



Debtor's
Guide to
Bankruptcy



Bankruptcy is one way of dealing with debts you cannot pay.
Bankruptcy proceedings:

- free you from overwhelming debts so you can make a fresh start, subject to some restrictions; and
- make sure your assets are shared out fairly among your creditors.

This guide is written from the perspective of an insolvent debtor wishing to declare him/herself bankrupt.

A Glossary of terms used throughout this guide is available on page 23

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.

DISCLAIMER

This guide has been produced by the Insolvency Service of Ireland (ISI) and is intended as a general, introductory, non-technical guide for insolvent debtors in relation to the availability of, and the processes involved in seeking bankruptcy. If, after reading this guide, you require further information of a general nature, please consult the ISI website, www.isi.gov.ie, or contact the ISI's office by the various means detailed on the inside back cover of this guide.

The ISI has no role in providing legal advice or interpreting the law and this guide is not an interpretation of, or advice on the law. In addition, the ISI has no role in providing financial advice. If you are in doubt in relation to your legal or financial position, please take appropriate professional advice.

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Part 1 Background Information

ABOUT THIS GUIDE

This guide is published by the Insolvency Service of Ireland (ISI). The role of the ISI is to restore insolvent debtors to solvency in a fair, transparent and equitable way.

Prior to seeking to make yourself bankrupt, you must explore the alternative solutions under the Personal Insolvency Act, 2012; such as a Debt Settlement Arrangement (DSA) or a Personal Insolvency Arrangement (PIA). More information on these alternatives is available at https://www.isi.gov.ie/en/ISI/Pages/Debt_solutions

Having considered these solutions and established that they are not appropriate to you, then you should consider whether the further option of bankruptcy is a suitable solution for resolution of your insolvent situation.

While instructing a Solicitor is not necessary, it is advisable to get professional legal advice in advance of declaring yourself bankrupt or defending any bankruptcy proceedings.

Further detailed information on bankruptcy is available on the ISI website, www.isi.gov.ie.

Part 2 Detailed Information

WHAT IS BANKRUPTCY?

Bankruptcy is a process where the ownership of an insolvent person's property transfers to the Official Assignee in Bankruptcy to be sold by him for the benefit of those to whom the individual owes debts (creditors).

Bankruptcy proceedings are brought in the High Court. The application for a Bankruptcy Order is filed in the Office of the Examiner of the High Court. When the person's property is sold, the Official Assignee will make sure that the proceeds are shared out fairly among creditors and any outstanding debt will be written off.

Bankruptcy normally lasts for 3 years.

Administration of bankruptcy - key offices

Pre bankruptcy applications are made to the Office of the Examiner of the High Court (referred to as the "Examiner's Office").

After a Bankruptcy Order has been made the Official Assignee will deal with the administration of the case. The debtor will deal with the Examiner's Office until declared bankrupt and after that he/she will deal with the Office of the Official Assignee. Details of those offices are set out below:

Office of the Examiner of the High Court (Examiner's Office)	This is a High Court Office, one of whose functions is to administer the bankruptcy list of the High Court. All documents which need to be filed for the bankruptcy list are filed here. The Examiner's Office Courts Service, 2nd Floor, Phoenix House, Smithfield, Dublin 7 Phone: 01 888 6269 / 6219 email: examinersmail@courts.ie
The Official Assignee (the OA) – Bankruptcy Division, ISI	The Official Assignee in Bankruptcy is the officer of the Court to whom the ownership of the property of the bankrupt person is transferred on the day the person is made bankrupt. He is an independent statutory officer who administers the estate of the bankrupt person and is answerable to the High Court. He manages the Bankruptcy Division within the ISI.

ALTERNATIVES TO BANKRUPTCY

Prior to seeking to make yourself bankrupt, you must have made reasonable efforts to make use of the alternative arrangements to bankruptcy - a Debt Settlement Arrangement or a Personal Insolvency Arrangement or, if your qualifying debts are under € 20,000 a Debt Relief Notice. More information on these alternatives is available at www.isi.gov.ie/en/ISI/Pages/Debt_solutions

	DRN	DSA	PIA	Bankruptcy
Level / Type of Debt	Under € 20,000	Unsecured only	Secured* and unsecured	Over € 20,000 / Secured and unsecured
Income	Under € 60 per month [†]	No Max	No Max	No Max
Assets	Max. € 400 [‡]	No Max	No Max	No Max
Required Intermediary	Approved Intermediary	Personal Insolvency Practitioner	Personal Insolvency Practitioner	None [§]

* Subject to a cap of 3 million, unless creditors consent to a higher level.

