

News with Clout

Providing Corporate & Personal Solvency Solutions

FORMAL PERSONAL INSOLVENCY SERIES INSTALMENT 1 – Part IX DEBT AGREEMENTS

This is the first summary of a three part series looking at the benefits and disadvantages of formal insolvency procedures for dealing with personal insolvency from the debtor's perspective.

The procedures for Debt Agreements are set out under Part IX of the *Bankruptcy Act, 1966* and are designed to deal with debtor's affairs that are smaller in nature in terms of the debts due and the assets they may own. For the want of a better term it is for the retail debtor with financial problems.

Currently for a debtor's affairs to be dealt with under Part IX, the assets and the liabilities of the debtor are unable to exceed a regularly adjusted threshold which currently stands at \$88,379.20. The debtor's after tax income is also currently not allowed to exceed \$66,284.40 for Part IX to apply

Compared to other formal insolvency procedures in this country, this is a simple streamlined procedure that is cheaper to administer and to obtain approval by the creditors.

To start with on lodgment of a proposal with ITSA any creditor's legal action against a debtor is put on hold whilst the procedure runs its course and until creditors have made their decision. Such actions include Bankruptcy Petitions, garnishees and levying of execution.

If the proposal for a Debt Agreement receives the requisite vote for approval by the deadline, which voting can and usually is done by mail, all creditors are bound including those creditors that voted against the proposal and cannot take any action against the debtor whilst ever the debtor complies with the Debt Agreement and the Agreement remains on foot.

The debtor does not have to go bankrupt, but the Debt Agreement is still listed on the Credit Agency data bases. The debtor has also not had to face his or her creditors at a creditors meeting which for many can be a traumatic experience.

Providing the terms of the Debt Agreement are complied with, the process gets the creditors permanently off the debtor's back. The usual income contribution approach is calculated in a sensible fashion and can run for however long or short creditors are prepared to wear.

If creditors do not approve a proposal an amended proposal can be lodged for approval. In fact there are mechanisms in place to enable Debt Agreements to be varied, with creditor approval if circumstances change during the Debt Agreement term.

Conversely unlike the situation of a bankruptcy there is no provision to review a debtor's income if the situation has improved whereas the income contributions issue is revisited annually for the 3 years of a bankruptcy.

In a bankruptcy, assets that are divisible property and devolve on a bankrupt during the course of the usual 3 years becomes property that can be divided amongst creditors whereas this does not occur under a Debt Agreement.

Where there is real property in a debtor's estate but no equity it would stand outside a Debt Agreement. Under a bankruptcy a caveat is usually placed on the property and any equity that may accrue in the property within a period of roughly 9 years from the commencement of a bankruptcy would likely end up in the pockets of the creditors.

As ever we welcome all enquiries.