November 2016

Bankruptcy Scenarios Pack

ISI

Tackling problem debt, together

TO HELP EXPLAIN SOME OF THE CONCEPTS CONTAINED IN BANKRUPTCY, THE INSOLVENCY SERVICE OF IRELAND (ISI) HAS CREATED SOME POSSIBLE SCENARIOS TO ILLUSTRATE HOW THE PROCESS MAY OPERATE IN RESPECT OF A DEBTOR.

BANKRUPTCY IS AN OPTION OR REMEDY PROVIDED FOR IN THE BANKRUPTCY ACT, 1988 (AS AMENDED) TO CATER FOR CIRCUMSTANCES WHERE AN INSOLVENT DEBTOR IS UNABLE TO COME TO A VOLUNTARY ARRANGEMENT WITH HIS/HER CREDITORS OR TO AVAIL OF THE 3 OTHER NON-BANKRUPTCY OPTIONS (I.E. A DEBT RELIEF NOTICE, DEBT SETTLEMENT ARRANGEMENT OR PERSONAL INSOLVENCY ARRANGEMENT) PROVIDED FOR UNDER THE PERSONAL INSOLVENCY ACT, 2012.

WHILE BASED WITHIN THE INSOLVENCY SERVICE OF IRELAND (ISI), THE OFFICIAL ASSIGNEE IN BANKRUPTCY RETAINS HIS INDEPENDENT STATUTORY POSITION UNDER THE BANKRUPTCY ACT 1988, AS ADMINISTRATOR OF BANKRUPTCIES AND HE IS ANSWERABLE TO THE HIGH COURT.

THESE POSSIBLE SCENARIOS ARE FOR ILLUSTRATIVE PURPOSES ONLY.

THE ISI DOES NOT PROVIDE FINANCIAL ADVICE.

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THE PROCESS

The diagram below shows the main stages of the bankruptcy process.

The following process was drafted in consultation with the Examiner's Office and reflects the documentary requirements of that office in relation to a bankruptcy application.

THE ISI BANKRUPTCY DIVISION

a) If you are going bankrupt the first step is to lodge € 200 electronically with the Bankruptcy Division of the ISI, and a receipt will be issued. You then must email the Bankruptcy Division at bankruptcy@isi.gov.ie to confirm the lodgement and attach a scanned copy of the bank lodgement confirming payment. The ISI will then forward a receipt by email. This email receipt must be produced when lodging the bankruptcy papers at the Office of the Examiner of the High Court.

THE EXAMINER'S OFFICE

b) You or your appointed solicitor will then prepare a Petition and a Statement of Affairs (further details below). Both completed forms must be verified by Affidavit. These forms together with other relevant forms are available on the ISI's website for completion by you or your solicitor.

   The Affidavit sworn by you must include a statement that you have made reasonable efforts to reach a satisfactory arrangement with their creditors relating to debts. The Statement of Affairs details assets, income and liabilities. Notes to aid in the completion of the forms are available on the ISI's website.

c) The Petition and Statement of Affairs are usually sworn before a Commissioner for Oaths or practising Solicitor.

d) After you have sworn the Affidavit, the completed forms should be submitted to the Examiner's Office in person or by post to Phoenix House, Phoenix St North, Smithfield, Dublin 7. (Email: examinersmail@courts.ie)

It is your responsibility to ensure that all papers contain information that is true and accurate.

The following list of documents should be submitted to the Examiner's Office together with the receipt for the €200 lodgement paid to the Official Assignee's Office in the Bankruptcy Division of the ISI.

1. The Petition (Form no. 13, on the Courts Service website) with accompanying Affidavit sworn by the applicant, plus 2 copies. There is no stamp duty due on this form.
2. Statement of Affairs (Form no. 23, on the Courts Service website) plus 2 copies. There is no stamp duty due on this form. Both the Statement of Affairs and Affidavit must be sworn by a Commissioner of Oaths or a practising Solicitor (a nominal fee may apply).

In addition to the above documents, you are required to attach the following (partially completed) forms (e.g. name inserted) which will be fully completed after a formal declaration of bankruptcy:

3. Order of Adjudication (Form no. 15 on Courts Service website) and 2 copies. There is no stamp duty due on this form.
4. Warrant of Seizure (Form no. 46 on the Courts Service website) and 2 copies. There is no stamp duty due on this form.
5. Notice of adjudication (Form no. 19 on the Courts Service website) and 2 copies. There is no stamp duty due on this form.

e) When the relevant papers have been accepted by the Examiner's Office a Court hearing date will be notified to you.

f) Dates are allocated based on the number of applications on the bankruptcy list and other factors.

g) Once you are given a Court date you must attend Court on that date – this will take place in the Four Courts in Dublin. The Court number will be available in the Court legal diary, available on the Courts Service website www.courts.ie

h) The process to apply for bankruptcy remains private and confidential until you have been adjudicated bankrupt. From this point court documents are available in the Examiners Office for public inspection.

APPEARANCE AT THE HIGH COURT

a) At the Court appearance if the Court is satisfied that all of the papers are in order, the Judge will adjudicate you bankrupt.

b) The Court will advise you to make contact with the Bankruptcy Inspector on the day of adjudication to progress your case. The Court requires the bankrupt to provide a copy of their Statement of Affairs and a copy of their Statement of Personal Information to the staff of the ISI on the day of adjudication. The staff will be located in the corridor outside the Courtroom.

c) The bankrupt must undertake to pay the costs of placing an advertisement in Iris Oifigiúil (approx €70) and on the ISI website (free) within 21 days of the date of adjudication in order to notify creditors of the bankruptcy.

d) When the Court adjudicates a person bankrupt, ownership of all property will transfer to the Official Assignee and this includes any interest in the family home.

e) Unsecured creditors can no longer seek repayment directly from a bankrupt. They must make a claim to the Official Assignee and all correspondence should be forwarded to him

f) Secured creditors can:

- rely on security (i.e. sell property or continue to allow mortgage repayments) and not claim in bankruptcy
- abandon security and claim for full debt in bankruptcy
- sell or value their security and claim for the debt shortfall in the bankruptcy.

