

PERSONAL INSOLVENCY

The Personal Insolvency Act 2012 has been amended by The Personal Insolvency (Amendment) Act 2015. The Insolvency Service of Ireland (ISI) is an independent statutory body which was established on 1 March, 2013.

The principal functions of the Insolvency Service are:-

- a) to monitor the operation of the arrangements relating to personal insolvency, the Debt Relief Notice (DRN), the Debt Settlement Arrangement (DSA) and the Personal Insolvency Arrangement (PIA) provided for in the Personal Insolvency Act 2012 (the Act),
- b) to consider applications for Debt Relief Notices in accordance with the Act,
- c) to process applications for Protective Certificates for DSAs and PIAs in accordance with the Act,
- d) to maintain the Registers of Debt Relief Notices, Protective Certificates, Debt Settlement Arrangements and Personal Insolvency Arrangements;
- e) to provide information to the public on the working of the Act,
- f) to advise the Minister on any matter relating to its functions,
- g) to authorise, supervise and regulate a person or class of persons to perform the functions of an approved intermediary,
- h) to authorise, supervise and regulate individuals to carry on practice as personal insolvency practitioners,
- i) prepare and issue guidelines as to what constitutes a reasonable standard of living and reasonable living expenses for debtors,
- j) arrange for the provision of such education and training, in relation to the performance by them of their functions under this Act, of approved intermediaries, personal insolvency practitioners and other persons, as it thinks fit,
- k) contribute to the development of policy in the area of personal insolvency,
- l) carry out any other duties and exercise any other powers assigned to it by or under the Act such as the administration of the provisions of the reformed bankruptcy

legislation, to manage the estates of bankrupt individuals with a view to realising assets for the benefit of creditors and arranging for the discharge from bankruptcy of the person concerned.

Their objective is to restore insolvent persons to solvency. The stated aim of the law is to alleviate the enormous financial burden being faced by many people in Ireland's poor economic climate; to help them to get back on their feet and contribute to economic activity again; and to enable creditors to recover money due to them by individuals to the extent that their means allow. The Insolvency Service of Ireland will be responsible for the running of the various schemes.

The Acts created three separate schemes which those eligible can enter into according to their requirements:

- a. Debt Relief Notice (DRN) – this is available for people who have unsecured (i.e. not charged to property or other assets) debts of up to €35,000.00. Such debts might include, for example, credit card debt, unsecured bank loans or overdrafts, utility bills etc. The process of applying for a DRN is extremely detailed, and involves the preparation of a detailed financial statement by an “approved intermediary” on behalf of the debtor. An application is made to the Insolvency Service initially who then apply to the Court for the issue of the DRN, which if granted will last for 3 years.
- b. Debt Settlement Arrangement (DSA) – this scheme applies to people whose debts are unsecured. There is no maximum limit. Here, the debtor will apply through a “Personal Insolvency Practitioner” to the Insolvency Service and thereafter the Court for a protective Certificate. This Certificate will give a period of 70 days for a meeting to be held with the creditors. At that meeting, the proposals for repayment of the debts will be put to the creditors. To put the scheme in place, the approval of 65% in value of the creditors is required. Once in place a DSA can last for up to 5 years, and once it expires the creditors are deemed to be repaid in full. The debtor is subject to certain restrictions while the DSA is in place.
- c. Personal Insolvency Arrangement (PIA) – this applies to those whose debts are either secured or unsecured or both with no maximum value.. The process is similar to that of the DSA, with a Protective Certificate being issued by the Court, a creditors meeting being held and voting requirements needing to be met. This scheme can last for up to 6 years.

Effect of schemes on a debtor:

Clearly the benefit to a debtor in entering into one of the schemes is that once the scheme has come to an end, the debts are deemed to have been fully discharged. While one of these schemes is in place, a debtor is subject to supervision and to certain restrictions in his / her financial activities for the duration of the scheme. For example, increases in income or receipt of cash gifts must be declared to the Insolvency Service and in some cases 50% of the value of both must be paid over to the Insolvency Service. Credit over a specified amount can only be obtained subject to conditions. A debtor is obliged to report any material changes in circumstances.

Generally, a debtor must co-operate fully in the process and comply with any reasonable request made by the Personal Insolvency Practitioner for information, documentation etc. If the debtor defaults on the approved arrangement then the scheme will be terminated and the debtor will again become liable for repayment of the full amount of the debts.

Effect of schemes on creditors:

In all cases, once the initial Court application has been granted, the debtor is protected against his creditors pursuing him / her for the recovery of the debts. A creditor can neither issue Court proceedings against the debtor nor continue with existing Court proceedings. A creditor can object to the scheme being put in place, either by voting against an arrangement at the creditors meeting, or by making an objection to the Court after the initial application. Furthermore, a creditor can apply to Court at any stage while a scheme is in place for termination of the scheme on a certain number of grounds, for example if the debtor is in arrears of agreed payments, or where the creditor believes that the debtor was ineligible in the first place to enter into the scheme.

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April 2013 (Revised December 2015) Wolfe & Co. Solicitors
Market Street, Skibbereen, Co. Cork - web: www.wolfe.ie
Tel: 028-21177, fax: 028-21676, e-mail: info@wolfe.ie