

January 2015

# 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.**

**IT IS IMPORTANT TO EMPHASISE THAT THESE POSSIBLE SCENARIOS ARE FOR ILLUSTRATIVE PURPOSES ONLY.**

**THE ISI DOES NOT PROVIDE FINANCIAL ADVICE.**

**Date of publication: January 2015**

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## SCENARIO 1

### BANKRUPTCY– 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 debt.**

#### 1. GERRY'S STORY

Gerry is an IT consultant who earns a monthly net income of € 3,052. 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 which is valued at € 1,500. 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 € 1,030
- Unsecured debt repayments of € 1,650

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.

## 2. GERRY'S CURRENT INSOLVENT POSITION

Assets	Value	Loan	Monthly Income	
Family Home	€ 180,000	€ 160,000	Net Income	€ 3,052
Car	€ 3,500			
Furniture	€ 1,500			
<b>Total</b>	<b>€ 185,000</b>	<b>€ 160,000</b>	<b>Total</b>	<b>€ 3,052</b>
Debts			Monthly expenses	
<b>Secured debts</b>			Total Set Costs <sup>1</sup>	€ 1,822
Family Home mortgage		€ 160,000	Rent/Mortgage <sup>2</sup>	€ 1,030
<b>Unsecured debts</b>			Childcare Costs <sup>2</sup>	€ 0
Personal loan		€ 85,000	<b>Reasonable Living Expenses</b>	<b>€ 2,852</b>
Credit Card debts		€ 35,000	<b>Available for unsecured debt service (€ 3,052-€ 2,852)</b>	€ 200
<b>Total</b>		<b>€ 280,000</b>	Unsecured debt repayments	(€ 1,650)
			<b>Deficit in meeting unsecured debt obligations (€ 200 -€ 1,650)</b>	<b>(€ 1,450)</b>

## 3. 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<sup>3</sup> which shows that his debts exceed his assets by € 95,000 [€ 280,000 - € 185,000]. [A minimum shortfall of € 20,000 is required.]

<sup>1</sup> 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 website ([www.isi.gov.ie](http://www.isi.gov.ie)). Gerry's circumstances meet those covered by Table 6. "Two adult household, one or more children, vehicle" of the Guide (Two adults € 1,407.50 + One child (age 7) €207.12 + One child (age 8) €207.12 = €1,821.74). For illustrative purposes and ease for the reader, the RLE figure is rounded to €1,822.

<sup>2</sup> 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".

<sup>3</sup> A Statement of Affairs is a document setting out the individuals assets, liabilities, income and expenditure at adjudication.

#### 4. DEBTOR JOURNEY TO ADJUDICATE HIMSELF/HERSELF BANKRUPT

1	Pay fee	Transfer € 200 to the Official Assignee in the Bankruptcy Division of the ISI, either electronically or using an interbank transfer. You should email the Bankruptcy Division at <a href="mailto:bankruptcy@isi.gov.ie">bankruptcy@isi.gov.ie</a> to confirm your lodgement and attach a scanned copy bank lodgement confirming your payment. We will then forward a receipt to you by email. You must produce this email receipt when issuing the petition at the Office of the Examiner of the High Court. The relevant account details are set out at Appendix 1: Official Assignee's Account Details.
2	Complete documents	Prepare Petition, which must be verified by Affidavit and a Statement of Affairs. Both the Affidavit and Statement of Affairs must be sworn. Please read carefully the notes for completion of forms at <a href="http://www.isi.gov.ie/en/ISI/Pages/BankruptcyDocuments">www.isi.gov.ie/en/ISI/Pages/BankruptcyDocuments</a> .
3	Swear Affidavit	The Affidavit is filed to verify that everything said in the Petition is true. An Affidavit is a written, signed and sworn statement which allows a person to formally affirm something to be true before a person that is authorised to witness the statement (such as a practising solicitor, Commissioner for Oaths or an officer of the Court. There may be a nominal fee on making the Affidavit.
4	Get Court date	File the stamped documents and Statement of Affairs in the Examiner's Office. You must bring the receipt for the € 200 payment to the Official Assignee with you. You will be provided with a Court date once the Examiner's Office is satisfied that all of your papers are in order for submission to the Court.
5	Declared bankrupt	At the Court hearing the Judge, if satisfied that all qualifying requirements have been met, will make an order adjudicating you bankrupt. Normally you will be served with a copy of the Order of Adjudication (Bankruptcy Order) and Warrant of Seizure by the Bankruptcy Inspector in the Bankruptcy Division of the ISI on the same day.
6	Meet Official Assignee	An appointment will be arranged for you to attend the ISI. You will be interviewed about all of your assets and debts. You must fully co-operate with the Official Assignee and his staff in the administration of your estate.
7	Statutory Sitting	Place advert in Iris Oifigiúil & a national daily newspaper* publicising your bankruptcy and the date of your statutory sitting in the High Court. Your creditors may attend the sitting and submit claims or send same to the Bankruptcy Division of the ISI.
8	Next three years	Periodic reviews (every 6 months) of your financial circumstances and ongoing obligation to co-operate with the Official Assignee and his staff in the administration of your estate.
9	Discharged	Automatic discharge from bankruptcy after 3 years. Ownership of any unsold property or other assets remain with Official Assignee. If an Income Payment Order/Agreement has been made in your case, you must continue to comply with this for up to 5 years from date of Order/signing of Agreement.

\* The Companies (Miscellaneous Provisions) Act 2013 contains a provision which provides an alternative to the requirement to advertise details of a petition for bankruptcy in a national newspaper. The provision provides for a person to publish details of the bankruptcy on the ISI website, at no cost.

## 5. DEBTOR JOURNEY TO BECOMING BANKRUPT

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) Gerry (the applicant) will lodge € 200 electronically with the Bankruptcy Division of the ISI, for which he will get a receipt (details of this account are available in Appendix 1). You should email the Bankruptcy Division at [bankruptcy@isi.gov.ie](mailto:bankruptcy@isi.gov.ie) to confirm your lodgement and attach a scanned copy bank lodgement confirming your payment. We will then forward a receipt to you by email. You must produce this email receipt when issuing the petition at the Office of the Examiner of the High Court.

### The Examiner's Office

- b) Gerry or his 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 Courts Service website (<http://www.courts.ie/rules.nsf/SuperiorApps?OpenView>) – see Rules of Superior Court (Bankruptcy) 2013 Appendix O - and the ISI's website for completion by the applicant or their solicitor. The Affidavit sworn by him must include a statement that he has made reasonable efforts to reach a satisfactory arrangement with the creditors relating to his debts. The Statement of Affairs details your his property, income and liabilities. Notes to aid in the completion of the forms are available on the ISI website.
- c) The Petition and Statement of Affairs are usually sworn before a Commissioner for Oaths or practising Solicitor.
- d) After he has sworn his Affidavit, he can submit your completed forms to the Examiner's Office. He can do this in person or by post to the Examiner's Office. (Phoenix House, Phoenix St North, Smithfield, Dublin 7. Email: [examinersmail@courts.ie](mailto:examinersmail@courts.ie))

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

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

1. **The Petition** (Form no. 13, Appendix O, Rules of The Superior Courts) with accompanying Affidavit sworn by him, plus 3 copies. There is no stamp duty on this form.
2. **His Statement of Affairs** (Form no. 23, Appendix O, Rules of The Superior Courts) plus 3 copies. There is no stamp duty on this form. Both the Statement of Affairs and Affidavit must be sworn by a Commissioner of Oaths or practising Solicitor (a nominal fee may apply).

In addition to the above documents, he will also be required to attach the following (partially completed) forms (e.g. name inserted) which will be fully completed after he is formally declared bankrupt:

3. **Order of Adjudication** (Form no. 15 Appendix O, Rules of The Superior Courts) and 3 copies. There is no stamp duty due on this form.
  4. **Warrant of Seizure** (Form no. 46 Appendix O, Rules of The Superior Courts) and 3 copies. There is no stamp duty due on this form.
  5. **Notice of adjudication and Statutory Sitting** (Form no. 19 Appendix O, Rules of the Superior Courts) and 3 copies. There is no stamp duty due on this form.
- e) When the relevant papers have been accepted by the Examiner's Office he will be given a Court hearing date by them.
- f) Dates are allocated based on the number of applications on the bankruptcy list and other factors.
- g) Once he has been given a Court date he 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](http://www.courts.ie)
- h) The process to apply for his bankruptcy remains private and confidential until Gerry has been adjudicated bankrupt. From this point court documents are available in the Examiners Office for public inspection.