THE OFFICIAL ASSIGNEE

a) The Official Assignee will negotiate an Income Payment Agreement or seek a Bankruptcy Payment Order for the surplus of any income over Reasonable Living Expenses. The term will last for a period of up to 3 years.

b) The bankrupt will be automatically discharged from bankruptcy in 1 year if compliant.

c) The Official Assignee has a three year period from the date of adjudication to monitor the valuation of your family home to ascertain whether it is in negative or positive equity. The Official Assignee, having valued your family home, will write out to you six months before the three year period elapses and inform you whether he believes your property is in positive or negative equity.

   Where your interest in your family home is in positive equity, the Official Assignee has a duty to your creditors to realise this interest. In order to value the Official Assignee's interest in the property, we will arrange for a further professional valuation of your property. You are entitled to seek your own independent valuation as well.

The policy of the Official Assignee is to sell his interest in positive equity family homes to the former bankrupt. Alternatively, he will sell his interest to the former bankrupt's spouse/civil partner.

The Official Assignee will accept staged payments for up to a maximum of 12 months and on final payment will transfer his interest to the former bankrupt or their spouse/civil partner.

If the former bankrupt or spouse/civil partner is unwilling or unable to purchase the Official Assignee's share, he will apply to the Court for permission to sell the home on the open market. It should be noted that the Official Assignee, is not entitled to sell your estate or interest in your home, without an order of the High Court under Section 61(4) of the Act.

If your interest in your family home is in negative equity and the Official Assignee has not issued proceedings seeking sale of the family home within 3 years of the date of adjudication of bankruptcy, the family home will re-vest in you, subject to any existing mortgage. If you do not wish the property to re-vest in your name, you should communicate that to the Official Assignee in writing.

d) Ownership of any other property or assets which are unsold at the end of the bankruptcy term will remain vested with the Official Assignee after discharge, until they are sold.

SCENARIO 1 - GERRY'S STORY

BANKRUPTCY – POSITIVE EQUITY IN FAMILY HOME

This sample scenario is designed to illustrate the basic features of bankruptcy, its effect on the family home where there is equity and includes the possible outcome for both secured and unsecured creditors.

It outlines the process that the Official Assignee must follow to allow him to realise (sell) the equity in the family home for the benefit of creditors of the bankruptcy estate. It also illustrates the protections afforded to the family home under the Family Home Protection Act 1976 and explains what this means for the bankrupt and their family.

BACKGROUND

Gerry is an IT consultant who earns a monthly net income of € 3,225. He is married to Sheila who does not work outside of the home in order to take care of their children. They have two children at Primary School (aged 7 and 8).

They have a family car, which is required for Gerry's work, and is valued at € 3,500 and furniture valued at € 1,500. Gerry has Bank of Ireland shares worth €5,000. Gerry bought his family home thirteen years ago.

The house is held in Gerry and Sheila's joint names. It is worth € 180,000, and the outstanding mortgage is € 160,000. Gerry has a total of € 120,000 in unsecured debt consisting of a personal loan (€ 85,000) and credit card debts (€ 35,000).

His monthly debt commitments are as follows:

- 100 % Mortgage repayment on his family home of € 1,200
- Unsecured debt repayments of € 1,631

He has attempted to enter into a Personal Insolvency Arrangement [PIA] but was unable to obtain agreement from his creditors. Gerry is unable to pay his debts in full as they fall due and acknowledges he is insolvent.

Gerry wishes to petition to adjudicate himself bankrupt.

GERRY'S CURRENT INSOLVENT POSITION

Assets	Value €	Loan €
Family Home	180,0000	160,000
Car	3,500	
Furniture	1,500	
BOI Shares	5,000	
Total	**190,000**	**160,000**
Debts		
Secured Debts		
Family Home mortgage		160,000
Unsecured Debts		
Personal loan		85,000
Credit Card debts		35,000
Total		**280,000**

Monthly Income	€
Net Income	3,225
Total	**3,225**
Monthly Expenses	
Total Set Costs[1]	1,815
Rent/Mortgage[2]	1,200
Childcare Costs[2]	0
Reasonable Living Expenses	**3,015**
Available for unsecured debt service (3,225 – 3,015)	210
Unsecured debt repayment	(1,631)
Deficit in meeting unsecured debt obligations (210-1,631)	**(1,421)**

ELIGIBILITY

Gerry believes he is eligible for bankruptcy because

- ✔ Gerry is unable to meet his obligations to his creditors.
- ✔ Gerry has considered whether his circumstances could be more adequately dealt with through a PIA and Debt Settlement Arrangement [DSA] with regard to the nature and value of his affairs but he was unable to agree same with his creditors. Accordingly Gerry will need to provide an affidavit proving this to the satisfaction of the Court.
- ✔ Gerry must accompany the petition with a Statement of Affairs[3] which shows that his debts exceed his assets by 20,000. In this case debts exceed assets by € 90,000 [€ 280,000 - € 190,000].

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[1]The Official Assignee will have regard to the tables in the ISI "Guidelines on a reasonable standard of living and reasonable living expenses", available on the ISI's website. Gerry's circumstances meet those covered by the category. "Two adult household, one or more children with vehicle" of the Guide (Two adults € 1,420.83 + One child (age 7) €197.12 + One child (age 8) €197.12 = €1,815.07). For illustrative purposes and ease for the reader, the RLE figure is rounded to €1,815.

[2]The Official Assignee will assess the reasonableness of mortgage, rent and/or childcare payments in accordance with the "Guidelines on a reasonable standard of living and reasonable living expenses".

[3]A Statement of Affairs is a document setting out the individual's assets, liabilities, income and expenditure at adjudication. A worked example can be found at Notes on how to fill out the forms for bankruptcy.

POSSIBLE OUTCOME FOR GERRY FROM BANKRUPTCY

Gerry has now been adjudicated bankrupt and all his property is now vested in the Official Assignee.

FAMILY HOME

The family home has a value of €180,000 and there is an outstanding mortgage of €160,000. There is, therefore €20,000 equity in the family home. As Gerry's share of the family home is now vested in the Official Assignee, 50% of the € 20,000 belongs to the Official Assignee.

