement;
Monitoring the arrangement throughout its lifetime;
Carrying out a review of the arrangement on at least an annual basis.
In insolvency proceedings, the debtor's role is to participate honestly in the process, agree to the arrangement negotiated by their PIP and meet the required terms of the arrangement.

Bankruptcy

On adjudication in bankruptcy, all assets divest from the bankrupt and vest in the Official Assignee (OA) in Bankruptcy. The OA is an independent statutory officer whose role is to administer bankruptcy estates and manage the Bankruptcy Division of the ISI.
In Ireland, a private individual can be appointed as trustee in bankruptcy to replace the High Court Official Assignee in Bankruptcy (OA). In practice, such appointments are extremely rare. The Bankruptcy Act does not specify any qualifications for such appointments.
The debtor's powers in bankruptcy are limited to being able to apply to the High Court to challenge certain decisions of the OA. The debtor has an obligation to comply with requests made by the OAs office with regard to the administration of the bankruptcy estate.

5 Under which conditions may set-offs be invoked?

The PI Acts 2012 to 2021 and the Bankruptcy Acts 1988 to 2015 both allow for set-offs to be applied. It is set out that, when determining the value of an asset or an amount owed, any debt or credit balances (b) held with the same creditor may be set-off against the original amount (a). The remaining balance is thus considered to be the debt or asset, which can be owed to the arranging debtor or to their creditor(s).[iv]
If a debtor has savings in a Credit Union to which they also owe a debt, the Credit Union shall off-set these savings against the amount owed by the debtor.[v]

6 What effect do insolvency proceedings have on current contracts the debtor is a party to?

Insolvency Proceedings

A Protective certificate prevents a creditor from taking any action during the Protective Certificate period. The ultimate Arrangement will set out what has been agreed with regard to pre-existing contracts.

Bankruptcy

Bankruptcy does not affect a secured creditor's rights over their security, i.e. a secured creditor retains all of the rights that they held under the terms of their security prior to the bankruptcy – the only difference being that the OA is now the owner of the property, not the bankrupt.
The OA has a duty to realise (sell or dispose of) all assets in a bankruptcy estate in order to satisfy, the greatest extent, the liabilities of the estate. Therefore, all contract-based liability claims against the debtor become liabilities of the estate. The OA will, only in exceptional circumstances, continue with any service-based contracts to which the bankrupt is party.
If the OA continues a contract, he becomes personally liable with right of indemnity out of the estate funds.[vi]

7 What effect does an insolvency proceeding have on proceedings brought by individual creditors (with the exception of pending lawsuits)?

Insolvency Proceedings

DSA or PIA: The initial step taken by a debtor seeking a DSA/PIA is to apply for a PC from the relevant court. This, if obtained, precludes certain named or specified creditors, who are the subject of the PC, from taking any actions against the debtor for recovery or enforcement of the specified debts. In effect, the creditor is precluded from:
Initiating any legal proceedings in relation to its debt;
Continuing any legal proceedings, including court orders/judgements etc., that were initiated prior to the granting of the PC, i.e. such legal proceedings are considered to be suspended for the duration of the PC;
Taking any step to recover or secure payment of their debt;

Contacting the debtor regarding their debt, unless requested to do so by the debtor;
Altering or terminating any agreement with the debtor, or;
Initiating bankruptcy proceedings against the debtor.
Once the debtor enters an arrangement, similar enforcement restrictions as set out immediately above will apply to creditors for the duration of the arrangement.
DRN: In the case of a DRN, once it has been granted by the relevant court, the same protections as listed above for a DSA/PIA apply for the duration of the DRN.

Bankruptcy

Secured and unsecured creditors are treated differently under bankruptcy. The only option open to a bankrupt's unsecured creditors for recovery of their debts is to make a claim in the bankruptcy for the amount they are owed. Unsecured creditors cannot bring legal proceedings against the bankrupt after the date of adjudication. This is a direct and automatic consequence of the bankruptcy order made by the High Court. The rights of secured creditors are not affected by bankruptcy proceedings.

