

**Consultation on Personal Insolvency Acts, Part 3,
Civil Law Reform Division,
Department of Justice and Equality,
Bishop's Square,
Redmond Hill,
Dublin 2.**

29th June 2017

Re: Consultation – Personal Insolvency Acts, Part 3.

Dear Sir/Madam,

I refer to the invitation of the Department of Justice and Equality for the views of interested parties on the operation of Part 3 of the Personal Insolvency Acts 2012 – 2015.

Revenue participate in the Insolvency Service of Ireland's Consultative Forum and have agreed in principle with the other members of the group on nine proposals which will be forwarded to the Department by the ISI. Revenue also wishes to make separate submissions to the consultation process and these are highlighted below.

1. Section 115A - Court review of proposed arrangements

Revenue's concern is in scenarios where it has opted out of the proposed arrangement and the appeal does not involve Revenue or its related debt. Revenue has no issue with the normal process where all debt is not available for enforcement until the protective certificate (PC) expires. It also has no issue where an appeal may prolong the expiration of the PC for a short period. Revenue's issue is where appeals are drawn out for protracted periods in cases where Revenue had opted out. We would propose to have an amendment to this section which provides for an exception, beyond a certain timeframe, for excludable debts in the circumstances where they have opted out of a proposed arrangement.

Suggested revision (**in bold**):

Section 115A(5) - Where an application is made under this section before the expiry of the period of the protective certificate, such certificate shall continue in force until –

- a) **The Personal Insolvency Arrangement comes into effect under subsection (13) or***
- b) **One of the following occurs –***

- i) *The time for bringing an appeal against a refusal of the appropriate court to make the order under subsection (9) has expired without any such appeal having been brought,*
- ii) *Such appeal has been withdrawn, or*
- iii) *The appeal has been determined, or*
- c) ***Three months after the date an excludable creditor opts out of a proposed arrangement and their debts do not form part of the appeal.***

2. *The advice provided by the personal insolvency practitioner (PIP) to the debtor*

Section 52 of the Act sets out the various advices the PIP should offer to the debtor. Revenue believes there should be a subsection included which requires the PIP to review the future earnings potential of the debtor. Where the PIP identifies the availability of earnings over a medium to long-term period, he/she should suggest a duration which adequately reflects this income stream. Revenue has seen a number of examples of proposed arrangements where the debtor seeks an opt-in on the basis of a once-off payment or short arrangement based on the debtor's current income but make no allowance in the proposal for potential earnings beyond the proposed period.

Suggested revision (**in bold**):

Section 52(3) - *In advising the debtor under subsection (1)(c) of the appropriateness of entering into a Personal Insolvency Arrangement or a Debt Settlement Arrangement, the personal insolvency practitioner shall have regard to—*

- (a) the value of the debtor's unsecured debts as compared to the value of the debtor's secured debts (if any),*
- (b) if applicable, whether the debtor has communicated with his or her secured creditors for the purpose of seeking to renegotiate or restructure the secured debts,*
- (c) whether the debtor has co-operated in good faith with his or her creditors who are secured creditors as respects the debtor's principal private residence in connection with any process relating to mortgage arrears operated by the secured creditors concerned which has been approved or required by the Central Bank of Ireland and which relates to the secured debt concerned,*
- (d) whether any of the debtor's secured creditors have indicated to the debtor or the personal insolvency practitioner a willingness to vary the terms of the secured debt to facilitate the operation of a Debt Settlement Arrangement in respect of the debtor's unsecured debts (including, without limitation, any variation of the terms of the secured debt that would reduce the amounts payable by the debtor in respect of the secured debt for the duration of the Debt Settlement Arrangement),*
- (e) where the debtor has proposed, but not entered into, a Debt Settlement Arrangement in respect of his or her unsecured debts, the terms of such proposal and the result of the creditors' meeting to consider such proposal, and*
- (f) where the debtor has entered into a Debt Settlement Arrangement in respect of his or her unsecured debts that has come to an end, failed or otherwise terminated, the circumstances of such ending, failure or other termination, **and***
- (g) whether the debtor has the potential for future earnings which should be considered when deciding an appropriate duration period for the proposed arrangement.***

3. Creditor consent for inclusion of excludable debt – Section 58 (DSA) & 92 (PIA)

Both Section 58(2) and Section 92(2) state that when a PIP is proposing to include an excludable debt as part of an arrangement, he or she should “without delay” notify the creditor concerned. In subsection 3 of both sections there is a requirement on the creditor to comply with 21 days of receipt of the notification. In many cases this timeframe does not cause Revenue difficulties however in cases where there are concerns about compliance levels or inconsistencies in the information provided, the engagement of the PIP can cause difficulties which can result in an opt-out decision by Revenue due to strict timeframes set down for the creditors.