## Appearance at the High Court

- i) At the Court appearance if the Court is satisfied that all of his papers are in order, the Judge will adjudicate him bankrupt.
- j) The Court may advise him to make contact with the Bankruptcy Inspector on the day of his adjudication to progress his case.
- k) He is required to attend his statutory Court sitting in order to notify his creditors of his bankruptcy. He must undertake to pay the costs of placing an advertisement in Iris Oifigiúil and one national daily newspaper\* in order to notify creditors of his bankruptcy and the date of his statutory Court sitting.
- l) When the Court adjudicates him bankrupt, ownership of all his property will transfer to the Official Assignee including his interest in the family home.
- m His unsecured creditors can no longer seek repayment directly from him. They must make a claim to the Official Assignee and all correspondence should be forwarded to him
- n) His secured creditors can:
  - rely on security (i.e. sell property or allow mortgage be paid off) 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 ISI Bankruptcy Division

- o) The Official Assignee will negotiate an Income Payment Agreement or seek an Income Payment Order for the surplus of his income over his Reasonable Living Expenses. This agreement order will last for a period of up to 5 years.
- p) He will be automatically discharged from bankruptcy in 3 years.
- q) Ownership of any property or assets which are unsold remain with the Official Assignee after he is discharged, until they are sold.

\* The Companies (Miscellaneous Provisions) Act 2013 contains a provision which provides an alternative to the requirement to advertise details of a petition for bankruptcy in a national newspaper. The provision provides for a person to publish details of the bankruptcy on the ISI website, at no cost.

## **6. POSSIBLE OUTCOME FOR GERRY FROM BANKRUPTCY**

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

The Official Assignee will assess the current mortgage payments being made by Gerry to ensure it is a reasonable accommodation expense in the circumstances. It is assumed in this scenario that the Official Assignee believes the mortgage repayments to be reasonable.

### **FAMILY HOME**

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

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.

His wife will have the option to purchase the Official Assignee's interest in the family home for € 10,000 [50% of the Equity]. The Official Assignee will have to apply to Court to sell this interest to Sheila. 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. The Court will consider the interests of the creditors, Sheila and their children in considering 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 entitled to retain personal goods up to a cumulative value of € 6,000.

### **INCOME**

The Official Assignee will seek an Income Payment Agreement shortly after adjudication for the surplus of Gerry's income over his Reasonable Living Expenses. This agreement, which will be reviewable every six months will last up to 5 years.

Gerry's monthly income and expenses after adjudication

Net monthly income	€ 3,052
Less	
Total Set Costs	€ 1,822
Rent/Mortgage	€ 1,030
<b>Reasonable Living Expenses</b>	<b>€ 2,852</b>
<b>Available to bankruptcy estate</b>	<b>€ 200</b>

For the purposes of this scenario it is assumed that Gerry reaches an Income Payment Agreement with the Official Assignee and there is € 200 per month available to the bankruptcy estate after having deducted sufficient sums in respect of Reasonable Living Expenses.

There will be a total amount of € 12,950 (See Appendix A) available for unsecured creditors as a final distribution of the estate. Gerry will be automatically discharged from bankruptcy after three years once he has fully cooperated with the Official Assignee.

### Gerry's position before and after bankruptcy

Assets	Before bankruptcy	Dividend	Debt write down	Post bankruptcy	Repayment %
Family Home	€ 180,000				
Car	€ 3,500			€ 1,750 <sup>1</sup>	
Furniture	€ 1,500			€ 1,500	
<b>Total</b>	<b>€ 185,000</b>	<b>€ 0</b>	<b>€ 0</b>	<b>€ 3,250</b>	
<b>Debts</b>					
<b>Secured debts</b>					
Family Home	€ 160,000				
<b>Unsecured debts</b>					
Personal loan	€ 85,000	(€ 9,173)	(€ 75,827)	€ 0	<b>11%</b>
Credit card debts	€ 35,000	(€ 3,777)	(€ 31,223)	€ 0	<b>11%</b>
<b>Bankruptcy Fees</b>		(€ 9,050)			
<b>Total (100%)</b>	<b>€ 280,000</b>	<b>(€ 22,000)</b>	<b>(€ 107,050)</b>	<b>€ 0</b>	
Deficiency/Surplus	(€ 95,000)			€ 3,250	

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

Administration Fee	€ 2,000
Realisation Fee	€ 6,550 <sup>2</sup>
Distribution Fee	€ 500
<b>TOTAL FEE</b>	<b>€ 9,050</b>

1 For the purposes of this scenario it is assumed the car has depreciated €1,750 over the course of the bankruptcy.

2 The Realisation Fee is calculated based on a sliding scale as follows: Administration Fee amount @ 0%, the next €1,500 @ 100%, the next €6,500 @ 50% , the balance up to €1m at 15% and the balance thereafter at 1%.

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

- a) Gerry will have repaid € 12,950 of his unsecured debts and the remaining € 107,050 is written off. This represents a 11% return for the unsecured creditors based on amounts outstanding prior to Gerry being adjudicated bankrupt.
- b) Gerry is solvent.
- c) After three years 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.
- d) Gerry's accommodation costs / mortgage repayments are reasonable as assessed by the Official Assignee having regard to the ISI Reasonable Living Expenses Guidelines.
- e) The family home is held in Sheila's sole name and Gerry pays the mortgage going forward.
- f) After up to 5 years of making payments to the bankruptcy estate Gerry's Income Payment Agreement will cease. The proceeds of these payments will then be distributed by dividend to the unsecured creditors.

## 8. APPENDICES

### Appendix A: Dividend Payment to Unsecured Creditors

<b>Assets Realised</b>			
Family Home	€ 10,000		
<b>Income Contribution</b>			
€ 200 x 60 months	€ 12,000		
<b>Dividend Calculation</b>			
Total Assets Realised in Estate	€ 22,000		
Less Costs and Fees	<u>(€ 9,050)</u>		
<b>Available to unsecured Creditors</b>	<b>€ 12,950</b>		
Unsecured Creditors	-	Dividend Paid	Percentage Return
Personal loan	€ 85,000	€ 9,173	11%
Credit Card	€ 35,000	€ 3,777	11%
<b>Total</b>	<b>€ 120,000</b>	<b>€ 12,950</b>	<b>11%</b>

## SCENARIO 2

### BANKRUPTCY – NEGATIVE 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 no equity and includes the possible outcome for both secured and unsecured debt.**

#### 1. LEO'S STORY

Leo is an area manager for a retail company who earns a monthly net income of €3,625. 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 € 5,000 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 € 1,300

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.

## 2. LEO'S CURRENT INSOLVENT POSITION

Assets	Value	Loan	Monthly Income	
Family Home	€ 150,000	€ 260,000	Net Income	€ 3,625
Car	€ 5,000			
Furniture	€ 1,500			
<b>Total</b>	<b>€ 156,500</b>	€ 260,000	<b>Total</b>	<b>€ 3,625</b>
Debts			Monthly expenses	
Secured debts			Total Set Costs <sup>1</sup>	€ 2,040
Family Home mortgage		€ 260,000	Rent/Mortgage <sup>2</sup>	€ 1,475
Unsecured debts			Childcare Costs <sup>2</sup>	€ 0
Personal loan		€ 70,000	Reasonable Living Expenses	€ 3,515
Credit Card debts		€ 18,000	Available for unsecured debt service (€ 3,625-€ 3,515)	€ 110
<b>Total</b>			Unsecured debt repayments	(€ 1,300)
		€ 348,000	Deficit in meeting unsecured debt obligations (€ 110 - € 1,300)	(€ 1,190)

## 3. 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<sup>3</sup> which shows that his debts exceed his assets by at least € 20,000. In this case debts exceed assets by € 191,500 (€ 348,000 - € 156,500).

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 website ([www.isi.gov.ie](http://www.isi.gov.ie)). Leo's circumstances meet those covered by Table 6. "Two adult household, one or more children, vehicle" of the Guide (Two adults € 1,407.50 + One child (age 7) €207.12 + One child (age 8) €207.12 + One child (age 5) €207.12 + Third child adjustment €10.81 = €2,039.67). For illustrative purposes and ease for the reader, the RLE figure is rounded to €2,040.

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 individuals assets, liabilities, income and expenditure at adjudication.