† After Reasonable Living Expenses are deducted

‡ Subject to certain exemptions.

§ Whilst it is possible to apply for bankruptcy yourself, it is advisable to seek legal advice to assist you in the process.

MAIN CONSEQUENCES OF BANKRUPTCY

- Your property transfers to the Official Assignee.
- You have a duty to contribute from surplus income (income less reasonable living expenses) towards your debts for up to 5 years.
- You are discharged from bankruptcy after 3 years.
- All your debts are written off.

Before bankruptcy		From commencement of bankruptcy
<p>Have debts</p> <p>May have assets</p> <p>May have income</p>	You	<p>Are debt free</p> <p>Have a duty to contribute surplus income to the Official Assignee for 5 years</p>
<p>Has no role</p>	OA	<p>Owns your assets</p> <p>Receives creditor claims</p> <p>Administers your estate</p> <p>Distributes payment to your creditors</p>
<p>Your creditors deal directly with you</p>	Creditor	<p>Your creditors deal directly with the OA and can no longer contact you directly</p>

WHO IS ELIGIBLE TO SEEK BANKRUPTCY?

You are eligible to seek bankruptcy if you meet the general conditions set out below:

ELIGIBILITY

- ✓ You must be insolvent i.e. you are unable to pay your debts to creditors in full as they fall due.
- ✓ You must lodge €650 with the Bankruptcy Division of the ISI (further details on how to do this are available in Appendix 1)
- ✓ You must swear an Affidavit stating that you have made reasonable efforts to make use of the alternative arrangements to bankruptcy such as DSA or PIA to the extent your financial circumstances permit you to.
- ✓ You must present a Statement of Affairs which will set out your financial situation and must disclose that your debts exceed your assets by more than €20,000.
- ✓ You must prepare a Petition for bankruptcy in which you must:
 - undertake to attend in person at the Statutory Sitting in Court.
 - undertake to advertise notice of your bankruptcy adjudication and Statutory Sitting* .
 - make various statements regarding your Centre of Main Interest (COMI), domicile or related matters.

* The Companies (Miscellaneous Provisions) Bill 2013 contains a provision which, if passed, will provide 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.

WHAT TYPE OF DEBT CAN OR CANNOT BE INCLUDED IN BANKRUPTCY?

- Personal loans e.g. cash loans, credit card debts
- Business/commercial loans
- Family maintenance payments under Court orders
- Revenue debts
- Personal guarantees
- Unsecured portion of property loans
- Trade debts

Can be included

- Secured debt (e.g. mortgage)

May be included

- Court fines in respect of criminal offences
- New debts incurred by you after the date you are made bankrupt.

Cannot be included

HOW TO SEEK BANKRUPTCY?

The process is outlined on page 17

HOW MUCH WILL BANKRUPTCY COST?

The fees involved in the process are available on the ISI website www.isi.gov.ie/en/ISI/Pages/fees

What are your duties and obligations in connection with bankruptcy?

- You must attend Court :
 - on the day your bankruptcy application is listed and
 - on the day of the Statutory Court Sitting.
- You must co-operate fully with the Official Assignee in all matters relating to your bankruptcy.
- You must attend the Bankruptcy Division of the ISI to be served with a Bankruptcy Order and a Warrant of Seizure, usually on the day you are made bankrupt. Ownership of all your property will automatically transfer to the Official Assignee.
- You will be called for interview with the Official Assignee having already completed a Statement of Personal Information and a Statement of Affairs in relation to your estate.
- You must publish a notice in Iris Oifigiúil and a national daily newspaper** confirming the date of the Court Sitting for your case, which you will have to attend.
- You also have other legal obligations in connection with the administration of your estate and assets. These include:
 - the delivery of your accounts or documents to the Official Assignee when requested,
 - the delivery of your title deeds to property and any other assets to the Official Assignee,
 - assisting the Official Assignee in the administration of your estate, and
 - disclosing any property acquired by you since the date of your bankruptcy order to the Official Assignee.
- You must also inform the Official Assignee if you change your address.

Where you fail to co-operate with the Official Assignee, the High Court may summon you to examine you under oath. Failure to co-operate with the Official Assignee may also result in conviction for offences under the legislation, which may make you liable to a fine and / or imprisonment for a term up to 5 years

** The Companies (Miscellaneous Provisions) Bill 2013 contains a provision which, if passed, will provide 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.

HOW WILL BANKRUPTCY AFFECT YOU?

The following frequently asked questions set out the main effects of bankruptcy.

EMPLOYMENT/INCOME

Will bankruptcy affect your employment?