In cases where there are still queries outstanding or where there is insufficient time for Revenue to review this information before the consent deadline, this leaves Revenue with no choice but to opt out. To ensure the most favourable result for the debtor, in most circumstances where this arises, Revenue suggest to the PIP to withdraw their consent request and resubmit. While Revenue believe this course of action is allowed, Revenue would see a benefit to having a subsection which gives the PIP the option to withdraw the consent request.

Suggested revision **(in bold)**:

Section 58(2) - *Where a personal insolvency practitioner proposes to include an excludable debt in a proposal for a Debt Settlement Arrangement, he or she shall, without delay, notify the creditor concerned of that fact, which notification shall be accompanied by—*

- (a) such information about the debtor’s affairs (including his or her creditors, debts, liabilities, income and assets) as may be prescribed, and*
- (b) a request in writing that the creditor confirm, in writing, whether or not the creditor consents, for the purposes of this section, to the inclusion of the debt in a Debt Settlement Arrangement, or*
- (c) written confirmation that the consent request is withdrawn where creditor queries, concerning the debtor’s affairs, remain outstanding or where query responses leave insufficient time for the creditor to fully review.***

Section 92 (2) - *Where a personal insolvency practitioner proposes to include an excludable debt in a proposal for a Personal Insolvency Arrangement, he or she shall, without delay, notify the creditor concerned of that fact, which notification shall be accompanied by—*

- (a) such information about the debtor’s affairs (including his or her creditors, debts, liabilities, income and assets) as may be prescribed, and*
- (b) a request in writing that the creditor confirm, in writing, whether or not the creditor consents, for the purposes of this section, to the inclusion of the debt in a Personal Insolvency Arrangement, or*
- (c) written confirmation that the consent request is withdrawn where creditor queries, concerning the debtor’s affairs, remain outstanding or where query responses leave insufficient time for the creditor to fully review.***

4. Inclusion of excludable debt in a Protective Certificate where Creditor consent for inclusion of excludable debt has not been requested – Section 59 (DSA) & 93 (PIA)

As above, both Section 58(2) and Section 92(2) state that when a PIP is proposing to include an excludable debt as part of a DSA/PIA, he or she should “without delay” notify the creditor concerned. However Sections 59 and 93 that deal with applications for a PC do not make it clear whether this consent should be sought before a PC application. The ISI has confirmed that their legal advice believes that as Sections 58 and 92 use the word “proposal” that such consent is not required before the issue of a PC. It is Revenue’s belief that the intention of the Act was to include as many creditors as possible as early as possible and proceeding to a PC without even contacting excludable creditors goes against that intention. Revenue has experienced numerous examples where the first contact from the PIP was to inform Revenue that a PC has been approved and all enforcement action must stop. Revenue has no issue with stopping enforcement action to allow a PIP to put together a DSA/PIA that will address a debtor’s circumstances, regardless of whether Revenue decides to opt in or out. Revenue however does have an issue with not being involved in the process/discussion until after a PC has issued. For that reason and to address what Revenue believes is the intention of the Act, Revenue submits that an amendment to sections 59 and 93 should be made to clarify this position.

Suggested revision **(in bold)**:

Inclusion of 59(2)(g) to read:

(g) where applicable, confirmation that requests for creditor consent have been sent in relation to all excludable debts pursuant to sections 58

Inclusion of 93(2)(h) to read:

(g) where applicable, confirmation that requests for creditor consent have been sent in relation to all excludable debts pursuant to sections 92

If you have any questions on the submissions presented please do not hesitate to contact me.

Yours sincerely,

Paddy Purtill
Principal Officer - Insolvency Unit

