For free confidential advice call
+353 1 247 88 99
email advice@nationaldebtrelief.ie

# Personal Insolvency Arrangement - A Guide

## What is a Personal Insolvency Arrangement?

A **Personal Insolvency Arrangement** is one of three completely new measures contained in The Personal Insolvency Bill 2012 which was passed into law in Ireland at the end of 2012 and which is intended to offer largely non-judicial debt settlement arrangements to debtors with personal debt problems.

This guide is intended to provide the layman with a brief summary of the provisions of the **Personal Insolvency Arrangement** or **PIA**. In separate guides we provide summaries of the other two measures contained in the bill, namely **Debt Relief Notice** or **DRN** and **Debt Settlement Arrangement** or **DSA**.

Before seeking to avail of any of these measures the insolvent debtor should obtain independent legal and/or financial advice from an authorized organisation or a qualified professional such as a local Free Legal Advice Centre (FLAC) the Money Advice and Budgeting Service (MABS), a solicitor, a qualified accountant, a licensed and authorised insolvency practitioner, a debt advice provider, a reputable financial adviser or a debt advice centre.

It is expected that the reliefs provided by these measures will be available to citizens by the second quarter of 2013 when implementation is expected to commence.

## Who may avail of a Personal Insolvency Arrangement?

The most remarkable aspect of a **PIA** is that it not only deals with the settlement of unlimited unsecured personal debt but that it also deals with secured debt up to a ceiling of €3 million, which the government declared in a departmental press release to be 'a concept unique in international law'. In their application for a **PIA** the debtor can apply for a write-down of their secured debt as well as a write-off of a portion of their unsecured debt.

As in the case of the other two solutions i.e. the **DRN** and the **DSA**, the debtor must be insolvent i.e. unable to pay their debts as they fall due.

To be eligible for a **PIA** the debtor must also be ordinarily domiciled in Ireland or must, within one year of applying for a protective certificate, have been ordinarily resident in Ireland or have ordinarily had a place of business in Ireland. The debtor must use the services of a **personal insolvency practitioner** (**PIP**) in applying for a **PIA** and must, in the opinion of the **PIP**, have no likelihood of becoming solvent within the five years following the issue of a certificate by the **PIP** to that effect. Furthermore the debtor must not have incurred 25% or more of the relevant debts in the six months period preceding the date of application for a **PIA**. One or more of the creditors must be a secured creditor holding security over an interest in property of the debtor situate in Ireland. The debtor must complete a **Prescribed Financial Statement** or **PFS** and make a statutory declaration regarding the completeness and accuracy of the **PFS** regarding their assets, liabilities, income and expenditure.

The debtor must also make a statutory declaration regarding their co-operation for a period of six months with the secured creditors of their **principal private residence** or **PPR** in accordance with any mortgage arrears process operated by those secured creditors, which was approved or required by the Central Bank of Ireland.

There are other restrictions relating to eligibility for a **PIA** which include restrictions relating to the debtor not having availed of certain other financial solutions or been subject to certain other financial constraints within certain time parameters.

## Can creditors refuse to agree to a Personal Insolvency Arrangement?

Yes they can. The consent of creditors is required for a **PIA** to be accepted and that consent is measured in three ways. Firstly, at least 65% of all creditors participating in and voting at the **meeting of creditors** or **MOC**, as measured by the debts due



© Copyright National Debt Relief (updated January 2013) All of our guides are correct at time of print. We are not responsible for any changes in legislation since this guide was created.

A fee is only payable where further services are requested. All fees will be explained in detail and discussed prior to commencement of any debt repayment plan. Repaying debt over a longer period may increase the total amount to be repaid. Phonecalls: Calls from a landline are normally free. Please consult your provider if you are unsure. Calls from a mobile may be subject to charges. If you get charged just ask us to call you back for free. Company Reg No: NI051195 | Consumer Credit Licence: 0611930 | Data Protection Registration Number: Z1130877

For free confidential advice call
+353 1 247 88 99
email advice@nationaldebtrelief.ie

to them, must accept the **PIA** proposal; secondly at least 50% of secured creditors, participating in and voting at the MOC, must accept the **PIA** proposal; thirdly at least 50% of unsecured creditors, participating in and voting at the MOC, must accept the proposal. Only if all three votes are passed by the requisite majority can the **PIA** proposal be accepted.

## Does a Personal Insolvency Arrangement deal with all kinds of debt?

Secured and unsecured debts are dealt with in a **PIA**. The debtor is obliged to pay preferential debts such as rates and income tax outside of the **PIA** on an ongoing basis. There are however certain 'excludable debts', largely debts due to the state, which may be included in the **PIA**, provided the creditor (e.g. the state) consents to such inclusion and these debts then become known as 'permitted debts'.