Gerry or his wife Sheila will have the option to purchase the Official Assignee's interest in the family home for €10,000 [50% of the Equity] from funds outside the bankruptcy. For the purposes of this scenario it is assumed that Sheila raises funds from a family member and seeks to buy the Official Assignee's share of the equity. The Official Assignee will have to apply to Court, under Section 61. (4) of the Bankruptcy Act, to sell this interest to Monica.

If Sheila is unable to raise the funds immediately she may apply to the Court for a postponement on the order for sale to enable her to raise the finance under Section 61. (5) of the Bankruptcy Act. The Court will consider the interests of the creditors and those of Sheila in determining whether to postpone a sale.

If Sheila cannot purchase the Official Assignee's interest, the Official Assignee will apply to Court for an order for Sale. For the purposes of this scenario it is assumed Sheila is able to raise the €10,000 and the Official Assignee gets Court approval to sell his interest to Sheila.

OTHER ASSETS

Gerry will be able to keep his car and his share of the household furniture as under Bankruptcy Law he is allowed to retain personal goods up to a cumulative value of € 6,000.

INCOME

The Official Assignee will seek an Income Payment Agreement/Bankruptcy Payment Order shortly after adjudication for the surplus of Gerry's income over his Reasonable Living Expenses. This agreement will be reviewed periodically and will last for 3 years from the date of the first payment.

Housing (mortgage or rent payments) and childcare costs vary across the country and cannot be applied universally like the set costs. These costs will be added to the set costs provided they are determined as reasonable by the Official Assignee in respect of housing appropriate to the needs of Gerry and his family. It is assumed in this scenario that the Official Assignee believes the mortgage repayments to be reasonable.

Gerry's monthly income and expenses after adjudication

Net monthly income	**€ 3,225**
Less	
Total Set Costs	€ 1,815
Rent/Mortgage	€ 1,200
Reasonable Living Expenses	**€ 3,015**
Available to bankruptcy estate	€ 210

OUTCOME

There will be a total amount of € 13,426 available for unsecured creditors as a final distribution of the estate. Gerry will be automatically discharged from bankruptcy after one year provided he has fully cooperated with the Official Assignee.

Dividend Payment to Unsecured Creditors

Assets Realised			
Family Home	€ 10,000		
Shares	€ 5,000		
Income Contribution			
€ 210 x 36 months	€7,560		
Dividend Calculation			
Total Assets Realised in Estate	€ 22,560		
Less Costs and Fees	(€9,134)		
Available to unsecured Creditors	€ 13,426		
Unsecured Creditors		**Dividend Paid**	**Percentage Return**
Personal loan	€ 85,000	€9,510	11%
Credit Card	€ 35,000	€3,916	11%
Total	**€ 120,000**	**€13,426**	**11%**

The Official Assignee deducts the following fees from the bankruptcy estate [the debtor is not liable for these fees] prior to making a distribution:

Bankruptcy Fees

Administration Fee	€ 2,000
Realisation Fee	€6,634[1]
Dividend Distribution Fee	€ 500
Total Fee	**€ 9,134**

GERRY'S POSITION AFTER MEETING HIS DUTIES AND OBLIGATIONS UNDER BANKRUPTCY

Gerry will have repaid €13,426 of his unsecured debts and the remaining €106,574 is written off. This represents an 11% return for the unsecured creditors based on amounts outstanding prior to Gerry being adjudicated bankrupt.

Gerry is solvent.

After one year Gerry will be automatically discharged from bankruptcy. The Official Assignee may object to automatic discharge where the individual has failed to co-operate or has failed to disclose assets.

The family home is held in Sheila's sole name and Gerry pays the mortgage going forward with the agreement of the bank.

After up to 3 years of making payments to the bankruptcy estate, Gerry's Bankruptcy Payment Order will cease. The proceeds of these payments will then be distributed by dividend to the unsecured creditors.

[1] This is calculated based on a sliding scale as follows: Administration Fee amount €2,000, the next €1,500 @ 100%, the next €6,500 @ 50%, the balance up to €1m at 15% and the balance thereafter @ 1%.

SCENARIO 2 - LEO'S STORY

BANKRUPTCY - NEGATIVE EQUITY IN FAMILY HOME

This sample scenario is designed to illustrate the basic features of bankruptcy and its effect on the family home where there is no equity and includes the possible outcome for both secured and unsecured creditors.

It examines how the Official Assignee treats the family home and the process by which the property may re-vest in the bankrupt. It illustrates how this process is subject to the Family Home Protection Act 1976 and explains what this means for the bankrupt and their family.

BACKGROUND

Leo is an area manager for a retail company who earns a monthly net income of €3,675. He is married to Nora who does not work outside of the home in order to take care of their children.

They have three children at Primary School (aged 7, 5 and 4). They have a family car, which is required for Leo's work, and is valued at €4,000 and furniture which is valued at €1,500.

Leo bought his family home four years ago. The house is held in Leo and Nora's joint names. It is worth €150,000 and the outstanding mortgage is € 260,000.

Leo has a total of €88,000 in unsecured debt consisting of a personal loan (€70,000) and credit card debts (€18,000). His monthly debt commitments are as follows:

- 100% Mortgage repayment on his family home of € 1,475
- Unsecured debt repayments of € 1,172

He has attempted to enter into a Personal Insolvency Arrangement [PIA] but was unable to obtain agreement from his creditors. Leo is unable to pay his debts in full as they fall due and acknowledges he is insolvent.

Leo wishes to petition to adjudicate himself bankrupt.