#### 4. DEBTOR JOURNEY TO ADJUDICATE HIMSELF/HERSELF BANKRUPT

1	Pay fee	Transfer € 200 to the Official Assignee in the Bankruptcy Division of the ISI, either electronically or using an interbank transfer. You should email the Bankruptcy Division at <a href="mailto:bankruptcy@isi.gov.ie">bankruptcy@isi.gov.ie</a> to confirm your lodgement and attach a scanned copy bank lodgement confirming your payment. We will then forward a receipt to you by email. You must produce this email receipt when issuing the petition at the Office of the Examiner of the High Court. The relevant account details are set out at Appendix 1: Official Assignee's Account Details.
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3	Swear Affidavit	The Affidavit is filed to verify that everything said in the Petition is true. An Affidavit is a written, signed and sworn statement which allows a person to formally affirm something to be true before a person that is authorised to witness the statement (such as a practising solicitor, Commissioner for Oaths or an officer of the Court. There may be a nominal fee on making the Affidavit.
4	Get Court date	File the stamped documents and Statement of Affairs in the Examiner's Office. You must bring the receipt for the € 200 payment to the Official Assignee with you. You will be provided with a Court date once the Examiner's Office is satisfied that all of your papers are in order for submission to the Court.
5	Declared bankrupt	At the Court hearing the Judge, if satisfied that all qualifying requirements have been met, will make an order adjudicating you bankrupt. Normally you will be served with a copy of the Order of Adjudication (Bankruptcy Order) and Warrant of Seizure by the Bankruptcy Inspector in the Bankruptcy Division of the ISI on the same day.
6	Meet Official Assignee	An appointment will be arranged for you to attend the ISI. You will be interviewed about all of your assets and debts. You must fully co-operate with the Official Assignee and his staff in the administration of your estate.
7	Statutory Sitting	Place advert in Iris Oifigiúil & a national daily newspaper* publicising your bankruptcy and the date of your statutory sitting in the High Court. Your creditors may attend the sitting and submit claims or send same to the Bankruptcy Division of the ISI.
8	Next three years	Periodic reviews (every 6 months) of your financial circumstances and ongoing obligation to co-operate with the Official Assignee and his staff in the administration of your estate.
9	Discharged	Automatic discharge from bankruptcy after 3 years. Ownership of any unsold property or other assets remain with Official Assignee. If an Income Payment Order/Agreement has been made in your case, you must continue to comply with this for up to 5 years from date of Order/signing of Agreement.

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## 5. DEBTOR JOURNEY TO BECOMING BANKRUPT

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) Leo (the applicant) will lodge € 200 electronically with the Official Assignee in the Bankruptcy Division of the ISI, for which he will get a receipt (details of this account are available in Appendix 1). You should email the Bankruptcy Division at [bankruptcy@isi.gov.ie](mailto:bankruptcy@isi.gov.ie) to confirm your lodgement and attach a scanned copy bank lodgement confirming your payment. We will then forward a receipt to you by email. You must produce this email receipt when issuing the petition at the Office of the Examiner of the High Court.

### The Examiner's Office

- b) Leo or his 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 Courts Service website (<http://www.courts.ie/rules.nsf/SuperiorApps?OpenView>) – see Rules of Superior Court (Bankruptcy) 2013 Appendix O - and the ISI's website for completion by the applicant or their solicitor. The Affidavit sworn by him must include a statement that he has made reasonable efforts to reach a satisfactory arrangement with the creditors relating to his debts. The Statement of Affairs details your his property, income and liabilities. Notes to aid in the completion of the forms are available on the ISI website.
- c) The Petition and Statement of Affairs are usually sworn before a Commissioner for Oaths or practising Solicitor.
- d) After he has sworn his Affidavit, he can submit your completed forms to the Examiner's Office. He can do this in person or by post to the Examiner's Office. (Phoenix House, Phoenix St North, Smithfield, Dublin 7. Email: [examinersmail@courts.ie](mailto:examinersmail@courts.ie))

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

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

6. **The Petition** (Form no. 13, Appendix O, Rules of The Superior Courts) with accompanying Affidavit sworn by him, plus 3 copies. There is no stamp duty on this form.
7. **His Statement of Affairs** (Form no. 23, Appendix O, Rules of The Superior Courts) plus 3 copies. There is no stamp duty on this form. Both the Statement of Affairs and Affidavit must be sworn by a Commissioner of Oaths or practising Solicitor (a nominal fee may apply).

In addition to the above documents, he will also be required to attach the following (partially completed) forms (e.g. name inserted) which will be fully completed after he is formally declared bankrupt:

8. **Order of Adjudication** (Form no. 15 Appendix O, Rules of The Superior Courts) and 3 copies. There is no stamp duty due on this form.
  9. **Warrant of Seizure** (Form no. 46 Appendix O, Rules of The Superior Courts) and 3 copies. There is no stamp duty due on this form.
  10. **Notice of adjudication and Statutory Sitting** (Form no. 19 Appendix O, Rules of the Superior Courts) and 3 copies. There is no stamp duty due on this form.
- e) When the relevant papers have been accepted by the Examiner's Office he will be given a Court hearing date by them.
  - f) Dates are allocated based on the number of applications on the bankruptcy list and other factors.
  - g) Once he has been given a Court date he 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](http://www.courts.ie)
  - h) The process to apply for his bankruptcy remains private and confidential until Leo has been adjudicated bankrupt. From this point court documents are available in the Examiners Office for public inspection.

## Appearance at the High Court

- i) At the Court appearance if the Court is satisfied that all of his papers are in order, the Judge will adjudicate him bankrupt.
- j) The Court may advise him to make contact with the Bankruptcy Inspector on the day of his adjudication to progress his case.
- k) He is required to attend his statutory Court sitting in order to notify his creditors of his bankruptcy. He must undertake to pay the costs of placing an advertisement in Iris Oifigiúil and one national daily newspaper\* in order to notify creditors of his bankruptcy and the date of his statutory Court sitting.
- l) When the Court adjudicates him bankrupt, ownership of all his property will transfer to the Official Assignee including his interest in the family home.
- m) His unsecured creditors can no longer seek repayment directly from him. They must make a claim to the Official Assignee and all correspondence should be forwarded to him.
- n) His secured creditors can:
  - rely on security (i.e. sell property or allow mortgage be paid off) 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 ISI Bankruptcy Division

- o) The Official Assignee will negotiate an Income Payment Agreement or seek an Income Payment Order for the surplus of his income over his Reasonable Living Expenses. This agreement order will last for a period of up to 5 years.
- p) He will be automatically discharged from bankruptcy in 3 years.
- q) Ownership of any property or assets which are unsold remain with the Official Assignee after he is discharged, until they are sold.

\* The Companies (Miscellaneous Provisions) Act 2013 contains a provision which provides an alternative to the requirement to advertise details of a petition for bankruptcy in a national newspaper. The provision provides for a person to publish details of the bankruptcy on the ISI website, at no cost.

## **6. POSSIBLE OUTCOME FOR LEO FROM BANKRUPTCY**

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

The Official Assignee will assess the current mortgage payments by Leo to ensure it is a reasonable accommodation expense in the circumstances. It is assumed in this scenario that the Official Assignee believes the mortgage repayments to be reasonable.

### **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.

Nora will have the option to purchase the Official Assignee's interest in the family home for an agreed sum plus the Official Assignee's costs. As there is no value in the Official Assignee's interest in the property, he may choose to sell the family home to Nora for a reasonable sum. In determining a figure the Official Assignee will have regard to the value of the property, the amount of negative equity and how long the property may remain in negative equity. He will further have regard to the other assets and circumstances in the bankruptcy estate. The Official Assignee is bound to achieve the best possible return for the creditors and in that regard each individual case will be assessed differently. For the purposes of this scenario the Official Assignee values the interest at € 5,000 and estimates costs of € 2,500. The Official Assignee will have to apply to Court to sell this interest to Nora. If Nora cannot purchase the Official Assignee's interest this will remain vested in the Official Assignee.

### **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. If Leo's share of the furniture and car is in excess of this figure Leo must choose which of his assets to choose as essential assets.

## INCOME

The Official Assignee will seek an Income Payment Agreement shortly after adjudication for the surplus of Leo's income over his allowed Reasonable Living Expenses. This agreement, which will be reviewable every six months will last up to 5 years. The Official Assignee will assess the current mortgage payments by Leo to ensure it is a reasonable accommodation expense in the circumstances. It is assumed in this scenario that the Official Assignee believes the mortgage repayments to be reasonable.

### Leo's monthly income and expenses after adjudication

Net monthly income	€ 3,625
Less	
Total Set Costs	€ 2,040
Rent/Mortgage	€ 1,475
Reasonable Living Expenses	€ 3,515
Available to bankruptcy estate	€ 110

For the purposes of this scenario it is assumed that Leo reaches an Income Payment Agreement with the Official Assignee and there is € 110 per month available to the bankruptcy estate after having deducted sufficient sums in respect of Reasonable Living Expenses.

There will be a total amount of € 4,110 (See Appendix A) available for unsecured creditors as a final distribution of the estate, and Leo has no repayment obligation for the remaining unsecured debt. Leo will be automatically discharged from bankruptcy after three years once he has fully cooperated with the Official Assignee.

