

**Part 1 - BANKRUPTCY**  
**CHRISTOPHER LEHANE**  
**OFFICIAL ASSIGNEE IN BANKRUPTCY**  
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## 1. Process of applying for bankruptcy

The High Court makes a debtor bankrupt either at the request of a creditor or at his own request. In either case, this request is made in a document called a petition. This petition must be filed in the Office of the Examiner of the High Court, (Floor 2, Phoenix House, Phoenix St North, Smithfield, D. 7.)

When the petition is filed, the petitioning creditor or debtor undertakes to the Court to advertise notice of the bankruptcy in various newspapers. The advertisement must also contain details of the place, date and time of the next time this is before the court (called the Statutory Court Sitting). The petitioner must also lodge €650.00 towards the costs and outlays of the bankruptcy in the Official Assignee's Office and gives an undertaking to the Official Assignee, as to the further costs and outlays which may be incurred.

## 2. Requirements to Petition for bankruptcy

### 2.1 Petition by a debtor:

A debtor may bring a petition for his/her own bankruptcy where:

- A) He/she is unable to pay debts to creditors and where his/her available estate (for example assets and property) is sufficient to produce at least €1,900.00. (Note: The Personal Insolvency Act, Part 4, once enacted by Minister's regulation in June, drops requirement that he must have assets of €1,900.00.)
- B) His debts are €20,000 greater than value of his assets, which is proved by Statement of Affairs produced with the Petition.
- C) The petition must also accompanied by an affidavit sworn by the debtor stating that he has, prior to presenting the petition, *made reasonable efforts to reach an appropriate arrangement with his creditors relating to his debts by making a proposal for a Debt Settlement Arrangement or a Personal Insolvency Arrangement to the extent that the circumstances of the debtor would permit him to enter into such an arrangement* and the Court must be so satisfied, before making an adjudication order. The affidavit must also verify the petition and the facts supporting every statement made for the purposes of application.
- D) It shall be in the Form No. 13, Appendix O of Rules of Superior Courts and shall:
  - (a) contain an undertaking by the debtor to attend in person at the statutory sitting;

- (b) contain an undertaking by the debtor to advertise notice of the adjudication and statutory sitting in the manner directed by the Court and to bear the expenses of such advertisement;
- (c) contain an undertaking by the debtor to lodge such sums, if any, as the Court may from time to time direct to cover the costs, fees and expenses incurred or to be incurred by the Official Assignee;
- (d) contain statements that :
- (i) the **Insolvency Regulation applies to the proceedings** and that the **debtor's centre of main interests is situated in the State** and the facts and grounds supporting each statement; or
  - (ii) that the **Insolvency Regulation applies to the proceedings**, that the **debtor's centre of main interests is situated in another specified Member State** and **that the debtor has an establishment within the State** and the facts and grounds supporting each statement; or
  - (iii) that the **Insolvency Regulation does not apply to the proceedings**, and in such case, shall contain a statement that the **debtor is domiciled in the State** or that, **within a year before the date of the presentation of the petition, he has ordinarily resided or had a dwellinghouse or place of business in the State**, or that **he has carried on business in the State personally or by means of an agent or manager**, or that he is or within the said period has been a member of a partnership which has carried on business in the State by means of a partner, agent or manager and the facts and grounds supporting that statement, and
  - (iv) **where the Insolvency Regulation applies to the proceedings**, contain a statement that, to the debtor's knowledge, **no insolvency proceedings have been opened in respect of the debtor in any Member State or Member States (other than the State)**, or that such insolvency proceedings **have been opened and if so, whether those insolvency proceedings are main proceedings, secondary proceedings or territorial proceedings.**

E) **Where insolvency proceedings have been opened in another Member State**, the affidavit verifying the petition shall **exhibit a certified copy of the original decision appointing the liquidator or any other certificate of the court having jurisdiction** (as referred to in Article 19 of the Insolvency Regulation) and if such decision or certificate is not in one of the official languages of the State, a **translation** of that

decision or certificate into the Irish or the English language certified by a person competent and qualified for the purpose.

G) Where the **centre of the debtor's main interests is situated within the territory of a Member State other than the State**, the petition shall also:

(i) identify the place within the State where the debtor has an **establishment** and the facts and grounds supporting that statement;

(ii) **where main proceedings have not been opened in another Member State**, contain a statement as to **which of the conditions referred to in Article 3(4)(a) or Article 3(4)(b) of the Insolvency Regulation is met and the facts and grounds supporting that statement.**

The affidavit verifying the petition shall verify the facts supporting every statement made for the purposes of sub-rule (2) of RSCs.

H) A **petition of bankruptcy by a debtor** shall be supported by the affidavit of the debtor setting forth the **particulars of his assets and where the same are and the estimated value thereof**, in order that it shall be made to appear to the satisfaction of the Court **that his available estate is sufficient to produce the sum of €1,904.61 at the least**, and if required he shall produce satisfactory evidence of the value of such assets. (Dropped by PI Act 2013 as previously stated)

I) Upon the presentation of a **petition by a creditor or a debtor** the petitioner shall **deposit with the Official Assignee the sum of €650**, and shall **thereafter lodge such further sums, if any, as the Court may from time to time direct, to cover the costs, fees and expenses incurred or to be incurred by the Official Assignee**, and no petition shall be received unless the receipt of the Official Assignee for the deposit payable on presentation of the petition is produced to the proper officer.

(This procedure will soon change to allow direct payment of €650 to OA account and receipt of lodgement in OA account will be accepted by Examiner's Office as proof of payment)

J) The Official Assignee shall account for the money so deposited to the creditor or, as the case may be, to the debtor's estate, and any sum so paid by a petitioning creditor shall be repaid to such creditor (except and so far as such deposit may be

required by reason of insufficiency of assets for the payment of the costs, fees and expenses incurred by the Official Assignee) out of the proceeds of the estate in the same priority as his costs.

K). Every petition of bankruptcy (together with, in the case of a creditor's petition, the original bankruptcy summons and the completed affidavit of service of the summons) shall be filed in the proper office (Examiner's Office).

L). The proper officer (Bankruptcy Registrar in Examiner's Office) shall at the time of filing, endorse on every petition and other document, the date of the filing thereof and in cases of declarations of insolvency and petitions, shall also endorse the hour of the day.

M) Upon the presentation of the petition the proper officer (Bankruptcy Registrar in Examiner's Office) shall appoint the time for the hearing thereof and shall endorse on the petition the time appointed for such hearing and shall sign the same.

## **2.2 Petition by a creditor:**

A creditor may petition for bankruptcy against a debtor where the debtor has committed an act of bankruptcy within the previous three months. The most common acts of bankruptcy relied upon by a creditor are:

1. Failure by the debtor to comply with a bankruptcy summons requesting payment of a specific sum due, within fourteen days from service of the summons on the debtor, and
2. The making of a return of no goods in respect of the debtor, by the sheriff or county registrar.
3. To these 2 acts must soon be added, failure of a DSA or PIA. ( Note: such failures do not automatically trigger bankruptcies, they just create acts of bankruptcy which a creditor may rely on, if he wishes to issue a petition to bankrupt the debtor)

For a creditor to be entitled to petition and the Court to make a debtor bankrupt, a number of conditions must be met. These include :

- He must give 14 days notice to debtor before he issues a Bankruptcy Summons.
- The petition must be issued within three months of the act of bankruptcy,
- The amount of debt owed must be set out in an affidavit,
- The debt owed must be at least €1,900.00 (Amount be €20,000 once the Personal Insolvency Act, Part 4 is enacted by Minister's regulation in June)
- The debtor must have a COMI or an *establishment* within jurisdiction or be either resident in the State or within a year prior to presentation of the petition, have ordinarily resided, had a dwelling house or place of business, or carried on business within the State (See above).
- Court must be satisfied before adjudicating, that *having considered assets and liabilities of the debtor, not appropriate to adjourn proceedings to allow debtor attempt to enter into a DSA or PIA*

The creditor's petition must state whether any security (for example, a mortgage or a charge) is held by them in respect of the debt. If so, the creditor must indicate whether he/she intends to give up the security for the benefit of other creditors or put a value on their security.

