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| **A Guide to Bankruptcy** |
| **Personal Insolvency Act 2012****May 2013** |

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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 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.

As well as introducing three new debt resolution processes, the Act has amended Irish Bankruptcy Law and introduced automatic discharge from bankruptcy, subject to certain conditions, after 3 years as opposed to 12 years at present.

# What is Bankruptcy?

Bankruptcy is a process where the property or assets of an individual, who is unable or unwilling to pay their debts (called a debtor), is transferred to a person given charge of the property by the High Court (called a trustee) to be sold.
When the property or assets are sold, the costs, expenses, court fees and certain priority debts are paid. After this, the net proceeds are distributed to those owed money (the creditors).

In nearly all cases, the Official Assignee in Bankruptcy, an officer of the Courts Service, is the trustee to whom this property is transferred. This is the person who administers the estate of bankrupt persons.

Bankruptcy proceedings are brought in the High Court. The application for a bankruptcy order (as well as any other application for the Bankruptcy list of the High Court) is filed in the Office of the Examiner of the High Court. Following this, the proceedings are dealt with by the High Court.

# How do you become bankrupt?

### Petition by a debtor:

You may bring a petition for your own bankruptcy where you are unable to pay debts to creditors and where your available estate (for example assets and property) is sufficient to produce at least €1,900.

### You must provide an affidavit that you have made reasonable efforts to reach an arrangement with your creditors. This can be done by investigating the possibility of entering a Debt Settlement Arrangement (“DSA”) or Personal Insolvency Arrangement (“PIA”). You must also show that your debts exceed your assets by at least €20,000. The Court must be satisfied that you are unable to meet your obligations with creditors for the Bankruptcy petition to be granted.

### Petition by a creditor:

A creditor may petition for bankruptcy against a debtor where the debtor has committed an act of bankruptcy within the previous three months. The most common acts of bankruptcy relied upon by a creditor are:

1. failure by the debtor to comply with a bankruptcy summons requesting payment of a specific sum due, within fourteen days from service of the summons on the debtor, and
2. the making of a return of no goods in respect of the debtor, by the sheriff or county registrar.

For a creditor to be entitled to petition the court to make a debtor bankrupt, a number of conditions must be met. These include:

* the petition must be presented within three months of the act of bankruptcy,
* the amount of debt owed must be set out in an affidavit,
* the debt owed must be at least €20,000
* The debtor must be either resident in the State or within a year prior to presentation of the petition, have ordinarily resided, had a dwelling house or place of business, or carried on business within the State.

The creditor's petition must state whether any security (for example, a mortgage or a charge) is held by them in respect of the debt. If so, the creditor must indicate whether he/she intends to give up the security for the benefit of other creditors or put a value on their security.

The Court will also consider whether a DSA or PIA would be a more appropriate solution for the debtor before granting a Bankruptcy petition.

**What am I required to do when I am made bankrupt?**

You must co-operate fully with the Official Assignee’s office in all matters relating to your bankruptcy. You must inform the Official Assignee if you change address. Initially you must attend for interview with the Official Assignee. You must also file a Statement of Affairs in the Office of the Examiner of the High Court.

The Statement of Affairs must set out all of your financial details including assets held and all amounts owed by you. The statutory court sitting will only be passed in the High Court when your Statement of Affairs has been filed. You also have other legal obligations in connection with the administration of your estate and assets. This includes: the delivery of your accounts or papers to the Official Assignee when requested, the delivery of your title deeds to property and any other possessions to the Official Assignee, assisting the Official Assignee in the administration of your estate, and disclosing any property acquired by you since the date of your bankruptcy Order to the Official Assignee. Where you fail to co-operate with the Official Assignee, the High Court may summon you to examine you under oath.

**Is my bankruptcy public knowledge?**

Following adjudication (the court order making you bankrupt) a notice of this is published by the petitioning creditor or you (if you have made yourself bankrupt) in one national and one local newspaper. This notice will also contain information about the next statutory court sitting. A local newspaper is one which is published in the area where you live or carry on business.