### Leo's position before and after bankruptcy

Assets	Before bankruptcy	Dividend	Debt write down	After OA Income Payment Order	Repayment %
Family Home	€ 150,000				
Car	€ 5,000			€ 3,000 <sup>1</sup>	
Furniture	€ 750			€ 750 <sup>2</sup>	
<b>Total</b>	<b>€ 156,500</b>			<b>€ 3,750</b>	
<b>Debts</b>					
Secured debts					
Family Home	€ 260,000				
Unsecured debts					
Personal loan	€ 70,000	€ 3,269	(€ 66,731)	€ 0	5%
Credit card debts	€ 18,000	€ 841	(€ 17,159)	€ 0	5%
Bankruptcy Fees		€ 7,490			
<b>Total (100%)</b>	<b>€ 348,000</b>	<b>€ 11,600</b>	<b>€ 86,951</b>	<b>€ 0</b>	
Deficiency/Surplus	(€ 191,500)			€ 3,750	

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

Administration Fee	€ 2,000
Realisation Fee	€ 4,990 <sup>3</sup>
Distribution Fee	€ 500
<b>TOTAL FEE</b>	<b>€ 7,490</b>

<sup>1</sup> For the purposes of this scenario it is assumed the car has depreciated €2,000 over the course of the bankruptcy.

<sup>2</sup> Assumed Leo owns 50% of the furniture with Nora.

<sup>3</sup> The Realisation Fee is calculated based on a sliding scale as follows: Administration Fee amount @ 0%, the next €1,500 @ 100%, the next €6,500 @ 50%, the balance up to €1m at 15% and the balance thereafter at 1%.

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

- g) Leo will have repaid a certain percentage of his unsecured debts and the remaining amount is written off. This represents a 5% return for the unsecured creditors based on amounts outstanding prior to Leo being adjudicated bankrupt.
- h) Leo is solvent.
- i) After three years 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.
- j) Leo's accommodation costs / mortgage repayments are reasonable as assessed by the Official Assignee having regard to the ISI Reasonable Living Expenses Guidelines.
- k) The family home is held in Nora's sole name and Leo pays the mortgage going forward.
- l) After 5 years of making income payments to the bankruptcy estate Leo's Income Payment Agreement will cease. The proceeds of these payments will then be distributed by dividend to the unsecured creditors.

## 8. APPENDICES

### Appendix A: Dividend Payment to Unsecured Creditors

Assets Realised			
Family Home	€ 5,000		
Income Contribution			
€ 110 x 60 months	€ 6,600		
Dividend Calculation			
Total Assets Realised in Estate	€ 11,600		
Less Costs and Fees	(€ 7,490)		
Available to unsecured Creditors	€ 4,110		
Unsecured Creditors		Dividend Paid	Percentage Return
Personal loan	€ 70,000	€ 3,269	5%
Credit Card	€ 18,000	€ 841	5%
<b>Total</b>	<b>€ 88,000</b>	<b>€ 4,110</b>	

## SCENARIO 3

### 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 debt.**

#### 1. MARTIN'S STORY

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 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 € 821 (50% of mortgage payment)
- Mortgage repayments on apartment of € 676 (50% of the mortgage payment)
- Unsecured debt repayments of € 1,500

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.



## 2. MARTIN'S CURRENT INSOLVENT POSITION

Assets	Value	Loan	Monthly Income	
Family Home	€ 300,000	€ 255,000	Net Income	€ 1,555
Apartment	€ 130,000	€ 210,000	Apartment Rent	€ 450
Car	€ 9,000			
Furniture	€1,500			
<b>Total</b>	<b>€ 440,500</b>	<b>€ 465,000</b>	<b>Total</b>	<b>€ 2,005</b>
Debts			Monthly expenses	
<b>Secured debts</b>			Total Set Costs <sup>1</sup>	€ 737
Family home mortgage		€ 255,000	Rent/Mortgage <sup>2</sup>	€ 821
Apartment mortgage		€ 210,000	Childcare Costs <sup>2</sup>	€ 0
<b>Unsecured debts</b>			<b>Reasonable Living Expenses</b>	<b>€ 1,558</b>
Bank Overdraft		€ 45,000	Apartment Mortgage Repayments	€ 676
Credit Card debts		€ 53,000	<b>Total expenses before unsecured debt repayments</b>	<b>€ 2,234</b>
<b>Total</b>		<b>€ 563,000</b>	<b>Deficiency prior to meeting unsecured debt obligations (€2,005-€2,234)</b>	<b>(€ 229)</b>

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 website ([www.isi.gov.ie](http://www.isi.gov.ie)). Martin's circumstances meet those covered by Table 8. "Two adult household, no children, vehicle" of the Guide (Two adults = € 1,473.29). For the purposes of this scenario it is assumed that Martina and Monica split the Total Set costs between them, leaving €736.65 for each to bear. For illustrative purposes and ease for the reader, the RLE figure is rounded to €737.

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. 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<sup>1</sup> 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).

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<sup>1</sup> A Statement of Affairs is a document setting out the individuals assets, liabilities , income and expenditure at adjudication.

#### 4. DEBTOR JOURNEY TO ADJUDICATE HIMSELF/HERSELF BANKRUPT

1	Pay fee	Transfer € 200 to the Official Assignee in the Bankruptcy Division of the ISI, either electronically or using an interbank transfer. You should email the Bankruptcy Division at <a href="mailto:bankruptcy@isi.gov.ie">bankruptcy@isi.gov.ie</a> to confirm your lodgement and attach a scanned copy bank lodgement confirming your payment. We will then forward a receipt to you by email. You must produce this email receipt when issuing the petition at the Office of the Examiner of the High Court. The relevant account details are set out at Appendix 1: Official Assignee's Account Details.
2	Complete documents	Prepare Petition, which must be verified by Affidavit and a Statement of Affairs. Both the Affidavit and Statement of Affairs must be sworn. Please read carefully the notes for completion of forms at <a href="http://www.isi.gov.ie/en/ISI/Pages/BankruptcyDocuments">www.isi.gov.ie/en/ISI/Pages/BankruptcyDocuments</a> .
3	Swear Affidavit	The Affidavit is filed to verify that everything said in the Petition is true. An Affidavit is a written, signed and sworn statement which allows a person to formally affirm something to be true before a person that is authorised to witness the statement (such as a practising solicitor, Commissioner for Oaths or an officer of the Court. There may be a nominal fee on making of the Affidavit.
4	Get Court date	File the stamped documents and Statement of Affairs in the Examiner's Office. You must bring the receipt for the € 200 payment to the Official Assignee with you. You will be provided with a Court date once the Examiner's Office is satisfied that all of your papers are in order for submission to the Court.
5	Declared bankrupt	At the Court hearing the Judge, if satisfied that all qualifying requirements have been met, will make an order adjudicating you bankrupt. Normally you will be served with a copy of the Order of Adjudication (Bankruptcy Order) and Warrant of Seizure by the Bankruptcy Inspector in the Bankruptcy Division of the ISI on the same day.
6	Meet Official Assignee	An appointment will be arranged for you to attend the ISI. You will be interviewed about all of your assets and debts. You must fully co-operate with the Official Assignee and his staff in the administration of your estate.
7	Statutory Sitting	Place advert in Iris Oifigiúil & a national daily newspaper* publicising your bankruptcy and the date of your statutory sitting in the High Court. Your creditors may attend the sitting and submit claims or send same to the Bankruptcy Division of the ISI.
8	Next three years	Periodic reviews (every 6 months) of your financial circumstances and ongoing obligation to co-operate with the Official Assignee and his staff in the administration of your estate.
9	Discharged	Automatic discharge from bankruptcy after 3 years. Ownership of any unsold property or other assets remain with Official Assignee. If an Income Payment Order/Agreement has been made in your case, you must continue to comply with this for up to 5 years from date of Order/signing of Agreement.

\* The Companies (Miscellaneous Provisions) Act 2013 contains a provision which provides an alternative to the requirement to advertise details of a petition for bankruptcy in a national newspaper. The provision provides for a person to publish details of the bankruptcy on the ISI website, at no cost.

## 5. DEBTOR JOURNEY TO BECOMING BANKRUPT

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) Martin (the applicant) will lodge € 200 electronically with the Bankruptcy Division of the ISI, for which he will get a receipt (details of this account are available in Appendix 1). You should email the Bankruptcy Division at [bankruptcy@isi.gov.ie](mailto:bankruptcy@isi.gov.ie) to confirm your lodgement and attach a scanned copy bank lodgement confirming your payment. We will then forward a receipt to you by email. You must produce this email receipt when issuing the petition at the Office of the Examiner of the High Court.

### The Examiner's Office

- b) Martin or his 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 Courts Service website (<http://www.courts.ie/rules.nsf/SuperiorApps?OpenView>) – see Rules of Superior Court (Bankruptcy) 2013 Appendix O - and the ISI's website for completion by the applicant or their solicitor. The Affidavit sworn by him must include a statement that he has made reasonable efforts to reach a satisfactory arrangement with the creditors relating to his debts. The Statement of Affairs details your his property, income and liabilities. Notes to aid in the completion of the forms are available on the ISI website.
- c) The Petition and Statement of Affairs are usually sworn before a Commissioner for Oaths or practising Solicitor.
- d) After he has sworn his Affidavit, he can submit your completed forms to the Examiner's Office. He can do this in person or by post to the Examiner's Office. (Phoenix House, Phoenix St North, Smithfield, Dublin 7. Email: [examinersmail@courts.ie](mailto:examinersmail@courts.ie))

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

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

11. **The Petition** (Form no. 13, Appendix O, Rules of The Superior Courts) with accompanying Affidavit sworn by him, plus 3 copies. There is no stamp duty on this form.