You can continue in current employment or seek new employment while you are bankrupt.

Under the Companies Act 1963, as amended, it is an offence for a bankrupt person to act in various capacities in relation to a company without the consent of the Court. These capacities include director, auditor, manager, liquidator or receiver of a company.

As a bankrupt person you are not entitled to hold elected representative office, in local authorities, Dáil or Seanad. Certain professions may be governed by bodies where members' personal finances are subject to regulatory requirements.

Will bankruptcy affect your income?

The Official Assignee will seek a contribution from your income after applying the ISI Guidelines on Reasonable Living Expenses.

These guidelines take a person's family situation into account when calculating how much of his/her surplus income (if any) can be paid to the Official Assignee.

The High Court, in determining what, if any, contribution it may direct you as a bankrupt person to pay, may also have regard to the ISI Guidelines. This will typically take the form of an Income Payment Order and last up to 5 years and ideally should be agreed to at the earliest stage of bankruptcy. This is to ensure that you as a bankrupt person are subject to it for the shortest period possible after your bankruptcy has been discharged.

Social Welfare payments are not liable to be taken by the Official Assignee or the Court.

Can you still trade while you are bankrupt?

Yes, as long as you trade in the same name in which you were made bankrupt. If you trade in a name other than that in which you were made bankrupt without disclosing this name, you are guilty of an offence. You must notify the Official Assignee of any business or trade in which you engage.

How will bankruptcy affect business partnerships?

When a partner is adjudicated bankrupt, the partnership is automatically dissolved unless the partnership agreement provides otherwise. Partnership assets are first used to pay partnership debts and if there is any surplus remaining, they can be used to pay an individuals' debts.

What happens to your pension?

Generally, your pension assets are not transferred to the Official Assignee. However, pension income receivable by you will be treated as income for the purposes of your bankruptcy. Approved Retirement Fund (ARF) and Vested Personal Retirement Savings Accounts (Vested PRSAs) may be included in your bankruptcy estate for realisation and payment to your creditors.

Where a bankrupt person has made excessive contributions to a pension scheme in the three years before being adjudicated bankrupt, the Official Assignee may apply to Court for an order to make the excessive amount available for distribution to the creditors.

If you have a pension entitlement that matures within 5 years of your bankruptcy order, the Official Assignee will have the right to claim it for the benefit of the bankruptcy estate.

BANKRUPTCY AND THE FAMILY HOME

Can the family home be sold?

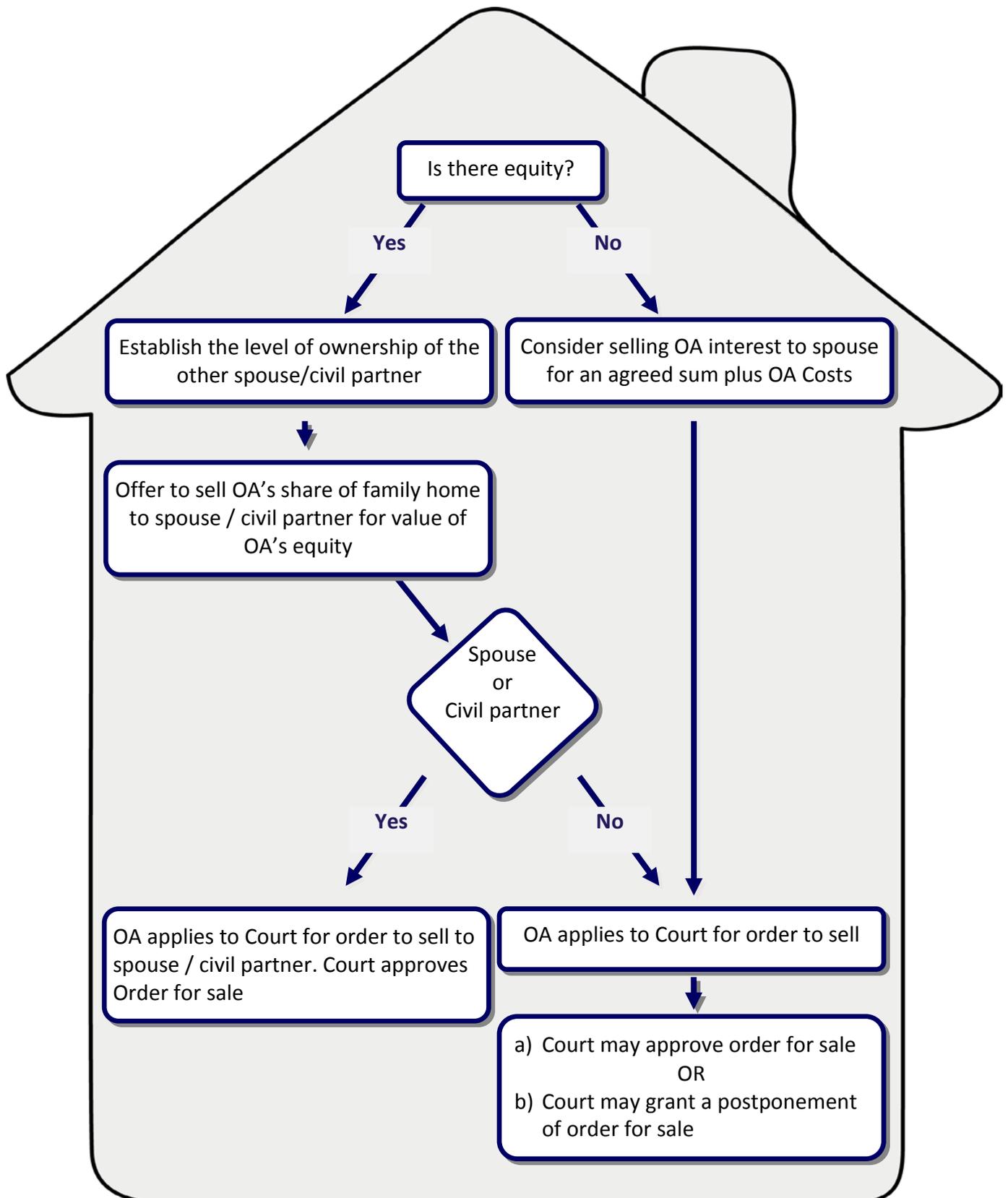
A family home is the property in which a married couple or civil partners ordinarily reside. The bankrupt person's interest or share in the family home transfers to the Official Assignee as with all other property.

