



P.A. McCormack & Co.

Chartered Certified Accountants & Insolvency Practitioners



PERSONAL AND CORPORATE INSOLVENCY

Regardless of whether you are trading through a corporate or personally, if you or your business become insolvent you will need the best professional advice available.

Whether your business can be turned around or not, it is important that the correct decision is made as soon as possible for the benefit of all stakeholders.

For an initial free consultation, with no further commitment, please contact our offices.



P.A. McCormack & Co.

Chartered Certified Accountants and Insolvency Practitioners

Flemington House
Brown Street
Carlow

Tel: 00353 (0)59 9130422

Clifton House
Lower Fitzwilliam Street
Dublin 2

Tel: 00353 (0)1 4923531

Email: info@pamccormack.com

Web: www.pamccormack.com

PERSONAL INSOLVENCY

Personal Insolvency Bill 2012

The Personal Insolvency Bill is due to be passed into law in November 2012 and the Personal Insolvency Board is expected to be in place and operational by the end of the first quarter of 2013. It is estimated that between 40 and 50 thousand people will avail of the provisions provided for in the Personal Insolvency Bill within 12 months of its introduction. Please see a brief summary below of the provisions provided in the Bill.

DRN - Debt Relief Note

Unsecured debt < €20k. Disposable income < €60 per month, assets < €400. Typically for credit / store cards, utility bills, personal overdraft / loans.

DSA - Debt Settlement Arrangement

Unsecured debt > €20k, no upper limit. Once in a lifetime only, all creditors treated on a pro rata basis. Typically for personal guarantees (e.g. Bank guarantees for a company), personal overdrafts / loans, credit cards and other unsecured debts.

Personal Insolvency Practitioner engaged for 5 year period, possible 1 year extension. Requires approval of 65% of creditors in value at meeting. Provides protection from bankruptcy petition, enforcement of judgement, no legal proceedings for recovery of debt. Debtor is discharged from remaining debts owed. Certain debts are excluded from DSA's.

PIA - Personal Insolvency Arrangement

Debts > €20k with a €3m ceiling for Secured debt (unsecured can also be included). Requires support of 65% creditors including 50% of both secured and unsecured in value - then binding on all. Typical debts include residence mortgage, investment properties, buy to let mortgages, personal guarantees and loans, credit cards, overdrafts and personal loans. Typically last 6 years and can be extended for a further year. Under the supervision of a Personal Insolvency Practitioner who must be fair to all parties.

After 6 years will exit PIA debt free except for mortgage and investment property loans which will then be performing.

CORPORATE INSOLVENCY

The main remedies for companies which have become insolvent are briefly set out below.

CVL - Creditors Voluntary Liquidation

Creditors Voluntary Liquidation is a method of winding up an insolvent company. Generally, following a meeting of the directors, a general meeting of the members is called for the purpose of passing a resolution to wind up the company. At the members meeting a resolution is passed to wind up the company and usually the members nominate a liquidator. The member's meeting is followed by a meeting of the creditors who will confirm the member's nomination for liquidator or propose an alternate (Section 266 to 268 CA 1963). Once appointed, the liquidator will examine the statement of affairs as prepared by the directors, take control of the assets and communicate with creditors, including suppliers, employees, banks etc..

Following disposal or liquidation of the company assets, the liquidator will pay out dividends to the creditors of the company in strict order of priority as set out in S285 Companies Act 1963. From commencement to conclusion of the liquidation, various reports on the liquidation and conduct of the directors are filed with the Office of the Director of Corporate Enforcement (For Example - Section 56 Companies Enforcement Act 2001).

Following the conclusion of the liquidation the company will be dissolved by Companies Registration Office. A creditors voluntary liquidation is the most common method used in winding up a company.

Compulsory Liquidation

A compulsory liquidation is broadly similar to a CVL, however in a compulsory liquidation the liquidator is appointed by the High Court and the liquidation is carried out under the strict supervision of the court. The process for a compulsory liquidation commences with a petition being presented to the court, this petition can be presented by the directors, the members or by one or more of the company creditors (Section 213 and 214 CA 1963). Often in cases where a

petition is presented by a creditor to wind up the company the directors may face restriction or disqualification action being taken by the liquidator (Section 150 and 160 CA 1990).