### **3. Consequences of being adjudicated bankrupt**

#### **3.1 Person**

#### **3.2 Debts**

#### **3.3 Assets**

#### **3.4 Income**

### **3.1 Person**

#### **3.1.1 Public notice - Will others know that I have been made bankrupt?**

Following adjudication (the court order making you bankrupt), a notice of this is published by the petitioning creditor or you (if you have made yourself bankrupt) in one national and one local newspaper. This notice will also contain information about the next statutory court sitting. A local newspaper is one which is published in the area where you live or carry on business. Creditors may appear at the statutory court sitting and may make a claim under the bankruptcy. Other notices are also published at various stages of the bankruptcy, such as advertising for creditors and

notice of discharge of bankruptcy. A bankruptcy register is maintained in the Office of the Examiner of the High Court and searches can be made against this register.

### **3.1.2 Duties - What am I required to do when I am made bankrupt?**

You must co-operate fully with the Official Assignee's office in all matters relating to your bankruptcy. You must inform the Official Assignee if you change address. You must attend at office of Official Assignee on day of adjudication to be served by the Bankruptcy Inspector with bankruptcy order and warrant of seizure of your assets, which automatically vested in the Official Assignee on your adjudication.

Within 2/3 weeks you will be called for interview with the official in office managing your case, having previously completed and e-mailed the official a Statement of Personal Information and Statement of Affairs in relation to your estate. The Statement of Affairs will be sworn by you and then filed in the Office of the Examiner of the High Court. Once the Statement of Affairs has been so filed, the Bankruptcy Registrar in the Examiner's Office will require the Petitioning Creditor (or yourself if you have applied to make yourself bankrupt) to publish a further advertisement in a national newspaper and Iris Oifigiul; notifying of your Statutory Sitting in a few weeks time, which you must personally attend.

You also have other legal obligations in connection with the administration of your estate and assets.

This includes:

- the delivery of your accounts or papers to the Official Assignee when requested,
- the delivery of your title deeds to property and any other possessions 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 and up to the date of your discharge, to the Official Assignee.

Where you fail to co-operate with the Official Assignee, the High Court may summon you to examine you under oath pursuant to S 21 of the Bankruptcy Act 1988 and you may also be separately prosecuted, under various offences set out in the Act.

### 3.1.3 Business / Employment/ Travel Restrictions

- **Trading** – You must not trade in any name, other than one under which you were bankrupted. If you trade under a name other than one under 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.
- **Partnerships** - A partnership where the bankrupt is a partner is dissolved by the bankruptcy. This is unless the terms of the partnership provide for it to continue.
- **Property transferred by the bankrupt** - Bankruptcy has legal implications for property transfers and possibly sales where the bankrupt entered into such transactions within certain time limits prior to the B. Act (Section 57,58 59 B. Act, as amended by Sections 152 – 154 of Personal Insolvency Act 2013)
- **Operate a bank account** - Yes, you can operate a bank account. However, if you obtain credit of €650.00 or more without disclosing your bankruptcy to credit provider, you are guilty of an offence.
- **Seek employment** - Yes you can continue in current employment or seek new employment and Official Assignee will actively encourage you to do so.
- **Manage a company or become a director of a company**- No, under the Companies Acts S 184 it is an offence for a bankrupt to act in various capacities in relation to a company. These include director, auditor, manager, liquidator or receiver of a company.
- **Serve in Public Office** – No, bankrupt persons are not entitled to hold elected representative office, in local authorities, in the Dáil or the Seanad. There are various Acts restricting undischarged bankrupts holding certain employments, though there is no general bar on being a civil servant.
- **Travel abroad** - There is no outright prohibition on you travelling abroad but you should inform the Official Assignee if you intend to do so. You may be arrested if it appears to the High Court that you may be leaving the State in order to avoid the consequences of your bankruptcy.

### 3.2 Debts

Section 136 of the Bankruptcy Act basically states that once a person is adjudicated bankrupt, a creditor has no right other than his rights set out in the Act, however nothing in the Act affects right of a secured creditor to realise or otherwise deal with his security.



### 3.2.1 Unsecured Creditors

They cannot issue proceedings seeking to recover debts and their only remedy in seeking to recover their debts is claiming in the bankruptcy. Certain unsecured creditors are preferential creditors (e.g. Revenue, Department of Social Protection, Local Authorities in respect of rates etc) and under S 81 of Act in respect of a 12 month period of their claims, they rank in priority of payment over other unsecured creditors.

### 3.2.2 Secured Creditors

The position and options of a secured creditor are fully covered in second paper, **Secured Creditors in Bankruptcy**, hereafter.

## 3.3 Assets

### 3.3.1 Irish assets

All property held by you when you are made bankrupt vests in the Official Assignee for the benefit of your creditors, pursuant to S 44 of Bankruptcy Act. The role of the Official Assignee is to sell or otherwise dispose of this property (called realisation) and distribute the proceeds to your creditors. A vesting certificate is lodged in the Office of the Examiner of the High Court and with the Property Registration Authority. This document records the interest of the Official Assignee in any property held by you at the date of adjudication. It means that you cannot sell or use this interest in the property as security to take out a loan.

The only property that does not vest in the Official Assignee are *essentials* up to a value of €3,100.00, (be €6000 once the Personal Insolvency Act, Part 4 is enacted by Minister's regulation in June) or more if the High Court allows. Any property you acquire after you are made bankrupt, transfers to the Official Assignee, if and when the Official Assignee claims it.

### Family Home Interests

- **Can the family home be sold?** - The bankrupt's interest in the family home vests in the Official Assignee as with all other property. However, the Official

Assignee may not sell the family home without obtaining permission from the High Court pursuant to S 61(4) of Bankruptcy Act. Where the Official Assignee seeks this permission, the High Court may postpone the sale of the family home, having regard to the interests of the creditors and of any spouse and dependants of the bankrupt.

- **We already have a mortgage or have borrowed against this home** - Then this is a secured loan against the property and the Official Assignee's interest relates to the equity remaining in the property.
- **I jointly own the family home with the bankrupt, what about my interest?** - Where the bankrupt owns property jointly with a spouse or partner, the bankruptcy causes the joint ownership to be split. The Official Assignee and the non-bankrupt co-owner then hold separate interests in the property, as *tenants in common*.

(On family home see second paper, **Secured Creditors in Bankruptcy**, hereafter.)

## **Pension Funds**

Where an adjudication of bankruptcy is post coming into force of Part 4 of Personal Insolvency Act (in June) then practically all pensions, other than Approved Retirement Funds (ARFs), will no longer vest in Official Assignee whereas some do at present.

### **3.3.2 Assets abroad**

Under EU legislation, (EU Insolvency Regulations 2002) bankruptcy orders in Ireland will be recognised as valid insolvency orders without further process in all EU Member States, other than Denmark; where Ireland centre of main interests of bankrupt. This allows the Official Assignee to realise such foreign property for the benefit of your creditors, in same way as your property here. In non EU countries the practice is to get orders in aid of foreign Court to enable enforcement there of bankruptcy order and generally and certainly in common law jurisdictions this order is readily obtainable.

**3.4 Income - Salary, pension and other sources of income** - Yes, the High Court may appropriate your salary or pension income for the benefit of your creditors.

The Insolvency Service in accordance with its duty under S 9 (i) of Personal Insolvency Act 2012 has published guidelines as to what constitutes a *reasonable standard of living and reasonable living expenses* under S 23 of said Act. Section 85D of the Bankruptcy Act 1988 (as inserted by section 157 of the Personal Insolvency Act 2012 repealing current S 65 of Bankruptcy Act), provides that a Court when making a bankruptcy payment order, may have regard to these guidelines and the Official Assignee will equally have regard to the guidelines, (when similarly having to assess *net disposable income* after paying *reasonable living expenses*) in agreeing income payment agreements with bankrupt persons.

Income payment orders and income payment agreements can be for no longer than 5 years and it is obviously in interests of bankrupt persons to agree to income payment agreements at earliest point in bankruptcy, to shorten period of their operation, post 3 year discharge period.

