

Scheme of Personal Insolvency Bill

Additional Documentation

Worked Examples

What is a Debt Relief Certificate?

The Debt Relief Certificate (DRC) provides for the forgiveness of debt for debtors with no assets and no income who are unable to meet qualifying debts totalling not more than €20,000. The purpose is to create an efficient means, non-judicial, of allowing persons to resolve unmanageable unsecured debt problems.

For example: Lets assume that John has the following unsecured debts which he has difficulty repaying:

Bank overdraft	€5,000
Credit card	€5,000
Personal Loan	€5,000
Store catalogue	€2,000
Utilities	€1,000

John unfortunately now finds himself unemployed and in receipt of a social welfare payment or that his income has been severely reduced. He has little or no capacity to pay off his debts following the payment of rent and meeting his basic household needs such as food, heat, etc. He lives in rented accommodation and has no assets to dispose of to help pay his debts and he is not in a position to receive assistance from family or friends.

What can John do?

John could now contact an approved intermediary (such as MABS) and request their assistance in completing the application form and statement of affairs for a Debt Relief Certificate. The approved intermediary will advise John on his options regarding his qualifying debts and the implications of entering into a DRC. These implications may be significant in terms of future access to credit of any kind and provision of utility and other services.

If John proceeds with the application, the approved intermediary will request **full disclosure of his income and outgoings** and any other information required by the Insolvency Service. John must pay a processing fee of (€0) to the approved intermediary prior to the submission of the DRC application.

The authorised intermediary submits the documentation to the Insolvency Service for approval. The Insolvency Service will examine the submitted documentation and if satisfied will issue a Debt Relief Certificate. The Certificate will list the qualifying debts

of the debtor on the application date, specify the amount of each debt and the creditor to whom it was owed. The Service then gives a copy of the Certificate to John and records the relevant details on the Insolvency Register.

A 1 year moratorium period during which creditors cannot pursue action against John in respect of the debts covered by the DRC commences on the date of the Certificate's registration in the Insolvency Register.

At the end of the 1 year moratorium period, John is discharged from the debts listed in the Debt Relief Certificate. John cannot apply for a further DRC before 6 years has elapsed and a DRC may not be availed of more than twice in a lifetime.

What is a Debt Settlement Arrangement?

The Debt Settlement Arrangement (DSA) provides for a system of debt settlement between a debtor and two or more creditors to repay an amount of unsecured consumer type debt **only** over a set period.

For example: Lets assume that that Mary has a number of unsecured debts such as credit card, personal loans, overdrafts, retail, store catalogues, etc which amount to over €20,000. She has difficulty in repaying her debts in full, perhaps due to reduced income and pressure to maintain mortgage repayments.

(Similarly with the DRC, debts that **do not qualify** for inclusion in a DSA include secured credit of any type, fines imposed by a court and family maintenance payments).

Mary can now contact a personal insolvency trustee, who having examined her circumstances and completed a financial statement of affairs may apply to the Insolvency Service for a Protective Certificate in respect of preparation of a DSA. If granted by the Insolvency Service, the Protective Certificate would provide for a standstill period (30 days) during which creditors may not take action against Mary.

The next step is for the personal insolvency trustee to forward a DSA to creditors for their agreement. The proposal would set out the amounts to be repaid by Mary over a five year period and any particular conditions that might attach.

If approved by creditors (by a vote of 65% in value of qualifying creditors), the Insolvency Service would provide formal registration of the DSA.

At the satisfactory conclusion of the DSA after 5 years, all of Mary's debts covered by it would be discharged in full. Mary could not apply for another DSA within a ten-year period.

The DSA will likely be subject to annual review by the personal insolvency trustee to reflect any changes in Mary's financial circumstances. It may be varied or terminated and in that regard, Mary could be subject to an application for adjudication in bankruptcy on the ending, termination or failure of the DSA.

There are grounds for challenge by creditors to Mary's DSA proposal and there is a role for the courts on application to have a DSA annulled.