8 What effect does an insolvency proceeding have on the continuation of lawsuits pending at the moment of the opening of the insolvency proceeding?

Insolvency Proceedings

DSA, PIA, DRN:

See response to question 7.

Bankruptcy

As is the case with assets in a bankruptcy estate, the OA replaces the bankrupt as defendant in any existing lawsuits brought about by creditors against the bankrupt. The OA has the option to either defend, settle or abandon the proceedings. If the OA successfully defends the proceedings, any counterclaim or costs will be paid into the bankruptcy estate for the benefit of all creditors. If the proceedings are successful, or a settlement is reached, the agreed amount becomes an admitted claim in the bankruptcy.

9 What are the main features of the participation of the creditors in the insolvency proceeding?

The ISI has, by bringing stakeholders together, produced a standard protocol (precedent) document for the DSA and the PIA. This sets out the obligations of both debtors and creditors during the operation of the arrangement. Sample DSA and PIA protocol documents are annexed to this document.
A creditor participates as follows:
1. Proof of Debt: In DSA or PIA cases, after a PC has been issued by the court to a debtor, their PIP must write to the creditors involved to inform them of their appointment, and to invite them to submit proof of their debts and an indication of how their debt should be treated under the terms of the arrangement. In Bankruptcy, all creditors are required to submit formal proof of debt before a dividend is paid to them.
2. Vote: When a creditor's meeting is called by a PIP acting for a debtor who wishes to enter into a DSA or a PIA, the creditors involved are entitled to vote on the terms of the agreement, provided that they have proven their debt.
3. Objections: A creditor may object before the courts before the terms of a DSA or PIA come into effect. The specific terms are set out in legislation.[vii]
4. Offer of Composition: Creditors are entitled to vote on an Offer of Composition brought about by a bankrupt. This would occur when a bankrupt wishes to reach settlement with some or all of their creditors before the term of their bankruptcy has elapsed in order to retain all of their assets.

10 In which manner may the insolvency practitioner use or dispose of assets of the estate?

11 Which claims are to be lodged against the debtor's insolvency estate and how are claims arising after the opening of insolvency proceedings treated?

Insolvency Proceedings

In respect of a DSA or PIA claims are not formally lodged by a creditor against a debtor. The first stage in the process is the completion of a debtor's Prescribed Financial Statement (PFS). The PFS lists all creditors and the amounts due to each creditor, and is the factual basis on which a PC is issued. Following the issue of the PC creditors may be asked by the PIP for proof of their debt in advance of an insolvency arrangement being prepared by the PIP. Where a creditor does not provide proof of debt after being requested to do so, there are implications in terms of voting rights for the arrangement and dividend share.
In respect of a DRN application, formal creditor claims are not made, but a creditor may be requested by an AI for confirmation that the sum disclosed by the debtor as due is the correct figure.
Fresh debts arising after the Arrangement date are not covered by the Arrangement. In the event that pre-existing debts change in magnitude, a variation to the overall arrangement may be required (e.g. contingent liability crystallises)

Bankruptcy

In bankruptcy, the profile of a bankruptcy estate (all of the bankrupt's assets and liabilities) is set out on two forms that the bankrupt is required to fill out and submit to the Bankruptcy Inspector on the day of their adjudication: the Statement of Affairs and the Statement of Personal Information. All types of liabilities are included as unproven claims in the bankruptcy provided that they were incurred by the debtor prior to their date of adjudication, i.e. the date that their bankruptcy term begins. Any debts that are incurred by the bankrupt after the date of adjudication cannot be included as a claim in the bankruptcy.[viii]

12 What are the rules governing the lodging, verification and admission of claims?

Insolvency Proceedings

Following the issue of a PC in DSA and PIA insolvency proceedings, the specified creditors are given notice of the issue of the PC and a copy of the debtor's PFS. The creditor may be asked to provide proof of debt and is asked what their preference is as to how they would like their debt treated. A creditor's debt shall be proved in the same manner as a debt of a bankrupt is proved under the Bankruptcy Act.
After the creditor has proven their debt, they will be entitled to vote at the statutory creditors' meeting convened to approve the debtor's proposal. If the creditor does not submit a proof of debt, or otherwise inadequately proves their debt, they cannot take part in the creditors' meeting or participate in any dividend payment provided for in the arrangement.

