Consolidated Submission for Insolvency Law Reform

ISI

Tackling problem debt, together

Insolvency Service of Ireland

Consolidated Submission for Civil Law Division

Dated 6th August 2019

Contents

1. BANKRUPTCY ACTS

1.1 Access to Financial Details of a Bankrupt

The experience of the Bankruptcy Division in dealing with bankruptcy cases over the past 3 years is that the quality and completeness of the information contained within the debtor's Statement of Affairs ("SOA") is, in the majority of cases, inadequate for efficiently processing these estates. Currently, a person seeking to be adjudicated bankrupt is required, amongst other things, to complete an SOA and submit the SOA to the Examiner's office at the time of filing for his or her petition for bankruptcy.

There is currently no audit or validation of the data contained in the SOA up to the point of adjudication. Whilst there are cursory checks taking place in the Examiners Office, these are associated with signature confirmation, numbers of copies submitted, etc., rather than validating that the SOA has been completed correctly.

This situation results in:

- A disjointed process of gathering the required SOA data post adjudication in order to be able to process the bankruptcy estate. This will now all have to take place in a time frame which is just 12 months long. unnecessary delays in the processing of court applications.
- Weeks, and sometimes months of communication between the Bankruptcy Division and a Bankrupt to establish an accurate picture of a Bankrupt's estate. This can be problematic as the onus on the Bankrupt to engage is lessened once adjudicated, particularly given that his debts are wiped out automatically on adjudication.
- An inability to fully realise the potential returns for a Bankrupt's creditors through an increased risk of non disclosure of assets and income in the SOA presented at adjudication.

The inability of the Official Assignee ("OA") to validate or check completeness of the SOA application pre-adjudication, directly contributes to the above issues.

In many countries, the comparable SOA document is submitted to the Insolvency Service's equivalent body pre-adjudication as part of the original application and checks are applied to what is submitted to ensure completeness.

A new case management system has been implemented in the Bankruptcy Division and the division now has the capability to accept the submission of SOA data, electronically or otherwise pre adjudication.

In order to address the concerns/shortcomings outlined above, the ISI proposes the following amendments to the primary legislation:

- firm statutory basis for the OA to receive information about a debtor's financial affairs preadjudication (see subsection 1(a) below),
- a firm statutory basis for a Bankruptcy Portal but for this to be flexible and adaptable for future (see subsection 1(b) below),
- a provision improving the quality of information received in the SOA (see subsection 2 below),
- a provision requiring debtors (i.e. those pre-adjudication) and bankrupts (i.e. those postadjudication) to lodge the SOA with the OA for checking and stamping before it can be filed with the Court (see subsections 3 and 4 below),
- an enabling provision to allow the OA to make enquiries and carry out checks with respect to information in the SOA (see subsection 5 below). This would apply pre and post adjudication and is

again aimed at improving the quality of the information in the SOA (and its usability by the OA in administering the bankruptcy). This closely resembles the power of the ISI to verify information in a Prescribed Financial Statement under the Personal Insolvency Act.

Section	Proposed Solution/Legislative Amendments
Insert new Section 61A to the Bankruptcy Acts	**61A Statement of Affairs** (1) The Official Assignee may whether by electronic means or otherwise and whether before or after adjudication: (a) receive and process information about a debtor's or a bankrupt's financial affairs and (b) provide such assistance or facilities as the Official Assignee sees fit in connection with the preparation of a statement of affairs. (2) A debtor or bankrupt, when completing a statement of affairs, shall make full and honest disclosure of his or her financial affairs and ensure that, to the best of his or her knowledge, the statement of affairs is true, accurate and complete. (3) Unless the Court otherwise directs, a debtor or bankrupt shall not file a statement of affairs with the Court unless the statement of affairs has been stamped, electronically or otherwise, by the Official Assignee. (4) The Official Assignee may refuse to stamp a statement of affairs as referred to in subsection (3) where the Official Assignee is not satisfied that the statement of affairs is true, accurate and complete. (5) The Official Assignee may carry out such checks or make such enquiries as he considers necessary or appropriate to verify the truth, accuracy or completeness of any matter referred to in a statement of affairs.

1.2 Income Payment Agreements

The OA uses Income Payment Agreements ("IPAs") with debtors to obtain contributions from them towards their bankruptcy debts. Whilst there is no statutory basis for such agreements under the Bankruptcy Acts, it is a far simpler and effective manner of ensuring payments are made by debtors in the normal course, given there is clearly consent by the debtor to the amount to be paid. It is also by far the most common process of

securing income contributions from debtors internationally, saving the requirement for court applications to put them in place or varying them.

The IPA is put in place for a period of 36 months, applying the ISI Reasonable Expense Guidelines, mirroring the power under amended legislation for Bankruptcy Payment Orders ("BPOs").

