

Group Briefing February 2016

Bankruptcy Term Reduced to 1 Year

On 29 January 2016, the Irish bankruptcy term was reduced from 3 years to 1 year. This Briefing sets out further detail, and summarises recent developments in the area of bankruptcy and personal insolvency.

BACKGROUND:

As signalled in our August 2015 Briefing (New Court review process available for rejected personal insolvency proposals), the Oireachtas Joint Committee on Justice, Defence and Equality recommended to the Minister for Justice and Equality that the bankruptcy term be reduced from 3 years to 1 year (it had already been reduced from 12 years to 3 years under the Personal Insolvency Act 2012).

To achieve this, the Bankruptcy (Amendment) Act 2015 was signed into law on 25 December 2015. Most of the provisions of the new Act (including the reduction in the bankruptcy term) were commenced by SI 34/2016 (Bankruptcy (Amendment) Act 2015 (Commencement) Order 2016) with effect from 29 January 2016.

KEY CHANGES:

The key changes introduced by the new Act are as follows:

- » **Bankruptcy term:** The standard bankruptcy term is now 1 year rather than 3 years.
- » **Bankruptcy Payment Order:** The standard duration of a Bankruptcy Payment Order (a Court order requiring a bankrupt to make payments for the benefit of his creditors from any surplus income or assets (after deduction of reasonable living expenses)) is now 3 years rather than 5 years.
- » **Bankrupt's home:** A bankrupt's ownership in his home will (in general) transfer back to him after 3 years unless:
 - » the Official Assignee applies to Court for an order for sale; or
 - » the Official Assignee and the bankrupt agree otherwise; or
 - » the Court orders that the home should not re-vest in the bankrupt or orders that the 3 year period be extended.
- » **Bankruptcy Payment Order:** The standard duration of a Bankruptcy Payment Order has been reduced to 3 years, if the Court extends the term of a bankruptcy, it can also extend the term of a related Bankruptcy Payment Order to 5 years.
- » **Term extensions in certain cases:**
 - » **Bankruptcy:**
 - » **8 years:** The High Court continues to have the power to extend the bankruptcy term to 8 years where it is satisfied that a bankrupt has failed to cooperate with the Official Assignee in the realisation of his assets, or has hidden income or assets that could be realised for the benefit of his creditors from the Official Assignee (or failed to disclose their existence to the Official Assignee).
 - » **15 years:** The High Court has been given the power to extend the bankruptcy term to 15 years where it views the bankrupt's failure to cooperate, or his hiding or failure to disclose assets, as particularly serious.
- » **Bankruptcy Payment Order:** While the standard duration of a Bankruptcy Payment Order has been reduced to 3 years, if the Court extends the term of a bankruptcy, it can also extend the term of a related Bankruptcy Payment Order to 5 years.

OTHER NOTABLE CHANGES ARE AS FOLLOWS:

- » **Onerous property:** The Official Assignee's power to disclaim onerous property has been extended. Previously, it was regarded as only covering leases. Now, it covers all property and is capable of being exercised (with leave of the Court) at any time, rather than within 12 months of the

adjudication or such extended time as the Court may agree.

- » **Books and records:** The Act amends the existing Bankruptcy Act 1988 to confirm that both electronic and paper records are subject to the powers of both the Court and the Official Assignee to demand accounts and records for the purposes of investigating the a bankrupt's affairs.
- » **Procedural changes:** The new Act abolishes the requirement for a statutory sitting of the High Court in all bankruptcy cases. These provisions have not yet been commenced (as they require changes to Court rules) but the commencement order is expected shortly.

TRANSITIONAL PROVISIONS:

Those declared bankrupt before 29 January 2016 will:

- » if already scheduled to exit bankruptcy by 29 July 2016, exit bankruptcy on schedule; and
- » if scheduled to exit bankruptcy after 29 July 2016, exit bankruptcy on the later of 29 July 2016 and the one year anniversary of the date they were adjudicated bankrupt.

There are similar transitional provisions in respect of Bankruptcy Payment Orders.

OTHER RELATED DEVELOPMENTS:

In related developments:

- » the Court review process outlined in our [August 2015 Briefing](#) came into force in November 2015, giving the Courts the ability to overturn a secured creditor's decision to reject a borrower's proposal for a Personal Insolvency Arrangement under the Personal Insolvency Act 2012; and

- » the [Quarter 4 Statistical Report for 2015](#) published by the Insolvency Service of Ireland in January 2016 confirmed that, during 2015, almost 1,700 permanent debt solutions had been agreed (including 479 bankruptcies, and 641 Personal Insolvency Arrangements).

The changes introduced by the Act further modernise the Irish bankruptcy regime, aligning the bankruptcy term to the 1 year terms available in other jurisdictions which should serve to reduce instances of '*bankruptcy tourism*'. They should also encourage more debt settlements outside of formal proceedings, as the borrower's threat of bankruptcy is now more real and should be taken seriously by the banks. Hopefully this will lead to a swifter resolution of the large number of arrears cases still sitting on the balance sheets of Irish banks.

This document contains a general summary of developments and is not a complete or definitive statement of the law. Specific legal advice should be obtained where appropriate.

KEY CONTACTS

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