ASSOCIATION OF PERSONAL INSOLVENCY PRACTITIONERS

Committee on Justice, Defence and Equality,
Leinster House
Kildare Street
Dublin 2

19 June 2015

Submission on the period for bankruptcy

Dear Sirs

Please find attached our submission to the Committee on the period for bankruptcy.

The Association of Personal Insolvency Practitioners (APIP) was formed in 2013 and is the largest representative body of Personal Insolvency Practitioners in Ireland, with 81 members.

It is a key stakeholder in the implementation of the Personal Insolvency Act 2012 and regularly engages with the Government and the Insolvency Service of Ireland in relation to the performance and implementation of Ireland's personal insolvency laws.

APIP is a voluntary organisation and is governed by its members and an elected Management Committee.

I am available to provide evidence to the Committee if required.

Should you have any queries or require anything further please let me know.

Yours faithfully,

Sent by email and therefore does not contain a signature

Eric Hendy
Chairperson

Chairperson:
Eric Hendy B Comm FCA AITI CTA Dip in Insolvency QFA PIP

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Association of Personal Insolvency Practitioners

Submission to the Joint Committee of Justice, Defence and Equality on the Period for bankruptcy

Introduction

The Association of Personal Insolvency Practitioners (APIP) was formed in 2013 and is the largest representative body of Personal Insolvency Practitioners (PIPs) in Ireland, with 81 members.

It is a key stakeholder in the implementation of the Personal Insolvency Act 2012 and regularly engages with the Government and the Insolvency Service of Ireland (ISI) in relation to the performance and implementation of Ireland's personal insolvency laws.

APIP is a voluntary organisation and is governed by its members and an elected Management Committee.

Its current Chairman Eric Hendy is available to provide evidence to the Committee.

Foreword

APIP supports the reduction of the bankruptcy period from three years to one year, with a corresponding change reducing the maximum Income Payment period in bankruptcy from five years to three years.

It is the view of APIP that bankruptcy is a vital remedy that should exist in any modern credit based society, both as a means of providing creditors with an effective means of debt recovery; and also as a means of providing debtors with an opportunity to obtain debt relief and a fresh start.

We believe the cornerstone of any bankruptcy system should be fairness: both to debtors who become bankrupt, but also to creditors who have their debts included into a bankruptcy; and it should be proportionate, striking the correct balance between the rights of creditors and the needs of debtors to seek relief from their unmanageable debts.

The financial failure of some consumers is an inevitable part of any modern credit based society and can arise for a number of different reasons: economic downturn, unemployment or illness, to name just a few. Often the media highlight the irresponsible or feckless behaviour of some debtors, but in our experience these examples are the exceptions to the rule and are unrepresentative of the majority of debtors who seek assistance from our members.

We believe it is important that modern bankruptcy law should treat debtors with fairness and compassion, but should also have sufficient safeguards in place to deal with those debtors who abuse or try and game the system.

We believe these safeguards exist in the form of offences that exist in the Bankruptcy Act 1988, which debtors can be prosecuted for; and by virtue of the fact the Official Assignee is able to apply to have a debtor's bankruptcy discharge deferred where they have been uncooperative or dishonest in their disclosure of assets and liabilities.

We also believe that in addition to the rights of debtors and creditors, the public interest in bankruptcy also has to be considered, so where debtors are unable to make payments to their creditors, there is no benefit for the creditor in delaying the discharge of the debtor beyond one year, but there is a cost to the public purse in administering the case.

We also believe there is a cost to society in unnecessarily delaying the discharge of debtors as it increases the occurrence of financial exclusion within the State.

On 17 June 2015, APIP held a meeting of its members at Portlaoise Heritage Hotel and discussed the bankruptcy reform and our submission to the Committee. Following those discussions we make the following recommendations to the Committee:

Recommendations and comments to the Committee on the period for bankruptcy:

- We believe that where debtors have fully co-operate with the Official Assignee and make a full and honest disclosure of all their assets and liabilities, there is no public good served by delaying a debtor's discharge beyond one year;
- We believe the majority of bankrupts will be consumers and will have no alternative but to petition for their bankruptcy as their circumstances will not allow them to apply for an Arrangement under the Personal Insolvency Act 2012 or creditors will have rejected any proposal they have made for such an Arrangement;
- We do not accept that one year bankruptcy is bankruptcy light. A debtor's estate still vests with the Official Assignee and where assets can be realised for the benefit of the creditors, they will still be realised.
- We do believe, however, the stigma of bankruptcy and the restrictions associated with it are onerous and harsh and where the bankruptcy arises from no fault of the debtor or through their misfortune, we believe providing a discharge for the bankruptcy after one year is proportionate;
- We do, however, believe more Arrangements under the Personal Insolvency Act 2012 will be accepted by creditors if the bankruptcy payment period is reduced, as Arrangements will offer creditors better returns. This will mean more negotiated Arrangements and less homes lost through insolvency;
- We believe that by reducing the bankruptcy period from three years to one year, this means the poorest of debtors who are unable to enter an Income Payment Agreement (IPA) with the Official Assignee will be able to move on with their lives sooner, as no IPA can be applied for after the debtor has been discharged. This will prevent further costs to the public purse of administering cases that are of no benefit to creditors;
- We believe the biggest threat in relation to forum shopping or bankruptcy tourism, is posed not by debtors coming to Ireland, but by some of our most innovative and entrepreneurial citizens choosing to leave Ireland to seek remedies elsewhere;
- We believe that by reducing the income payment periods from five years to three years, this brings the Irish bankruptcy regime into line with neighbouring states and is the most effective safeguard against bankruptcy tourism. We also believe it brings the law of bankruptcy into line with the recommendations of the European Commission in its Entrepreneurship Action Plan 2020[i].
- We believe scope for abuse will be negligible as the Official Assignee will still be able to apply for the debtor's discharge to be deferred under S85A of the Bankruptcy Act 1988.

[1] Para: 3.5, Entrepreneurship Action Plan 2020, European Commission, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0795:FIN:EN:PDF