

### WHAT DOES IT MEAN WHEN YOU SAY SOMEONE IS A BANKRUPT?

Bankruptcy is the last resort open to a creditor who cannot get paid by any other means and the end of the line for a debtor who is not able to pay his debts.

When it is approved by the High Court everything the debtor owns (except the bare necessities to live and work ) are handed over to a Court appointed official, called the Assignee in Bankruptcy to be sold.

When sold, the costs, expenses, court fees and priority debts (such as revenue liabilities, local rates, certain employees' entitlements etc) are paid first. Only then, is what is left the divided between all other creditors.

This is a Court managed regime which is managed by a Court appointed supervisor. This has usually been the Official Assignee in Bankruptcy but there is the option to appoint a Private Trustee.

One of the possibilities of the new Personal Insolvency Regime is that PIPS are likely to become more involved in the Bankruptcy process.

On bankruptcy, all your existing debts are written off.

However:

- your assets, including any bank accounts, are frozen;
- in most circumstances, you will be interviewed at the Assignee in Bankruptcy Office or over the telephone;
- you must disclose all your assets, liabilities and earnings;
- the Assignee will assess your income to get a voluntary contributions from you over a three year period;
- your bankruptcy is advertised.

- The most common restrictions for a bankrupt are that you cannot:
- Obtain credit over £500 without disclosing that they are bankrupt;
- act as a director of a limited company or be involved in its management without leave of Court;
- be involved in a partnership.

You can:

- earn money either as an employee or self-employed trading under the name you were made bankrupt;
- operate a bank account though this will be in credit at all times;
- retain a motor vehicle so long as the Assignee's considers it a necessity ;
- retain household furniture and effects sufficient for the basic domestic needs of yourself and your family.

During the period you cannot own anything and anything that you do own on bankruptcy (eg property ) becomes the property of the Assignee. He will take steps to realise assets for the benefit of creditors.

Your property will be offered first to members of your family giving them the option to purchase your share of the equity before it is placed for sale on the open market.

If the property or any other asset remains unsold when your bankruptcy finishes it does not revert to you but can still be realised by the Assignee at a later date. For example, a property which may not have any equity in it on bankruptcy may appreciate in value and so cost more to buy back.

Should you receive any legacy or windfall during the period then this will form part of your Estate and must be paid over to the Assignee.

You should co-operate and disclose your whereabouts and earnings and assets to the Assignee or run the risk of prolonging your Bankruptcy period to 8 years.

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## HOW DOES SOMEONE BECOME BANKRUPT?

Either a Debtor or Creditor can apply to the High Court for an order of Bankruptcy.

The difference between Bankruptcy and Personal Insolvency is that the statutory scheme of Personal Insolvency is controlled by a PIP under the supervision of the Insolvency Service. This is a much less intrusive and more personal way of dealing with people in financial difficulty with the object of bringing someone from insolvency to solvency.

The debtor in bankruptcy is controlled by a Court Official under the direction of the High Court. He loses all control over their assets and has no real input in what proposals are made and actions are taken to deal with the debt involved.

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## WHAT HAPPENS WHEN THE COURTS SAYS I AM A BANKRUPT?

The control of all assets and liabilities is removed from both debtor and creditors and transferred to a Court managed regime.

While bankrupt a person is limited in their commercial dealing and subject to the dictates of the Assignee in Bankruptcy which impacts on family and commercial relationships.

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## WILL MY EMPLOYMENT BE AFFECTED?

It is up to each individual to check that being declared bankrupt will not have a negative effect on their occupation. In this regard contact should be made with any professional body which you are a member of or with your employer to ensure you can continue in your employment as normal.

As a general rule those who have been declared bankrupt cannot act as company directors or hold a position of public office. There are also some restrictions which apply to engaging in business.

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## HOW IS THIS DIFFERENT TO PERSONAL INSOLVENCY?

If an individual is involved in an Arrangement under the Personal Insolvency Act they know what the arrangements are before they start into the process.

Unlike Bankruptcy , where a secured Lender has control of what happens to a property , in Arrangements properties can be included in the structure of the Arrangement.

If they comply with these agreed arrangement then they become solvent.

Other than being subject to review each year they get on with their life without intervention.

If there is a material change in their circumstances they have the option to vary the arrangement without losing the momentum of the original Arrangement.

On successful completion of the arrangement they are returned to solvency.

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## WHO WILL KNOW I AM A BANKRUPT?

There will be a Notice in a national and local newspaper that you are a Bankrupt.

At the direction of the Assignee of Bankruptcy or Court such Notices may appear a few times during the three years you are a Bankrupt

Your name and other details of your Bankruptcy also go onto to a Public Bankruptcy Register.

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## SO, WHAT HAPPENS AFTER I AM MADE A BANKRUPT?

You are now under the control of the Official Assignee and have to comply with any directions they give to you from giving details of all assets and liabilities to producing any paperwork to back it up.

You have to put together a Statement of Affairs (similar to a Prescribed Financial Statement in Personal Insolvency). You have to tell them if you change address.