LEO'S CURRENT INSOLVENT POSITION

Assets	Value €	Loan €
Family Home	150,0000	260,000
Car	4,000	
Furniture	1,500	
Total	**155,500**	**260,000**
Debts		
Secured Debts		
Family Home mortgage		260,000
Unsecured Debts		
Personal loan		70,000
Credit Card debts		18,000
Total		**348,000**

Monthly Income	€
Net Income	3,675
Total	**3,675**
Monthly Expenses	
Total Set Costs[1]	2,023
Rent/Mortgage[2]	1,475
Childcare Costs[2]	0
Reasonable Living Expenses	**3,498**
Available for unsecured debt service (3,625 – 3,498)	177
Unsecured debt repayment	(1,172)
Deficit in meeting unsecured debt obligations (177-1,172)	**(995)**

ELIGIBILITY

Leo believes he is eligible for bankruptcy because

- ✔ Leo is unable to meet his obligations to his creditors.
- ✔ Leo has considered whether his circumstances could be more adequately dealt with through a PIA and Debt Settlement Arrangement [DSA] with regard to the nature and value of his affairs but he was unable to agree same with his creditors. Accordingly Leo will need to provide an affidavit proving this to the satisfaction of the Court.
- ✔ Leo must accompany the petition with a Statement of Affairs[3] which shows that his debts exceed his assets by at least €20,000. In this case debts exceed assets by € 192,500 (€ 348,000 - € 155,500).

[1] The Official Assignee will have regard to the tables in the ISI "Guidelines on a reasonable standard of living and reasonable living expenses", available on the ISI's website.. Leo's circumstances meet those covered by the category "Two adult household, one or more children with vehicle" of the Guide (Two adults € 1,420.83 + One child (age 7) €197.12 + One child (age 8) €197.12 + One child (age 5) €197.12 + Third child adjustment €10.81 = €2,023.00).

[2] The Official Assignee will assess the reasonableness of mortgage, rent and/or childcare payments in accordance with the "Guidelines on a reasonable standard of living and reasonable living expenses".

[3] A Statement of Affairs is a document setting out the individual's assets, liabilities, income and expenditure at adjudication. A worked example can be found at Notes on how to fill out the forms for bankruptcy.

POSSIBLE OUTCOME FOR LEO FROM BANKRUPTCY

Leo has now been adjudicated bankrupt and all his property is now vested in the Official Assignee.

FAMILY HOME

As the mortgage is being serviced Leo's mortgage bank has elected to stay outside bankruptcy and rely on its security.

The family home has a value of € 150,000 and there is an outstanding mortgage of € 260,000. There is therefore no equity in the family home. As Leo's share of the family home is now vested in the Official Assignee, 50% of the family home belongs to the Official Assignee.

Assuming that there is no rise in the property value, the family home will revest in Leo after three years as there is no equity available for the bankruptcy estate. If Leo's circumstances dictate, for various reasons, that he does not want the home to re-vest in him there is a mechanism to prevent re-transfers in such cases. Leo will have to contact Bankruptcy Division and notify them of this in writing to prevent the home from re-vesting.

The ISI strongly recommend that Leo should take independent legal advice regarding this correspondence.

OTHER ASSETS

Leo has an entitlement to keep essential assets (e.g. car, furniture, tools of his trade) up to the value of € 6,000.

INCOME

The Official Assignee will seek an Income Payment Agreement/Bankruptcy Payment Order shortly after adjudication for the surplus of Leo's income over his Reasonable Living Expenses. This agreement will be reviewed periodically and will last for 3 years from the date of the first payment.

Housing (mortgage or rent payments) and childcare costs vary across the country and cannot be applied universally like the set costs. These costs will be added to the set costs provided they are determined to be reasonable by the Official Assignee in respect of housing appropriate to the needs of Leo and his family. It is assumed in this scenario that the Official Assignee believes the mortgage repayments as reasonable.

Leo's monthly income and expenses after adjudication

Net monthly income	**€ 3,675**
Less	
Total Set Costs	€ 2,023
Rent/Mortgage	€ 1,475
Reasonable Living Expenses	**€ 3,498**
Available to bankruptcy estate	€ 177

OUTCOME

There will be a total amount of € 936 available for unsecured creditors as a final distribution of the estate. Leo will be automatically discharged from bankruptcy after one year once he has fully cooperated with the Official Assignee.

Dividend Payment to Unsecured Creditors

Income Contribution			
€177 x 36 months	€ 6,372		
Dividend Calculation			
Total Assets Realised in Estate	€ 6,372		
Less Costs and Fees	(€ 5,436)		
Available to unsecured Creditors	€936		
Unsecured Creditors		**Dividend Paid**	**Percentage Return**
Personal loan	€ 70,000	€ 749	1%
Credit Card	€ 18,000	€ 187	1%
Total	**€88,000**	**€936**	**1%**

The Official Assignee deducts the following fees from the bankruptcy estate [the debtor is not liable for these fees] prior to making a distribution:

Bankruptcy Fees

Administration Fee	€ 2,000
Realisation Fee	€ 2,936[1]
Dividend Distribution Fee	€ 500
Total Fee	**€ 936**

[1]This is calculated based on a sliding scale as follows: Administration Fee amount €2,000, the next €1,500 @ 100%, the next €6,500 @ 50%, the balance up to €1m at 15% and the balance thereafter at 1%

LEO'S POSITION AFTER MEETING HIS DUTIES AND OBLIGATIONS UNDER BANKRUPTCY

Leo is solvent. After one year Leo will be automatically discharged from bankruptcy. The Official Assignee may object to automatic discharge where the individual has failed to co-operate or has failed to disclose assets.

The family home will revest in Leo after three years as there is no equity available for the bankruptcy estate.

After 3 years of making income payments to the bankruptcy estate Leo's Bankruptcy Payment Order will cease. The proceeds of these payments will then be distributed by dividend to the unsecured creditors.

SCENARIO 3 - MARTIN'S STORY

BANKRUPTCY – BUY TO LET PROPERTY

This sample scenario is designed to illustrate the basic features of bankruptcy, its effect on the family home where there is equity, the treatment of buy to let properties and includes the possible outcome for both secured and unsecured creditors.

It outlines the process that the Official Assignee must follow to allow him to realise (sell) the equity in the family home for the benefit of creditors of the bankruptcy estate. It also illustrates the protections afforded to the family home under the Family Home Protection Act 1976 and explains what this means for the bankrupt and their family. As the buy to let properties are regarded as investment properties, the Official Assignee can realise their value without recourse to the Court.

BACKGROUND

Martin is an accounting technician who earns a monthly net income of € 1,555. He lives with his wife Monica who works in a bank. They have no children.

They have a family car, which is required for Martin's work, and is valued at € 9,000 and furniture which is valued at € 1,500.