#### **4. Discharge - Once Personal Insolvency Act Part 4 is enacted by Minister's regulation in June how will a person be freed from bankruptcy?**

**4.1** The following new provisions **will apply** once the Personal Insolvency Act, Part 4 is enacted by Minister's regulation in June:

- (i) The automatic discharge from bankruptcy period will be reduced from 12 years to 3 years.
- (ii) Bankruptcies existing for 3 years or more at the time of commencement of the Act will be automatically discharged after a further six months have elapsed, this latter time to allow for any creditor objection.
- (iii) The bankrupt's unrealised property will remain vested in the Official Assignee in Bankruptcy after discharge from bankruptcy and the discharged bankrupt will be under a duty to co-operate with the Official Assignee in the realisation and distribution of such of his or her property as is vested in the Official Assignee.
- (iv) The Official Assignee, Trustee in Bankruptcy or a creditor may apply to the Court to object to the discharge of a person from bankruptcy. The grounds for such an objection are that the debtor has failed to co-operate with the Official Assignee or Trustee in Bankruptcy or has hidden or failed to disclose income or assets. The Court may suspend the discharge pending further investigation or extend the period before discharge of the bankrupt, up to a maximum of 8 years from the date of adjudication.

**4.2 The High Court will also by order in following circumstances discharge a bankruptcy, where all costs, fees and expenses of bankruptcy and preferential debts have been paid:**

**(i) Discharge after payment of debts in full:**

This is where the bankrupt's creditors are paid in full. If the High Court so allows, interest may also be payable. Normally, interest is only paid where surplus funds are available.

**(ii) Discharge with the creditors' consent:**

This is where all of the bankrupt's unsecured creditors consent to the discharge.

**(iii) Discharge after making composition with the creditors:**

This is where unsecured creditors agree to accept payment of a certain percentage of their debt in settlement of the full amount. This must be supported by at least 60% in number and value of those creditors who vote at a sitting of the High Court for this to be accepted. The bankrupt must provide the Official Assignee with sufficient funds to make this settlement and pay his/her unsecured creditors. This is called an *Offer of Composition*.

## **5. Costs**

The costs for an individual to apply to the High Court to have himself adjudicated bankrupt are as follows:

- a) Solicitors and Counsel fees
- b) Court stamp duties on Petition and Affidavit €100
- c) Official Assignee Costs €650
- d) Indemnity to cover further Official Assignee Costs (if any)
- e) Costs of 2 paper and Iris Oifigiul advertisements €1000 approx.

**APPENDIX A**  
**PERSONAL INSOLVENCY ACT - PART 4 – BANKRUPTCY**

**142.**—Section 3 of the Bankruptcy Act 1988 is amended by the insertion of the following definitions—

“ ‘Debt Settlement Arrangement’ has the same meaning as in the *Personal Insolvency Act 2012*;

‘Personal Insolvency Arrangement’ has the same meaning as it has in the *Personal Insolvency Act 2012*;

‘statement of affairs’ means a statement of the debtor’s or bankrupt’s affairs in the form specified in rules of court;

‘trustee’ means a person appointed as trustee under Part V;”.

**143.**—Section 7 of the Bankruptcy Act 1988 is amended in subsection (1) by the insertion after paragraph (c) of the following paragraphs:

“(ca) the individual has been subject as a debtor to a Debt Settlement Arrangement which has been terminated under *section 83* of the *Personal Insolvency Act 2012*;

(cb) the individual has been subject as a debtor to a Debt Settlement Arrangement which under *section 84* of the *Personal Insolvency Act 2012* is deemed to have failed;

(cc) the individual has been subject as a debtor to a Personal Insolvency Arrangement which has been terminated under *section 122* of the *Personal Insolvency Act 2012*;

(cd) the individual has been subject as a debtor to a Personal Insolvency Arrangement which under *section 123* of the *Personal Insolvency Act 2012* is deemed to have failed;”.

**144.**—Section 8 of the Bankruptcy Act 1988 is amended—

(a) by the substitution of the following for subsection (1):

“(1) A summons (in this Act referred to as a ‘bankruptcy summons’) may be granted by the court to a person

(in this section referred to as ‘the creditor’) who proves that—

(a) a debt of more than €20,000 is due to the creditor concerned by the person against whom the summons is sought,

(b) the debt is a liquidated sum, and

(c) the creditor concerned has given not less than 14 days’ notice to the debtor of the creditor’s intention to apply for a bankruptcy summons and the debt remains unpaid.”,

and

(b) in subsection (2) by the substitution of “more than €20,000” for “€1,300 or more”.

**145.**—Section 11 of the Bankruptcy Act 1988 is amended—

(a) in paragraph (a) of subsection (1) by the substitution of “amounts to more than €20,000” for “amounts to €1,900 or more”, and

(b) by the substitution of the following for subsection (3):  
“(3) Subject to subsections (4) and (5) a debtor may petition for adjudication against himself.

(4) A debtor may not present a petition for adjudication unless the petition is accompanied by an affidavit sworn by the debtor that he has, prior to presenting the petition, made reasonable efforts to reach an appropriate arrangement with his creditors relating to his debts by making a proposal for a Debt Settlement Arrangement or a Personal Insolvency Arrangement to the extent that the circumstances of the debtor would permit him to enter into such an arrangement.

(5) A debtor may not present a petition for adjudication unless the petition is accompanied by a statement of affairs and such statement of affairs discloses that the debts of the debtor exceed the assets of the debtor by any amount greater than €20,000.”

**“Petitioning creditor’s costs.**

**146.**—The Bankruptcy Act 1988 is amended by the substitution of the following for section 12:

12.—(1) The petitioning creditor shall at his own cost present his petition and prosecute it until the statutory sitting referred to in section 17(3), and subject to subsection (2) the Court shall at or after the sitting make an order for the payment of such costs out of the estate of the bankrupt in course of priority to be settled by rules of court.

(2) In considering whether it is appropriate to make an order under subsection (1) the Court shall have regard to whether or not the petitioning creditor had unreasonably refused to accept proposals made in connection with a proposal for a Debt Settlement Arrangement or a Personal Insolvency Arrangement pursuant to the *Personal Insolvency Act 2012*."

**Adjudication: creditor's petition.**

**147.**—The Bankruptcy Act 1988 is amended by the substitution of the following for section 14:

14.—(1) Subject to subsection (2), where the petition is presented by a creditor, the Court shall, if satisfied that the requirements of section 11(1) have been complied with, by order adjudicate the debtor bankrupt.

(2) Before making an order under subsection (1), the Court shall consider the nature and value of the assets available to the debtor, the extent of his liabilities, and whether the debtor's inability to meet his engagements could, having regard to those matters and the contents of any statement of affairs of the debtor filed with the Court, be more appropriately dealt with by means of—  
(a) a Debt Settlement Arrangement, or  
(b) a Personal Insolvency Arrangement,  
and where the Court forms such an opinion the

Court may adjourn the hearing of the petition to allow the debtor an opportunity to enter into such of those arrangements as is specified by the Court in adjourning the hearing.

(3) A copy of the order shall be served on the debtor, either personally or by leaving it at his residence or place of business in the State.

(4) For the purposes of subsection (2), the Court may order the bankrupt to attend and make full disclosure of his assets and liabilities to the Court by way of a statement of affairs filed with the Court.”.

#### **Adjudication on debtor’s petition.**

**148.**— The Bankruptcy Act 1988 is amended by the substitution of the following for section 15:

15.—(1) Subject to subsection (2), where the petition for adjudication is presented by the debtor the Court may, where it considers it appropriate to do so, and where it is satisfied that the debtor is unable to meet his engagements with his creditors and that the requirements of section 11(4) and (5) have been complied with, by order adjudicate the debtor a bankrupt.

(2) Before making an order under subsection (1), the Court shall consider the nature and value of the assets available to the debtor, the extent of his liabilities, and whether the debtor’s inability to meet his engagements could, having regard to those matters and the contents of the debtor’s statement of affairs filed with the Court, be more appropriately dealt with by means of—

(a) a Debt Settlement Arrangement, or

(b) a Personal Insolvency Arrangement,

and where the Court forms such an opinion the court may adjourn the hearing of the petition to allow the debtor an opportunity to enter into such



of those arrangements as is specified by the Court in adjourning the hearing.”.

