

UNDERSTANDING BANKRUPTCY & INSOLVENCY

THE WAY TO FINANCIAL RECOVERY

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GOVERNMENT INAUGURAL CONFERENCE

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Overview

1. Where are we now?
2. What is personal insolvency?
3. What is bankruptcy?
4. The bankruptcy process

1. WHERE ARE WE NOW?



Scale of the problem is unprecedented

- This is a national crisis
- 166,000 residential mortgages are in arrears as at Q2 2014
- Half of all loans to Small/Medium enterprises in trouble
- 6 years is far too long to deal with the problem
- No proper or sustained economic recovery until the problem is resolved
- Banks are still kicking the can down the road

Debt is the main issue – an unmanageable millstone around our necks

Bank solutions

Short term

- Interest Only
- Moratorium

Longer term

- Reduced Capital & Full Interest
- Term Extension
- Capitalisation of Arrears
- Split Mortgage
- Interest rate reduction

Longer Term (contd)

- Economic Concession
- Voluntary Sale/Voluntary Surrender
- Appoint a Receiver (for investment properties)
- Judgment and Repossession
- Judgment Mortgage

Other

- Mortgage-to-Rent

Why bank solutions often do NOT work

They fail to take a holistic approach:

- Banks do not get on with other Banks!
- Banks find it hard to make decisions - communication breakdowns at branch level/head office
- Very slow response
- Kicking the can down the road and storing up problems and continued reliance on short term solutions – 30% interest only – 24% arrears capitalisation – 17% term extensions
- Many of the measures are not working – 20% of arrangements have defaulted

It's all about them and what suits them

What happens in the UK?

- The Enterprise Act!
- 1 in every 400 people enter insolvency annually (and UK economy is recovering!)
- Individual Voluntary Arrangements (IVAs)
- Bankruptcy
- 2009 – 90,000 Bankruptcies
- Every year there are 50,000 Bankruptcies and even more IVAs

Many more people avail of bankruptcy and insolvency provisions

Ireland before 2013

A very harsh system!

- Bankruptcy was the only insolvency option
- No automatic discharge from bankruptcy
- Could only be discharged after 12 years if all costs paid and all revenue debt paid
- Bankruptcy used to punish
- People often spending 30 years in Bankruptcy

Bankruptcy was not a viable option before 2014

The new regime

The Troika demanded that government put in place a modern insolvency regime:

- This has been in place for companies since 1991
- Personal Insolvency Act 2012
- Insolvency Service of Ireland (ISI) established 2013
- New Bankruptcy regime meaning automatic discharge after 3 years

The new regime can help

2. WHAT IS PERSONAL INSOLVENCY?



Are you insolvent?

Being insolvent means not being able to pay all your debts as they fall due

- Many people are actually insolvent but do not recognise it
- Why should creditors be put before family and children?

To be eligible for a Personal Insolvency you must:

- Be insolvent e.g. not be able to meet your debts as they fall due
- Be domiciled in Ireland
- Be unlikely to become solvent in next 5 years
- Have complied with MARP for 6 months (if applying for PIA)
- Not have incurred more than 25% of debt in last 6 months

What is Personal Insolvency?

- It's A DEAL!
- There are 2 types of deal – Personal Insolvency Arrangement and Debt Settlement Arrangement
- The DEAL is brokered by a PIP (Personal Insolvency Practitioner)
- Because it is a DEAL you are involved in negotiation
- The basic idea is to return you to solvency and to protect family homes
- Because Insolvency is a DEAL you have to bring something to the table – if you cannot bring something to the table Insolvency may not be for you.

Reasonable Living Expenditure Guidelines

- The Insolvency Service of Ireland has published guidelines as to the MINIMUM income needed to live on
- All possible solutions from informal deals with banks, insolvency and bankruptcy, reference these guideline living expenses
- Couple with 3 children example: there could be €70,000 earned before any unsecured creditor should be paid

Guideline example

Family of 5 – 2 adults, 3 children (age 12, 14, 16) with 1 car:

Living allowance (ISI guidelines) for 2 adults, 3 secondary age children plus a car	€2667 per month*
Mortgage	€1400 per month
TOTAL monthly allowance	€4667

Equates to a wage (single earner) of c. €70,000

*excludes child benefit which is not counted as income/part of allowance

The veto

- The creditors vote on the proposal
- 65% of creditors must agree (proportional e.g. 70% of debt = 70% of voting rights)
- If 65% of creditors do not agree there is NO DEAL

In the UK over 90% of IVAs are accepted despite huge debt write down

Why will banks accept massive write downs???

The answer is
Bankruptcy!

3. WHAT IS BANKRUPTCY



What is Bankruptcy?

Bankruptcy is a legal process where all debts are written off IN FULL!