Bankruptcy

Notification of individuals who have been adjudicated bankrupt are sent to a list of financial institutions and Government Departments by the Bankruptcy Division of the ISI the day after the individuals are adjudicated bankrupt. Notice of these adjudications are also posted on the ISI website and in *Iris Oifigiul*, which is an official Irish State publication.
All secured creditors in a bankruptcy estate are given thirty days' notice (in writing or by email) from the date of adjudication to lodge proof of their claims in the bankruptcy estate. Such proof of debt can take the form of mortgage deeds, invoices, statements and bills, or in some circumstances an affidavit from the creditor may be required.
Before a dividend is paid to creditors in a bankruptcy estate, the ISI will advertise the upcoming payments and the cases they relate to. The creditors (both secured and unsecured) are again given thirty days to lodge their claims with the ISI, and the same burden of proof is required.
In all cases, creditors are required by the Bankruptcy Division of the ISI to fill out standardised Proof of Debt Forms, which are available on the ISI website.

13 What are the rules governing the distribution of proceeds? How are claims and the rights of creditors ranked?

Preferential Debt

In Personal Insolvency Arrangements (PIA) and Debt Settlement Arrangements (DSA), preferential debts are paid per the terms of the agreement, and in bankruptcy preferential debts rank directly after bankruptcy fees and any costs or expenses incurred by the OA when dealing with the bankruptcy estate. Debts that are considered to be preferential are:

Certain amounts due to the Revenue Commissioners, such as Income Tax, Capital Gains Tax, VAT, PAYE/PRSI etc.;

Certain Local Authority Rates incurred in the 12 months prior to the debtor's date of adjudication or entering into the arrangement (commencement date). This includes local council rates and charges;

Wages or salaries owed to any employees of the debtor for the 4 months previous to the commencement date;

Any pension-related, holiday-related or sick absence pay due to these employees.[ix]

Secured Debt

In a PIA, the secured creditor is bound by the terms of the agreement. In a normal PIA the secured lender is paid out of the debtor's income at whatever figure is agreed to in the arrangement. The debtor's remaining monthly income, if any, after the debtor's RLEs and PIP's fees are deducted is paid to their unsecured creditors by way of dividend.

Bankruptcy does not affect the rights of a secured creditor. Such a creditor may take one of the following three options with regard their secured debt:

Rely on their security – this means they effectively stay outside the bankruptcy;

Realise or value their security and claim for the shortfall (if any) – the creditor will calculate the fair market value of the secured asset and subtract this from the total owing. The resultant shortfall (if any) is admitted into the bankruptcy estate as an unsecured claim. During this process, the secured creditor may sell the asset in question;

Abandon their security – the secured creditor has an option to abandon their security entirely and have their claim admitted into the bankruptcy estate as an unsecured claim.

Unsecured Debt

In both a PIA and a DSA, the debts of unsecured creditors are settled under the agreed terms of the arrangement. In a DRN if a person's circumstances improve during the supervision period, he/she must tell the ISI and depending on the level of change, may be asked to make some contribution to what he /she owes.

The claims of unsecured creditors of a bankruptcy estate are ranked equally. Their debts are settled with the disbursement of any funds that remain after bankruptcy fees, OA expenses and preferential debts have been settled.

14 What are the conditions for, and the effects of closure of insolvency proceedings (in particular by composition)?

Insolvency Proceedings

The general condition for satisfactory closure of insolvency proceedings is that the debtor has complied with their obligations under the arrangement for the full term of the arrangement. Once this has happened, the debtor stands discharged from their unsecured debts. The status of secured debt will be dependent on the specific terms of the arrangement.