**149.**—Section 39 of the Bankruptcy Act 1988 is amended—

(a) by the substitution of the following for subsection (1):

“(1) Where a stay on the realisation of the estate of the bankrupt has been granted under section 38 or where the Official Assignee has otherwise consented in writing to suspend the realisation of the bankrupt’s estate on such terms as he may specify in such consent, the bankrupt shall call a meeting of his creditors before the Court for the purpose of making an offer of composition to them.”,  
and

(b) by the substitution of the following for subsection (4):

“(4) A creditor whose debt is less than €500 shall not be entitled to vote.”.

**150.**—The Bankruptcy Act 1988 is amended by the insertion, after 35 section 44, of the following sections:

**“Pensions in Bankruptcy.**

44A.—(1) Subject to subsection (2), where a person is adjudicated bankrupt, and he or she is, or may become entitled to, payments under a relevant pension arrangement, assets relating to the arrangement (other than payments already received by the bankrupt, or that the bankrupt was entitled to receive, under the arrangement) shall not vest in the Official Assignee for the benefit of the creditors of the bankrupt.

(2) Where a bankrupt has an interest in or entitlement under a relevant pension arrangement which would, if the bankrupt performed an act or exercised an option, cause that debtor to receive from or at the request of the person administering that relevant pension arrangement—

(a) an income, or

(b) an amount of money other than income, in accordance with the relevant provisions of the Taxes Consolidation Act 1997, that bankrupt shall be considered as being in receipt of such income, and such amount of money shall vest in the Official Assignee or the trustee in bankruptcy.

(3) Subsection (2) applies where—

(a) the bankrupt is entitled at the date of being adjudicated a bankrupt to perform the act or exercise the option

referred to in subsection (2),

(b) was entitled at any time before the date of the adjudication, to perform the act or exercise the option referred to in subsection (2), but had not performed the act or exercised the option, or

(c) will become entitled within 5 years of the date of the adjudication to perform the act or exercise the option referred to in subsection (2).

(4) Where subsection (2) applies, the Official Assignee or the trustee in bankruptcy may where he or she considers that it would be beneficial to the creditors of the bankrupt to do so, perform an act or exercise an option referred to in subsection (2) in place of the bankrupt.

(5) In this section and in sections 44B and 85D a reference to a relevant pension arrangement means:

(a) a retirement benefits scheme, within the meaning of section 771 of the Taxes Consolidation Act 1997, for the time being approved by the Revenue Commissioners for the purposes of Chapter 1 of Part 30 of that Act;

(b) an annuity contract or a trust scheme or part of a trust scheme for the time

being approved by the Revenue Commissioners under section 784 of the Taxes Consolidation Act 1997;

(c) a PRSA contract, within the meaning of section 787A of the Taxes Consolidation Act 1997, in respect of a PRSA product, within the meaning of that section;

(d) a qualifying overseas pension plan within the meaning of section 787M of the Taxes Consolidation Act 1997;

(e) a public service pension scheme within the meaning of section 1 of the Public Service Superannuation (Miscellaneous Provisions) Act 2004;

(f) a statutory scheme, within the meaning of section 770(1) of the Taxes Consolidation Act 1997, other than a public service pension scheme referred to in paragraph (e);

(g) such other pension arrangement as may be prescribed by the Minister, following consultation with the Ministers for Finance, Social Protection and Public Expenditure and Reform.

**Excessive pension contributions by bankrupt.**

44B.—(1) Where, on application by the Official Assignee or the trustee in bankruptcy, the Court is satisfied that the bankrupt, or a person on his or her behalf, has within the 3 years prior to the adjudication made contributions to a relevant pension arrangement under which the bankrupt is, or may become entitled to, payments and which contributions—

(a) were excessive in view of the bankrupt's financial circumstances when those contributions were made, and

(b) had the effect of—

(i) materially contributing to the bankrupt's inability to pay his or her debts, or

(ii) substantially reducing the sum available for distribution to the creditors,

the Court may make such order in relation to the relevant pension arrangement as it considers appropriate for the purpose of ensuring that the contributions which the Court considers to be excessive or any part of such contributions can be vested in the Official Assignee or the trustee in bankruptcy to be made available for distribution to the creditors.

(2) In considering an application under subsection (1) and in determining whether or not the contributions made by the bankrupt to a relevant pension arrangement were excessive the Court may have regard to all the financial circumstances of the bankrupt and in particular:

(a) whether the bankrupt made payments to his or her creditors in respect of debts due to those creditors on a timely basis at or about the time when the bankrupt made the contribution concerned;

(b) whether the bankrupt was obliged to make contributions of the amount or percentage of income as the payments actually made under his or her terms and conditions of employment and if so obliged, whether the bankrupt or a person who as respects the bankrupt is a relative could have materially influenced the creation of such obligation;

(c) the amount of the contributions paid,

including the percentage of total income of the bankrupt in each tax year concerned which such contributions represent;

(d) the amount of the contributions paid, in each of the 6 years prior to the making of the adjudication including the percentage of total income of the bankrupt which such contributions represent in each of those years;

(e) the age of the bankrupt at the relevant times;

(f) the percentage limits which applied to the bankrupt in relation to relief from income tax for the purposes of making contributions to a relevant pension arrangement in each of the 6 years prior to the adjudication; and

(g) the extent of provision made by the bankrupt in relation to any relevant pension arrangement prior to the making of the contributions concerned.

(3) In this section “relative” as respects a person, means a brother, sister, parent, spouse or civil partner of the person or a child of the person or of the spouse or civil partner.”.

**151.**—Section 45 of the Bankruptcy Act 1988 is amended in subsection (1) by the substitution of “€6,000” for “€3,100”.

**152.**—Section 57 of the Bankruptcy Act 1988 is amended in subsection (1) by the substitution of “3 years” for “1 year”.

**153.**—Section 58 of the Bankruptcy Act 1988 is amended in subsection (1) by the substitution of “3 years” for “1 year”.

**154.**—Section 59 of the Bankruptcy Act 1988 is amended—  
(a) in paragraph (a) of subsection (1) by the substitution of “3

years” for “two years”, and

(b) in paragraph (a) of subsection (3) by the substitution of “3 years” for “two years”.

**155.**—The Bankruptcy Act 1988 is amended by the insertion, after section 65, of the following new section:

**“Cesser of section 65.**

65A.—An application for an order under section 65 shall not be made after the coming into operation of this section, but this section shall not operate to prevent an application under section 65(2) where an order under section 65(1) is in force on the coming into operation of this section.”.

**156.**—Section 81 of the Bankruptcy Act 1988 is amended in paragraph (a) of subsection (1) by the substitution of “31st December” for “5th day of April”.

**157.**—Section 85 of the Bankruptcy Act 1988 is amended by the substitution of the following for section 85:

**Automatic discharge from bankruptcy.**

85.—(1) Subject to subsection (2) and section 85A every bankruptcy shall, on the 3rd anniversary of the date of the making of the adjudication order in respect of that bankruptcy, unless prior to that date the bankruptcy has been discharged or annulled, stand discharged.

(2) Subject to section 85A, a bankruptcy subsisting on the coming into operation of *section 157* of the *Personal Insolvency Act 2012* where the order of adjudication was made more than 3 years prior to the coming into operation of that section, shall stand discharged 6 months after that day unless the bankruptcy has otherwise been discharged or annulled.

(3) Where a bankruptcy is discharged in pursuance of this section the unrealised property of the bankrupt shall remain vested in the Official Assignee for the benefit of the creditors.

(4) A bankrupt who is discharged from bankruptcy in pursuance of this section shall have a duty to co-operate with the Official Assignee in relation to the realisation and distribution of such of his property as is vested in the Official Assignee.

(5) A person whose bankruptcy has been discharged by virtue of this section may apply to the Official Assignee for the issue of a certificate of discharge from bankruptcy.

(6) In this section and in sections 85A to 85D 'bankrupt' includes personal representatives and assigns.

**Objection to automatic discharge from bankruptcy.**

85A.—(1) The Official Assignee, the trustee in bankruptcy or a creditor of the bankrupt may, prior to the discharge of a bankrupt pursuant to section 85, apply to the Court to object to the discharge of a bankrupt from bankruptcy in accordance with section 85 where the Official Assignee, the trustee in bankruptcy or the creditor concerned believes that the bankrupt has—

(a) failed to co-operate with the Official Assignee in the realisation of the assets of the bankrupt, or

(b) hidden from or failed to disclose to the Official Assignee income or assets which could be realised for the benefit of the creditors of the bankrupt.

