**Chartered Accountants Leinster Society Luncheon**

**Speech by Mr. Lorcan O 'Connor, Director, Insolvency Service of Ireland**

Mr. Chairman , ladies and gentlemen , I'm honoured to be invited as guest speaker at the Leinster society's monthly business luncheon. Given that today's audience is primarily made up of accountants, I hope you're not too disappointed that I begin my speech by sharing some statistics with you.

800,000 – that's roughly the number of mortgages in Ireland.
150,000 – that's roughly the number of mortgages that are in arrears.
100,000 – that's roughly the number of mortgages in arrears for periods in excess of 90 days.
I could go on and give further statistics covering buy to let lending and unsecured debt – but I think it's already clear how big a problem we face.

When you look at the number of 150,000 for mortgages that are in arrears, it's important that we remember there are people behind the statistic. Arguably, the 150,000 cases could directly affect half a million people when you take into account the fact that many mortgages are in Joint names and in many cases, the borrowers will have children.

While this fact alone may prove sobering to many, the problem unfortunately grows when one looks at related research. As a country, we are already all too aware of the impact of mental health issues on people's lives. Grant Thornton recently published a report into the psychology of debt. Their research identified, what many people probably already suspected - a correlation between debt problems and mental disorder.

In short, the research identifies that one in two adults with debt problems will encounter mental health issues. These issues may not be confined to the direct borrower but may also affect their immediate family. It is therefore clear that time spent helping people address their debt problems can help their overall health and well being and not just solve their financial difficulties. This reason is just one example of why I and my implementation team are doing all that we can to set up the Insolvency Service in as short a time as possible.

When I speak to my counter parts in the UK Insolvency Service, the Insolvency Service of Northern Ireland or equivalent organisations in other countries they speak of their setup experiences in years rather than months. Similar feedback is received when I speak to people involved in the regulation of various aspects of financial services.

From a standing start last November, we hope to begin accepting applications next month for the new debt solutions introduced by the Personal Insolvency Act. I also expect the relevant provisions of the Act to be commenced next month that will reform existing bankruptcy laws and reduce bankruptcy from an existing 12 year term to 3 years in line with European norms.

**NEW ALTERNATIVES TO BANKRUPTCY**
And so to turn to the new alternatives to bankruptcy that the Personal Insolvency Act introduces.

**DRN**

The first arrangement is called a debt relief notice and it will allow for the write off of qualifying debt up to €20,000, subject to a 3 year supervision period. This is primarily designed for those with very little income and very little assets. Approved intermediaries will advise debtors applying for a debt relief notice and will be available through MABS offices around the country. The features of the debt relief notice are very similar to those which apply to debt relief orders which have been successfully introduced in the UK in recent years.

**DSA**
The second arrangement introduced by the new Act is the debt settlement arrangement which provides for the agreed settlement of unsecured debt with no limits involved over a period normally expected to be 5 years. Once again there are similar solutions available to insolvent debtors in other jurisdictions which work efficiently in addressing both debtor and creditor issues in any given case. The success of the IVA schemes in the UK, which are broadly similar to the debt settlement arrangement here, gives me confidence that DSAs will also be a success here.

**PIA**

The third and final arrangement, the Personal Insolvency Arrangement will facilitate the restructuring or settlement of secured debt of up to €3m, a cap that can be increased with the consent of all secured creditors, and the settlement of unsecured debts without limit, over a period normally expected to be 6 years. To my knowledge this arrangement does go further than those that are available in other jurisdictions in that it addresses secured debt in certain circumstances short of formal bankruptcy. Given the difficulties that this country faces in relation to property debt, such a feature in my mind is essential.

There has been much speculation as to whether this arrangement will be a success or whether banks shall choose to vote against many proposals that arise through this process.
I will touch on some specific creditor and bank issues later but I would like to stress that both the debt settlement arrangement and personal insolvency arrangement are voluntary arrangements that are designed to take into account both the interest of a debtor and his or her creditors.
It is likely that in the vast majority of cases a practitioner will be able to make a proposal that is in both the interest of the debtor and the creditor.

The reality of the situation is that these new arrangements offer an efficient and an effective means to tackle problem debt in a controlled manner short of bankruptcy. While security is recognised in bankruptcy, the reality of the situation is that bankruptcy in the vast majority of cases is bad news for the creditor. It is costly and, in almost all cases, is likely to crystallise negative equity.

**INFORMATION CAMPAIGN**

I now wish to turn to some other aspects of the Insolvency Service - the first being the launch of our information campaign late last month.

