INSOLVENCY/BANKRUPTCY BASIC TERMS GLOSSARY

WHAT IS PERSONAL INSOLVENCY?

Personal insolvency is when money is owed by a person as opposed to a company and they are unable to repay this money under the terms that they agreed for repayment.

HOW DO I KNOW IF I AM INSOLVENT?

Insolvent means that you are unable to pay your debts in full as they fall due, so if you are not in a financial position to repay your loan instalments or can only afford to pay part of them you may be considered insolvent.

WHAT IS THE PERSONAL INSOLVENCY ACT 2012?

This Act consists of laws that were introduced to deal with people who are insolvent. The Act sets out three entirely new arrangements that borrowers can enter into with lenders to manage dents they are unable to pay – Debt Relief Notices, Debt Settlement Arrangements and Personal Insolvency Arrangements.

The Act also sets up for the first time a dedicated body called the Insolvency Service of Ireland (ISI) to oversee and regulate how debt will be dealt with under these arrangements (see www.isi.gov.ie).

Finally the Act makes changes to the old rules which existed for people who wished to be bankrupt. To avail of any of the options under the act the borrower who wishes to do so must in fact be insolvent.

There are three elements which safeguards an individual's integrity by protecting the family home, protecting the individual's entitlement to a livelihood and guaranteeing an individual a reasonable standard of living. The baseline process brings an individual from insolvency to solvency.

WHAT IS THE ISI?

The ISI is an independent statutory body who will provide a number of services under the 2012 act. These include:

- Monitoring the operation of arrangements under the Act;
- Considering applications for these arrangements;
- Maintaining a register of debtors;
- Providing information to the public on how the act will work;
- Authorising and regulating Intermediaries and Personal Insolvency Practitioners;
- Issuing guidelines on various different features under the Act.

WHAT IS A DEBTOR?

A debtor is somebody who owes money - a borrower.

WHAT IS A CREDITOR?

A creditor is somebody who loans money – a lender.

WHAT IS A SECURED CREDITOR?

A secured creditor holds security such as a mortgage or judgment against a property owned by the borrower. The secured creditor can rely upon this security and sell the asset comprising the security.

WHAT IS AN UNSECURED CREDITOR?

An unsecured creditor does not hold any security, for example, trade creditors and other business debts. They rank equally with other unsecured creditors.

WHAT IS A PREFERENTIAL CREDITOR?

A preferential creditor is a creditor whose debts have priority for payment before other creditors. These include taxes, rates and certain kinds of employee claims and benefits.

IF I THINK I AM INSOLVENT WHAT CAN I DO?

If this is the case you should contact a Personal Insolvency Practitioner (PIP) as soon as possible in order to get advice on what options are available to you to deal with your debt.

WHAT IS A PERSONAL INSOLVENCY PRACTITIONER OR PIP?

A Personal Insolvency Practitioner is the person mandated by the legislation to implement the new Statutory Insolvency Scheme.

A PIP is somebody specially licensed and regulated by the ISI to deal people who are unable to pay their debts. PIPS can be either solicitors, barristers, accountants or other qualified financial advisers who have undergone the required training and have shown the ISI that they are capable of dealing with insolvency situations. A PIP will ask you to provide certain financial information and will then set out your options to you as to how to deal with your financial picture.

WHAT IS A PROTECTIVE CERTIFICATE?

This is a certificate approved by the courts which would prevent any lenders pursuing a borrower for a limited amount of time (usually 70 days) to allow for proposals and negotiations to be explored. It essentially provides the borrower with breathing space and freezes any action a lender can take to pursue the borrower as long as it lasts.

WHAT IS A PRESCRIBED FINANCIAL STATEMENT?

A Prescribed Financial Statement (PFS) is an true and accurate written account of all assets, debts, income and expenditure so that a true reflection of the financial position of the person seeking relief can be seen. It is used in any application made under the 2012 act. This will enable the PIP to then recommend different options for dealing with outstanding debts and to recommend which arrangement if any under the 2012 Act would be suitable.

The PFS is also used to confirm that the person seeking relief is eligible to do so under the provisions of the new legislation and the statement forms the basis of calculating what repayments will be made to creditors and what portion of monies can be kept so that they can enjoy a reasonable standard of living.

WHAT IS A DEBT SETTLEMENT ARRANGEMENT?

A Debt Settlement Arrangement (DSA) covers unsecured personal debts in the amount of €20,000 or more. The borrower will have to pay off a certain amount for up to 5 years (with the possibility of an extra year) and the balance may possibly then be written off. A DSA allows for settlement of unsecured debt; secured debt is unaffected.

It is a once in a lifetime option and may be proposed by a borrower to one or more creditors for the settlement of unsecured debts. Lenders who hold not less than 65% in value of the debts due must approve the DSA. A PFS will be prepared and will be used to calculate the various proposals.

WHAT IS A PERSONAL INSOLVENCY ARRANGEMENT?

A Personal Insolvency Arrangement (PIA) applies specifically to mortgage holders and those with secured debts of €20,000 to €3 million and any unsecured debts over €20,000. The process is similar in that the PIP will make the application after the PFS has been completed and lenders who make up 65% of the total debt again must be in agreement for some of the debt to be written down or for whatever proposal is suggested.

A Protective Certificate also issues here if all is in order and the PIP must then notify the relevant creditors of the issue of the certificate and the proposed PIA, seek creditor submissions and provide them with certain documents.

WHAT IS BANKRUPTCY?

Bankruptcy is a process where the property or assets of a borrower who is unable or unwilling to pay their debts are transferred to a person who is given charge of the property by the High Court (called a trustee) to be sold. When sold, the costs, expenses, court fees and certain priority debts of lenders (such as revenue liabilities, local rates, certain employees' entitlements etc) are paid. After this, the proceeds are divided between all other lenders who are owed money.

The Official Assignee in Bankruptcy usually acts as bankruptcy trustee to whom this property is transferred. They work directly for the courts. There is the option to appoint a Private Trustee also. One of the elements of the new regime, is that PIPS are likely to become more involved in the Bankruptcy process.

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