

# PERSONAL INSOLVENCY IN IRELAND

**The rate of personal insolvency is rising in Ireland at an alarming rate and there are a number of creditor remedies available which, if pursued fully, will most likely mean it will be futile to take bankruptcy proceedings. It is for this reason that there are a small number of bankruptcies in Ireland. In addition, there are costs associated with getting a person deemed to be a bankrupt, including the cost of making the petition; the initial cost of the official assignee; and, obviously, the associated legal costs. It is for this reason, that other creditor remedies are pursued.**

## Options

Bankruptcy is still an unusual state in Ireland. Either a creditor, or the debtor themselves, can petition for a determination of being declared bankrupt. This must be founded upon an 'act of bankruptcy' within the previous three months. An act of bankruptcy includes:

- Assignment of assets for the benefit of creditors;
- Where there has been a fraudulent conveyance against the creditors;
- Where there has been a fraudulent preference;
- Where an execution order is levied or attempted; and,
- Bankruptcy are summons not satisfactorily answered.

The effect of being declared bankrupt is that the person's property vests in the official assignee. All but a limited list of assets are included, excluded assets relate to personal assets to the value of c. €3,100. The reality, however, is that there is a cost associated with having a person adjudged a bankrupt and there is no preferential status in being the creditor who takes that action. Consequently, there is often no particular reason why a creditor would act unilaterally. This is, in fact, the reason why the incidence of bankruptcy is less than might be envisaged. The effect of

Brian McEnery considers the range of insolvency options which, in their totality, make individual bankruptcy rare in Ireland

bankruptcy may be to preclude a person from being a member of a professional association and will certainly prohibit a person from being a member of the Oireachtas.

## Status

The other point about bankruptcy is that a person remains a bankrupt until this status is lifted from the person by the courts. The courts will only lift the status of bankruptcy if certain costs, expenses and preferential creditors are discharged. It is also worth pointing out that a bankrupt is obliged to disclose their status if they are seeking credit to the amount of €650 or more. Finally, in respect of bankruptcy a person, even as a discharged bankrupt, remains on the list of bankrupts for their life. This specter is one which is unlikely to encourage any individual debtor to volunteer to the High Court process of bankruptcy. Unfortunately our personal insolvency legislation in Ireland is less developed that it is in the UK. It can be argued that a formal voluntary arrangement process would be utilised if it were available. The Department of Finance needs to produce legislation sooner rather than later.

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# PERSONAL INSOLVENCY IN NORTHERN IRELAND

Reginald W Nesbitt outlines the different procedures through which personal insolvency is managed in Northern Ireland

## There are two solutions to personal insolvency available in Northern Ireland.

### Individual voluntary arrangement

A voluntary arrangement (VA) is a legally binding agreement by a debtor to use assets or future income to pay his creditors part or all of what they are owed. Both bankrupt and non-bankrupt debtors can enter a VA. Debtors can apply to the High Court for an interim order to protect them from creditor action while they attempt to set up a VA. They must engage an insolvency practitioner to act as nominee to prepare a report to the High Court on what ever proposal they plan to make to their creditors. The nominee convenes a meeting of creditors. If at least three quarters (by value) of the creditors present

#### INDIVIDUAL VOLUNTARY ARRANGEMENT

Length of time the procedure typically takes: Five years

Typical Cost: Fees are a matter to be agreed between the debtor and insolvency practitioner and are subject to creditor approval

Approximate number a year: 600

vote in favour of the proposal it becomes binding on all the creditors. The nominee, or another insolvency practitioner, appointed in his place by the creditors, becomes the supervisor and oversees the implementation of the arrangement.

### Bankruptcy

The creditor serves a statutory demand. If the debtor fails to pay within three weeks the creditor petitions the High Court for him to made bankrupt. Debtors can also petition for their own bankruptcy. On the making of a bankruptcy order, the official receiver, who is a civil servant and officer of the court, becomes receiver and manager of the bankrupt's estate. If assets are negligible or non-existent, the official receiver becomes trustee to administer the estate. Where there are more substantial assets, the official receiver will apply to the Department of Enterprise, Trade and Investment for the appointment of an insolvency practitioner as trustee, or will call a meeting of the creditors to appoint one. The function of the trustee is to realise the bankrupt's assets and to distribute the balance by way of dividend to the creditors. The official receiver's role is to investigate the conduct and affairs of the

bankrupt. Bankrupts are usually discharged after a period of one year, although realisation of their estates takes longer. If there is evidence of impropriety the official receiver can apply to the court for an order placing a bankrupt under restrictions, notably on taking credit, for up to 15 years.

#### BANKRUPTCY

Length of time the procedure typically takes: Up to one year for investigation, two for realisation of assets and distribution of proceeds

Typical Cost: The Department charges a fee of £925, plus 17% of the value of assets realised. Trustee's remuneration is either fixed by agreement with the creditors or is at the realisation and distribution scales in Schedule 4 to the Insolvency Rules (Northern Ireland) 1991

Approximate number a year: 1,000

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