Other creditors may appear at the statutory court sitting and may make a claim under the bankruptcy. Other notices are also published at various stages of the bankruptcy, such as advertising for creditors and notice of discharge of bankruptcy. A Bankruptcy Register in the Office of the Examiner of the High Court and searches can be made against this register.

**Can I stop the bankruptcy?**

You may apply to the High Court within 3 days of the service of the bankruptcy order on you, giving reasons why you should not have been made bankrupt. This is called a ‘show cause’ application.

**What happens to my property when I am made bankrupt?**

All property held by you when you are made bankrupt vests in the Official Assignee for the benefit of your creditors. The role of the Official Assignee is to sell or otherwise dispose of this property (called realisation) and distribute the proceeds to your creditors. A vesting certificate is lodged in the Office of the Examiner of the High Court and with the Property Registration Authority. This document records the interest of the Official Assignee in any property held by you at the date of adjudication. It means that you cannot sell or use this interest in the property as security to take out a loan. The only property that does not vest in the Official Assignee is essentials up to a value of €6,000 (or more if the High Court allows). Any property you acquire after you are made bankrupt, transfers to the Official Assignee, if and when the Official Assignee claims it.

**What about property I own abroad?**

Under EU legislation, (EU Insolvency Regulations 2002) bankruptcy proceedings in Ireland may be recognised as proceedings in most other EU member states. In most cases, this should allow the Official Assignee to realise such property for the benefit of your creditors.

**Does it have implications for my salary and pension**?

The High Court may appropriate your salary or pension for the benefit of your creditors. However this is subject to any provision the High Court may make to meet your family responsibilities and your personal situation.

**Can I operate a bank account while I am a bankrupt?**

You can operate a bank account. However if you obtain credit of €650.00 or more without disclosing your bankruptcy, you are guilty of an offence.

**Can I still trade while I am a bankrupt?**

You must trade in your own name. If you trade in a name other than that in which you were made bankrupt without disclosing this name, you are guilty of an offence. You must notify the Official Assignee of any business or trade in which you engage.

**Can I manage a company or become a director of a company?**

No, under the Companies Acts it is an offence for a bankrupt to act in various capacities in relation to a company. These include director, auditor, manager, liquidator or receiver of a company.

**Can I seek employment whilst a bankrupt?**

Yes, and you can continue in current employment or seek employment.

**Can I travel abroad?**

There is no outright prohibition on you travelling abroad but you should inform the Official Assignee if you intend to do so. You may be arrested if it appears to the High Court that you may be leaving the State in order to avoid the consequences of your bankruptcy.

**Are there other consequences?**

Yes, bankrupt persons are not entitled to hold elected representative office, in local authorities, in the Dáil or the Seanad.

**I have been discharged from bankruptcy; will my name be removed from the Register?**

No, the Register is a record of all bankruptcies, including those that have been discharged. A person searching the Register is told the status of the bankruptcy (discharged) and the date it was discharged. No information is given about the address of the former bankrupt.

 **Can the family home be sold?**

The bankrupt’s interest in the family home vests in the Official Assignee as with all other property. However the Official Assignee may not sell the family home without obtaining permission from the High Court. Where the Official Assignee seeks this permission, the High Court may postpone the sale of the family home having regard to the interests of the creditors and of any spouse and dependants of the bankrupt.

**What if we have a mortgage against the property?**

Then this is a secured loan against the property and the Official Assignee’s interest only relates to the equity remaining in the property.

**I own the family home with the bankrupt; what about my interest?**

Where the bankrupt owns property jointly with a spouse or partner,the bankruptcy causes the joint ownership to be split. The Official Assignee and the non-bankrupt co-owner then hold separate interests in the property.

**What about my income?**

The Official Assignee may apply to court for the appropriation of part of the bankrupt’s salary, income or pension. If the High Court directs any deduction to be made, it may have regard to the bankrupt’s family responsibilities and personal situation. Social welfare and unemployment payments are not liable to appropriation.