The unsecured debts in a **PIA** are mainly debts such as credit card and store card debts, loans, overdrafts and debts relating to utilities. When the **PIA** proposal includes terms providing for a write-down of secured debt to a specified amount, the terms of the **PIA** shall (unless the relevant secured creditor agrees otherwise) provide that such written down amount shall rank equally with and abate in equal proportion to the unsecured debts covered by the **PIA** and shall be discharged with those unsecured debts on completion of the obligations specified in the **PIA**.

## Why should secured creditors agree to write-downs of their loans?

This is the big imponderable given that the law lacks compellability in regard to the co-operation and agreement of secured creditors. The hope in government is that secured creditors will choose to agree to **PIA** proposals where it is clearly the best offer that the debtor can make.

With personal bankruptcy becoming a more attractive option in Ireland, secured creditors will be offered a better return from a **PIA** than they could expect in bankruptcy and government hopes that the uptake in **PIA**s will be significant and it has stated that it is prepared to amend the legislation if creditor co-operation in approving 'good' **PIA**s is not forthcoming and at an acceptable level. The banks in particular are likely to be reluctant to agree to write-downs of secured debts because of the negative effect on their balance sheets and because of the consequent possible need for further recapitalization.

The law does offer some comfort to secured creditors insofar as it contains some provisions which limit the extent to which secured loans can be written down in a **PIA** so that the secured creditor will receive, on the subsequent sale of the property, an amount equal to the lesser of (a) the value of the security or (b) the amount of the debt secured thereby. The law also provides for a claw-back if the property is subsequently sold for an amount greater than the written-down value of the debt it secured.

## How is the secured property valued?

By agreement between the debtor, the personal insolvency practitioner and the secured creditor and failing that by the parties agreeing to appoint an independent expert to value the property and failing that by referring the matter back to The Insolvency Service who will appoint an independent expert whose valuation will be binding.

How much does the debtor in a PIA have to pay to creditors? That depends on what they can afford to pay and the length of the term of the **PIA**. If the debtor's financial circumstances change for the better during the term of the **PIA**, then he or she will have to increase their payments into the **PIA** accordingly, for the benefit of creditors.

## How long will a Personal Insolvency Arrangement last?

A **PIA** will normally last six years, the usual period of supervision but there is provision for the term of a **PIA** to be increased for up to a further year. Of course the **PIA** proposal may be for a term shorter than six years and if creditors agree, then that will be the length of the term of supervision. It is important to note that a debtor may only enter into a **PIA** once in their lifetime.

## Who regulates the PIA?

The government has established a body called The Insolvency



© Copyright National Debt Relief (updated January 2013) All of our guides are correct at time of print. We are not responsible for any changes in legislation since this guide was created.

A fee is only payable where further services are requested. All fees will be explained in detail and discussed prior to commencement of any debt repayment plan. Repaying debt over a longer period may increase the total amount to be repaid. Phonecalls: Calls from a landline are normally free. Please consult your provider if you are unsure. Calls from a mobile may be subject to charges. If you get charged just ask us to call you back for free. Company Reg No: NI051195 | Consumer Credit Licence: 0611930 | Data Protection Registration Number: Z1130877

Service one of whose functions is to monitor the operation of the three new debt settlement arrangements including **PIAs**, as provided for in The Personal Insolvency Bill 2012. Included within the functions of the Insolvency Service is the processing of applications for protective certificates, maintaining Registers for each of the three new debt settlement arrangements and authorizing persons to act as personal insolvency practitioners or **PIPs**. A **PIP** has a pivotal role in the processes relating to **PIAs**, including advising the debtor before they apply for a **PIA** and supervising the **PIA** if it is accepted at the meeting of the debtor's creditors and subsequently approved by the court.

## How is a Personal Insolvency Arrangement applied for?

The insolvent debtor must provide a written statement in relation to his financial affairs to an authorized **PIP**. The **PIP** then meets with the debtor who completes a Prescribed Financial Statement. The **PIP** advises the debtor as to the options open to him in relation to his insolvency and with the debtor's written authorization may assume responsibility for managing the debtor's **PIA** proposal. The **PIP** then writes making application to The Insolvency Service on the debtor's behalf informing it of the debtor's intention to propose a **PIA** and applying for a protective certificate.

The **PIP** provides a statement confirming their opinion that the information in the debtor's financial statement is correct, that the debtor satisfies the criteria for a **PIA**, that there is no likelihood that the debtor will become solvent within the next five years and that it is appropriate for the debtor to apply for a **PIA**.

