Personal Insolvency Service

W.O. McGrory & Co offers a specialist service to individuals and company directors experiencing personal financial problems that need the assistance of professional intervention. The firm is registered as a recognised intermediary qualified to act of behalf of people involved in MARP (Mortgage Arrears Resolution Process). Tony Mallon of W.O McGrory & Co is a registered Personal Insolvency Practioner (PIP) with the Insolvency Service of Ireland (I.S.I) and we are currently accepting Insolvency proposals from people in financial difficulty. www.isi.gov.ie

The introduction into law of the new Personal Insolvency Act 2012 passed recently, introduces new options to allow people deal with their financial difficulties ranging from unsustainable home mortgages, buy to let type investments, credit card and credit union debts or who are dealing with the financial fallout from a marital breakdown.

Our firm has a well established reputation for liaising between clients and the banks and other financial institutions in resolving these sensitive and problematic cases. The scale of people in difficulties can be summarised as follows:

- 86,146* Residential mortgages in arrears (11.3%) of the entire private residential mortgage market
- In excess of 168,000 mortgages in some form of difficulties
- 26,770* (17.9%) of the buy to let market in arrears of more than 90 days
- An estimated 50% of properties in negative equity

* Figures as per the Central Bank Quarter 3 returns - September 2012.

The new Personal Insolvency legislation allows for an overhaul of the existing bankruptcy and personal insolvency regime. In particular the legislation will introduce non-judicial voluntary arrangement solutions for insolvent individuals. The key components of the legislation are as follows:

- The establishment of a new government office called The Insolvency Service of Ireland with a staff of approximately 80.
- The legislation reforms the Bankruptcy legislation - reduction from 12 years to 3 years
- The legislation introduces 3 new forms of debt settlement systems:
    - Debt Relief Notice (DRN)
    - Debt Settlement Arrangements (DSA)
    - Personal Insolvency Arrangements (PIA)

The Insolvency Service of Ireland's office is set up to administer and oversee all non-judicial arrangements formally agreed between lenders and their customers. It will not however, be involved in any negotiations between the banks and their customers. The Insolvency Service's role is restricted to the registering of any arrangements granted by the courts and the supervision and regulation of Personal Insolvency Practitioners (PIP's) who will be acting on behalf of people in difficulties.

The legislation introduces 3 new forms of debt relief options that people will be able to avail of. A summary of each option is set out below:

1. Debt Relief Notices (DRN)

- The debt relief notice procedure provides for the write off of qualifying ***unsecured*** debt up to a maximum of €20,000
- To qualify the customer (debtor) must have assets of less than €400
- and/or a car valued at less than €1,200
- and net monthly disposable income of less than €60 (i.e.) after deductions for reasonable living expenses including rent, food, clothing, light & heat etc.

- Examples of qualifying unsecured debt include:
    - car loans
    - credit union loans
    - credit card debts
    - bank overdraft or any unsecured loan from a bank
    - Utility bills
    - rent arrears
    - student loans

Effects of a Debt Relief Notice

- The Debt Relief Notice is effective for 3 years (i.e. no credit will be advanced to the customer during the 3 year period
- During that time creditors (credit card companies etc) cannot initiate legal proceedings or take steps to recover their debts
- At the end of the 3 year period a Debt Relief Certificate is issued by the Insolvency Service confirming discharge of the specified debts)

2. Debt Settlement Arrangements (DSA)

- The Debt Settlement Arrangement is only applicable in respect of **unsecured debt in excess of €20,000**
- There are no monetary upper limits
- The eligibility criteria to apply for a DSA are as follows:

A debtor must:

- owe a debt to at least 1 unsecured creditor
- be insolvent as defined by the Bill*
- be resident in Ireland for at least 1 year
- unlikely to become solvent within 5 years

* The definition of insolvent in The Personal Insolvency Bill is defined as unable to discharge their debts in full as they fall due. ***NB: paying interest only even with the bank's agreement does not mean that you are paying your debts in full as they fall due within the meaning of the legislation.***

Debt Settlement Arrangement Approval

- The debt settlement arrangement being offered by the customer (debtor) must be approved by at least 65% of creditors in value of the creditors present and voting at a creditors meeting.
- The appointed agent (PIP) notifies the Insolvency Service of the customer's intention to propose a DSA and to apply for a protective certificate.
- If the Insolvency Service office is happy with the paperwork it issues a 70 day protective certificate (can be extended by a further 40 days) which prevents any credit institutions taking action against the customer
- If approved, the DSA is legally binding on both the customer and the specified creditors and will be administered by the insolvency practitioner
- This approval also applies to debts owed to lending institutions even if they didn't support the arrangement.