You may not necessarily lose your family home in bankruptcy. You may be able to agree a schedule of mortgage payments with your bank and the Official Assignee, where such payments are within the Reasonable Living Expenses approved by him.

The Official Assignee may not sell the family home without firstly obtaining permission from the High Court. Where the Official Assignee seeks this permission, the High Court will consider the matter having regard to the interests of the creditors and of any spouse or civil partner and dependants of the bankrupt person. If there is equity (i.e. surplus in value of property above amount of mortgage) in the family home the Official Assignee will firstly seek to sell his half share to the spouse or civil partner. (See diagram opposite).

If there is no equity in the family home there is no immediate interest for the Official Assignee to sell. However, if the spouse or civil partner wishes to purchase the interest of the Official Assignee, the Official Assignee in determining the purchase price will have regard to the value of the property, the amount of negative equity, how long the property may remain in negative equity and any other relevant matter.

Sale of family home to spouse or civil partner



OTHER PROPERTY

How will property owned jointly with a bankrupt person be affected?

Where a person owns property jointly with a bankrupt person, the bankruptcy splits the joint ownership. The non bankrupt co-owner and the Official Assignee then hold separate interests in the property.

How will property you own abroad be affected?

Under the European Community Insolvency Regulation, bankruptcy proceedings in Ireland may be recognised as insolvency proceedings in all European Community Member States (except Denmark), where the *centre of main interest* (COMI) of the bankrupt person is within Ireland.

The Official Assignee, under the European Community Insolvency Regulation, is entitled on foot of the Bankruptcy Order here to realise property of the bankrupt person across the European Community for the benefit of creditors.

Where the bankrupt person's *centre of main interest* is in another EU country (except Denmark) but he has an establishment (business) within Ireland, then secondary proceedings may be instituted here but only to administer the estate of the bankrupt person within Ireland.

The Official Assignee can equally enforce his bankruptcy order outside the EU and in Denmark, by obtaining an "order in aid" in the Courts of the relevant foreign country.

How does bankruptcy affect property transferred by the bankrupt person?

Bankruptcy has legal implications for property transfers made before the date of the Bankruptcy Order.

The Official Assignee can review, and possibly challenge, any property transfers made before bankruptcy.

He may apply to Court to set aside these transactions by the bankrupt person making the property previously transferred, again available for the benefit of the creditors.

OTHER IMPLICATIONS OF BANKRUPTCY

Are any assets exempt from your bankruptcy?

The role of the Official Assignee is to investigate the full extent of your property, sell or otherwise dispose of your property and distribute the proceeds to your creditors.