Martin and Monica bought their home thirteen years ago. The house is held in Martin and Monica's joint names. It is worth € 300,000, and the outstanding mortgage is € 255,000.

Martin and his brother Michael jointly own a Residential Investment Property (RIP). It is a two bed apartment currently valued at € 130,000 with an outstanding mortgage of € 210,000. The apartment is currently occupied at a rent of € 900 per month.

Martin has discussed his intention to enter into bankruptcy with Michael and explained the implications.

Martin has a total of € 98,000 in unsecured debt consisting of an overdraft (€ 45,000) and credit card debts (€ 53,000). His monthly debt commitments are as follows:

- Mortgage repayment on his and Monica's home of € 814 (50% of mortgage payment)
- Mortgage repayments on apartment of € 661 (50% of the mortgage payment)
- Unsecured debt repayments of € 1,563

He has attempted to enter into a Personal Insolvency Arrangement [PIA] but was unable to obtain agreement from his creditors. Martin is unable to pay his debts in full as they fall due and acknowledges he is insolvent.

Martin wishes to petition to adjudicate himself bankrupt.

MARTIN'S CURRENT INSOLVENT POSITION

Assets	Value €	Loan €
Family Home	300,000	255,000
Apartment	130,000	210,000
Car	9,000	
Furniture	1,500	
Total	**440,500**	**465,000**
Debts		
Secured Debts		
Family Home mortgage		255,000
Apartment Mortgage		210,000
Unsecured Debts		
Overdraft		45,000
Credit Card debts		53,000
Total		**563,000**

Monthly Income	€
Net Income	1,555
Apartment Rent	450
Total	**2,005**
Monthly Expenses	
Total Set Costs[1]	743
Rent/Mortgage[2]	814
Childcare Costs[2]	0
Reasonable Living Expenses	**1,557**
Available for other debts service (2,005 – 1,557)	448
Other debts repayment	(2,224)
Deficit in meeting other debt obligations (448-2,224)	**(1,776)**

ELIGIBILITY

Martin believes he is eligible for bankruptcy because

- ✔ Martin is unable to meet his obligations to his creditors.
- ✔ Martin has considered whether his circumstances could be more adequately dealt with through a PIA and Debt Settlement Arrangement [DSA] with regard to the nature and value of his affairs but he was unable to agree same with his creditors. Accordingly Martin will need to provide an affidavit proving this to the satisfaction of the Court.
- ✔ Martin must accompany the petition with a Statement of Affairs[3] which shows that his debts exceed his assets by at least € 20,000. In this case debts exceed assets by € 122,500 (€ 563,000 - € 440,500).

[1] The Official Assignee will have regard to the tables in the ISI "Guidelines on a reasonable standard of living and reasonable living expenses", available on the ISI's website.. Martin's circumstances meet those covered by the category "Two adult household, no children with vehicle" of the Guide (€ 1,486.62). For the purposes of this scenario it is assumed that Martin and Monica split the Total Set costs between them, leaving €743.31 for each to bear. For illustrative purposes and ease for the reader, the RLE figure is rounded to €743.

[2] The Official Assignee will assess the reasonableness of mortgage, rent and/or childcare payments in accordance with the "Guidelines on a reasonable standard of living and reasonable living expenses". For the purposes of this scenario it is assumed that Martin and Monica split the total set costs and mortgage payments evenly between them.

[3] A Statement of Affairs is a document setting out the individual's assets, liabilities, income and expenditure at adjudication. A worked example can be found at Notes on how to fill out the forms for bankruptcy.

POSSIBLE OUTCOME FOR MARTIN FROM BANKRUPTCY

Martin has now been adjudicated bankrupt and all his property is now vested in the Official Assignee.

FAMILY HOME WITH MONICA

The family home has a value of €300,000 and there is an outstanding mortgage of €255,000. There is, therefore €45,000 equity in the family home. As Martin's share of the family home is now vested in the Official Assignee, 50% of the € 45,000 belongs to the Official Assignee.

Martin or his wife Monica will have the option to purchase the Official Assignee's interest in the family home for €22,500 [50% of the Equity] from funds outside the bankruptcy. For the purposes of this scenario it is assumed that Monica raises funds from a family member and seeks to buy the Official Assignee's share of the equity. The Official Assignee will have to apply to Court, under Section 61. (4) of the Bankruptcy Act, to sell this interest to Monica.

If Monica is unable to raise the funds immediately she may apply to the Court for a postponement on the order for sale to enable her to raise the finance under Section 61. (5) of the Bankruptcy Act. The Court will consider the interests of the creditors and those of Monica in determining whether to postpone a sale.

If Monica cannot purchase the Official Assignee's interest, the Official Assignee will apply to Court for an order for Sale. For the purposes of this scenario it is assumed Monica is able to raise the €22,500 and the Official Assignee gets Court approval to sell his interest to Monica.

BUY-TO-LET PROPERTY

The Official Assignee will instruct the tenant to pay 50% of the rent directly to him as the rent will form part of the bankruptcy estate for the benefit of the creditors. The Official Assignee will not pay the mortgage in respect of the property.

The lending institution may on foot of its mortgage agreement appoint a receiver to collect the rent and from that time onwards the rent will no longer be paid to the Official Assignee. On the basis that there is no equity in the property and the bank proves the security to the satisfaction of the Official Assignee; he will surrender possession to the bank where no receiver has been appointed.

For the purposes of this scenario we assume the Bank appoint a receiver, values its security at € 130,000 after deducting selling costs and claims for the shortfall of € 80,000 in the bankruptcy.

OTHER ASSETS

Martin is allowed to keep essential assets (e.g. car, furniture, tools of his trade) up to the value of €6,000. As Martin owns 100% of the furniture valued at € 1,500 and the car is valued at € 9,000, he has exceeded the € 6,000 threshold for essential assets by € 4,500.

Martin must select which of his assets are to be regarded as essential assets. For the purposes of this scenario we assume Monica pays € 4,500 to the Official Assignee in order to retain all essential assets above the €6,000 threshold.

