Personal Insolvency (Amendment) Bill 2014 – Third list of Amendments 08 July 2015

Preliminary Submission by FLAC, 10 July 2015

Introduction.

This note is based on the third list of amendments proposed to the Personal Insolvency (Amendment) Bil 2015. FLAC has prepared this note based on a very rushed consideration of the amendments. We hope that it is accurate but we would ask that it be read with the health warning that these reflections are a first consideration. However, given the speed with which this is likely to be considered by the Oireachtas, we feel it is useful to note a few things, as follow below.

If anyone wants to discuss these matters further, please contact Paul Joyce or Noeline Blackwell of FLAC.

Amendment to section 9 of Principal Act (2).

The proposals to expand the information function, to collect statistics, monitor develops and effective communications are all very welcome. The section would benefit from:

- A power to consult with a wide variety of stakeholders, including consumers;
- A specific power to instigate and to conduct research;
- A specific obligation to publish the outcomes of research and monitoring undertaken.

Amendment of section 26 of Principal Act (3).

This raises the limit for a DRN to €35,000. FLAC welcomes this. We always believed that the limit of €20,000 was too low, and said so at the time.

Amendment of section 91 of Principal Act (10)

This proposes: The existing requirement for co-operation under the MARP as a mandatory criterion for eligibility for PIA has been extended by the addition of proposed s. 91(1)(g)(ii) of the Principal Act to include that if the debtor has entered into an alternative repayment arrangement in good faith under the MARP and a PIP confirms that it is his or her belief that if the debtor were not to enter into a PIA arrangement, she or he would be unlikely to become solvent within five years.

This has to be read in the light of recent scathing comment from the Central Bank about the failure of 7 of its regulated entities to be fully compliant with the Central Bank's expectations on how lenders should engage with MARP as part of the Code of Conduct on Mortgage Arrears. This section continues to assume good faith on the part of the lenders . All those seeking to help those in mortgage distress were aware of shortcomings in bank dealings with borrowers. The belated and limited scrutiny of the Central Bank is simply confirmation of what many others already knew. In the circumstances, it is possible that the original s. 91(1)(g) should be deleted as a condition entirely. (http://www.centralbank.ie/press-area/press-releases/Pages/CentralBanksthemedinspectionidentifiesweaknessesinlenderscompliancewiththeCodeofConductonMortgageArrears.aspx)

Court review of proposed Personal Insolvency Arrangement. (17)

The proposed court review limits, to some extent, the absolute power of creditors to veto any personal insolvency arrangement in the current legislation through the insertion of a new section 115A. In order to avail of the court review:

- A Personal Insolvency Practitioner will have to form a view that there are reasonable grounds for applying for a review:
- The applicant's family home will have to be part of the proposed arrangement (a 'relevant debt');
- The proposal must not, in the normal course, require the debtor to cease to occupy the family home unless it is not practicable to remain;
- The applicant will have to either be in mortgage arrears on their principal private residence on 1/1/2015 or have been in arrears before that date and now be in an 'alternative arrangement'.

It is therefore only of value to those currently in arrears. This makes it a temporary solution only which does not deal with the underlying problem which allows lenders to act without explanation and at their absolute discretion. Of course it will be of real value to those now in long term arrears, many of whom are increasingly desperate for a solution and at real risk of losing their homes.

However, in all other cases, major creditors - for most consumer debt, the mortgage lenders - will be able to continue without any curb whatsoever on their power to grant or deny a personal insolvency legislation at their total unexplained discretion.

It appears that if creditors object to a proposed variation of such a court reviewed PIA, if granted, under a new s.119A the debtor will also be able to refer that objection to the court.