12. **His Statement of Affairs** (Form no. 23, Appendix O, Rules of The Superior Courts) plus 3 copies. There is no stamp duty on this form. Both the Statement of Affairs and Affidavit must be sworn by a Commissioner of Oaths or practising Solicitor (a nominal fee may apply).

In addition to the above documents, he will also be required to attach the following (partially completed) forms (e.g. name inserted) which will be fully completed after he is formally declared bankrupt:

13. **Order of Adjudication** (Form no. 15 Appendix O, Rules of The Superior Courts) and 3 copies. There is no stamp duty due on this form.

14. **Warrant of Seizure** (Form no. 46 Appendix O, Rules of The Superior Courts) and 3 copies. There is no stamp duty due on this form.

15. **Notice of adjudication and Statutory Sitting** (Form no. 19 Appendix O, Rules of the Superior Courts) and 3 copies. There is no stamp duty due on this form.

- e) When the relevant papers have been accepted by the Examiner's Office he will be given a Court hearing date by them.
- f) Dates are allocated based on the number of applications on the bankruptcy list and other factors.
- g) Once he has been given a Court date he 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](http://www.courts.ie)
- h) The process to apply for his bankruptcy remains private and confidential until Martin has been adjudicated bankrupt. From this point court documents are available in the Examiners Office for public inspection.

## Appearance at the High Court

- i) At the Court appearance if the Court is satisfied that all of his papers are in order, the Judge will adjudicate him bankrupt.
- j) The Court may advise him to make contact with the Bankruptcy Inspector on the day of his adjudication to progress his case.
- k) He is required to attend his statutory Court sitting in order to notify his creditors of his bankruptcy. He must undertake to pay the costs of placing an advertisement in Iris Oifigiúil and one national daily newspaper\* in order to notify creditors of his bankruptcy and the date of his statutory Court sitting.
- l) When the Court adjudicates him bankrupt, ownership of all his property will transfer to the Official Assignee including his interest in the family home.
- m) His unsecured creditors can no longer seek repayment directly from him. They must make a claim to the Official Assignee and all correspondence should be forwarded to him
- n) His secured creditors can:
  - rely on security (i.e. sell property or allow mortgage be paid off) 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 ISI Bankruptcy Division

- o) The Official Assignee will negotiate an Income Payment Agreement or seek an Income Payment Order for the surplus of his income over his Reasonable Living Expenses. This agreement/ order will last for a period of up to 5 years.
- p) He will be automatically discharged from bankruptcy in 3 years.
- q) Ownership of any property or assets which are unsold remain with the Official Assignee after he is discharged, until they are sold.

\* The Companies (Miscellaneous Provisions) Act 2013 contains a provision which provides an alternative to the requirement to advertise details of a petition for bankruptcy in a national newspaper. The provision provides for a person to publish details of the bankruptcy on the ISI website, at no cost.

## **6. POSSIBLE OUTCOME FOR MARTIN FROM BANKRUPTCY**

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

The Official Assignee will assess the current mortgage payments by Martin to ensure it is a reasonable accommodation expense in the circumstances. It is assumed in this scenario that the Official Assignee believes the mortgage repayments to be reasonable.

### **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.

Monica will have the option to purchase the Official Assignee's interest in the family home for € 22,500 [50% of the Equity]. The Official Assignee will have to apply to Court 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. The Court will consider the interests of the creditors, and 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 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 prove 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 and claims for the shortfall of € 80,000 in the bankruptcy.

## OTHER ASSETS

Martin has an entitlement to keep essential assets (e.g. car, furniture, tools of his trade) up to the value of € 6,000. As Martin's 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 shortly after adjudication for the surplus of Martin's income over his Reasonable Living Expenses. This agreement, which will be reviewed every six months will last up to 5 years.

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

### Martin's monthly income and expenses after adjudication

Net monthly income	€ 1,555
Less	
Total Set Costs	€ 737
Rent/Mortgage	€ 821
<b>Reasonable Living Expenses</b>	<b>€ 1,558</b>
<b>Available to bankruptcy estate</b>	<b>(€ 3)</b>

For the purposes of this scenario it is assumed that Martin cannot 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.

There will be a total amount of € 17,200 (See Appendix A) 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 three years once he has fully cooperated with the Official Assignee.



### Martin's position before and after bankruptcy

Assets	Before bankruptcy	Dividend	Debt write down	After OA Income Payment Order	Repayment %
Family Home	€ 300,000				
Apartment	€ 130,000				
Car	€ 9,000			€ 6,000 <sup>1</sup>	
Furniture	€ 1,500			€ 1,500	
<b>Total</b>	<b>€ 440,500</b>	<b>€ 0</b>	<b>€ 0</b>	<b>€ 7,500</b>	
<b>Debts</b>					
Secured debts					
Family Home	€ 255,000				
Apartment	€ 130,000				
Unsecured debts					
Personal loan	€ 45,000	(€ 4,348)	(€ 40,652)		9.6%
Credit card debts	€ 53,000	(€ 5,121)	(€ 47,879)		9.6%
Apartment	€ 80,000	(€ 7,731)	(€ 72,269)		9.6%
Bankruptcy Fees		(€ 9,800)			
<b>Total (100%)</b>	<b>€ 563,000</b>	<b>€ 27,000</b>	<b>€ 160,800</b>		
Deficiency/Surplus	(€ 122,500)			€ 7,500	

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

Administration Fee	€ 2,000
Realisation Fee	€ 7,300 <sup>2</sup>
Distribution Fee	€ 500
	<b>€ 9,800</b>

<sup>1</sup> We assume the car depreciates €3,000 over the life of the bankruptcy.

<sup>2</sup> The Realisation Fee is calculated based on a sliding scale as follows: Administration Fee amount @ 0%, the next €1,500 @ 100%, the next €6,500 @ 50%, the balance up to €1m at 15% and the balance thereafter at 1%.

## **7. MARTIN'S POSITION AFTER MEETING HIS DUTIES AND OBLIGATIONS UNDER BANKRUPTCY**

- m) Martin's unsecured debt has been discharged.
- n) Martin will have repaid € 17,200 of his unsecured debts and the remaining € 160,800 is written off. This represents a 9.6% return for the unsecured creditors based on amounts outstanding prior to Martin being adjudicated bankrupt.
- o) Martin is solvent.
- p) After three years 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.
- q) Martin's accommodation costs / mortgage repayments are reasonable as assessed by the Official Assignee having regard to the ISI Reasonable Living Expenses Guidelines.
- r) The family home is held in Monica's sole name and Martin pays a contribution to the mortgage going forward.
- s) Martin is not in a position currently to contribute to the bankruptcy estate. This will be reviewed and once he is in a position to do so an Income Payment Agreement will be put in place. The proceeds of these payments will then be distributed by dividend to the unsecured creditors.

## 8. APPENDICES

### APPENDIX A: DIVIDEND PAYMENT TO UNSECURED CREDITORS

Assets Realised			
Family Home	€ 22,500		
Car excess	€ 4,500		
<b>Total Assets in Estate</b>	<b>€ 27,000</b>		
Income Contribution			
€ - x 5 years	€ - <sup>1</sup>		
<b>Total Income in Estate</b>	<b>€ -</b>		
Dividend Calculation			
Total value in Estate	€ 27,000		
Less Costs and Fees	<u>€ 9,800</u>		
<b>Available to unsecured Creditors</b>	<b>€ 17,200</b>		
Unsecured Creditors		Dividend Paid	Percentage Return
Bank Overdraft	€ 45,000	€ 4,348	9.6%
Credit Card	€ 53,000	€ 5,121	9.6%
Apartment	€ 80,000	€ 7,731	9.6%
<b>Total</b>	<b>€ 178,000</b>	<b>€ 17,200</b>	

<sup>1</sup> Martin's Income and Expenditure will be reviewed on a six monthly basis. The proceeds of any contribution made to the bankruptcy estate will then be distributed by dividend to the unsecured creditors.

## SCENARIO 4

### BANKRUPTCY– APPLICANT ELIGIBLE

**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 debt.**

#### 1. ROBERT'S STORY

Robert is single, an architect and has been unemployed for almost 2 years. His only source of income is social welfare. 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 for €230,000 which 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 €1,544
- Mortgage repayment on buy to let property of €1,480
- Unsecured debt repayments of €220

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.