The only assets that do not transfer to the Official Assignee are essential assets up to a value of € 6,000 (including vehicles), or more, if the High Court allows.

Any property you acquire during the period of your bankruptcy, transfers to the Official Assignee if and when the Official Assignee claims it and you are under a legal duty to declare such acquired property to the Official Assignee.

What happens if you seek to obtain credit from someone while you are bankrupt?

If you obtain credit of € 650 or more without disclosing your bankruptcy, you are guilty of an offence under the Bankruptcy Act, 1988 as amended.

You should be aware that being bankrupt may affect your credit rating and may influence any information about you held by rating reference agencies such as the Irish Credit Bureau (or the Central Credit Register). This means you may find it more difficult to get credit in the future.

Can you operate a bank account while you are bankrupt?

Yes, you can operate a bank account. Maintaining a bank account is an essential requirement in the normal course of living and will assist you in vouching your income and expenses. Whilst the Official Assignee notifies financial institutions that bankruptcy legislation does not prevent persons made bankrupt from holding or operating a bank account, it is a matter for the financial institution itself to decide whether it still wishes to keep you as a customer.

Generally, financial institutions do continue to keep their customers who are made bankrupt, although they may impose conditions on the nature of accounts they may hold.

Can you travel outside the jurisdiction while you are bankrupt?

There is no outright prohibition on you travelling abroad but you should inform the Official Assignee if you intend to do so. However, if it appears to the High Court that you may be leaving the State in order to avoid the consequences of your bankruptcy, you may be arrested.

What happens if your financial circumstances change during your bankruptcy?

If your financial circumstances change you must notify the Official Assignee and the terms of your Income Payment Agreement/Order may be altered, to take account of this. Your financial circumstances will be reviewed on a 6 monthly basis throughout your bankruptcy and you will be obliged to complete an income and expenses form to assist in the assessment at each review.

PUBLICATION OF YOUR BANKRUPTCY

Will details of your bankruptcy be published anywhere?

Yes – notification of your bankruptcy will appear in Iris Oifigiúil, a national daily newspaper^{††} and the Register of Bankruptcies maintained by the Office of the Examiner of the High Court.

Will your name be removed from the Bankruptcy Register at any time?

No - the Register is a record of all bankruptcies, including those that have been discharged. A person searching the Register is told the status of the bankruptcy and the date it was discharged, as appropriate. No information is given about the address of a former bankrupt person.

DISCHARGE FROM BANKRUPTCY

How long does bankruptcy last?

You will normally be automatically discharged from bankruptcy after 3 years. This period could be shorter if you can come to a settlement with your creditors. More information about early discharge options is available on the ISI website. This period could be longer if you do not fully co-operate or if you fail to disclose all of your property. While bankruptcy normally ends after 3 years, ownership of your unsold property will remain with the Official Assignee, until sold.

^{††} The Companies (Miscellaneous Provisions) Bill 2013 contains a provision which, if passed, will provide 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.

Part 3

The Process

WHAT ARE THE MAIN STEPS INVOLVED FOR YOU?

The chart is followed by a more detailed breakdown of the debtor journey, from filing a Petition through to being adjudicated bankrupt and finally to discharge from bankruptcy.

The debtor journey outlines the steps of the bankruptcy process. It does not detail the steps you might take prior to applying for bankruptcy, such as obtaining financial or legal advice on your debt situation or on how you should engage with your creditors.

1 Pay fee	<p>Transfer € 650 to the Official Assignee in the Bankruptcy Division of the ISI, either electronically or using an interbank transfer. The relevant account details are set out at Appendix 1: Official Assignee’s Account Details.</p>
2 Complete documents	<p>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 www.isi.gov.ie/en/ISI/Pages/BankruptcyDocuments.</p>
3 Get documents stamped	<p>The above documents must be stamped. Stamp Offices are located around the country, details of which can be found on: www.courts.ie/offices.nsf/webcobycounty?OpenView The necessary stamp duty must be paid and currently it is € 82.50 for the Petition and € 20 for the Affidavit.</p>
4 Get Court date	<p>File the stamped documents and Statement of Affairs in the Examiner’s Office. You must bring the receipt for the € 650 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.</p>
5 Declared bankrupt	<p>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.</p>
6 Meet Official Assignee	<p>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.</p>
7 Statutory Sitting	<p>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.</p>
8 Next three years	<p>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.</p>
9 Discharged	<p>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.</p>

* The Companies (Miscellaneous Provisions) Bill 2013 contains a provision which, if passed, will provide 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.

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 your bankruptcy application.