We now have a website www.isi.gov.ie and an information line at 076 106 4200 which are available for all stakeholders to consult so that they can familiarise themselves with the new arrangements and timelines over the coming weeks.

This website is not only for the benefit of debtors but also creditors and practitioners. In the first three weeks of operation we have received over 20,000 individual website visits and over 1,000 people contacting our information line.

**REASONABLE LIVING EXPENSES**

As part of the information campaign, the Insolvency Service also issued its guidelines to a reasonable standard of living and reasonable living expenses. The Insolvency Service is required to produce such a guide in accordance with section 23 of the Personal Insolvency Act. In preparing the guide the service was required to have regard to a number of matters including such measures and indicators of poverty set out in government policy publications and the need to facilitate the social inclusion of debtors and their dependants and their active participation in economic participation on the State.

The service considers that for the purposes of the Act, a reasonable standard of living is one which meets a person's physical, psychological and social needs. A reasonable standard of living does not mean that a person should live at a luxury level and neither does it mean that a person should only live at subsistence level. It follows that reasonable living expenses are expenses that a person will necessarily incur in achieving a reasonable standard of living.

Our model is a modified version of the consensual budging standards model originally developed in Ireland by the Vincentian Partnership for Social Justice. The model has regard to differences in the size and composition of households and recognises that the cost of a child, for example, varies according to the age of a child.

In producing our model we sense checked the output to specific analysis undertaken on our behalf by the central statistics office, based on their household budget survey, and the central bank, based upon their knowledge of the existing mortgage arrears resolution process.

These guidelines safe guard a reasonable standard of living so as to protect debtors while facilitating creditors in recovering as much of the debts owing to them as possible. These guidelines are not designed to force people out of their jobs nor are they designed for the micro management of a debtor's day to day expenditure or lifestyle by the ISI, creditors, or any other party involved in an insolvency arrangement.

At its most basic, the guide amounts to a fundamental building block to identify what level of debt is sustainable for a debtor. It's a straightforward equation. Income less day to day expenditure identifies what is left to service debt. Income is a matter of fact. The approach to expenditure needs to be consistent across cases to complete the equation – that's what this guide does.

**REGULATION**

I now wish to turn to the regulation of Approved Intermediaries and Personal Insolvency Practitioners - the people who will be assisting debtors directly.

The independent role played by the practitioner will be critical to the success of the new arrangements. With this in mind, it is important that the Insolvency Service provide a strong regulatory framework that will cover the authorisation and supervision of individuals who will provide services under the remit of this legislation.

We have already announced the main features of the regulatory regime that will apply and I hope to publish the regulations shortly.

I make no apologies for setting a high hurdle for practitioners. I equally make no apologies for refusing grandfathering rights in this area. The reality of the situation is that very few people in this country today can genuinely call themselves an expert in personal insolvency as we have had only a trickle of bankruptcy cases in recent years. In fact, there were only 35 new bankruptcies last year.

This fact, combined with the fact that the new legislation is, frankly, complex and extensive means that for somebody to act in this area they need to demonstrate to the satisfaction of the Insolvency Service that they have the relevant knowledge and experience to undertake their role as a PIP. This requires people to attend a course of study and pass an exam in this area. I believe this is important to ensure that all key stakeholders have confidence in personal insolvency practitioners.

Debtors need to be confident that when they meet with a practitioner that they are getting the appropriate advice and appraised of all relevant options.

The Insolvency Service needs to have confidence in the work undertaken by the practitioner and can rely on various opinions formed by the practitioner and undertakings given by the practitioner.

The courts will have similar requirements.
Creditors also need to have confidence in the practitioner. If they don't - it is difficult to see how they would vote in favour of a proposal made by a practitioner.

Given the requirements of a practitioner, it is envisaged that applicants are likely to be solicitors, barristers, accountants, qualified financial advisers and holders of other relevant qualifications in Law, Business or Finance.
Before concluding I wish to touch briefly on two further points - the new central bank initiative around dealing with problem debts and finally the role of the banks.

**CENTRAL BANK**
As you may be aware the Central Bank have launched a number of initiatives in recent times including the publication of mortgage arrears resolution targets, a review of the code of conduct on mortgage arrears and a framework for a pilot approach to the coordinated resolution of multiple debts owed by a distressed borrower.

I mentioned at the outset the very significant number of mortgages in arrears and when you look at other debts in arrears the numbers grow significantly higher.

Notwithstanding the very high number of problem loans, the reality is that only a subset of these relate to truly insolvent situations. Many of the problems could be dealt with short of any formal insolvency process, where a protocol is in place between lenders, both secured and unsecured. The waterfall approach to dealing with problem loans contained within this pilot will also assist Personal Insolvency Practitioners in designing their approach to cases.