INCOME

The Official Assignee will seek an Income Payment Agreement/Bankruptcy Payment Order shortly after adjudication for the surplus of Martin's income over his Reasonable Living Expenses. This agreement will be reviewed periodically and will last for 3 years from the date of the first payment.

Housing (mortgage or rent payments) and childcare costs vary across the country and cannot be applied universally like the set costs. These costs will be added to the set costs provided they are determined to be reasonable by the Official Assignee in respect of housing appropriate to the needs of Martin and his wife. It is assumed in this scenario that the Official Assignee believes the mortgage repayments as reasonable.

Martin will have his income assessed solely and therefore only receives an allowance of 50% of the RLE of the household.

MARTIN'S MONTHLY INCOME AND EXPENSES AFTER ADJUDICATION

For the purposes of this scenario it is assumed that Martin is not in a position to reach an Income Payment Agreement with the Official Assignee as there is no surplus per month available to the bankruptcy estate after having deducted sufficient sums in respect of Reasonable Living Expenses.

The Official Assignee will review Martin's income and expenditure should there be any change in his financial circumstances.

Martin's monthly income and expenses after adjudication

Net monthly income	**€ 1,555**
Less	
Total Set Costs	€ 743
Rent/Mortgage	€ 814
Reasonable Living Expenses	**€ 1,557**
Available to bankruptcy estate	(€2)

OUTCOME

There will be a total amount of € 17,200 available for unsecured creditors as a final distribution of the estate, and Martin has no repayment obligation for the remaining unsecured debt. Martin will be automatically discharged from bankruptcy after one year once he has fully cooperated with the Official Assignee.

Dividend Payment to Unsecured Creditors

Assets Realised			
Family Home	€22,500		
Car excess	€4,500		
Income Contribution			
€0 x 36 months	0[1]		
Dividend Calculation			
Total Assets Realised in Estate	€27,000		
Less Costs and Fees	(€9,800)		
Available to unsecured Creditors	€17,200		
Unsecured Creditors	**-**	**Dividend Paid**	**Percentage Return**
Overdraft	€45,000	€4,300	9%
Credit Card	€53,000	€5,160	9%
Apartment	€80,000	€7,740	9%
Total	**€178,000**	**€17,200**	**9%**

The Official Assignee deducts the following fees from the bankruptcy estate [the debtor is not liable for these fees] prior to making a distribution:

Bankruptcy Fees

Administration Fee	€ 2,000
Realisation Fee	€7,300[1]
Dividend Distribution Fee	€ 500
Total Fee	**€ 9,800**

[1] This is calculated based on a sliding scale as follows: Administration Fee amount €2,000, the next €1,500 @ 100%, the next €6,500 @ 50%, the balance up to €1m at 15% and the balance thereafter @ 1%.

MARTIN'S POSITION AFTER MEETING HIS DUTIES AND OBLIGATIONS UNDER BANKRUPTCY

Martin's unsecured debt has been discharged.

Martin will have repaid €17,200 of his unsecured debts and the remaining €160,800 is written off. This represents a 9% return for the unsecured creditors based on amounts outstanding prior to Martin been adjudicated bankrupt.

Martin is solvent. After one year Martin will be automatically discharged from bankruptcy. The Official Assignee may object to automatic discharge where the individual has failed to co-operate or has failed to disclose assets.

The family home is held in Monica's sole name and Martin pays a contribution to the mortgage going forward with the agreement of the bank.

SCENARIO 4 - ROBERT'S STORY

BANKRUPTCY - EQUITY IN PRINCIPAL PRIVATE RESIDENCE (PPR)

This sample scenario is designed to illustrate the basic features of bankruptcy, its effect on the home where there is equity and includes the possible outcome for both secured and unsecured creditors.

It should be noted that in this scenario, Robert's household composition means that his Principal Private Residence is not deemed a family home under the Family Home Protection Act 1976 and so the Official Assignee can realise (sell) the asset without recourse to the Court.

The property will **not** re-vest in the bankrupt after the three year period and will remain vested in the Official Assignee until he sells the property or surrenders the property to the secured creditor.

BACKGROUND

Robert is single, an architect and has been unemployed for almost 2 years. His only source of income is €950 from the Department of Social Protection. He has a car, which is valued at €2,000.

Robert bought his home ten years ago and is held in his sole name. It is worth €270,000 and the outstanding mortgage is €240,000.

Robert also bought a buy to let property in early 2007 and the outstanding mortgage is €230,000. It is currently worth €90,000. It is unrented as it is in an unfinished housing estate.

Robert also has €10,000 in unsecured debt consisting of a Personal loan. His monthly debt commitments are as follows:

- Mortgage repayment on his PPR of €1,551
- Mortgage repayment on buy to let property of €1,487
- Unsecured debt repayments of €208

He has attempted to enter into a Personal Insolvency Arrangement [PIA] but was unable to obtain agreement from his creditors. Robert is unable to pay his debts in full as they fall due and acknowledges he is insolvent.

Robert wishes to petition to adjudicate himself bankrupt.

ROBERT'S CURRENT INSOLVENT POSITION

Assets	Value €	Loan €
PPR	270,0000	240,000
House	90,000	230,000
Car	2,000	
Total	**362,000**	**470,000**
Debts		
Secured Debts		
PPR mortgage		240,000
House Mortgage		230,000
Unsecured Debts		
Personal loan		10,000
Total		**480,000**

Monthly Income	€
Net Income	950
Total	**950**
Monthly Expenses	
Total Set Costs[1]	1,050
Rent/Mortgage[2]	1,551
Childcare Costs[2]	0
Reasonable Living Expenses	**2,601**
Available for other debt service (950 – 2601)	(1,651)
Other debt repayment	(1,695)
Deficit in meeting other debt obligations	**(3,346)**

ELIGIBILITY

Robert believes he is eligible for Bankruptcy because

- ✔ Robert is unable to meet his obligations to his creditors.
- ✔ Robert has considered whether his circumstances could be more adequately dealt with through a Personal Insolvency Arrangement [PIA] and Debt Settlement Arrangement [DSA] with regard to the nature and value of his affairs but he was unable to agree same with his creditors. Accordingly Robert will need to provide an affidavit proving this to the satisfaction of the Court.
- ✔ Robert must accompany the petition with a Statement of Affairs[3] which shows that his debts exceed his assets by €118,000. [A minimum shortfall of €20,000 is required.]