The ISI Bankruptcy Division

- a) You (the applicant) will lodge € 650 electronically with the Official Assignee in the Bankruptcy Division of the ISI, for which you will get a receipt (details of this account are available in Appendix 1).

The Examiner's Office

- b) You or your solicitor will then prepare a Petition and a Statement of Affairs (further details at step (e) below. The Petition must be verified by an Affidavit. Both the Statement and Affidavit must be sworn before a Commissioner for Oaths (after they have been checked by the Examiner's Office). These forms together with other relevant forms are available on the Courts Service website (<http://www.courts.ie/rules.nsf/SuperiorApps?OpenView>) – see Appendix O - and the ISI's website for completion by the applicant or their solicitor. The Affidavit sworn by you must include a statement that you have made reasonable efforts to reach a satisfactory arrangement with the creditors relating to your debts. The Statement of Affairs details your property, income and liabilities. Notes to aid in the completion of the forms are available on the ISI website.
- c) When you have completed the forms you may submit them in draft format to the Examiner's Office for consideration to ensure that they are in order to be placed before the High Court. You can do this in person; by post or by email to the Examiner's Office. (Phoenix House, Phoenix St North, Smithfield, Dublin 7. Email: examinersmail@courts.ie)
It is your responsibility to ensure that all your papers contain information that is true and accurate.
- d) The Examiner's Office will check that you have completed the forms correctly and if all is in order they will return the forms to you to be sworn before a Commissioner for Oaths. If there are any errors or omissions in your draft forms, the Examiner's Office will notify you and return the forms to you for correction. Once you have made the appropriate corrections to the forms, you should then re-submit them to the Examiner's Office.

- e) When your forms are in order, you must take the forms and go to your local Stamp Office in your local Court district and pay the necessary stamp duty on them. A list of Stamp Offices around the country can be found here :

www.courts.ie/offices.nsf/webcobycounty?OpenView

If you wish to proceed with your application you should submit the following list of documents to the Examiner's Office together with the receipt for the € 650 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 you, plus 2 copies. There is stamp duty due on the Petition of € 82.50. There is stamp duty of € 20.00 due on an Affidavit.
2. **Your Statement of Affairs** (Form no. 23) plus 2 copies.
Both the Statement of Affairs and Affidavit must be sworn by a Commissioner of Oaths (a nominal fee may apply).

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

3. **Order of Adjudication** (Form no. 15 Appendix O, Rules of The Superior Courts) and 2 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 2 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 2 copies. There is no stamp duty due on this form.
- f) When the relevant papers have been accepted by the Examiner's Office you will be given a Court hearing date by them.
- g) Dates are allocated based on the number of applications on the bankruptcy list and other factors.
- h) Once you have been given a Court date you 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
- i) Bankruptcy is a private and confidential process until you have been adjudicated bankrupt.

Appearance at the High Court

- j) At the Court appearance if the Court is satisfied that all of your papers are in order, the Judge will adjudicate you bankrupt.
- k) The Court may advise you to make contact with the Bankruptcy Inspector on the day of your adjudication to progress your case.
- l) You are required to attend your statutory Court sitting in order to notify your creditors of your bankruptcy. You must undertake to pay the costs of placing an advertisement in Iris Oifigiúil and one national daily newspaper* in order to notify creditors of your bankruptcy and the date of your statutory Court sitting.
- m) When the Court adjudicates you bankrupt, ownership of all your property will transfer to the Official Assignee including your interest in the family home.
- n) Your unsecured creditors can no longer seek repayment directly from you. They must make a claim to the Official Assignee and all correspondence should be forwarded to him.
- o) Your 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

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

*The Companies (Miscellaneous Provisions) Bill 2013 contains a provision which, if passed, will provide 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.

Part 4 Supplementary Information

RELATED PUBLICATIONS – WWW.ISI.GOV.IE

A number of bankruptcy scenarios are available on the ISI website, explaining how bankruptcy operates; particularly in relation to income payments and the family home of a bankrupt person. Further information and publications which may be of assistance to you may also be found there.

DATA PROTECTION

The ISI will comply with the Data Protection Acts of 1988 and 2003, except where it is exempted in the case of an investigation process.

GLOSSARY OF TERMS

The Act

The Bankruptcy Act, 1988 (The Act) which has been principally reformed by the Civil Law (Miscellaneous Provisions) Act 2011, the Personal Insolvency Act 2012, and the Courts and Civil Law (Miscellaneous Provisions) Act 2013.⁷

Affidavit

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 them (such as a practicing solicitor, Commissioner for Oaths or an officer of the Court)

Approved Retirement Fund (ARF)

An Approved Retirement Fund is a personal retirement fund where you can keep your pension invested as a lump sum after retirement. You can withdraw from it regularly to give yourself an income, on which you pay income tax.