- THERE IS NO DEAL – the bank and other creditors have NO say
- A court appointed assignee controls ANY repayments to the creditors
- Banks do not like bankruptcy
- They will get much less (if anything) in bankruptcy

This is why banks do write offs

Understanding Bankruptcy could help in negotiating with your bank

- Remember in bankruptcy all debts are written off in full
- Banks have no say in bankruptcy
- If there are any payments made in the period of bankruptcy it is likely they will be eaten up by the official assignee himself – leaving nothing for banks/creditors

The threat of bankruptcy works

Weighing up options

	Is it a deal?	Do your creditors have to agree?	Length of term?
Informal deal with bank	Yes	Yes – entirely	Variable – up to length of mortgage (which may be extended)
Personal Insolvency	Yes	Yes – 65%	6 years or less
Bankruptcy	No	No	3 years or less

Taking control

Up to now almost all bankruptcies were creditor bankruptcies – meaning somebody else bankrupted YOU.

Now people are bankrupting themselves.

Famous bankrupts: Abraham Lincoln, Walt Disney, Henry Ford, The Barclay Brothers, Ivan Yeats, Irish Developers

Recent reports in the media indicate that Bernard McNamara is back in business – over €1 billion written off!!!!

Key questions on Bankruptcy

- Who is eligible for bankruptcy?
- What happens to my job/income?
- What happens to my assets?
- What happens to my pension?
- What happens if I inherit?
- What happens to my family home?
- What happens to co-owners or guarantors?
- What happens after bankruptcy?

Who is eligible for bankruptcy?

To be eligible for bankruptcy you must meet 3 criteria:

- Debts must exceed assets by €20,000
- You must be insolvent
- Must make reasonable efforts to do an insolvency deal first

What happens to my job / income?

Usually nothing, depending on your level of income:

- You are entitled to continue to work or to start to work
- There are certain restrictions for 3 years
- The Official Assignee will review your income and may require you to make payments to him if your income is above ISI guidelines (allowance could be €70,000 for a family of five)
- Payment orders can be made for up to 5 years on excess income
- If your income goes up payments may be required. If your income goes down payments agreed may be suspended

What happens to my assets?

Usually nothing, depending on the assets you have:

- Entitled to hold onto ordinary things of life including ‘tools of trade’ and vehicle
- Entitled to hold onto €6,000 worth of assets
- Excess assets transfer to the Official Assignee, for sale
- If you have additional properties they will now belong to the OA and he will decide what to do with them

What happens to my pension?

Usually nothing:

- Will vest with Official Assignee if it can be accessed within 5 years of adjudication
- Nothing to stop you locking it up before bankruptcy

What happens if I inherit?

- Would be considered an after-acquired asset and could be taken if inheritance happens during the 3 years
- If there is a chance you might inherit in the next few years, prudent to ask those involved to alter their wills

What happens to my family home?

It depends – you do not automatically lose the family home:

- Official Assignee has stated he does not want to sell the family home
- If you can pay a sustainable mortgage all should be fine
- Take advice on your individual situation

What happens to co-owners or guarantors?

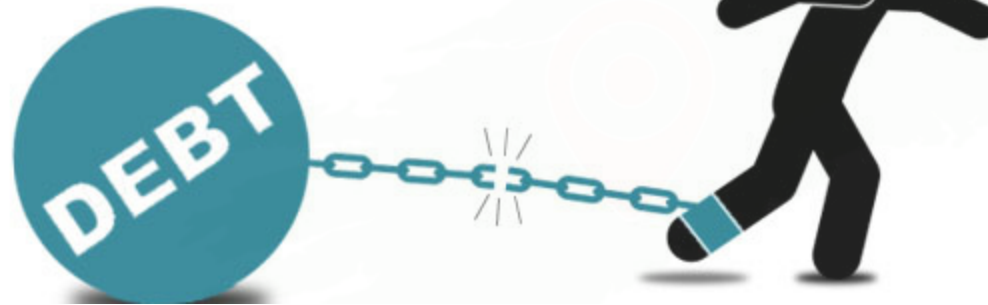
Bankruptcy only deals with the bankrupt

- If s/he has co-borrowers or guarantors they will remain responsible for the debt

What happens after bankruptcy?

- Automatically discharged after 3 years (provided you have cooperated with the Official Assignee)
- Debt free
- Credit rating will return in time
- Do not win the lottery during the 3 years - but afterwards win away!!

4. THE BANKRUPTCY PROCESS



The Bankruptcy process

1. Consultation
2. Assessment for insolvency and obtain PIP report.
3. Apply to High Court.
4. Attend first High Court sitting.
5. Meet with Official Assignee's Office.
6. Attend second High Court sitting.
7. Discharged from bankruptcy after 3 years or less.

A reminder

Whilst it is relatively straightforward, it is still a legal process:

- Not reversible – do seek professional advice on possible outcomes specific to your situation
- Feedback we have heard is that the Official Assignee's office is fair and respectful - but will come down hard if you are not cooperative or it's thought you are trying to conceal assets. You must be open and transparent
- Any transactions done 5 years prior to bankruptcy can be reversed

Your recovery is vital to Ireland

- For too long we have been navel gazing...
- The key to Ireland's recovery is to return ordinary people to solvency
- Banks are in charge and government policy has been to save the banks at all costs
- Sustainable solutions must have borrower buy-in

Time to take control into our own hands!

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