## 2. ROBERT'S CURRENT INSOLVENT POSITION

Assets	Value	Loan	Monthly Income	
Family Home	€ 270,000	€ 240,000	Net Income	€950
Buy to Let Property	€90,000	€230,000		
Car	€ 2,000			
<b>Total</b>	<b>€ 362,000</b>	<b>€ 470,000</b>	<b>Total</b>	<b>€ 950</b>
Debts			Monthly expenses	
<b>Secured debts</b>			Total Set Costs <sup>1</sup>	€ 1,045
Family Home mortgage		€240,000	Rent/Mortgage <sup>2</sup>	€ 1,544
Buy to Let mortgage		€230,000	Childcare Costs	-
<b>Unsecured debts</b>			<b>Reasonable Living Expenses</b>	<b>€2,589</b>
Personal loan		€10,000	Buy to Let Mortgage Repayments	€1,480
<b>Total</b>		<b>€480,000</b>	<b>Total expenses before unsecured debt repayments</b>	<b>€ 4,069</b>
			<b>Deficit prior to meeting unsecured debt obligations [€4,069 - €950]</b>	<b>€ (3,119)</b>

## 3. 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<sup>3</sup> which shows that his debts exceed his assets by €108,000. [A minimum shortfall of €20,000 is required.]

<sup>1</sup> 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 website ([www.isi.gov.ie](http://www.isi.gov.ie)). Robert's circumstances meet those covered by Table 2 "One adult household, vehicle" of the Guide (One adult, vehicle € 1,045.48). For illustrative purposes and ease for the reader, the RLE figure is rounded to €1,045.

<sup>2</sup> 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".

<sup>3</sup> A Statement of Affairs is a document setting out the individuals assets, liabilities, income and expenditure at adjudication.

#### 4. DEBTOR JOURNEY TO ADJUDICATE HIMSELF/HERSELF BANKRUPT

1	Pay fee	Transfer € 200 to the Official Assignee in the Bankruptcy Division of the ISI, either electronically or using an interbank transfer. You should email the Bankruptcy Division at <a href="mailto:bankruptcy@isi.gov.ie">bankruptcy@isi.gov.ie</a> to confirm your lodgement and attach a scanned copy bank lodgement confirming your payment. We will then forward a receipt to you by email. You must produce this email receipt when issuing the petition at the Office of the Examiner of the High Court. The relevant account details are set out at Appendix 1: Official Assignee's Account Details.
2	Complete documents	Prepare Petition, which must be verified by Affidavit and a Statement of Affairs. Both the Affidavit and Statement of Affairs must be sworn. Please read carefully the notes for completion of forms at <a href="http://www.isi.gov.ie/en/ISI/Pages/BankruptcyDocuments">www.isi.gov.ie/en/ISI/Pages/BankruptcyDocuments</a> .
3	Swear Affidavit	The Affidavit is filed to verify that everything said in the Petition is true. An Affidavit is a written, signed and sworn statement which allows a person to formally affirm something to be true before a person that is authorised to witness the statement (such as a practising solicitor, Commissioner for Oaths or an officer of the Court. There may be a nominal fee on making of the Affidavit.
4	Get Court date	File the stamped documents and Statement of Affairs in the Examiner's Office. You must bring the receipt for the € 200 payment to the Official Assignee with you. You will be provided with a Court date once the Examiner's Office is satisfied that all of your papers are in order for submission to the Court.
5	Declared bankrupt	At the Court hearing the Judge, if satisfied that all qualifying requirements have been met, will make an order adjudicating you bankrupt. Normally you will be served with a copy of the Order of Adjudication (Bankruptcy Order) and Warrant of Seizure by the Bankruptcy Inspector in the Bankruptcy Division of the ISI on the same day.
6	Meet Official Assignee	An appointment will be arranged for you to attend the ISI. You will be interviewed about all of your assets and debts. You must fully co-operate with the Official Assignee and his staff in the administration of your estate.
7	Statutory Sitting	Place advert in Iris Oifigiúil & a national daily newspaper* publicising your bankruptcy and the date of your statutory sitting in the High Court. Your creditors may attend the sitting and submit claims or send same to the Bankruptcy Division of the ISI.
8	Next three years	Periodic reviews (every 6 months) of your financial circumstances and ongoing obligation to co-operate with the Official Assignee and his staff in the administration of your estate.
9	Discharged	Automatic discharge from bankruptcy after 3 years. Ownership of any unsold property or other assets remain with Official Assignee. If an Income Payment Order/Agreement has been made in your case, you must continue to comply with this for up to 5 years from date of Order/signing of Agreement.

\* The Companies (Miscellaneous Provisions) Act 2013 contains a provision which provides an alternative to the requirement to advertise details of a petition for bankruptcy in a national newspaper. The provision provides for a person to publish details of the bankruptcy on the ISI website, at no cost.

## 5. DEBTOR JOURNEY TO BECOMING BANKRUPT

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) Robert (the applicant) will lodge € 200 electronically with the Bankruptcy Division of the ISI, for which he will get a receipt (details of this account are available in Appendix 1). You should email the Bankruptcy Division at [bankruptcy@isi.gov.ie](mailto:bankruptcy@isi.gov.ie) to confirm your lodgement and attach a scanned copy bank lodgement confirming your payment. We will then forward a receipt to you by email. You must produce this email receipt when issuing the petition at the Office of the Examiner of the High Court.

### The Examiner's Office

- b) Robert or his 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 Courts Service website (<http://www.courts.ie/rules.nsf/SuperiorApps?OpenView>) – see Rules of Superior Court (Bankruptcy) 2013 Appendix O - and the ISI's website for completion by the applicant or their solicitor. The Affidavit sworn by him must include a statement that he has made reasonable efforts to reach a satisfactory arrangement with the creditors relating to his debts. The Statement of Affairs details your his property, income and liabilities. Notes to aid in the completion of the forms are available on the ISI website.
- c) The Petition and Statement of Affairs are usually sworn before a Commissioner for Oaths or practising Solicitor.
- d) After he has sworn his Affidavit, he can submit your completed forms to the Examiner's Office. He can do this in person or by post to the Examiner's Office. (Phoenix House, Phoenix St North, Smithfield, Dublin 7. Email: [examinersmail@courts.ie](mailto:examinersmail@courts.ie))

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

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

16. **The Petition** (Form no. 13, Appendix O, Rules of The Superior Courts) with accompanying Affidavit sworn by him, plus 3 copies. There is no stamp duty on this form.

17. **His Statement of Affairs** (Form no. 23, Appendix O, Rules of The Superior Courts) plus 3 copies. There is no stamp duty on this form. Both the Statement of Affairs and Affidavit must be sworn by a Commissioner of Oaths or practising Solicitor (a nominal fee may apply).

In addition to the above documents, he will also be required to attach the following (partially completed) forms (e.g. name inserted) which will be fully completed after he is formally declared bankrupt:

18. **Order of Adjudication** (Form no. 15 Appendix O, Rules of The Superior Courts) and 3 copies. There is no stamp duty due on this form.

19. **Warrant of Seizure** (Form no. 46 Appendix O, Rules of The Superior Courts) and 3 copies. There is no stamp duty due on this form.

20. **Notice of adjudication and Statutory Sitting** (Form no. 19 Appendix O, Rules of the Superior Courts) and 3 copies. There is no stamp duty due on this form.

- e) When the relevant papers have been accepted by the Examiner's Office he will be given a Court hearing date by them.
- f) Dates are allocated based on the number of applications on the bankruptcy list and other factors.
- g) Once he has been given a Court date he 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](http://www.courts.ie)
- h) The process to apply for his bankruptcy remains private and confidential until Robert has been adjudicated bankrupt. From this point court documents are available in the Examiners Office for public inspection.



## Appearance at the High Court

- i) At the Court appearance if the Court is satisfied that all of his papers are in order, the Judge will adjudicate him bankrupt.
- j) The Court may advise him to make contact with the Bankruptcy Inspector on the day of his adjudication to progress his case.
- k) He is required to attend his statutory Court sitting in order to notify his creditors of his bankruptcy. He must undertake to pay the costs of placing an advertisement in Iris Oifigiúil and one national daily newspaper\* in order to notify creditors of his bankruptcy and the date of his statutory Court sitting.
- l) When the Court adjudicates him bankrupt, ownership of all his property will transfer to the Official Assignee including his interest in the family home.
- m) His unsecured creditors can no longer seek repayment directly from him. They must make a claim to the Official Assignee and all correspondence should be forwarded to him
- n) His secured creditors can:
  - rely on security (i.e. sell property or allow mortgage be paid off) 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 ISI Bankruptcy Division

- o) The Official Assignee will negotiate an Income Payment Agreement or seek an Income Payment Order for the surplus of his income over his Reasonable Living Expenses. This agreement order will last for a period of up to 5 years.
- p) He will be automatically discharged from bankruptcy in 3 years.
- q) Ownership of any property or assets which are unsold remain with the Official Assignee after he is discharged, until they are sold.