If the debtor breaches the terms of the DRN, DSA, or PIA, it may be terminated. If the debtor reaches 6 months of arrears in payments, the agreement is deemed to have failed. In either event, the debtor becomes liable for the full debts due by them, including all arrears, charges and interest accrued during the period of non-payment in respect of those debts.

Bankruptcy

A bankrupt who has complied with the bankruptcy process is automatically discharged from bankruptcy after one year. A bankrupt may, at any stage during their bankruptcy term, make an offer (composition) to their creditors in order to settle their debts. The bankrupt has to apply to the High Court for a stay on their bankruptcy proceedings; this stops the OA from further realising any assets in the estate. The bankrupt may then make the offer of composition in the High Court to his creditors. The offer of composition is voted on by the bankrupt's creditors; if at least 60% of these creditors (by number and by value of debt) agree to the terms of the offer, it will be passed.

Payment of the amount agreed under the offer of composition may be sourced from dividends of the estate or by funds from the bankrupt themselves. Any fees or expenses incurred by the OA's office in the administration of the bankruptcy need to be satisfied, as well as any preferential debts. Once the OA agrees to the High Court mediated offer of composition, the bankrupt is discharged from bankruptcy.

15 What are the creditors' rights after the closure of insolvency proceedings?

Insolvency Proceedings

Unsecured creditors – not applicable.

Secured creditors – the status of secured debt will be dependent on the specific terms of the arrangement.

Bankruptcy

In bankruptcy, creditors cannot pursue the bankrupt for any existing debts after the date of adjudication (debts incurred by the bankrupt post-adjudication may be pursued normally); they must instead liaise directly with the OA. Once the bankrupt is discharged from their bankruptcy, which is after one year for the majority of cases (incidences of non-compliance etc. may extend this term for up to 15 years), all unsecured debts (including preferential debts) are discharged. The debts associated with secured creditors, where they exercise their option to rely on their security, will persist after the date of discharge. For secured creditors, the bankruptcy proceedings shall not affect their rights over the secured asset.

If the secured creditor has valued their security and claimed in the bankruptcy for the shortfall (as an unsecured debt), the portion remaining after payment of any dividends will be written off after discharge. It should be noted that, even if a secured creditor only exercises their option to rely on their security (and not claim for the shortfall in the bankruptcy), they will be unable to pursue the debtor for any shortfall after they are discharged from bankruptcy. In this scenario, the net effect of bankruptcy on a secured loan (or mortgage) is that any portion of the loan over and above the value of the linked asset (at the date of adjudication) is treated as an unsecured debt.

16 Who is to bear the costs and expenses incurred in the insolvency proceedings?

Insolvency Proceedings

DSA or PIA: In insolvency proceedings, creditors generally bear the costs of the arrangement. PIP fees, as agreed with creditors at the time the arrangement is voted on and passed or on subsequent approval by court on a review, are deducted from available debtor funds. Where a creditor raises an objection to the issue of a PC or Arrangement, the creditor generally bears his or her own costs [x]. Where a creditor raises an objection to a proposed PIA, the creditor may apply to court for the award of costs if its objection is upheld [xi]. In the usual course of events costs follow the cause, i.e. the party whose actions incur the costs must pay them.

DRN: There are no costs involved in a DRN.

Bankruptcy

Creditors bear the costs of the bankruptcy, which are paid out of any funds available in the bankruptcy estate.

17 What are the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to the general body of creditors?

Insolvency Proceedings

Included under the conditions that a debtor has to meet before they can enter into insolvency proceedings is a provision that they must provide a complete and accurate statement of their financial affairs, and sign a statutory declaration confirming this information. The Personal Insolvency Practitioner (PIP) must also satisfy themselves that the debtor is being truthful, and has fully disclosed to them all pertinent information in relation to their financial situation. A creditor or PIP, or the ISI in respect of a DRN only, may apply to court to have an insolvency proceeding terminated under certain grounds provided for in the PI Act, including:

Debtor through their conduct has arranged their financial affairs so as to become eligible for an arrangement or DRN;

Procedural requirements of the Act have not been met;

Inaccuracies or omissions in the debtor's Prescribed Financial Statement (PFS) that has led, or may lead, to a material detriment to the creditor;

Eligibility requirements not complied with by the debtor;

Debtor has given a preference to a third party thereby reducing the amount available for the payment of their debts; or

The debtor has committed an offence under the Personal Insolvency Act 2012 (as amended).