The golden rule is that you must make full and frank disclosure and co-operate fully. Any property you receive before the discharge or annulment of the adjudication order shall vest in the Official Assignee if and when he claims it.

If you don't you run the risk of the wrath of the High Court and may have your Bankruptcy extended to 8 years.

In an insolvency arrangement, an individual is answerable to the PIP who is appointed to deal with the arrangement over the relevant timeframe. This is subject to annual review and is also open to variation on a change of circumstances during the course of the arrangement.

You are however free to function either in a work environment or a personal environment without the same micromanagement as in a bankruptcy

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## WHAT HAPPENS TO MY ASSETS AND LIABILITIES WHEN I AM MADE BANKRUPT?

All assets you own are transferred to the Official Assignee or Trustee to be sold to make money which is given to your creditors (this is called realisation). You are allowed to keep enough to enable you to have a reasonable standard of living and to work.

Creditors must go through a process called Proof of Debts where they have to provide evidence of the amount owed to them.

Any assets you come by after you are made bankrupt, transfers to the Official Assignee.

If you inherit during your bankruptcy you have to notify the Official Assignee, who may then claim that asset or inheritance.

In personal insolvency any decisions on the disposal of property or the payment of debts is clear before the arrangement is entered into except in so far as there are a change of circumstances during the course of the arrangement.

A Personal Insolvency Arrangement avoids the intrusive element of bankruptcy and simply offers the debtor an opportunity to reach solvency by complying with the Arrangement. Therefore, before an individual goes down the road of an Insolvency Arrangement they are fully aware of their obligations and can predetermine the actions that are necessary to achieve successful completion.

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## CAN MY FAMILY HOME BE SOLD?

In bankruptcy technically yes.

The High Court must authorise the sale, however, and can postpone the sale of the family home if the circumstances of the debtor or spouse and dependants merit it.

One of the essential differences between Bankruptcy and Personal Insolvency under the Personal Insolvency Arrangements is that the principal primary residence has a special status. Unless a personal insolvency participant has a principal primary residence which is disproportionately expensive or has been agreed by the individual to be sold the primary objective of the Legislation is to protect an individual's interest in the home and keep them living there.

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## WHAT HAPPENS TO THE MORTGAGE ON MY PRINCIPAL PRIMARY RESIDENCE?

If it is sold, the proceeds go to pay off the mortgage before any other debts. If there is not enough to pay off the mortgage, the balance is treated the same as all other unsecured debts.

Again, this is an option in Bankruptcy but not a default option in Personal Insolvency.

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## WHAT HAPPENS IF MY WIFE AND I OWN THE FAMILY HOME?

Both of you get half and half – with your half going to the Assignee in Bankruptcy.

The insolvency regime protects the interest of a debtor in the principal primary residence, so it protects and in no way affects the interest of any other party.

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## WHAT ABOUT MY HOLIDAY HOME IN SPAIN?

Under EU legislation proceedings in Ireland may be recognised as proceedings in most other EU member states.

In most cases, this should allow the property to be included in your Bankruptcy.

You are obliged to disclose all assets , no matter where they are located.

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## HOW LONG DOES BANKRUPTCY LAST?

Anyone who is made a bankrupt remains a bankrupt for 3 years, unless or until they are discharged by the High Court.

Any assets which haven't been sold on this date are not given back to the Bankrupt and may be realised at a later date unless the sale would clear all creditors and costs and leave a balance.

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## WILL I BE ABLE TO WORK OR EARN A LIVING?

The most common restrictions for a bankrupt are that you cannot:

- act as a director of a limited company or be involved in its management without leave of Court;
- be a public representative;
- be involved in a partnership.

You can, however:

- earn money either as an employee or self-employed trading under the name you were made bankrupt;

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## WHAT ARE THE COSTS TO BECOME A BANKRUPT?

As well as fees payable to solicitors, and/or barristers, there are also outlays, which are approximately €2500. There may also be other professional advisors, accountants, solicitors or barristers, and/or VAT@ 21% .

The minimum fee to apply for Bankruptcy is approximately €10,000, if we deal with it on your behalf and do all the work without using outside professionals:

- Stamp Duty on the petition in bankruptcy,	€ 82.50
- Stamp Duty on the verifying affidavit -	€ 20.00
- Stamp Duty on the affidavit of debt	€ 20.00
- Commissioner for Oaths/Solicitors swearing fees	€ 20.00
- the cost of advertising the order of adjudication: €1,500.00	
- the initial deposit with the office of the Official Assignee	€ 650.00
	€2,292.50
Legal Representation Fee:	€5,000.00



There is a fee payable to the State as Stamp Duty on any assets sales:

### Scaled Costs for Stamp Duty on Realisation

On the First €3000	€900.00
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On every €100 thereafter	15.00
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*For Example on a Property worth €250,000:*

On the first €3000 you pay €900 stamp duty

Therefore on every €100 of the remaining €247,000 you pay €15 stamp duty

$(2470 \times €15) = €37,050.00 + €900.00 = \mathbf{€37,950.}$

## FOR MORE INFORMATION

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