\* The Companies (Miscellaneous Provisions) Act 2013 contains a provision which provides an alternative to the requirement to advertise details of a petition for bankruptcy in a national newspaper. The provision provides for a person to publish details of the bankruptcy on the ISI website, at no cost.

## **6. POSSIBLE OUTCOME FOR ROBERT FROM BANKRUPTCY**

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

### **FAMILY HOME**

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 as defined in the Family Home Protection Act 1976 as amended<sup>1</sup> the Official Assignee will not have to apply to Court for an order to sell the property.

The Official Assignee will sell the house 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.

The Official Assignee will allow a reasonable rent for Robert for his accommodation cost.

### **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 prove 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 and claims for the shortfall of €140,000 in the bankruptcy.

### **OTHER ASSETS**

Robert will be able to keep his car and household furniture valued at €4,000 as under Bankruptcy Law he is entitled to retain personal goods up to a cumulative value of € 6,000.

### **INCOME**

The Official Assignee would normally seek an Income Payment Agreement 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<sup>2</sup>. Robert's circumstances will be reviewed every six months during the bankruptcy. If Robert's income changes the Official Assignee will then seek to put an Income payment order in place which can last up to five years. For the purposes of this scenario it is assumed that Robert finds alternative accommodation at a monthly rent of €500.

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<sup>1</sup> 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

<sup>2</sup> Section 85D(4) Bankruptcy Act, 1988

The unsecured creditors will avail of €15,500 (See Appendix A) 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 three years once he has fully cooperated with the Official Assignee.

#### Robert's position before and after Bankruptcy

Assets	Before Bankruptcy	Dividend	Debt write down	After OA Income Payment Order	Repayment %
Family Home	€ 270,000			-	
Buy to Let Property	€ 90,000				
Car	€ 2,000			€ 800 <sup>1</sup>	
<b>Total</b>	<b>€ 362,000</b>	<b>€ 0</b>	<b>€ 0</b>	<b>€ 800</b>	
<b>Debts</b>					
<b>Secured debts</b>					
Family Home	€ 240,000				
Buy to Let Property	€90,000				
<b>Unsecured debts</b>					
Personal loan	€10,000	(€1,033)	(€8,967)		<b>10%</b>
Buy to Let Property	€140,000	(€14,467)	(€125,533)		<b>10%</b>
<b>Bankruptcy Fees</b>		(€9,500)			
<b>Total (100%)</b>	<b>€480,000</b>	<b>€25,000</b>	<b>€ 134,500</b>		
Deficiency/Surplus	€ (118,000)			€800	

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

Administration Fee	€ 2,000
Realisation Fee	€7,750 <sup>2</sup>
Distribution Fee	€ 500
<b>Total Fee</b>	<b>€10,250</b>

<sup>1</sup> We assume the car depreciates €1,200 over the life of the bankruptcy.

<sup>2</sup> This is calculated based on a sliding scale on the gross amount before selling costs as follows: Administration Fee amount @ 0%, the next €1,500 @ 100%, the next €6,500 @ 50% and the balance up to €1m at 15%.

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

- a) Robert's unsecured debt have been discharged.
- b) 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.
- c) Robert is solvent.
- d) After three years 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.
- e) Robert's accommodation costs / mortgage repayments are reasonable as assess by the Official Assignee having regard to the ISI Reasonable Living Expenses Guidelines.
- f) Should an income payment agreement be put in place the agreement shall last 5 years after it is commenced or earlier if agreed.

## 8. APPENDICES

### Appendix A: Dividend Payment to Unsecured Creditors

Assets Realised			
Family Home	€30,000		
Less associated Selling Costs	(€5,000)		
<b>Total</b>	<b>€ 25,000</b>		
Income Contribution			
€0 x 60 months	€ 0		
<b>Total Income in Estate</b>	<b>€ 25,000</b>		
Dividend Calculation			
Total Income in Estate	€25,000		
Less Costs and Fees	<u>(€9,500)</u>		
<b>Available to unsecured Creditors</b>	<b>€15,500</b>		
Unsecured Creditors	-	Dividend Paid	Percentage Return
Personal loan	€ 10,000	€1,033	10%
Buy to Let Property	€140,000	€14,467	10%
<b>Total</b>	<b>€150,000</b>	<b>€15,500</b>	

## SCENARIO 5

### BANKRUPTCY– APPLICANT ELIGIBLE

**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 debt.**

#### 1. STEPHANIE’S STORY

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 been unable to pay 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 €2,042
- Unsecured debt repayments of €500

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.

## 2. STEPHANIE'S CURRENT INSOLVENT POSITION

Assets	Value	Loan	Monthly Income	
Family Home	€ 280,000	€ 360,000	Net Income	€ 1,600
<b>Total</b>	<b>€ 280,000</b>	<b>€ 360,000</b>	<b>Total</b>	<b>€ 1,600</b>
Debts			Monthly expenses	
<b>Secured debts</b>			Total Set Costs <sup>1</sup>	€ 748
Family Home mortgage		€ 360,000	Rent/Mortgage <sup>2</sup>	€ 1,021
<b>Unsecured debts</b>			Childcare Costs <sup>2</sup>	
Credit Union Loan		€ 15,000	<b>Reasonable Living Expenses</b>	<b>€ 1,769</b>
Credit Card debts		€ 10,000	Available for unsecured debt service (€1,600-€1,769)	(€ 169)
<b>Total</b>		<b>€ 385,000</b>	Unsecured debt repayments	(€ 500)
			<b>Deficit in meeting unsecured debt obligations (-€169 -€500)</b>	<b>(€ 669)</b>

## 3. 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<sup>3</sup> which shows that her debts exceed her assets by €105,000. [A minimum shortfall of €20,000 is required.]

<sup>1</sup> 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 website ([www.isi.gov.ie](http://www.isi.gov.ie)). Stephanie's circumstances meet those covered by Table 7. "Two adult household, no vehicle" of the Guide (Two adults €1,496.26). For illustrative purposes and ease for the reader, the RLE figure is rounded to €1,496.26. For the purposes of this scenario it is assumed that Stephanie and Monica split the Total Set costs between them, leaving €748.13 for each to bear. For illustrative purposes and ease for the reader, the RLE figure is rounded to €748.

<sup>2</sup> 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.

<sup>3</sup> A Statement of Affairs is a document setting out the individuals assets, liabilities, income and expenditure at adjudication.

#### 4. DEBTOR JOURNEY TO ADJUDICATE HIMSELF/HERSELF BANKRUPT

1	Pay fee	Transfer € 200 to the Official Assignee in the Bankruptcy Division of the ISI, either electronically or using an interbank transfer. You should email the Bankruptcy Division at <a href="mailto:bankruptcy@isi.gov.ie">bankruptcy@isi.gov.ie</a> to confirm your lodgement and attach a scanned copy bank lodgement confirming your payment. We will then forward a receipt to you by email. You must produce this email receipt when issuing the petition at the Office of the Examiner of the High Court. The relevant account details are set out at Appendix 1: Official Assignee's Account Details.
2	Complete documents	Prepare Petition, which must be verified by Affidavit and a Statement of Affairs. Both the Affidavit and Statement of Affairs must be sworn. Please read carefully the notes for completion of forms at <a href="http://www.isi.gov.ie/en/ISI/Pages/BankruptcyDocuments">www.isi.gov.ie/en/ISI/Pages/BankruptcyDocuments</a> .
3	Swear Affidavit	The Affidavit is filed to verify that everything said in the Petition is true. An Affidavit is a written, signed and sworn statement which allows a person to formally affirm something to be true before a person that is authorised to witness the statement (such as a practising solicitor, Commissioner for Oaths or an officer of the Court. There may be a nominal fee on making of the Affidavit.
4	Get Court date	File the stamped documents and Statement of Affairs in the Examiner's Office. You must bring the receipt for the € 200 payment to the Official Assignee with you. You will be provided with a Court date once the Examiner's Office is satisfied that all of your papers are in order for submission to the Court.
5	Declared bankrupt	At the Court hearing the Judge, if satisfied that all qualifying requirements have been met, will make an order adjudicating you bankrupt. Normally you will be served with a copy of the Order of Adjudication (Bankruptcy Order) and Warrant of Seizure by the Bankruptcy Inspector in the Bankruptcy Division of the ISI on the same day.
6	Meet Official Assignee	An appointment will be arranged for you to attend the ISI. You will be interviewed about all of your assets and debts. You must fully co-operate with the Official Assignee and his staff in the administration of your estate.
7	Statutory Sitting	Place advert in Iris Oifigiúil & a national daily newspaper* publicising your bankruptcy and the date of your statutory sitting in the High Court. Your creditors may attend the sitting and submit claims or send same to the Bankruptcy Division of the ISI.
8	Next three years	Periodic reviews (every 6 months) of your financial circumstances and ongoing obligation to co-operate with the Official Assignee and his staff in the administration of your estate.
9	Discharged	Automatic discharge from bankruptcy after 3 years. Ownership of any unsold property or other assets remain with Official Assignee. If an Income Payment Order/Agreement has been made in your case, you must continue to comply with this for up to 5 years from date of Order/signing of Agreement.