3. Personal Insolvency Arrangement -
Secured & Unsecured debt from €20,000 to €3,000,000*
- Key features

- applicable to both secured & unsecured debts in Ireland
- a person(s) can only enter into a PIA once in their lifetime
- you cannot apply for a PIA unless you have entered into the MARP (Mortgage Arrears Resolution Process) with your lender. This condition only applies to Principal Private Resident mortgages.
- proposal must be made through a Personal Insolvency Practitioner (PIP)
- 70 day protective certificate (can be extended by a further 40 days) which prevents any credit institutions taking action against the customer
- any proposal to the lending institutions for the compromise and settlement of debt must be over a 6 year term
- Any agreements reached between customers and their lenders must be formally registered with the Insolvency Service of Ireland. (I.S.I)
- The Insolvency Service has no role in the negotiations and agreement of any proposal being offered.
- any proposal must be approved by:
at least 65% of all creditors (lending institutions)
- 50% of the total debt must be secured debt and must be supporting the proposal.
- If the proposal is not supported the procedure is deemed to come to an end
- **There is no right of appeal by the customer against the vote taken if the banks do not accept the proposal on offer.**
- There is no obligation to vacate the principal private residence or include its sale in any arrangement being offered unless the

customer consents to the sale of the family home as part of any arrangement

Eligibility

A debtor (customer) must:

- owe at least 1 secured creditor (Irish assets only)
- be insolvent as defined i.e. unable to discharge their debts in full as they fall due
- unlikely to become solvent within 5 years
- be resident in Ireland
- complete a prescribed financial statement & statutory declaration

* The €3,000,000 cap can be waived with the written consent of all the secured creditors (Banks)

Personal Insolvency Arrangements Approval

- The Personal Insolvency Arrangement being offered by the customer (debtor) must be approved by at least 65% of creditors in value of the creditors present and voting at a creditors meeting.
- If approved, the Personal Insolvency Arrangement is legally binding on both the customer and the specified creditors.
- administered by the insolvency practitioner for a maximum period of 7 years
- This approval also applies to debts owed to lending institutions even if they didn't support the arrangement. Once in place, a PIA will restrict any creditor from petitioning for bankruptcy or enforcement of a debt.
- A Personal Insolvency Arrangement is deemed to have failed if after commencement the arrangement falls 6 months in arrears.

List of debts that <u>cannot</u> be included in any of the 3 Debt Settlement Arrangements (excluded debts)

- Court approved Domestic Support Orders (e.g.) Child Maintenance Payments
- Loan(s) obtained through fraud or through the proceeds of crime
- Debt(s) owed as a result of a court action

List of debts that <u>can</u> be included in any of the 3 Debt Settlement Arrangements subject to consent & agreement (excludable debts)

- Personal tax liabilities
- Rates & Local Authority Charges (e.g.) household charges
- Debts owed to the HSE under nursing homes support scheme (Fair Deal Scheme)
- Debts owed to management companies (Annual Maintenance Charges)

Bankruptcy

Main features

- The introduction of a minimum debt amount of €20,000 must be owed before an application for bankruptcy can be made
- 14 day notice must be given to all banks/suppliers owed before you can apply to be made a bankrupt
- Automatic discharge from bankruptcy after 3 years (previously 12 years) i.e. all debts are cleared after 3 years regardless of the size of debts owed.
- All assets including the family home must be included in any bankruptcy application
- You cannot apply for bankruptcy unless you have attempted of one of the other 3 insolvency alternatives i.e. Debt Relief Notice (DRN), Debt Settlement Arrangement (DSA) or a Personal Insolvency Arrangement (PIA)

Call us today on (041) 9836707 or email info@mcgrory.ie for more information or to arrange a free initial consultation.