Asset

See **Property**.

Bankruptcy

Bankruptcy is a process where the ownership of property by a person who cannot pay his/her debts transfers to the Official Assignee in Bankruptcy to be sold/distributed. Bankruptcy proceedings are brought in the High Court. When the property or assets are sold, the expenses, fees, costs, and certain priority debts are paid. The net proceeds are paid to those owed money (creditors) and any outstanding debt will be written off. It normally lasts for 3 years.

Bankruptcy Inspector

The Bankruptcy Inspector is a member of staff of the Bankruptcy Division of the ISI whose role it is (among other functions) to serve bankrupt persons with a copy of the Bankruptcy Order and Warrant of Seizure when they are made bankrupt.

Bankruptcy Order

This is the order the Court makes when it adjudicates a person bankrupt having dealt with his/her petition for bankruptcy. This may also be called the adjudication order.

⁷ The Companies (Miscellaneous Provisions) Bill 2013 contains a provision which, if passed, will provide 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 their bankruptcy on the ISI website, at no cost.

COMI (Centre of Main Interest)

The centre of main interest is the place where the debtor conducts the administration of his interests on a regular basis and is therefore ascertainable to third parties.

Creditor

A person to whom you owe money.

Debt

Debt is a liability that a person must pay.

Debtor

Someone who owes you money.

Debt Relief Notice (DRN)

A DRN is a personal insolvency process provided for under the Personal Insolvency Act, allowing for the write off of qualifying debts up to € 20,000, subject to certain conditions.

Debt Settlement Arrangement (DSA)

A DSA is a personal insolvency process provided for under the Personal Insolvency Act, allowing for the write off of qualifying unsecured debts without limit, subject to agreement of creditors and meeting certain conditions.

Estate

A name for all of a bankrupt person's assets or property which the Official Assignee deals with in order to pay their creditors.

Equity

Equity is the value of any assets/property you own after any debts are paid. In the context of your property, your equity in property refers to the difference between its market value and the mortgage you owe on it.

Income Payment Agreement

A written agreement between a bankrupt person and the Official Assignee to pay the Official Assignee his/her surplus salary or other income for up to 5 years, after Reasonable Living Expenses have been deducted.

Income Payment Order

This is similar to an income payment agreement but is where the Court orders a bankrupt person to pay the Official Assignee his/her surplus salary or other income for up to 5 years after Reasonable Living Expenses have been deducted.

Insolvency Service of Ireland (ISI)

The ISI is the statutory body established under the Personal Insolvency Act 2012 which is responsible for administering and monitoring the operation of the full suite of personal insolvency solutions as prescribed by the Personal Insolvency Act 2012.

Insolvent

A person is insolvent if he/she is unable to pay his/her debts in full as they fall due.

Interest

A right to, or share in, a property.

Iris Oifigiúil

Iris Oifigiúil is the State gazette. It is the official means by which the Government makes public announcements. Email: info@irisoifigiuil.ie

Legal charge

A form of security (e.g. a mortgage) to ensure payment of a debt.

Negative Equity

This is used to describe a situation where the market value of your house is less than the balance you owe on your mortgage

New Arrangements

“New arrangements” refers to the three new measures introduced under the Personal Insolvency Act 2012 — the Debt Relief Notice; Debt Settlement Arrangement and Personal Insolvency Arrangement.

Official Assignee in Bankruptcy

The Official Assignee is an officer of the Court to whom the ownership of the property of bankrupt persons is transferred on the making of a bankruptcy order. He administers the estate of the bankrupt person and is the head of the bankruptcy division within the ISI. He is an independent statutory officer answerable to the High Court in relation to the exercise of his functions.

Office of the Examiner of the High Court

One of the functions of this office of the High Court is to administer the bankruptcy list of the High Court. All documents which need to be filed for the bankruptcy list are filed here.

Office of the Examiner of the High Court
Courts Service,
2nd Floor, Phoenix House,
Smithfield, Dublin 7

Phone: 01 888 6269 / 6219

Email: examinersmail@courts.ie

Personal Insolvency Arrangement (PIA)

A PIA is a personal insolvency process provided for under the Personal Insolvency Act, allowing for the write off of qualifying unsecured debt without limit and secured debt to a maximum of € 3m (or higher with agreement of secured creditors), subject to agreement of creditors and compliance with certain conditions

Petition for bankruptcy

This is a document that must be completed by a debtor in order to apply to Court to be made bankrupt. It must be stamped in a Stamp Office and filed in the Examiner's Office.