\* The Companies (Miscellaneous Provisions) Act 2013 contains a provision which provides an alternative to the requirement to advertise details of a petition for bankruptcy in a national newspaper. The provision provides for a person to publish details of the bankruptcy on the ISI website, at no cost.

## 5. DEBTOR JOURNEY TO BECOMING BANKRUPT

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) Stephanie (the applicant) will lodge € 200 electronically with the Bankruptcy Division of the ISI, for which he will get a receipt (details of this account are available in Appendix 1). You should email the Bankruptcy Division at [bankruptcy@isi.gov.ie](mailto:bankruptcy@isi.gov.ie) to confirm your lodgement and attach a scanned copy bank lodgement confirming your payment. We will then forward a receipt to you by email. You must produce this email receipt when issuing the petition at the Office of the Examiner of the High Court.

### The Examiner's Office

- b) Stephanie or his 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 Courts Service website (<http://www.courts.ie/rules.nsf/SuperiorApps?OpenView>) – see Rules of Superior Court (Bankruptcy) 2013 Appendix O - and the ISI's website for completion by the applicant or their solicitor. The Affidavit sworn by him must include a statement that he has made reasonable efforts to reach a satisfactory arrangement with the creditors relating to his debts. The Statement of Affairs details your his property, income and liabilities. Notes to aid in the completion of the forms are available on the ISI website.
- c) The Petition and Statement of Affairs are usually sworn before a Commissioner for Oaths or practising Solicitor.
- d) After he has sworn his Affidavit, he can submit your completed forms to the Examiner's Office. He can do this in person or by post to the Examiner's Office. (Phoenix House, Phoenix St North, Smithfield, Dublin 7. Email: [examinersmail@courts.ie](mailto:examinersmail@courts.ie))



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

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

**The Petition** (Form no. 13, Appendix O, Rules of The Superior Courts) with accompanying Affidavit sworn by him, plus 3 copies. There is no stamp duty on this form.

**His Statement of Affairs** (Form no. 23, Appendix O, Rules of The Superior Courts) plus 3 copies. There is no stamp duty on this form. Both the Statement of Affairs and Affidavit must be sworn by a Commissioner of Oaths or practising Solicitor (a nominal fee may apply).

In addition to the above documents, he will also be required to attach the following (partially completed) forms (e.g. name inserted) which will be fully completed after he is formally declared bankrupt:

1. **Order of Adjudication** (Form no. 15 Appendix O, Rules of The Superior Courts) and 3 copies. There is no stamp duty due on this form.
2. **Warrant of Seizure** (Form no. 46 Appendix O, Rules of The Superior Courts) and 3 copies. There is no stamp duty due on this form.
3. **Notice of adjudication and Statutory Sitting** (Form no. 19 Appendix O, Rules of the Superior Courts) and 3 copies. There is no stamp duty due on this form.

- e) When the relevant papers have been accepted by the Examiner's Office he will be given a Court hearing date by them.
- f) Dates are allocated based on the number of applications on the bankruptcy list and other factors.
- g) Once he has been given a Court date he 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](http://www.courts.ie)
- h) The process to apply for his bankruptcy remains private and confidential until Stephanie has been adjudicated bankrupt. From this point court documents are available in the Examiners Office for public inspection.

## Appearance at the High Court

- i) At the Court appearance if the Court is satisfied that all of his papers are in order, the Judge will adjudicate him bankrupt.
- j) The Court may advise him to make contact with the Bankruptcy Inspector on the day of his adjudication to progress his case.
- k) He is required to attend his statutory Court sitting in order to notify his creditors of his bankruptcy. He must undertake to pay the costs of placing an advertisement in Iris Oifigiúil and one national daily newspaper\* in order to notify creditors of his bankruptcy and the date of his statutory Court sitting.
- l) When the Court adjudicates him bankrupt, ownership of all his property will transfer to the Official Assignee including his interest in the family home.
- m) His unsecured creditors can no longer seek repayment directly from him. They must make a claim to the Official Assignee and all correspondence should be forwarded to him
- n) His secured creditors can:
  - rely on security (i.e. sell property or allow mortgage be paid off) 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 ISI Bankruptcy Division

- o) The Official Assignee will negotiate an Income Payment Agreement or seek an Income Payment Order for the surplus of his income over his Reasonable Living Expenses. This agreement order will last for a period of up to 5 years.
- p) He will be automatically discharged from bankruptcy in 3 years.
- q) Ownership of any property or assets which are unsold remain with the Official Assignee after he is discharged, until they are sold.

\* The Companies (Miscellaneous Provisions) Act 2013 contains a provision which provides an alternative to the requirement to advertise details of a petition for bankruptcy in a national newspaper. The provision provides for a person to publish details of the bankruptcy on the ISI website, at no cost.

## 6. 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.

### FAMILY HOME

As Stephanie has handed back the keys to her home it will not be an asset in the bankruptcy. 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 seek an Income Payment Agreement shortly after adjudication for the surplus of Stephanie's income over her Reasonable Living Expenses. This agreement, which will be reviewable every six months will last up to 5 years.

#### Stephanie's monthly income and expenses after adjudication

Net monthly income	€ 1,600
Less	
Total Set Costs	€ 748
Rent/Mortgage	€ 500
<b>Reasonable Living Expenses</b>	<b>€ 1,248</b>
<b>Available to bankruptcy estate</b>	<b>€ 352</b>

For the purposes of this scenario it is assumed that Stephanie reaches an Income Payment Agreement with the Official Assignee and there is €352 per month available to the bankruptcy estate after having regard to Reasonable Living Expenses.

The unsecured creditors will avail of €12,202 (See Appendix A) 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 three years once she has fully cooperated with the Official Assignee.

### Stephanie's position before and after Bankruptcy

Assets	Before Bankruptcy	Dividend	Debt write down	After OA Income Payment Order	Repayment %
Family Home	€ 280,000			€ -	
<b>Total</b>	<b>€ 280,000</b>	<b>€ 0</b>	<b>€0</b>	<b>€ -</b>	
<b>Debts</b>					
<b>Secured debts</b>					
Family Home	€ 360,000			€ 0	
<b>Unsecured debts</b>					
Credit Union loan	€ 15,000	(€1,743)	(€13,257)	€0	<b>12%</b>
Credit card debts	€ 10,000	(€1,162)	(€8,838)	€ 0	<b>12%</b>
Family Home W/o	€80,000	(€9,297)	(€70,703)		<b>12%</b>
<b>Bankruptcy Fees</b>		(€8,918)			
<b>Total (100%)</b>	<b>€ 385,000</b>	<b>(€21,120)</b>	<b>€ 92,798</b>	<b>€ 0</b>	
Deficiency/Surplus	€ (105,000)			-	

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

Administration Fee	€ 2,000
Realisation Fee	€ 6,418 <sup>1</sup>
Distribution Fee	€ 500
<b>TOTAL FEE</b>	<b>€ 8,918</b>

<sup>1</sup> This is calculated based on a sliding scale as follows: Administration Fee amount @ 0%, the next €1,500 @ 100%, the next €6,500 @ 50% and the balance up to €1m at 15%.

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

- a) Stephanie's unsecured and secured debt have been discharged.
- b) Stephanie will have repaid €12,202 of her unsecured debts and the remaining €92,798 is discharged. This represents a 12% return for the unsecured creditors based on amounts outstanding prior to Stephanie been adjudicated bankrupt.
- c) Stephanie is solvent.
- d) After three 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.
- e) Stephanie's accommodation costs / mortgage repayments are reasonable as assess by the Official Assignee having regard to the ISI Reasonable Living Expenses Guidelines.
- f) After 5 years or less on agreement with the Official Assignee Stephanie will cease making income payments to the bankruptcy estate.

## 8. APPENDICES

### Appendix A: Dividend Payment to Unsecured Creditors

Assets Realised			
Family Home	€ 0		
<b>Total</b>	<b>€ 0</b>		
Income Contribution			
€352 x 60 months	€ 21,120		
<b>Total Income in Estate</b>	<b>€ 21,120</b>		
Dividend Calculation			
Total Income in Estate	€ 21,120		
Less Costs and Fees	<u>(€ 8,918)</u>		
<b>Available to unsecured Creditors</b>	<b>€ 12,202</b>		
Unsecured Creditors		Dividend Paid	Percentage Return
Credit Union	€ 15,000	€ 1,743	12%
Credit Card	€ 10,000	€ 1,162	12%
Family Home	€ 80,000	€ 9,297	12%
<b>Total</b>	<b>€ 105,000</b>	<b>€12,202</b>	