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Technical Alerts

TA 02/2016 - Personal Insolvency (Amendment) Act 2015

Readers of this document should note that the interpretation of detailed provisions of this amending legislation has yet to be tested in the Courts.

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Introduction

- 1.Provisions of the Personal Insolvency (Amendment) Act, 2015 ("the 2015 Act") reflect practical experience in applying existing legislation governing personal insolvency.
- 2.This Technical Alert summarises key changes made by the 2015 Act to the Personal Insolvency Act, 2012 ("the Principal Act") which include:

- provisions to specifically address arrangements approved by the sole creditor entitled to vote or where no creditor votes;
 - significant increase in the maximum debt threshold for a debt relief scheme;
 - entitlement (in stated circumstances) of a person seeking to comply with an alternative repayment agreement to apply for a personal insolvency arrangement; and
 - right of appeal to the Court for an order enforcing a proposed personal insolvency arrangement rejected by the creditors.
- 3.This Technical Alert is intended to assist members in understanding the changes made to personal insolvency legislation. However, it does not purport to be a detailed analysis of the provisions of the 2015 Act.
- 4.Statutory references are to the relevant sections of the 2015 Act, unless otherwise indicated.

Debt Relief Notice – DRN

5.[Section 3](#) increases the maximum amount of "qualifying debt" due by a person wishing to avail of a DRN from €20,000 to €30,000.

Debt Settlement Arrangement– DSA

- 6.Where the change in the debtor's financial situation prior to the creditors' meeting necessitates completion of a "new Prescribed Financial Statement", [Section 4](#) requires a copy of the revised Statement be sent to the Insolvency Service of Ireland – ISI.
- 7.[Section 7](#), which inserts Section 74A into the Principal Act, sets out the detailed procedures applicable where there is only one creditor entitled to vote ("sole creditor") – for example, it is not necessary to hold a creditors' meeting.
- 8.[Section 8](#) clarifies what documents will be provided to creditors and to the ISI in circumstances where the DSA was approved by the sole creditor or was deemed to be approved as no creditor voted.

Personal Insolvency Arrangement - PIA

- 9.Section 91 of the Principal Act sets out the cumulative criteria to be met by an applicant for a PIA. Section 91(g) requires a formal declaration from the debtor that he or she has co-operated with the secured creditors "... as respects the debtor's principal private residence ...", but was not able to agree an alternative repayment arrangement. [Section 12](#) provides an alternative criteria - that the debtor, having entered into an alternative repayment arrangement and endeavoured, in good faith, to comply therewith, is "... unlikely to become solvent within the period of 5 years...". The debtor's eligibility under this alternative criteria must be supported by a confirmation from the personal insolvency practitioner – PIP.
- 10.[Section 17](#), which inserts Section 111A into the Principal Act, sets out the detailed procedures applicable where there is only one creditor entitled to vote. In such circumstances, Sections 106 and 108 of the Principal Act are disappplied.
- 11.[Section 18](#) clarifies what documents will be provided to creditors and to the ISI in circumstances where the PIA was approved by the sole creditor or was deemed to be approved as no creditor voted.
- 12.Where a proposed PIA, covering debts which include a "relevant debt", is not approved, the PIP "... where he or she considers that there are reasonable grounds ..." can apply to the relevant court for an order bringing the proposed PIA into effect (Section 115A of the Principal Act, inserted by [Section 21](#)).
- 13."Relevant debt" is defined by Section 115A (18) of the Principal Act as one secured over the debtor's principal private residence regarding which the debtor:
- (i)was in arrears with payments on 1 January 2015; or
 - (ii)having been in arrears with payments before 1 January 2015, has entered into an alternative repayment arrangement with the secured creditor.
- 14.Notice of the application, to be made within 14 days of rejection of the proposed PIA, must be provided to each creditor, the debtor and the ISI.
- 15.Each creditor must be informed of its entitlement to lodge with the Court, within 14 days, a notice "... setting out whether or not the creditor objects to the application and the creditor's reasons for this.". A creditor availing of this option must copy its notice to the PIP, each creditor and the ISI.
- 16.The Court is required (Section 115A (10) of the Principal Act), when deciding whether to make an order, to "... have regard to the conduct, within the 2 years prior

to the issuance of the protective certificate..." of the debtor in seeking to pay, and of the creditor/s in seeking to recover, the debts due. The Court also takes into account submissions made by the creditor to the PIP, as well as "... any alternative option available to the creditor".

17. In the first instance, the Court determines whether the mandatory requirements applicable to any proposed PIA have been complied with. Thereafter, Section 115A of the Principal Act lists various matters about which the Court must be satisfied about before it may make an order confirming the proposed PIA. These include that:

"... there is a reasonable prospect that confirmation of the proposed Arrangement will

- (i) enable the debtor to resolve his or her indebtedness without recourse to bankruptcy,
- (ii) enable the creditors to recover the debts due to them to the extent that the means of the debtor reasonably permit, and
- (iii) enable the debtor –
 - (I) not to dispose of an interest in, or
 - (II) not to cease to occupy,

all or a part of his or her principal residence."

18. Other matters about which the Court must be satisfied, prior to making an order enforcing the proposed PIA, are that the costs of the debtor continuing to reside in his or her residence "... are not disproportionately high...", that the proposed PIA "... is fair and equitable in relation to each class of creditors that has not approved the proposal..." and that the proposed PIA "... is not unfairly prejudicial to the interests of any interested party..."

19. The procedures to be followed, the documents to be provided and to whom, where an application is made to vary a PIA approved under Section 115A of the Principal Act are contained in *Section 22*.

Regulation of Personal Insolvency Practitioners

20. The definition of "improper conduct" (*Section 23*) includes failure by the PIP "... to perform his or her functions under this Act in accordance with this Act and any regulations made thereunder."

21. *Section 24* grants an authorised officer appointed by the Director of the Insolvency Service significantly greater powers covering access to premises, access to and copies of records, making enquiries of a person who, "in the authorised officer's opinion", possesses relevant information, operate "...any data equipment, including a computer ...", etc. The powers are similar to those given to authorised officers appointed by the Director of Corporate Enforcement by Chapter 4, Part 13, Investigations, Companies Act, 2014.

<i>Section</i>	<i>Effective date</i>	<i>Statutory Instrument</i>	<i>S.I. of 2015</i>
1	29th September 2015	Personal Insolvency (Amendment) Act 2015 (Commencement) Order 2015	414
2	29th September 2015	do.	414
3	29th September 2015	do.	414
4	20th November 2015	Personal Insolvency (Amendment) Act 2015 (Commencement) (No.2) Order 2015	514
5	20th November 2015	do.	514

<i>Section</i>	<i>Effective date</i>	<i>Statutory Instrument</i>	<i>S.I. of 2015</i>
6	29th September 2015	Personal Insolvency (Amendment) Act 2015 (Commencement) Order 2015	414
7–11	20th November 2015	Personal Insolvency (Amendment) Act 2015 (Commencement) (No.2) Order 2015	514
12	29th September 2015	Personal Insolvency (Amendment) Act 2015 (Commencement) Order 2015	414
13	20th November 2015	Personal Insolvency (Amendment) Act 2015 (Commencement) (No.2) Order 2015	514
14	20th November 2015	do.	514
15	20th November 2015	do.	514
16	29th September 2015	Personal Insolvency (Amendment) Act 2015 (Commencement) Order 2015	414
17–22	20th November 2015	Personal Insolvency (Amendment) Act 2015 (Commencement) (No.2) Order 2015	514
23–27	29th September 2015	Personal Insolvency (Amendment) Act 2015 (Commencement) Order 2015	414