[1] The Official Assignee will have regard to the tables in the ISI "Guidelines on a reasonable standard of living and reasonable living expenses", available on the ISI's website. Robert's circumstances meet those covered by the category "One adult household with vehicle" of the Guide (€ 1,050.48). For illustrative purposes and ease for the reader, the RLE figure is rounded to €1,050.

[2] The Official Assignee will assess the reasonableness of mortgage, rent and/or childcare payments in accordance with the "Guidelines on a reasonable standard of living and reasonable living expenses".

[3] A Statement of Affairs is a document setting out the individual's assets, liabilities, income and expenditure at adjudication. A worked example can be found at Notes on how to fill out the forms for bankruptcy.

POSSIBLE OUTCOME FOR ROBERT FROM BANKRUPTCY

Robert has now been adjudicated bankrupt and all his property is now vested in the Official Assignee.

PRINCIPAL PRIVATE RESIDENCE (PPR)

The home has a value of €270,000 and there is an outstanding mortgage of € 240,000. There is therefore €30,000 equity in the home. Robert's home is now vested in the Official Assignee and as such any equity belongs to the Official Assignee.

As Robert's residence is not a family home or shared home as defined in the Family Home Protection Act 1976 as amended[1] the Official Assignee will not have to apply to Court for an order to sell the property.

The Official Assignee will first offer to sell the house to a family member from funds outside of the bankruptcy. If these funds are not available he will sell the property on the open market for the benefit of the creditors. For the purposes of this scenario it is estimated the costs associated with selling the property are €5,000.

For the purposes of this scenario it is assumed that Robert finds alternative accommodation at a monthly rent of €500.

BUY-TO-LET PROPERTY

The Official Assignee will not pay the mortgage in respect of the property. The lending institution may on foot of its mortgage agreement appoint a receiver to manage the property. On the basis that there is no equity in the property and the bank proves the security to the satisfaction of the Official Assignee; he will surrender possession to the bank where no receiver has been appointed.

For the purposes of this scenario we assume the Official Assignee surrenders possession to the bank and the bank values its security at €90,000 after selling costs and claims for the shortfall of €140,000 in the bankruptcy.

OTHER ASSETS

Robert will be able to keep his car valued at €2,000 as under Bankruptcy Law he is entitled to retain personal goods up to a cumulative value of € 6,000.

INCOME

The Official Assignee will normally seek an Income Payment Agreement/Bankruptcy Payment Order shortly after adjudication for the surplus of Robert's income over his Reasonable Living Expenses. However, as Robert's only source of income is social welfare payments no income payment will be sought by the Official Assignee.

[1] Family Home Protection Act 1976 defines a family home as being a home in which a married couple reside and includes a shared home as defined by the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010

OUTCOME

The unsecured creditors will avail of €15,500 as a final distribution of the estate, and Robert has no repayment obligation for the remaining unsecured debt. Robert will be automatically discharged from bankruptcy after one year once he has fully cooperated with the Official Assignee.

Dividend Payment to Unsecured Creditors

Assets Realised			
PPR (Net of €5,000 selling costs)	€ 25,000		
Income Contribution			
0 x 36 months	€ 0		
Dividend Calculation			
Total Assets Realised in Estate	€ 25,000		
Less Costs and Fees	(€ 9,500)		
Available to unsecured Creditors	€ 15,500		
Unsecured Creditors	**-**	**Dividend Paid**	**Percentage Return**
Personal loan	€ 10,000	€ 1,085	10%
RIP - House	€ 140,000	€ 14,415	10%
Total	**€ 150,000**	**€ 15,500**	**10%**

The Official Assignee deducts the following fees from the bankruptcy estate [the debtor is not liable for these fees] prior to making a distribution:

<u>Bankruptcy Fees</u>

Administration Fee	€ 2,000
Realisation Fee	€ 7,000[1]
Dividend Distribution Fee	€ 500
Total Fee	**€ 9,500**

[1] This is calculated based on a sliding scale as follows: Administration Fee amount €2,000, the next €1,500 @ 100%, the next €6,500 @ 50%, the balance up to €1m at 15% and the balance thereafter @ 1%.

ROBERT'S POSITION AFTER MEETING HIS DUTIES AND OBLIGATIONS UNDER BANKRUPTCY

Robert's unsecured debt has been discharged.

Robert will have repaid €15,500 of his unsecured debts and the remaining €134,500 is discharged. This represents a 10% return for the unsecured creditors based on amounts outstanding prior to Robert been adjudicated bankrupt.

Robert is solvent.

After one year Robert will be automatically discharged from bankruptcy. The Official Assignee may object to automatic discharge where the individual has failed to co-operate or has failed to disclose assets.

SCENARIO 5 - STEPHANIE'S STORY

BANKRUPTCY – NEGATIVE EQUITY PRINCIPAL PRIVATE RESIDENCE (PPR)

This sample scenario is designed to illustrate the basic features of bankruptcy, its effect on the home where there is negative equity and includes the possible outcome for both secured and unsecured creditors.

It should be noted that in this scenario, Stephanie's 's household composition means that her Principal Private Residence is not deemed a family home under the Family Home Protection Act 1976 and so the Official Assignee can realise (sell) the asset without recourse to the Court.

The property will **not** re-vest in the bankrupt after the three year period and will remain vested in the Official Assignee until he sells the property or surrenders the property to the secured creditor.

BACKGROUND

Stephanie is a factory worker whose working week has been reduced from full time to part time. She currently works 2-3 shifts per week and earns on average €1,600 per month.

She lives with her partner, Mike. Stephanie's house is held in her sole name. It is worth €280,000 and the outstanding mortgage is €360,000. She has not paid her mortgage for over a year.

Stephanie also has €25,000 in unsecured debt consisting of a Credit Union loan (€15,000) and credit cards (€10,000). She has been unable to pay anything off her credit card in almost two years and the interest continues to accrue. Her monthly debt commitments are as follows:

- Mortgage repayment on her family home of €2,107
- Unsecured debt repayments of €532

She has attempted to enter into a Personal Insolvency Arrangement [PIA] but was unable to obtain agreement from her creditors. Stephanie is unable to pay her debts in full as they fall due and acknowledges she is insolvent.