How might a Personal Insolvency Arrangement work in practice?

Again, let us take the example of John

John has a number of unsecured debts, such as credit card, personal loans, overdrafts etc. These unsecured debts amount to €50,000. He also has a mortgage on his principal private residence for €300,000. His principal private residence is a house valued at €200,000. John also has a buy-to-let mortgage on an apartment that he bought as an investment. That buy-to-let mortgage is for €250,000 but the value of the apartment is only €150,000. John is self-employed and his income has fallen substantially over the past three years so that he is now unable to meet his debt payments as they fall due.

John has tried unsuccessfully to reach an accommodation with his mortgage lenders to restructure the loans. John contacts a personal insolvency trustee and completes a standard financial statement setting out his financial affairs in full. The personal insolvency trustee advises John as to his options and will assess whether John meets the eligibility criteria for a PIA. Those criteria include the following:

- John must be cash-flow insolvent (i.e. unable to meet his debts in full as they fall due);
- it is unforeseeable that over the course of a [5] year period, John will become solvent;
- a debt settlement arrangement (DSA) would not be a viable alternative to a PIA as a mechanism to make John solvent within a period of [5] years.

If the personal insolvency trustee is satisfied that John meets the above eligibility criteria and is satisfied that there is a reasonable possibility that a PIA would be capable of making John solvent within [6] years, the personal insolvency trustee applies to the Insolvency Service for a protective certificate. The Insolvency Service carries out certain checks in relation to the application and issues a protective certificate which protects John from action by his creditors for a minimum of [40] working days (and up to a maximum of [60] working days, subject to extension for a further [10] working days).

The personal insolvency trustee notifies John's creditors and sends them prescribed information, including information as to John's financial situation. The personal insolvency trustee considers any submissions from creditors and prepares a proposal for a PIA, taking into account what John can afford to pay to his creditors but leaving him with sufficient income to maintain a reasonable standard of living.

The proposal provides for the following treatment with respect to John's debts:

- John to make payments totalling €20,000 to unsecured creditors over 6 years representing 40% of the amount due.

- The principal amount of the mortgage in respect of John's principal private residence is written down to €250,000 and is restructured so that the term of the loan is extended by 5 years, thereby reducing the monthly repayments further.
- John is to sell the buy-to-let apartment under the supervision of the personal insolvency trustee. The proceeds of the sale (€150,000) are paid to the buy-to-let mortgage lender. The shortfall due to that lender (€100,000) abates in equal proportion to the unsecured debts (i.e. 40%) and so John makes further payments to that lender totalling €40,000 over 6 years.

If John consents, the personal insolvency trustee then summons a creditors' meeting to vote on the proposal. In considering whether to vote in favour of the proposal, the creditors take into account whether the financial outcome for them under the PIA is likely to be better than the estimated financial outcome for them in alternative scenarios such as enforcement or bankruptcy.

If the specified majority of creditors vote in favour of the PIA and no creditor objects to it in the Circuit Court, the PIA comes into effect and the Insolvency Service registers it in the Personal Insolvency Register.

If John's financial circumstances improve over the course of the PIA (e.g. if he receives an inheritance or his income increases materially), John is obliged to notify the personal insolvency trustee and the terms of the PIA may be varied to provide for increased payments to the creditors.

If John subsequently decides to sell his principal private residence and property prices have improved since he entered into the PIA, there is a clawback of the uplift in value up to a maximum of the amount that has been written off under the PIA (i.e. €50,000) but disregarding any improvements made to the property since the date of its valuation for the purposes of the PIA.

If John does not abide by the terms of the PIA (e.g. there is a 6 month arrears default in making the payments due under the PIA) the arrangement will fail and John will again be liable in full for the debts. The creditors can then take enforcement action against John or petition for his bankruptcy.

If John successfully completes the PIA, all of his unsecured debts and the shortfall due in respect of the buy-to-let mortgage are discharged. John remains liable to pay the mortgage in respect of his principal private residence on the restructured terms agreed under the PIA.