A Guide to a Personal Insolvency Arrangement ("PIA")

Personal Insolvency Act 2012

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Disclaimer

The guide is for illustrative / guidance purposes only. The Insolvency Service of Ireland will issue further guidance to Personal Insolvency Practitioners regarding the regulation of the Personal Insolvency Act 2012 which may materially change the information contained within this guide. Please note that all circumstances are individual and a full review of financial position will always be required to ensure the appropriate advice and arrangements (if applicable) are sought.

Introduction

The Personal Insolvency Act was signed into law on 26 December 2012. The Act is designed to alleviate the insolvency burden affecting so many people in the Republic of Ireland. The act is largely based upon similar personal insolvency legislation which has operated very successfully in the UK over the last 20 years.

The Personal Insolvency Act's key function is to enable creditors to recover the debts due to them and to allow insolvent borrowers to repay their debts in a realistic, manageable and orderly manner. The Act has amended Irish Bankruptcy Law and also introduces three new mechanisms as an alternative including a Personal Insolvency Arrangement.

What is a Personal Insolvency Arrangement?

A Personal Insolvency Arrangement ("PIA") enables an eligible insolvent debtor to reach agreement with creditors (both secured and unsecured) in relation to the settlement and/or restructuring of his or her debts where the debtor is insolvent and satisfies other statutory requirements. Under a PIA, a debtor's unsecured debts will be settled over a period of up to 6 years (extendable to 7 years in certain circumstances) and the debtor will be released from those unsecured debts at the end of that period.

Secured debts (limited to €3 million, unless all secured creditors consent to the inclusion of a higher amount) can be restructured under a PIA (e.g. to provide for reduced payments for a certain period or a write-down of a portion of negative equity). Depending on the terms of the PIA, the debtor may be released from a secured debt at the end of the PIA period or the secured debt can continue to be payable by the debtor (although perhaps on restructured terms).

Who can propose a Personal Insolvency Arrangement?

A debtor is only eligible to seek a PIA if they meet the general conditions set out below:

- ✓ The debtor must be insolvent and unable to pay his or her debts in full as they fall due;
- ✓ The debtor must owe debt to at least one secured creditor holding security over Irish property or assets;
- ✓ The debtor's secured debts are less than €3 million;
- ✓ The debtor must have co-operated under a mortgage arrears process for a period of 6 months with the secured creditor in respect of his or her 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;
- ✓ The debtor's domicile must be in the Republic of Ireland, or must have, within the past year ordinarily resided or had a place of business within the Republic of Ireland;
- ✓ The debtor must complete and sign a Prescribed Financial Statement (PFS) and made a Statutory Declaration that it is true and accurate;
- ✓ The debtor must not have been the subject of a PIA previously;
- ✓ The debtor must not be bankrupt or subject to a bankruptcy measure, or have been discharged from bankruptcy in the past 5 years;
- ✓ The debtor must not have been the subject of a Protective Certificate issued in respect of a PIA in the past year.
- ✓ The debtor must obtain a statement from the PIP which confirms that the PIP is of the opinion that:
    - The information in the PFS is true and accurate;
    - The debtor is eligible for a PIA;
    - Having considered the PFS there is no likelihood of the debtor becoming solvent in the next five years;
    - That if the debtor enters into a PIA there is a reasonable prospect they will become solvent within the next 5 years.

Conditions which would make an individual ineligible for a PIA include:

- × The debtor has incurred 25% or more of his or her debt during the past 6 months;
- × The debtor has been subject of a Debt Relief Notice (DRN) now or within the past 3 years;
- × The debtor has been subject of a Debt Settlement Arrangement (DSA) now or within the past 5 years;
- × The debtor has been subject of a PIA previously;
- × The debtor has been subject to a bankruptcy measure, or have been discharged from bankruptcy in the past 5 years;
- × The debtor has been subject of a Protective Certificate issued in respect of a PIA in the past year.

What type of debt may/may not be included in a Personal Insolvency Arrangement?

The PIA is designed to deal with secured and unsecured debt. These may include:

- Principal private residence housing loans
- Investment property loans
- Buy to let mortgages/loans
- Personal guarantees
- Personal loans
- Credit Union loans
- Business/commercial loans
- Credit card loans

"Excludable debts" that require the consent of creditors before they can be included in a PIA include:

- Taxes, duties, levies owed or payable to State
- Local government charges
- Amounts due to the Health Service Executive under the Nursing Home Support Scheme

- Annual service charges to owner's management companies (apartments and housing estates)
- Liabilities arising under the Social Welfare Consolidation Act 2005
- Local authority rates
- Household charges

Certain debts known as "Excluded debts" cannot be included in a PIA. These include:

- Family maintenance payments under Court orders
- Court fines in respect of criminal offences
- Liabilities arising out of personal injury or wrongful death claims awarded by the Court
- Liabilities arising from loans obtained by fraud

Main steps in process for obtaining a PIA

A debtor will be required to meet with a Personal Insolvency Practitioner ("PIP"), and provide them with accurate and complete financial details. The PIP will assess the debtor and determine if they are a candidate for a PIA.

The PIP will then also assist the debtor in the preparation of the Prescribed Financial Statement ("PFS") before submitting a completed application form to the Insolvency Service Ireland ("ISI") who will then apply to the Court for a Protective Certificate for a period of 70 days. During these 70 days the debtor is protected from any legal proceedings initiated by creditors.

On receipt of the Protective Certificate the PIP will formulate a PIA proposal and seek creditor submissions before convening a meeting of creditors. The PIP will provide the creditors with all relevant information and asked to vote on the proposal.

The proposal for a PIA will be deemed passed if supported by at least 65% of creditors in value of actual votes cast and at least 50% of secured creditors and 50% of unsecured creditors in terms of value. If passed the ISI will be notified, who in turn, notify the Court who must also approve the arrangement. Details of the arrangement and the debtor are then entered on the register for PIA's.