Stephanie wishes to petition to adjudicate herself bankrupt.

STEPHANIE'S CURRENT INSOLVENT POSITION

Assets	Value €	Loan €
Family Home	280,0000	360,000
Total Debts	**280,000**	**360,000**
Secured Debts		
PPR mortgage		360,000
Unsecured Debts		
Credit Union		15,000
Credit Card debts		10,000
Total		**385,000**

Monthly Income	€
Net Income	1,600
Total Monthly Expenses	**1,600**
Total Set Costs[1]	755
Rent/Mortgage[2]	1053
Childcare Costs[2]	0
Reasonable Living Expenses	**1,808**
Available for unsecured debt service (1,600 – 1,808)	(208)
Unsecured debt repayment	(532)
Deficit in meeting secured & unsecured debt obligations (-208-532)	**(740)**

ELIGIBILITY

Stephanie believes she is eligible for Bankruptcy because

- ✔ Stephanie is unable to meet her obligations to her creditors. Stephanie has considered whether her circumstances could be more adequately dealt with through a Personal Insolvency Arrangement [PIA] and Debt Settlement Arrangement [DSA] with regard to the nature and value of her affairs but she was unable to agree same with her creditors.
- ✔ Accordingly Stephanie will need to provide an affidavit proving this to the satisfaction of the Court.
- ✔ Stephanie must accompany the petition with a Statement of Affairs[3] which shows that her debts exceed her assets by €105,000. [A minimum shortfall of €20,000 is required.]

[1] The Official Assignee will have regard to the tables in the ISI "Guidelines on a reasonable standard of living and reasonable living expenses", available on the ISI's website. Stephanie's circumstances meet those covered by the category "Two adult household with no vehicle" of the Guide (Two adults €1,509.59). For illustrative purposes and ease for the reader, the RLE figure is rounded to €1,509.50. For the purposes of this scenario it is assumed that Stephanie and Mike split the Total Set costs between them, leaving €754.75 for each to bear. For illustrative purposes and ease for the reader, the RLE figure is rounded to €755.

[2] The Official Assignee will assess the reasonableness of mortgage, rent and/or childcare payments in accordance with the "Guidelines on a reasonable standard of living and reasonable living expenses". For the purposes of this scenario it is assumed that Stephanie and Mike split the total set costs and mortgage payments evenly between them.

[3] A Statement of Affairs is a document setting out the individual's assets, liabilities, income and expenditure at adjudication. A worked example can be found at Notes on how to fill out the forms for bankruptcy.

POSSIBLE OUTCOME FOR STEPHANIE FROM BANKRUPTCY

Stephanie has now been adjudicated bankrupt and all her property is now vested in the Official Assignee. Stephanie can no longer afford to live in her house and has decided to give the keys back to the bank. She has found alternative rental accommodation with Mike towards which she makes a contribution of €500 per month.

PRINCIPAL PRIVATE RESIDENCE (PPR)

As Stephanie has handed back the keys to her home, the lending institution may take steps to realise its security.

On the basis that there is no equity in the property and the bank proves the security to the satisfaction of the Official Assignee; he will surrender possession to the bank where no receiver has been appointed. The mortgage bank can claim in the bankruptcy for the shortfall between the debt due to them and the value of the house.

OTHER ASSETS

Under Bankruptcy Law Stephanie is entitled to retain personal goods up to a cumulative value of € 6,000.

INCOME

The Official Assignee will normally seek an Income Payment Agreement/Bankruptcy Payment Order shortly after adjudication for the surplus of Stephanie's income over her Reasonable Living Expenses. This agreement will be reviewed periodically and will last for 3 years from the date of the first payment.

Stephanie's monthly income and expenses after adjudication

Net monthly income	**€ 1,600**
Less	
Total Set Costs	€ 755
Rent/Mortgage	€ 500
Reasonable Living Expenses	**€ 1,255**
Available to bankruptcy estate	€ 345

OUTCOME

The unsecured creditors will avail of €4,807 as a final distribution of the estate, and Stephanie has no repayment obligation for the remaining unsecured debt. Stephanie will be automatically discharged from bankruptcy after one year once she has fully cooperated with the Official Assignee.

Dividend Payment to Unsecured Creditors

Assets Realised			
PPR	€ 0		
Income Contribution			
€345 x 36 months	€ 12,420		
Dividend Calculation			
Total Assets Realised in Estate	€ 12,420		
Less Costs and Fees	(€7,613)		
Available to unsecured Creditors	€ 4,807		
Unsecured Creditors		**Dividend Paid**	**Percentage Return**
Credit Union	€15,000	€673	6%
Credit card debts	€10,000	€481	6%
PPR Written Off	€80,000	€3,653	6%
Total	**€ 105,000**	**€4,807**	**6%**

The Official Assignee deducts the following fees from the bankruptcy estate [the debtor is not liable for these fees] prior to making a distribution:

Bankruptcy Fees

Administration Fee	€ 2,000
Realisation Fee	€ 5,113[1]
Dividend Distribution Fee	€ 500
Total Fee	**€ 7,613**

[1] This is calculated based on a sliding scale as follows: Administration Fee amount €2,000, the next €1,500 @ 100%, the next €6,500 @ 50%, the balance up to €1m at 15% and the balance thereafter @ 1%.

STEPHANIE'S POSITION AFTER MEETING HER DUTIES AND OBLIGATIONS UNDER BANKRUPTCY

Stephanie's unsecured and secured debt has been discharged.

Stephanie will have repaid €4,807 of her unsecured debts and the remaining €100,193 is discharged. This represents a 5% return for the unsecured creditors based on amounts outstanding prior to Stephanie been adjudicated bankrupt.

Stephanie is solvent.

After one years Stephanie will be automatically discharged from bankruptcy. The Official Assignee may object to automatic discharge where the individual has failed to co-operate or has failed to disclose assets.

After 3 years or less, on agreement with the Official Assignee, Stephanie will cease making income payments to the bankruptcy estate.