

PERSONAL INSOLVENCY

3-PAGE SPECIAL REPORT

Light at the end of the debt tunnel

Finally, Ireland has an insolvency regime that befits a modern economy, one which more accurately addresses the needs of its population, writes **Dave Boland**

The harsh bankruptcy laws of recent times, whose 12-year sentence reflected a harsh and judgemental attitude which equated insolvency with moral failure, have been replaced by something far more in tune with a western economy in 2013. Indeed, according to a spokesperson from the Insol-

veny Service of Ireland, the range of measures now available through the ISI have been designed "to provide quality insolvency solutions to debtors in a transparent and customer-focused manner which is fair to all".

All of which is quite a remove from a 12-year bankruptcy term and a set of laws which stacked the deck firmly in favour of the creditors.

The main provisions of the new legislation are well documented, but in summary the three main mechanisms are the Debt Relief Notice (DRN), the forfeited debt of up to €20,000, generally lasting up to three years; a Debt Settlement Arrangement (DSA) for unlimited unsecured debts, generally lasting five years; and a Personal Insolvency Arrangement (PIA) for se-

cluded debt of up to €3 million, which includes mortgage debt and involves a heavily restricted budget for six years.

Outside of this, there is still the nuclear option of bankruptcy, but even this has come down to a more manageable three-year period.

Since September 9, the ISI has been in a position to accept applications under these various mechanisms, though how popular they will be remains to be seen. The Department of Justice expects that there will be between 3,000 and 4,000 applications for DRNs, with 15,000 applications each for DSAs and PIAs (though there are organisations, including Stubbs Gazette, which expect those numbers to be significantly higher).

It is also expected that there will be some 3,000 applica-

tions per year for bankruptcy, representing a hundred-fold increase on the 30 bankruptcies granted by the courts in 2011.

Of course, one of the main stumbling blocks to the success of the new regime could be as simple as their very popularity. The starting point for any of the processes involved meeting with a Personal Insolvency Practitioner (PIP) or an Approved Intermediary for the DRNs. At present, some 49 Personal Insolvency Practitioners (PIPs) have been authorised by the ISI, as well as eight MABS companies representing 28 individuals who are authorised to act as Approved Intermediaries (AIs).

So either these people are going to be very, very busy, or distressed debtors are going to have to form a queue (al-

though the ISI is committed to working with educational providers to put in place the necessary training and educational courses for PIPs and AIs).

Even with inherent teething problems, the fact remains that, simply by virtue of existing, the new insolvency legislation offers some solace to the tens of thousands – maybe even hundreds of thousands – of people in Ireland who could be described as insolvent.

This does not mean that it will be a panacea to those who find themselves unable to meet their obligations. Some people will not meet the criteria to avail of the solutions, which, in any case, require the assent of creditors if they are to proceed (though realism should, and probably will, trump dogmatism in due course).

The new Personal Insol-

veny legislation is in no way the perfect solution, and there are still elements which hark back to our more draconian past (for example, the necessity for court involvement, and the problem of a register both suggest that Ireland has not quite given up on its predilection for stigmatising debt).

But it is a step – a significant step – towards financial redemption for an entire generation which has been staring down the barrel of a lifetime burden for themselves and their families.

It is also fair to say that the ISI is cognisant of the need to ensure that debt resolution is an evolving thing. It is the ISI's stated intention to create a formal consultative committee in the autumn involving representatives of PIPs and AIs, creditors and debtors to

address areas of a mutual interest.

For example, the ISI's medium to long-term objective is to agree a protocol involving creditors and PIPs similar to the Individual Voluntary Arrangement (IVA) protocol that exists in Britain – something which has resulted in high levels of creditor acceptance.

The ISI is committed to reviewing and assessing its performance on a regular basis and to making any necessary changes once identified," said the spokesperson. "The ISI's vision for the service as it evolves is to create modern, fair and effective personal insolvency solutions facilitating economic activity."

Which, in the current circumstances, is about as good as it's going to get for insolvent individuals in Ireland.

Family homes are the crux of debt relief

By Dave Boland

The primary concern of many of the people – maybe even most of the people – who have approached a PIP to date has been their ability (or inability) to hold onto the family home. The issue is compounded by the fact that many

of these properties are in negative equity, but the reality is that, whatever the status of the loan, it is often impossible to approach debt in a dispassionate way when what is at stake is one of the cornerstones of Irish society.

The crux of the matter is that people are concerned about losing their homes,"

said Donal Hackett, a partner in Milne O'Dwyer Certified Accountants and the only PIP based in Laois, Offaly and Westmeath. "And what is at issue is how much the banks will engage in writing down the mortgage."

The trouble, as Hackett sees it, is that there are two sets of competing contingencies, with



Donal Hackett, partner in Milne O'Dwyer Certified Accountants

the banks looking to maximise their returns and not proposing any write downs, while borrowers are simply trying to manage their unsustainable repayments.

"I believe that banks are going to have to recognise negative equity, especially where there is little chance of it ever being repaid," said Hackett. "Doing so would allow people to deal with affordable levels of debt and allow them to get on with their lives; but for the banks, it would also give them a performing loan book."

It is for these reasons that Hackett believes that banks

will eventually have to engage with this vexed issue – because kicking the can down the road has proven to be an ineffective mechanism to date. "All stakeholders should have an interest in making these things work," he said. "It's true that sacrifices are going to have to be made, but they have to be made by both sides."

Hackett has many years of experience in dealing with people's financial situation and brokering mutually beneficial agreements; and he is hopeful about the new insolvency regime because for the first time there is the legal framework for

putting formal structures on the process.

"There will be a bit of toing and froing, and from what we have seen in Britain and the US, it will take a little bit of time before everybody comes on board," he said. "So I expect to see a run-in period of several months, before we see a serious volume of activity."

"It can work and it will work, and PIPs are legally obliged to ensure, as far as possible, that people don't have to sell or move out of the family home. In some cases, it will not be practicable to stay, but I feel that in a lot of cases, it will be

possible to keep people in their houses. It depends on finances, but we will certainly investigate all the possibilities."

Of course, the banks too will have to evaluate the figures and take everything on board, but in this case, the PIP becomes a facilitator, almost a mediator, trying to find common ground between the opposing sides.

"Everybody's circumstances will be different, but there will always be options available," said Hackett. "The key will be to come up with an arrangement that provides for a sustainable structure into the future."