(2) An application under subsection (1) shall be made on notice to the bankrupt and where made

by the trustee in bankruptcy or a creditor, notice shall also be given to the Official Assignee.

(3) Where it appears to the Court that the making of an order pursuant to subsection (4) may be justified, the Court may make an order that the matters complained of by the applicant under subsection (1) be further investigated and pending the making of a determination of the application the bankruptcy shall not stand discharged by virtue of section 85.

(4) Where the court is satisfied that the bankrupt has—

(a) failed to co-operate with the Official Assignee in the realisation of the assets of the bankrupt, or

(b) hidden from or failed to disclose to the Official Assignee income or assets

which could be realised for the benefit of the creditors of the bankrupt,

the Court may where it considers it appropriate to do so, order that in place of the discharge provided for in section 85 the bankruptcy shall stand discharged on such later date, being not later than the 8th anniversary of the date of the making of the adjudication order, as the Court considers appropriate.

(5) Where the Court has made an order under subsection (4), no further application may be made under subsection (1).

(6) The making of an order under this section 45 shall not prevent an application being made for discharge or annulment under section 85B.

**Entitlement to discharge from bankruptcy.**

85B.—(1) A bankrupt shall be entitled to an order discharging him from bankruptcy where provision has been made for the payment of the



expenses, fees and costs of the bankruptcy, and for preferential payments, and—

(a) he has paid one euro in the euro, with such interest as the Court may allow,

or

(b) he has obtained the consent in writing of all of his creditors, whose debts have been proved and admitted in the bankruptcy,

or

(c) section 41 (discharge of adjudication order) applies.

(2) The giving of consent by a creditor under subsection (1) constitutes a waiver by that creditor of the right to recover the amount concerned proved and admitted in the bankruptcy.

(3) A person whose bankruptcy has been discharged by virtue of this section may apply to the Official Assignee for the issue of a certificate of discharge from bankruptcy.

### **Annulment of adjudication in bankruptcy.**

85C.—(1) A person shall be entitled to an annulment of his adjudication—

(a) where he has shown cause pursuant to section 16, or

(b) in any other case where, in the opinion of the Court, he ought not to have been adjudicated bankrupt.

(2) An order of annulment shall provide that any property of the bankrupt then vested in the Official Assignee shall be revested in or returned to the bankrupt, and that order shall for all purposes be deemed to be a conveyance, assignment or transfer of that property to the bankrupt and, where appropriate, may be registered accordingly.

(3) A person whose bankruptcy has been annulled may apply to the Official Assignee for

the issue of a certificate that the bankruptcy has been annulled.

**Bankruptcy payment orders.**

85D.—(1) The Court may, on application being made to it by the Official Assignee or the trustee in bankruptcy, make an order requiring a bankrupt to make payments to the Official Assignee or the trustee in bankruptcy from his income or other assets for the benefit of his creditors (a ‘bankruptcy payment order’).

(2) An application for a bankruptcy payment order may not be made after the bankrupt has been discharged from bankruptcy, but where an application for such an order is made before the discharge of the bankrupt, the Court may make a bankruptcy payment order after the date of discharge as if the bankrupt had not been so discharged.

(3) An order made under subsection (1) shall have effect for no longer than 5 years from the date of the order coming into operation, and where, during the order’s validity, the court has varied the order under subsection (5) such variation shall not cause the order to have effect for a period of more than 5 years, and in any event, any order made under subsection (1) or varied under subsection (5) shall cease to have effect on the 8th anniversary of the date on which the bankrupt was adjudicated bankrupt.

(4) In making an order under subsection (1) the Court shall have regard to the reasonable living expenses of the bankrupt and his or her dependants and the Court may also have regard to any guidelines on reasonable living expenses issued by the Insolvency Service under the *Personal Insolvency Act 2012* or by the Official Assignee.

(5) The Court, on the application of the bankrupt or the Official Assignee or the trustee in bankruptcy, may vary a bankruptcy payment order granted under subsection (1) where there has been a material change in the circumstances of the bankrupt.

(6) The court in granting an application under subsection (1) may order any person from whom the bankrupt is entitled to receive any salary, income, emolument, pension or other payment to make payments to the Official Assignee or trustee.

(7) For the purposes of this section, where a bankrupt is, or may become entitled to, payments under a relevant pension arrangement, an asset relating to the arrangement (other than payments already received by the bankrupt, or that the bankrupt was entitled to receive, under the arrangement) shall not be regarded as an asset."

**158.**—Section 123(3)(b) of the Bankruptcy Act 1988 is amended by the substitution of "3 years" for "twelve months".

## APPENDIX B

### Order 76 of Rules of Superior Courts

#### Rules 10 – 49

**Note:** Current Order 76 provisions administering internal OA Office procedures, will be deleted from Order in June and similar provisions will be made by the Minister in form of regulation pursuant to Section 3 of the Personal Insolvency Act 2013 when Courts Act 2013 is enacted (merging OA Office into ISI, whilst preserving statutory position of OA.)

#### III. Bankruptcy Summons

10. A bankruptcy summons shall be in the Form No. 1 and shall:

(a) require the debtor, within fourteen days after the service of the summons upon him, to pay the debt to the creditor or to secure the payment of the debt to the satisfaction of the creditor or to compound the debt to the satisfaction of the creditor, and

(b) state that in the event of the debtor failing to pay the sum specified in the summons or to secure or compound for it to the satisfaction of the creditor such default shall be an act of bankruptcy.

11. (1) A creditor desirous that a bankruptcy summons may be granted shall, not earlier than four clear days after he shall have served a notice in the Form No. 4, file in the proper office a copy of such notice, together with an affidavit in the Form No. 5 of the truth of his debt made by himself or by any other person who can swear positively to the facts verifying the truth of his debt, and that no form of execution has issued in respect of such debt and remains to be proceeded upon, and shall lodge with the proper officer any bills, notes, guarantees, contracts, judgments or orders referred to in his affidavit together with the summons which it is proposed to issue.

(2) Where a debt of any part thereof is for money lent pursuant to a credit agreement to which either the Consumer Credit Act 1995 applies or the 2010 Regulations apply,

or interest or charges in connection with such an agreement, the affidavit shall contain:

(a) a statement of the date when a copy of the credit agreement was handed, delivered or sent to the borrower in accordance with section 30 of the Consumer Credit Act 1995 or, as the case may be, received by the borrower in accordance with Regulation 13(2) of the 2010 Regulations, and

(b) particulars showing compliance of the credit agreement as to content with the requirements of Part III of the Consumer Credit Act 1995 or, as the case may be, Part 4 of the 2010 Regulations, which particulars shall be verified by the affidavit.

(3) A creditor who has complied with the requirements of sub-rules (1) and (2) shall apply ex parte to the Court for the grant of a Bankruptcy Summons at such time and place as shall have been fixed for the hearing of the application.

12. (1) A bankruptcy summons may be granted in accordance with section 8(2) of the Act to two or more creditors who are not partners, upon the affidavits of each of them.

(2) A bankruptcy summons may be granted to a partnership upon the affidavit of one of the partners.

(3) A bankruptcy summons may be granted to a company or other body corporate upon the affidavit of the secretary, director or other person duly authorised in that behalf.

(4) Detailed particulars of demand shall be endorsed upon or annexed to the bankruptcy summons. No objection shall be allowed to the particulars unless the Court considers that the debtor has been misled by them. An original and at least two copies of every bankruptcy summons and particulars shall be lodged with the proper officer at the time of issue, and shall be sealed.

13. (1) Every bankruptcy summons shall be endorsed with the name and registered place of business of the solicitor for the summoning creditor. If no solicitor is employed for the purpose, it shall bear an endorsement stating that it has been granted to the creditor in person, together with his residence and an address within

the jurisdiction at which a notice to dismiss the summons or any other notice or proceeding in the matter may be served.

(2) There shall be endorsed on the summons in addition to an intimation of the consequences of neglect to comply with the requisition of the summons, a notice to the debtor that if he disputes the debt and desires to obtain the dismissal of the summons he must file an affidavit within fourteen days after service of the summons stating (a) that he is not so indebted or only so indebted to a less amount than 1,904.61 or (b) that before the service of the summons he had obtained the protection of the Court or (c) that he has secured or compounded the debt to the satisfaction of the creditor.