Property

Section 3 of the Act defines property as "... money, goods, things in action (a right to sue someone), land and every description of property whether real or personal and whether situated in the State or elsewhere; also obligations or easements, and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as above defined". When someone is made bankrupt all of his/her assets vest in the Official Assignee (Section 44 of the Act) for the benefit of their creditors.

Personal Retirement Savings Account (PRSA) - Vested

A personal retirement savings account is a type of personal pension policy available from banks, life assurance companies, and through brokers. It is more flexible than a traditional personal pension plan. Anyone up to the age of 75 can take out a PRSA. You don't have to be earning an income to do so. A vested PRSA is one which has matured where the funds have been invested.

Realisation

This is the process where the Official Assignee sells or otherwise disposes of the property of a bankrupt person.

Secondary proceedings

Where prior (main) insolvency proceedings have been issued in a Member State of EU (e.g. England), a second set of insolvency proceedings can still be issued in a second Member State (e.g. Ireland), where the debtor has an establishment (a place where he carries on business). The proceedings can only administer assets within the second Member State (Ireland), with all other assets worldwide being administered by the administrator/ trustee in the main proceedings in first Member State (England).

Secured creditor

A creditor who holds a specific claim (usually a property interest) over one or more of a debtor's assets as security for a secured debt. An example would be a mortgage or charge over a house.

Secured debt

A debt backed or secured by an asset to reduce the risk associated with the debt by use of arrangements which make the asset available to the secured creditor to discharge the debt before general/unsecured creditors (e.g. a mortgage or charge over a house used as security for a housing loan). If the debtor defaults or fails to meet one of the terms of repayment, the Bank may seize the debtors' house to sell, using the proceeds towards the settlement of outstanding secured debts.

Statement of Affairs

A document that is sworn by a debtor, setting out his/her assets, liabilities, income and expenditure at adjudication.

Statutory Court Sitting

A Court sitting after adjudication of bankruptcy before which a notification is placed in the Iris Oifigiúil and a national daily newspaper⁸ where the bankrupt person must attend and make full disclosure of his/her property and his/her creditors may prove their debts.

Unsecured creditor

A creditor who does not have a specific claim over the debtor's assets.

Unsecured debt

A debt where the unsecured creditor would not be entitled to seize specific assets if the debtor fails to make repayments because that creditor does not hold security (e.g. mortgage) over those assets.

Vesting

The process whereby upon the making of a bankruptcy adjudication order, the ownership of a person's property transfers to the Official Assignee.

Warrant of Seizure

This is a document which accompanies the order of adjudication and enables the Bankruptcy Inspector to seize a debtor's property. This is served upon adjudication on a debtor together with the bankruptcy order.

⁸ The Companies (Miscellaneous Provisions) Bill 2013 contains a provision which, if passed, will provide 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.

APPENDIX 1: OFFICIAL ASSIGNEE'S ACCOUNT DETAILS

The following are the bank details you will need in order to pay the € 650 application fee to the Official Assignee.

Name & Address of Bank: AIB Bank, Capel Street, Dublin 1.

Sort Code: 93 11 01

Account Number: 44043077

IBAN: (if applicable) IE79 AIBK 9311 0144 0430 77

BIC: AIBKIE2D

Account Name: Official Assignee in Bankruptcy

Reference:

(Please include a reference description for identification purposes e.g. your name)

The Insolvency Service of Ireland's objective is to restore people who are insolvent to solvency in a fair, transparent and equitable way.

Insolvency Service of Ireland

Phoenix House

Conyngham Road

Dublin 8

Phone: 076 106 4200

Email: bankruptcy@isi.gov.ie

Website: www.isi.gov.ie

Key features of bankruptcy

- Bankruptcy is a High Court process that deals with unsecured debt (such as personal loans, credit card and business loans) and secured debt (such as mortgages).
- Most forms of unsecured debt are written off in bankruptcy.
- When you are made bankrupt, the ownership of your assets transfers to a person in the ISI called the Official Assignee.
- You may not necessarily lose your home. You may be able to agree a schedule of mortgage payments with the bank and the Official Assignee to enable you to stay in your home and pay off your mortgage.
- Bankruptcy will normally last for 3 years.
- If you have money left after your reasonable living expenses, you will give this to the Official Assignee for up to 5 years.
- Your name will appear and remain on the bankruptcy Register kept in the Office of the Examiner of the High Court, Courts Service, Phoenix House, Smithfield Dublin 7 and anyone can check this Register.