A statutory declaration from the debtor also accompanies the application, which includes a declaration confirming, in the case of the property being the debtor's PPR, that he or she has co-operated for at least six months with the secured creditor's Mortgage Arrears Resolution Process, in accordance with the Central Bank's Code of Conduct on Mortgage Arrears and that no alternative repayment arrangement (ARA) was capable of being agreed or that the secured creditor was not prepared to offer an ARA to the debtor.

## How does The Insolvency Service process the Personal Insolvency Arrangement application?

The Insolvency Service satisfies itself that the application and accompanying documents are in order and may if they deem it necessary seek further information or documents from the debtor or the **PIP** and may make such further enquiries as it deems fit in its evaluation. If satisfied that the application is in order, The Insolvency Service issues a certificate to that effect and forwards the certificate, the application and any supporting documentation to the appropriate court and notifies the **PIP** accordingly.

The court decides whether or not to issue the protective certificate and it may hold a hearing if it requires further information or evidence. Once the protective certificate is issued it lasts for 70 days and it may be extended for a further 40 days in certain circumstances.

The court registrar informs The Insolvency Service and the relevant PIP when a protective certificate is issued or extended. The PIP informs the relevant creditors of the debtor's intention to propose a DSA and that a protective certificate has been issued and invites submissions as to how the debts might be settled.

## What is the purpose and effect of the protective certificate?

The protective certificate provides a breathing space for the debtor together with the **PIP** to prepare the **PIA** proposal. Certain enforcement proceedings and other actions may not be initiated or progressed in relation to the debts specified therein while the certificate is in force. During this time the **PIA** proposal is prepared and the **PIP** calls a meeting of all creditors.

## What happens at the meeting of creditors?

Creditors provide proofs of debts and vote to accept or reject the **PIA** proposal. The voting of participating creditors takes place as described already with 65% acceptance by all creditors, 50% acceptance by secured creditors and 50% acceptance by unsecured creditors required for the **PIA** to progress. If the **PIA** is accepted at the meeting the **PIP** informs The Insolvency Service which then provides a copy of the **PIA** to the appropriate court.



© Copyright National Debt Relief (updated January 2013) All of our guides are correct at time of print. We are not responsible for any changes in legislation since this guide was created.

A fee is only payable where further services are requested. All fees will be explained in detail and discussed prior to commencement of any debt repayment plan. Repaying debt over a longer period may increase the total amount to be repaid. Phonecalls: Calls from a landline are normally free. Please consult your provider if you are unsure. Calls from a mobile may be subject to charges. If you get charged just ask us to call you back for free. Company Reg No: NI051195 | Consumer Credit Licence: 0611930 | Data Protection Registration Number: Z1130877

If approved by the court the **PIA** takes effect once registered by The Insolvency Service in its Register of **PIAs**. There are provisions for creditors to object to the **PIA** within fourteen days of the Meeting of Creditors and the court will deal with any such objections in making its decision. If the **PIA** is not accepted at the meeting of creditors or if it is not subsequently approved by the court, then the process terminates and the debtor will be open to bankruptcy and other enforcement procedures.

## How will the Personal Insolvency Arrangement operate once approved?

The **PIP** supervises the payments by the debtor into the **PIA** and distributes the funds, allowing for deduction of the **PIP's** fees, to creditors who are party to the **DSA** on a pari passu basis, unless otherwise specified. Payments may be regular monthly payments of surplus income or be lump sum payments or be by transfers of assets to creditors or come from the sales of assets or from any combination of these. The **PIA** lasts for six years or possibly for a further year or for such term not exceeding six years which was agreed at the meeting of creditors.

During the term of the **PIA** certain enforcement and other actions by creditors and their agents are stayed. The debtor and the **PIP** must comply with certain ongoing obligations during the term of the **PIA** and at the end of the term the debtor is discharged from the specified unsecured debts and from the secured debts to the extent specified in the **PIA** as approved and the **PIA** is then successfully completed.

There are provisions for the **PIA** to be terminated before its term is completed if the debtor fails to comply with the terms agreed at the outset and if no solution to that failure can be found and agreed between the debtor and the creditors. In that circumstance the debtor becomes liable in full for all debts covered by the **PIA** unless otherwise provided for in the **PIA** or unless the appropriate court makes an order to the contrary.



© Copyright National Debt Relief (updated January 2013) All of our guides are correct at time of print. We are not responsible for any changes in legislation since this guide was created.

A fee is only payable where further services are requested. All fees will be explained in detail and discussed prior to commencement of any debt repayment plan. Repaying debt over a longer period may increase the total amount to be repaid. Phonecalls: Calls from a landline are normally free. Please consult your provider if you are unsure. Calls from a mobile may be subject to charges. If you get charged just ask us to call you back for free. Company Reg No: NI051195 | Consumer Credit Licence: 0611930 | Data Protection Registration Number: Z1130877