Examinership (Companies Amendment Act 1990)

An examinership is a process whereby an application is made to the High Court for the appointment of an examiner. The examination process normally provides the company with the protection of the court for a 100 day period during which the examiner prepares a 'Scheme of Arrangement' for approval by the court. When a petition for the appointment of an examiner is presented to the court it is usually accompanied with an 'Independent Accountant's Report'. The independent Accountant's report includes an assessment of the business and an opinion as to whether the business or part of the business can be saved for the benefit of the employees, creditors and other stakeholders (Section 3B CAA 1990). If the court is satisfied that the business or part of the business has a reasonable prospect of survival it will appoint an examiner. Throughout the examination process the examiner will report to the court and will prepare a scheme of arrangement for approval by the creditors. Following approval, the scheme of arrangement is presented to the court for approval. If approved the court will issue an order approving the scheme and at that stage all parties are bound by the scheme. The scheme will include the estimated outcome for the various classes of creditors both under a winding up and under the scheme of arrangement. The scheme will detail proposed investment into the company, dividends payable to the various classes of creditors, recommended changes in management and other matters which the examiner feels are necessary for the survival of the business. Unlike a liquidation the directors powers and management functions do not cease with the appointment of an examiner.

The powers of the Examiner are set out in the Companies Amendment Acts 1990 and 1999 and include powers to repudiate onerous contracts or leases.

CORPORATE INSOLVENCY cont.

Informal Arrangements

Informal arrangements are arrangements entered into between a company and its creditors. These arrangements are more likely to work where there are a limited number of creditors and survival of the company will be of benefit to the company and its creditors. Any creditor who does not wish to accept the proposal may institute legal proceedings. These type of arrangements are difficult to agree and implement and are not very common. The arrangements do not involve the High Court and are significantly less costly.

Receiverships

Receivers are appointed by charge holders to the assets of a company under either a fixed or fixed and floating charge. Receivers are normally appointed by mortgage or charge holders, usually the banks, and can be in the form of fixed charge property receivers or fixed and floating charge - receiver and managers. Under a receivership the receiver acts to realise assets for the benefit of the charge holder and normally has no responsibility to the other creditors. However where a receiver is appointed under a floating charge the receiver will have a responsibility to the preferential creditors who rank in priority to the floating charge holder in accordance with the provisions of Section 98 CA 1963.

The Receiver's appointment is concluded when - the debenture owing to the debenture / charge holder has been discharged or the assets over which the Receiver has been appointed have been fully realised or disposed of.

Following the discharge of the receiver by charge holder the function of the receiver ceases and the remaining assets are passed back to the liquidator or the directors where no liquidator has been appointed.

CORPORATE LIQUIDATION – SOLVENT COMPANY

MVL - Members Voluntary Liquidation (Sections 252 to 263 CA 1963)

A members voluntary liquidation is appropriate where the company is not insolvent. One of the required documents necessary to place a company into a MVL is a directors sworn affidavit of solvency. This type of liquidation is appropriate where a company is solvent, has served its purpose, members wish to dissolve their association in the company and in some cases are carried out to unlock shareholder capital in a tax efficient manner. The company must have sufficient funds to pay its liabilities within 12 months from commencement of the winding up.

We provide a professional and confidential service and can assist you with all areas of Personal and Corporate Insolvency, including;

- Independent Business Review / Turnaround and Rescue
- Advice on Insolvency Obligations and Options (Corporate & Personal)
- Advising directors on preparation for and conducting a Creditors Meeting
- Directors obligations and common pitfalls
- Full Liquidation Service, including MVL, CVL and Compulsory Liquidations
- Examinations and preparation of Independent Accountant's Reports
- Advice to creditors, including attendance at CVL meetings and sitting on Committees of Inspection, providing ongoing reports to appointing creditor(s)



P.A. McCormack & Co.

Chartered Certified Accountants and Insolvency Practitioners

Flemington House
Brown Street
Carlow

Tel: 00353 (0)59 9130422

Email: info@pamccormack.com

Web: www.pamccormack.com

Clifton House
Lower Fitzwilliam Street
Dublin 2

Tel: 00353 (0)1 4923531