(3) Where the summoning creditor is ordinarily resident outside the jurisdiction or, being a company or other body corporate, has its registered office or principal place of business outside the jurisdiction, there shall be endorsed on the front of the bankruptcy summons an address within the jurisdiction at which payment can be made.

14. (1) A bankruptcy summons shall be personally served within twenty-eight days from the date of the summons by delivering to the debtor a sealed copy of the summons with endorsed or annexed particulars of demand together with a true copy of the affidavit filed in accordance with rule 11. If personal service within the time limit cannot be effected, the Court may grant extension of the time for such service. If the Court is satisfied by affidavit that the debtor is evading service or that from any other cause prompt personal service cannot be effected, it may order service to be effected in the manner permitted by Order 9, rule 2 as if the debtor were a defendant, or make such order for substituted or other service, or for the substitution for service of notice by letter, public advertisement (in the Form No. 8), or otherwise, as may be just.

(2) The person serving a bankruptcy summons shall, within three days at most after service, endorse on the summons the day and date of the service thereof, and every affidavit of service of such summons shall mention the date on which such endorsement was made. Such affidavit shall be in the Form No. 3.

15. The affidavit mentioned in sub-rule (2) of rule 13 shall be in the Form No. 6. Where a debtor files such affidavit, the time shall be fixed by the proper officer at which the application for the dismissal of the summons will be heard by the Court.

Notice thereof in the Form No. 7 shall be given and the affidavit served by the debtor, not less than four days before the date so fixed, by service of the notice and the affidavit on the solicitor for the summoning creditor at his registered place of business or, if no solicitor is employed, by service on the summoning creditor at the address within the jurisdiction for the service of notices. In default of the debtor giving notice or in default of his appearance before the Court at the time fixed his application shall be dismissed.

#### IV. Security

16. (1) Where a person is required to give security, such security, unless otherwise specially directed by the Court, shall be in the form of a bond with one or more sureties.

(2) The bond shall be taken in such sum as the Court shall fix having regard to the amount in issue and the probable cost of the proceeding.

(3) Where a person is required to give security he may in lieu of entering into a bond lodge in Court to the credit of the matter such sum as the Court shall fix. Notice of such lodgment having been made shall be given forthwith to the person entitled to the security. Money so lodged shall be subject to the order of the Court and shall be drawn out by the draft of the Official Assignee, but every such draft shall be signed also by the Judge.

(4) The security of a guarantee association or society approved of by the Court may be given in lieu of a bond or a lodgment.

(5) In all cases where a person proposes to give a bond by way of security he shall serve two clear days previously on the solicitor for the person to be secured, or on such person when no solicitor has been employed, notice of the proposed sureties and of the time and place appointed for the execution of the bond according to the prescribed form.

(6) The sureties shall make an affidavit of their sufficiency according to the prescribed form unless the person to be secured shall dispense with such affidavit, and such sureties shall attend the Court to be cross-examined if required.

(7) The bond shall be executed and attested in the presence of the Official Assignee unless otherwise directed by the Court.

#### V. Declaration of insolvency

17. Any debtor may file a declaration of his insolvency in the Form No. 9 and such declaration shall be signed by the debtor in the presence of a solicitor, who shall inform such debtor of the nature and effect thereof and shall subscribe his name as witness to the due execution thereof, and file an affidavit in the Form No. 10, verifying such declaration of insolvency.

18. A petition of bankruptcy filed by any debtor shall be deemed to include a declaration of insolvency, and no such declaration shall in such case be necessary.

#### VI. Bankruptcy petition

A. Bankruptcy Petition by a person other than the Debtor (including petition to open territorial proceedings under the Insolvency Regulation)

19. (1) A petition by a person other than the debtor shall be in the Form No. 11 and shall:

(a) contain a statement showing the nature and amount of the debt and showing that the debt has not been paid, secured or compounded;

(b) recite the specific act of bankruptcy on which the petition is founded;

(c) contain an undertaking by the petitioner to advertise notice of the adjudication and statutory sitting in the manner directed by the Court, and to bear the expenses of such advertisement;

(d) contain:



(i) statements that the Insolvency Regulation applies to the proceedings and that the debtor's centre of main interests is situated in the State and the facts and grounds supporting each statement; or

(ii) statements that the Insolvency Regulation applies to the proceedings, that the debtor's centre of main interests is situated in another specified Member State and that the debtor has an establishment within the State and the facts and grounds supporting each statement; or

(iii) a statement that the Insolvency Regulation does not apply to the proceedings, and in such case, shall contain a statement that the debtor is domiciled in the State or that, within a year before the date of the presentation of the petition, he has ordinarily resided or had a dwellinghouse or place of business in the State, or that he has carried on business in the State personally or by means of an agent or manager, or that he is or within the said period has been a member of a partnership which has carried on business in the State by means of a partner, agent or manager and the facts and grounds supporting that statement;

(e) where the Insolvency Regulation applies to the proceedings, contain a statement that, to the petitioner's knowledge, no insolvency proceedings have been opened in respect of the debtor in any Member State or Member States (other than the State), or that such insolvency proceedings have been opened and if so, whether those insolvency proceedings are main proceedings, secondary proceedings or territorial proceedings;

(f) contain an indemnity on the part of the petitioner, indemnifying the Official Assignee as to the Official Assignee's costs, fees and expenses allowed by the Court up to and including the statutory sitting and as to such further costs, fees and expenses of the Official Assignee as the Court may upon the application of the Official Assignee direct, and

(g) contain notice of the date for the hearing of the petition.

(2) Where main insolvency proceedings have been opened in respect of the debtor in another Member State, paragraphs (a) and (b) of sub-rule (1) shall not apply to a petition by the liquidator in the main proceedings for the opening of secondary proceedings in respect of the debtor in accordance with Article 29 of the Insolvency Regulation.

(3) Where insolvency proceedings have been opened in another Member State, the affidavit verifying the petition shall exhibit a certified copy of the original decision appointing the liquidator or any other certificate of the court having jurisdiction (as referred to in Article 19 of the Insolvency Regulation) and if such decision or certificate is not in one of the official languages of the State, a translation of that decision or certificate into the Irish or the English language certified by a person competent and qualified for the purpose.

(4) The petition shall be verified by affidavit, which may be endorsed on the petition, and which shall verify each fact relied on in support of the statement made for the purposes of sub-rule (1)(d).

19A. (1) This rule applies only where, in the petitioning creditor's belief, the centre of the debtor's main interests is situated within the territory of a Member State other than the State.

(2) In a case to which this rule applies, the petition shall also:

(i) identify the place within the State where, in the petitioning creditor's belief, the debtor has an establishment and the facts and grounds supporting that statement;

(ii) where main proceedings have not been opened in another Member State, contain a statement as to which of the conditions referred to in Article 3(4)(a) or Article 3(4)(b) of the Insolvency Regulation is met and the facts and grounds supporting that statement.

(3) The affidavit verifying the petition shall verify each fact relied on in support of each statement made for the purposes of sub-rule (2).

20. (1) A petition by a person other than the debtor shall be signed by the petitioner or, if more than one, by all the petitioners, unless the petitioners are partners, in which case one partner may sign on behalf of himself and the other partners. Any petitioner may sign the petition by his attorney duly authorised by power of attorney in that behalf.

(2) A petition by a creditor limited company or body corporate shall be sealed with the seal of the company or body corporate and signed by two directors or by one director and the secretary. Such seal and signature shall in all cases be attested.

21. On the presentation of a petition by a creditor, the petitioning creditor shall file in the proper office an affidavit in the Form No. 12 proving his debt and the act of bankruptcy, provided that when a debt or any part thereof is in respect of money lent by a credit agreement to which either the Consumer Credit Act 1995 applies or the 2010 Regulations apply or interest or charges in connection therewith, the affidavit shall incorporate a statement showing in detail particulars showing compliance of the credit agreement as to content with the requirements of Part III of the Consumer Credit Act 1995 or, as the case may be, Part 4 of the 2010 Regulations, and provided also that where the act of bankruptcy relied on is non-compliance with a bankruptcy summons, it shall also incorporate a statement that the debt has not been secured or compounded.