The creditors do not have any right to seek reversal of any transactions or asset transfers prior to the commencement of the insolvency proceedings. However, if the debtor can be considered to have made excessive contributions to a pension fund, the creditor may seek financial relief from the courts. This may result in the court ordering that the fund provider issues a full refund of the amount for distribution among the creditors party to the arrangement.

Bankruptcy

Previous asset transfers and payments that bankrupts made to creditors or other individuals can be overturned under bankruptcy legislation. This includes situations where:

The bankrupt has paid an amount or transferred an asset to any creditor in preference to any other creditors to whom they owe a debt. The OA can seek to have such payments, made in the three years prior to the date of adjudication, reversed. If the OA is successful, the amount in question would be paid back into the bankruptcy estate for the benefit of all creditors;[xii]

The bankrupt has transferred or gifted an asset to a third party for an amount less than the fair market value. Upon successful application before the High Court by the OA, such transfers within three years prior to the date of adjudication can be voided and the shortfall would be paid into the bankruptcy estate for the benefit of all creditors;[xiii]

The bankrupt has transferred an asset or made a payment which can be considered to be an "avoidance transaction", i.e. the bankrupt was intending to avoid having the asset or sum of money considered as part of their bankruptcy estate. Two time periods apply in these cases:

Any such transactions made three years prior to the bankruptcy can be reversed by the OA on successful application to the High Court, and;

Any such transactions made five years prior to the bankruptcy, provided that the bankrupt fails to prove they were solvent at the time of the transaction.[xiv]

In all of the scenarios above, the OA must prove by affidavit before the High Court that these transactions did indeed occur in such a manner that satisfies the High Court under the terms of the legislation; thus, these transactions/transfers would be considered detrimental to the creditors of the bankruptcy estate.

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[i] Refer to Chapter 3 Sections 59-64 (DSA) and Chapter 4 Sections 93-98 (PIA) of the Insolvency Act 2012 (as amended) for Legislation regarding Protective Certificates (PC)

[ii] Section 115A of the Insolvency Act 2012 (as amended)

[iii] Refer to Part 5 of the Personal Insolvency Act 2012 for the legislative basis for a Personal Insolvency Practitioner, and the Personal Insolvency Act 2012 (Authorisation and Supervision of Personal Insolvency Practitioners) Regulations 2013 (S.I. No. 209 of 2013) for qualification criteria, regulatory standards and authorisation requirements. Refer to section 7 of the Personal Insolvency (Amendment) Act 2021 for the legislative basis of the PIP requesting a person to perform functions of a PIP.

[iv] Section 135 of the Personal Insolvency Act 2012 (as amended) and Section 17 of the First Schedule of the Bankruptcy Act 1988 (as amended)

[v] Section 135 (2) of the Personal Insolvency Act 2012 (as amended)

[vi] Section 61 and Section 136 of the Bankruptcy Act 1988 (as amended)

[vii] Section 87 (DSA) and Section 120 (PIA) of the Personal Insolvency Act 2012 (as amended)

[viii] Section 75 of the Bankruptcy Act 1988 (as amended)

[ix] Section 81 and Section 101 of the Bankruptcy Act 1988 (as amended)

[x] Section 97 of the Personal Insolvency Act 2012 (as amended)

[xi] Section 115 (a) of the Personal Insolvency Act 2012 (as amended)

[xii] Section 57 of the Bankruptcy Act 1988 (as amended)

[xiii] Section 58 of the Bankruptcy Act 1988 (as amended)

[xiv] Section 59 of the Bankruptcy Act 1988 (as amended)

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