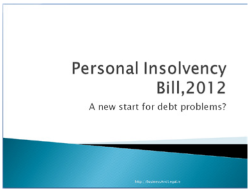
Money Matters

with Derek Madden & Company

Derek Madden & Company
Accountants & Registered Auditors
022 51752 info@maddenco.ie www.maddenco.ie



This month we take a look at the recently published Personal Insolvency Bill. It is hoped that the Bill will bring change to outdated laws, some of which have been in place for over a century, that have stifled Irish entrepreneurs in the past. Mr. Niall Byrne, President of the CPA, welcomed the publication of the Personal Insolvency Bill, calling it 'an important step in developing a supportive climate for entrepreneurship in Ireland.' Below we outline some of the aspects of the bill. It is expected to be passed into law around October of this year and may be subject to change as it passes through the legislative process.

PERSONAL INSOLVENCY BILL

The much anticipated Personal Insolvency Bill was published by the Government on 29 June 2012. Minister Alan Shatter stated that the Bill provides a modern insolvency process which addresses the obligations of debtors and the rights of creditors in a "proportionate and balanced way". The Bill is draft legislation and has not yet been passed into law. The Bill provides for:

1.The introduction of three new non-judicial debt settlement systems: Personal Insolvency Arrangements; Debt Settlement Arrangements; and Debt Relief Notices.

2.The establishment of an Insolvency Service to oversee these new non-judicial debt settlement systems and provision for the authorisation of personal insolvency practitioners.

3.Reforms to the current bankruptcy legislation, including:

- The reduction of the automatic discharge period from 12 years to 3 years, subject to certain conditions.
- Increasing to 3 years the review period for certain pre-bankruptcy transactions.

Personal Insolvency Arrangements (PIAs)

- A PIA is similar to the examinership procedure that exists for insolvent companies. A debtor who meets certain criteria may, through a personal insolvency practitioner, propose a PIA to his creditors for the compromise and settlement of his debts over a 6 year period.
- A PIA may include terms altering the rights of secured creditors.
- It is available in respect of secured debt of up to €3 million and all unsecured debt. The €3 million cap can be waived with the written consent of all secured creditors.
- To qualify, the debtor must owe a debt to at least one secured creditor; be insolvent; and there must be no likelihood of the debtor becoming solvent within 5 years.
- The personal insolvency practitioner will make a PIA proposal to creditors. The PIA must be approved by a majority of creditors representing not less than 65% in value of the total of the debtor's debt due to the creditors; and creditors representing more than 50% of the value of the secured debts; and creditors representing more than 50% of the value of the unsecured debt.
- If approved, the PIA is legally binding and will be administered by a personal insolvency trustee.

Debt Settlement Arrangements (DSAs)

- A DSA is available only in respect of unsecured debt, and cannot be utilised to affect the rights of the holders of security over assets.
- The eligibility criteria are similar to those which apply in the case of a PIA (save that a DSA cannot be used for secured debt).
- The personal insolvency practitioner will make a DSA proposal to creditors. The DSA must be approved by at least 65% of creditors in value of the creditors present and voting.
- If approved, the DSA is legally binding and will be administered by a personal insolvency trustee.

Debt Relief Notices (DRNs)

- The DRN procedure provides for the write-off of qualifying unsecured debt (credit card debt, utility bills, overdrafts, rent etc) up to €20,000.
- This procedure is only available to a debtor with a net disposable income of €60 or less a month and who has assets worth €400 or less

The Government published a draft general scheme of the Bill on 25 January 2012. An Oireachtas Committee made certain recommendations on the draft to the Government, including that an appeals mechanism be put in place where creditors unreasonably refused to approve a debt settlement arrangement. However, this recommendation was not implemented in the Bill. A recommendation that the Circuit Court be the appropriate court for certain matters was accepted.

PIAs & Bankruptcy

The reduction in the automatic discharge period from 12 years to 3 will make bankruptcy a more viable option than previously for an insolvent debtor. The threat of bankruptcy might force a secured creditor to agree to the terms of a PIA as a secured creditor may achieve a better outcome under the terms of a PIA. This limits the value in a secured creditor voting against a PIA.

A copy of the bill can be viewed on www.oireachtas.ie

Sources: www.cpaireland.ie; www.williamfry.ie