22. Where a petitioning creditor is not known to the proper officer or a petition is not signed by a solicitor in addition to being signed by the petitioning creditor, it shall not be filed until the petitioner shall be identified to the satisfaction of the proper officer.

23. In all cases the petitioning creditor shall indemnify the Official Assignee against any costs, fees and expenses incurred by him and allowed by the Court up to and including the statutory sitting and against such further costs, fees and expenses as to the Court may, upon the application of the Official Assignee, on notice to the petitioning creditor, direct.

24. The proper officer shall appoint the time at which the petition is to be heard. Notice of the time so appointed shall be written on the petition and sealed copy thereof. A sealed copy of the petition shall be taken out by the petitioner or his solicitor and may be used as if it were an original.

25. Every petition by a person other than the debtor shall be served, not less than seven days before the hearing of the petition, by delivering to the debtor personally a copy of such petition and by showing to the debtor at the time of such service the sealed original, or shall be served in such substituted manner as the Court may direct. The petitioner shall file in the proper office an affidavit of service of the petition not later than two clear days before the hearing.

#### B. Bankruptcy Petition by a Debtor

26. (1) A debtor's petition shall be in the Form No. 13 and shall:

(a) contain an undertaking by the debtor to attend in person at the statutory sitting;

(b) contain an undertaking by the debtor to advertise notice of the adjudication and statutory sitting in the manner directed by the Court and to bear the expenses of such advertisement;

(c) contain an undertaking by the debtor to lodge such sums, if any, as the Court may from time to time direct to cover the costs, fees and expenses incurred or to be incurred by the Official Assignee;

(d) contain:

(i) statements that the Insolvency Regulation applies to the proceedings and that the debtor's centre of main interests is situated in the State and the facts and grounds supporting each statement; or

(ii) statements that the Insolvency Regulation applies to the proceedings, that the debtor's centre of main interests is situated in another specified Member State and that the debtor has an establishment within the State and the facts and grounds supporting each statement; or

(iii) a statement that the Insolvency Regulation does not apply to the proceedings, and in such case, shall contain a statement that

the debtor is domiciled in the State or that, within a year before the date of the presentation of the petition, he has ordinarily resided or had a dwellinghouse or place of business in the State, or that he has carried on business in the State personally or by means of an agent or manager, or that he is or within the said period has been a member of a partnership which has carried on business in the State by means of a partner, agent or manager and the facts and grounds supporting that statement, and

(e) where the Insolvency Regulation applies to the proceedings, contain a statement that, to the debtor's knowledge, no insolvency proceedings have been opened in respect of the debtor in any Member State or Member States (other than the State), or that such insolvency proceedings have been opened and if so, whether those insolvency proceedings are main proceedings, secondary proceedings or territorial proceedings.

(2) Where insolvency proceedings have been opened in another Member State, the affidavit verifying the petition shall exhibit a certified copy of the original decision appointing the liquidator or any other certificate of the court having jurisdiction (as referred to in Article 19 of the Insolvency Regulation) and if such decision or certificate is not in one of the official languages of the State, a translation of that decision or certificate into the Irish or the English language certified by a person competent and qualified for the purpose.

(3) The petition shall be supported by an affidavit, which may be endorsed on the petition, which shall verify the petition and shall verify the facts supporting every statement made for the purposes of sub-rule (1)(d).

26A. (1) This rule applies only where the centre of the debtor's main interests is situated within the territory of a Member State other than the State.

(2) In a case to which this rule applies, the petition shall also:

(i) identify the place within the State where the debtor has an establishment and the facts and grounds supporting that statement;

(ii) where main proceedings have not been opened in another Member State, contain a statement as to which of the conditions referred to in

Article 3(4)(a) or Article 3(4)(b) of the Insolvency Regulation is met and the facts and grounds supporting that statement.

(3) The affidavit verifying the petition shall verify the facts supporting every statement made for the purposes of sub-rule (2).

27. A petition of bankruptcy by a debtor shall be supported by the affidavit of the debtor setting forth the particulars of his assets and where the same are and the estimated value thereof, in order that it shall be made to appear to the satisfaction of the Court that his available estate is sufficient to produce the sum of □€1,904.61 at the least, and if required he shall produce satisfactory evidence of the value of such assets.

### C. General

28. The petitioner shall swear to the best of his knowledge and belief that the allegations in the petition are true.

29. (1) Upon the presentation of a petition by a creditor or a debtor the petitioner shall deposit with the Official Assignee the sum of □€650, and shall thereafter lodge such further sums, if any, as the Court may from time to time direct, to cover the costs, fees and expenses incurred or to be incurred by the Official Assignee, and no petition shall be received unless the receipt of the Official Assignee for the deposit payable on presentation of the petition is produced to the proper officer.

(2) The Official Assignee shall account for the money so deposited to the creditor or, as the case may be, to the debtor's estate, and any sum so paid by a petitioning creditor shall be repaid to such creditor (except and so far as such deposit may be required by reason of insufficiency of assets for the payment of the costs, fees and expenses incurred by the Official Assignee) out of the proceeds of the estate in the same priority as his costs.

30. Every petition of bankruptcy (together with, in the case of a creditor's petition, the original bankruptcy summons and the completed affidavit of service of the summons) shall be filed in the proper office.

31. The proper officer shall at the time of filing endorse on every petition and other document the date of the filing thereof and in cases of declarations of insolvency and petitions shall also endorse the hour of the day.

32. Upon the presentation of the petition the proper officer shall appoint the time for the hearing thereof and shall endorse on the petition the time appointed for such hearing and shall sign the same.

## VII. Adjudication in bankruptcy

33. Where two or more petitions are presented against the same debtor, or against debtors being members of the same partnership, the petition which was first presented shall be entitled to be first heard. Where such first petition shall not have been proceeded with to adjudication or where the debtor shows cause against the adjudication thereunder or where delay will be avoided, any other petition may be proceeded with. If the Court shall make adjudication upon such last mentioned petition, all other petitions shall stand dismissed with such costs (if any) as the Court may allow, and a note of such dismissal shall be endorsed by the proper officer on each such petition.

34. No order of adjudication shall be made against a firm in the firm's name, but it shall be made against the partners individually with the addition of the firm's name.

35. The debt of the petitioning creditor which has been proved for the adjudication shall in all cases be deemed to be a debt proved and admitted in the bankruptcy, unless the Court shall otherwise order.

35A. (1) Where, on the hearing of a petition for adjudication, the Court is satisfied that main insolvency proceedings have previously been opened in a Member State other than the State, the Court may make an order of adjudication opening secondary proceedings.

(2) An adjudication order or order of adjudication opening secondary proceedings shall contain the appropriate recital included in Form No. 15.

36. (1) The petitioning creditor or the Official Assignee may after adjudication make application to the Court, supported by affidavit, for the appointment of a receiver or manager in accordance with section 73 of the Act.

(2) Where cause is shown against the adjudication or where the funds realised by the receiver or manager are insufficient to discharge his costs, fees and expenses, the petitioning creditor shall pay such costs, fees and expenses to the receiver or manager as the Court may direct, and the Court shall decide any claim for damages arising out of his appointment, and may make such Order as it thinks fit.

37. (1) A receiver or manager of property or business of the debtor appointed by the Court shall submit his accounts (including a rental, if required) for examination to the Official Assignee, and for that purpose shall attend upon him at such reasonable times as he may require.

(2) The remuneration of a receiver or manager shall be under the direction of the Court, and no receiver or manager shall have any lien whatever for his remuneration on any money or property which may have come to his hands.

38. (1) Upon adjudication on the petition of a creditor, a copy of the order concerned, in the Form No. 15, shall be served on the bankrupt by the Bankruptcy Inspector or any of his assistants.

(2) An affidavit of service of the copy order shall be sworn forthwith by the Bankruptcy Inspector, or his assistant as the case may be, and filed in the proper office.

39. (1) A person adjudicated bankrupt intending to show cause against the validity of the adjudication in accordance with section 16 of the Act shall within three days from the date of service of the copy order of adjudication, or such extended time as the Court may allow not exceeding fourteen days from the date of such service, file in the proper office notice in writing of his intention together with an affidavit containing the particulars referred to in sub-rule (2).