**CREDITORS**

I now wish to turn to the issue of creditor engagement in these new insolvency arrangements. Much has been debated around whether creditors will engage and whether the arrangements provide a veto to creditors. The factual position is that the legislation provides for a voting mechanism. This however covers both debtors and creditors. In effect, debtors need to vote in favour of the practitioners proposal and so too do a majority of creditors. Similar mechanisms are used in other jurisdictions without issue.

I welcome commitments by each of the main banks that they will engage with these new arrangements. But I am not just relying on their words. As stated previously, I believe that commercial logic shall dictate that creditors will engage positively with these new arrangements as the alternative, which is likely to be bankruptcy in most cases, is not in anyone's interest – especially theirs.

Creditors need not fear these new arrangements. I say this for three main reasons.
Firstly - the Personal Insolvency Practitioner will be independent and ensure the interests of a debtor and creditor are balanced at an appropriate point. I have set out earlier why it is the Insolvency Service's intention to have a robust regulatory regime to ensure a high quality of service by practitioners. The bottom line is that we will do everything within our power to protect the integrity of the role of the Personal Insolvency Practitioner so as to protect confidence in the overall system. If a creditor has a concern regarding any given practitioner, they should tell the Insolvency Service and we will look into the issue as a matter of utmost priority.

Secondly - the Legislation prevents creditors being unfairly prejudiced. In my mind, this is determined with reference to what a creditor might receive in bankruptcy. The principle is no different to that which applies in the corporate world. The unfair prejudice test for an Examiner's Scheme of Arrangement is what a creditor would get in a Liquidation.

Thirdly – the cases that will come before creditors will be genuine cases. I say that because there are several inbuilt protections contained within the Personal Insolvency Act to prevent instances of strategic default or situations where debtors are less than forthcoming in relation to their complete financial position.
In my mind the vast majority of applicants will be genuine and there may only be a very small number of instances where issues with regards to debtors bona fides arise. However where such situations do arise, I believe it is important that the ISI deals with such situations appropriately to ensure confidence in the system is maintained for the vast majority of genuine cases.

A genuine insolvent debtor need have nothing to fear from these new arrangements. In fact they will offer both a solution and a much needed second chance for those debtors. But a debtor applying for one of these new arrangements will be required to complete a prescribed financial statement and swear a statutory declaration that the statement gives a complete and accurate picture of their affairs.

Where an applicant intentionally fails to comply with a relevant obligation contained within the Act or provides information to the Insolvency Service knowing the information to be false or misleading in a material respect, the Insolvency Service will prosecute, where appropriate. A person convicted of an offence under this Act shall be liable to fines or imprisonment or both. This should not be interpreted as a threat to debtors or in any way a negative – As I stated earlier, genuine insolvent debtors need have nothing to fear. In fact, these measures are designed to protect the genuine distressed debtor who is insolvent.

**CONCLUSION**

And so to conclude - we are now only a number of weeks away from the Insolvency Service being in a position to accept applications for these new alternatives to bankruptcy. While it is only a matter of weeks, a significant amount of work needs to be undertaken in this period, including the finalisation of our IT systems, the authorisation of Practitioners and the completion of our work with the Courts Service. As things stand I reconfirm that we hope to be in a position to begin accepting applications by the end of June.

I believe it is important that all key stakeholders use the intervening period to their advantage. Debtors should familiarise themselves with the options that the new debt solutions offer to them. While doing so, they should be mindful that it will always be in their best interest to continue to work with their creditors to try to resolve their difficulties prior to any formal insolvency process, including these three new debt solutions. In fact, such cooperation is a prerequisite to applying for a personal insolvency arrangement.

Practitioners should use the coming weeks to familiarise themselves with the legislation, begin the necessary work to ensure that they are in a position to apply for authorisation and liaise with creditors to understand what their expectations around proposals are.

Finally I also believe it is important for creditors to use the intervening period to familiarise themselves with the operational challenges that the new solutions might bring and also set out to the practitioner industry at large what they would expect to see in a given proposal. They should also endeavour to deal with as many problem loans as possible short of any formal insolvency process.

I firmly believe that these new debt solutions are not just good for debtors but are also in the interest of creditors by offering an efficient and fair means to tackle what is a very large problem for everyone concerned. Ultimately it is in all of our interests to return an insolvent debtor to solvency, to ensure their wellbeing and give them the second chance that they deserve.
Thank you.
Q & A