(2) The notice shall state which of the requirements of section 11(1) of the Act are alleged by the person adjudicated not to have been complied with, and the affidavit shall set out in detail the grounds on which he claims the adjudication to be invalid. The notice shall be in the Form No. 16.

(3) Upon filing of the notice and affidavit the proper officer shall set the notice down for hearing before the Court, and shall endorse on the notice the time fixed for the hearing and shall date and sign it.



(4) A copy of the notice so endorsed shall, together with a copy of the affidavit, be served by the person showing cause upon the solicitor for the petitioning creditor, or upon the petitioning creditor if no solicitor is employed, and upon the Official Assignee.

40. After lodging such notice of his intention he shall, on application to the proper officer, and on payment for the same be furnished forthwith with copies of the proceedings on which the adjudication was founded.

41. If at the sitting of the Court to hear the cause against the validity of the adjudication the debtor shall not appear, or if having appeared he shall fail to show to the satisfaction of the Court that the requirements of section 11(1) of the Act or such of them as shall have been put in issue, have not been complied with, or unless the Court in accordance with section 16(2) of the Act shall adjourn the application the cause shown by the debtor shall be disallowed with such costs as the Court may order. If at such sitting any new evidence as to any of these matters shall be given, or any witness to any of such matters shall not be present for cross-examination (if required to attend) and further time shall be desired, the Court may, if it think the application reasonable, grant such further time as it may think fit.

42. Immediately on the adjudication of a debtor on his own petition, or after the expiration of the time for showing cause against an adjudication on a creditor's petition or after the disallowance of any cause if cause had been shown, a summons to the bankrupt in the Form No. 14 shall issue, specifying the statutory sitting, and a sealed copy of such summons shall be served upon him personally, provided that the Court may in any case direct some other mode of service. It shall be the duty of the solicitor for the petitioner to cause service to be affected and an affidavit thereof to be made and filed forthwith.

43. From and after the statutory sitting the Official Assignee shall be at liberty to choose and appoint a solicitor to have carriage of the proceedings on his behalf and to advise him in the course of the proceedings.

44. After adjudication the petitioner or his solicitor shall at the request of the Official Assignee furnish to the Official Assignee all information which he may have relating to the trade dealings, affairs or property of the bankrupt, and produce to the Official Assignee any books of account and documents in his possession or control relating to the matters aforesaid.

## VIII. Motions and practice

45. Every solicitor (not being a solicitor presenting a petition or a solicitor nominated by the Official Assignee to act on his behalf) nominated to act on behalf of any bankrupt or other person being a party to any motion or other proceeding in the bankruptcy, shall file in the proper office a notice of appointment or change of solicitor, as the case may be, in the Forms Nos. 17 and 18 respectively.

46. A short note or statement of every motion of course shall be delivered to the proper officer at least two clear days before it is moved, specifying the matter in which and the party on whose behalf it is made, the nature of the application and the name of the solicitor or party applying.

47. Motions on notice shall be grounded on affidavit or other document or evidence stated in the notice of motion unless the Court in any particular case otherwise directs and such motions and affidavits shall be filed in the proper office.

48. Where any person other than the applicant is affected by the motion, no order shall be made except with the consent of that person duly shown to the Court, or upon proof that notice of the intended motion and copies of the supporting affidavits have been duly served upon that person; provided that the Court, if satisfied that the delay caused by proceedings in the ordinary way would or might entail serious mischief, may make any order *ex parte* on such terms as to costs and otherwise, and subject to such undertaking (if any) as the Court thinks just, and any person affected by such order may move to set it aside.

49. (1) Two copies of the notice shall be filed in the proper office by the solicitor or person serving it, and the notice shall specify a date for hearing not less than two clear days after the date of service of the notice unless the Court otherwise directs; provided that, where the notice requires to be served personally, it shall be served not less than four clear days before the hearing of the motion.

(2) A copy of the notice shall be served forthwith upon the Official Assignee, together with copies of the affidavit or affidavits or other documents grounding the motion.

(3) Any further affidavit or affidavits in reply shall be filed in the proper office and copies thereof shall be served forthwith upon the Official Assignee.

**APPENDIX C**  
**GLOSSARY OF BANKRUPTCY TERMS**

**Annulment**

Cancellation.

**Assets**

Anything that belongs to you that may be used to pay your debts.

**Bankruptcy Adjudication Order**

A court order making you bankrupt.

**Bankruptcy petition**

A request made (by you as the debtor or by a creditor) to the court for you to be made bankrupt and giving the reasons why.

**Bankruptcy Register**

The register is a record of all bankruptcies, including those that have been discharged. However a person conducting a search against the register is told only the status of the bankrupt 'discharged' and the date it was discharged. No information is given about the former bankrupt.

**Creditor**

Someone to whom you owe money.

**Debts**

Money you owe.

**Discharge from bankruptcy – freed from bankruptcy**

Anyone who is made a bankrupt remains a bankrupt for 12 years, unless or until he/she discharged by the High Court, after settling his/her debts with his/her creditors. (This 12 year automatic discharge period will reduce to 3 years, once the Personal Insolvency Act, Part 4 is enacted by Minister's regulation in June. (See **Discharge** at page 11 at above)

**Estate**

Your assets or property which Official Assignee can deal with to pay your creditors.

**Income payments agreement**

You may enter into a written agreement with the Official Assignee to pay him part of your wages, salary or other income for an agreed period, up to a maximum of 5 years.

**Income payments order**

The court may order you to pay part of your wages, salary, pension or other income to the Official Assignee, if your income is more than you or your family need to live on (ie after deducting sufficient sum for reasonable living expenses), for a period up to a maximum of 5 years.

**Interest**

A right to, or share in, a property.

**Legal charge**

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

**Official Assignee in Bankruptcy (Official Assignee)**

Under the Bankruptcy Act 1988 when you are made bankrupt all your estate vests in the Official Assignee. His role is to sell your assets as soon as convenient and distribute the proceeds thereof to your creditors.

**Personal Insolvency Practitioner**

A person who specialises in insolvency, usually an accountant, solicitor or financial adviser, authorised and regulated by Insolvency Service of Ireland and by recognised professional bodies.

**Petition**

See "Bankruptcy petition".

**Preferential creditor**

A creditor in bankruptcy proceedings who is entitled to receive certain payments in priority to other unsecured creditors. These creditors include certain Revenue , Social Welfare and Local Authority debts over a 12 month period and debts due to occupational pension schemes and employees.

### **Proxy**

Instead of attending a meeting, a person (e.g. a creditor) can appoint someone to go and vote in their place – a 'proxy'.

### **Public examination – S 21 of Bankruptcy Act**

The court may order that a bankrupt be questioned in open court about their affairs, dealings and property.

### **Secured Creditor**

A creditor who has a right to sell an asset of yours on foot of a legal or equitable charge in the event you fail to pay a debt eg a mortgagee bank of your family home or a judgement mortgagee (ie a person who has registered a judgement in the Property Registration Authority against your property, turning its judgement debt against you, into a mortgage against your home)

### **Trustee in Bankruptcy**

The trustee in bankruptcy is an insolvency practitioner who takes control of your assets, replacing the Official Assignee in Bankruptcy appointed on day you were adjudicated bankrupt. He / she may be appointed by the Court where 60% in number and value of your creditors at a special sitting of the Court (called a Statutory Sitting) vote in favour of his / her appointment. The trustee takes over the powers and functions of the Official Assignee under the Bankruptcy Act and his main duties are likewise, to sell your assets and share proceeds among the creditors.

### **Unsecured creditor**

A creditor who does not hold security (such as a mortgage) for money owed. Some unsecured creditors may also be preferential creditors giving them priority over other unsecured creditors in payment of their debts.

# IMPORTANT NOTICE

With effect from **Tuesday 21<sup>st</sup> May 2013**, the office of the Official Assignee in Bankruptcy will be based at:

**Insolvency Service of Ireland,  
Block 2,  
Phoenix House,  
Conyngham Road,  
Dublin 8**

**Tel: 0761 064 200**

**Email: [officialassigneeinbankruptcy@courts.ie](mailto:officialassigneeinbankruptcy@courts.ie)**