However, whilst there are clear advantages in obtaining contributions in a consensual manner through IPAs over the BPO process, given there is no statutory basis for enforcement, the OA is clearly exposed where a debtor enters into an IPA and post discharge defaults on the IPA. In such circumstance, the OA has lost the opportunity to seek a BPO which has to be applied for pre discharge. This exposure has manifested itself on a number of cases in the recent past where bankrupts have ceased to pay funds under the IPA post discharge and we are of the view it is arising more frequently as a consequence of one year bankruptcies.

In the absence of any statutory basis for enforcement of an IPA, the Official Assignee is obliged to seek BPOs through the High Court in all cases, where there is surplus income, to ensure he will be in a position to enforce the payments should default occur; notwithstanding that many debtors may dutifully make their payments and the OA and debtors may actually agree to variations thereof in the absence of court orders.

In summary, the lack of any statutory recognition and enforcement of IPAs results in:

- greater default by debtors in cases where BPOs are not put in place pre discharge,
- increased Court applications involving the Bankruptcy Judge, Bankruptcy Division staff, court staff, debtors and their legal and financial advisors.
- increased costs for all parties involved, which in some bankruptcy estates may exceed any benefit for creditors from the debtor's contributions.

The proposed new section 85E of the Bankruptcy Acts is drafted copying the equivalent English legislative provision in the Insolvency Act 1986 reducing drafting burden and providing a body of UK case law since 1986 on its interpretation which would be very useful.

Section	Proposed Solution/Legislative Amendments
Insert new section 85E to the Bankruptcy Acts	85E. (1) In this section "income payment agreement" means a written agreement between a bankrupt and the Official Assignee or between a bankrupt and his trustee and which provides— (a)that the bankrupt is to pay to the Official Assignee or the trustee an amount equal to a specified part or proportion of the bankrupt's income for a specified period, or (b)that a third person is to pay to the Official Assignee or the trustee a specified proportion of money due to the bankrupt by way of income for a specified period. (2)A provision of an income payment agreement of a kind specified in subsection (1)(a) or (b) may be enforced as if it were a provision of a bankruptcy payment order. (3)While an income payment agreement is in force the Court may, on the application of the bankrupt, the Official Assignee or the trustee, discharge or vary an attachment of earnings order that is for the time being in force to secure payments by the bankrupt. (4)The following provisions of section 85D shall apply to an income payment agreement as they apply to a bankruptcy payment order—
	(a)subsection (8) (receipts to form part of estate), and (b)subsection (9) (meaning of income). (5)An income payment agreement must specify the period during which it is to have effect; and that period— (a) shall have effect for no longer than 3 years from the date on which the agreement is made. (6)An income payment agreement may (subject to subsection (5)) be varied— (a)by written agreement between the parties, or (b)by the Court on an application made by the bankrupt, the Official Assignee or the trustee. (7)The Court— (a)may not vary an income payment agreement so as to include provision of a kind which could not be included in a bankruptcy payment order, and

	(b) shall grant an application to vary an income payment agreement if and to the extent that the Court thinks variation necessary to avoid the effect mentioned in section 65(2).

1.2.1 Remove reference to 'anniversary of adjudication' in sections 85D(3) and 85D(3)(3b) of the Bankruptcy Act 1988

1.2.2 Business Case

Unfortunately, we are increasingly finding that the backstop / end date provision in this section is being abused by practitioners and debtors, seeking to reduce debtor contributions towards bankruptcy estates. This is being achieved through delaying the Bankruptcy Payment Order (BPO) application being brought to Court in the first place, by failing to provide adequate information to allow an assessment to be put to the Court and then by seeking multiple adjournments once the BPO application is listed. When the Court is finally in a position to make the BPO, the backstop / end date provision in this section prevents it making a 3 year order and it can only order for the balance remaining up to the end date, which clearly defeats the intention of the Legislature in providing for a 3 year / 5 year order period. In fact, by removing the end stop date the intention of the Legislature will more effectively be achieved, in that BPOs will be put in place as soon as possible after adjudication date and last 3 years; as the incentive to delay the BPO and frustrate Legislature's intention will have been removed.

Example of actual case demonstrating why amendment is required:

The bankrupt was adjudicated on the 23rd March 2018 and 4th anniversary end date of BPO under Act will be the 23rd March 2022. Due to delays in provision of information, BPO application was only first listed in March 2019 and then adjourned six times. BPO was finally granted on the 15th July 2019 to pay each and every month for 36 successive months, which means the BPO would but for backstop cease on the 15th June 2022. However, in compliance with the current legislation it will actually terminate on the 15th March 2022, resulting in a loss to the estate of €7,000.00.

1.2.2 Proposed Legislative Amendment

Section	Proposed Solution/Legislative Amendments
Amend Section 85D(3)	(3) Subject to subsections (3A) and (3B), an order made under subsection (1) shall have effect for no longer than 3 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 3 years, ~~and in any event, any order made under subsection (1) or varied under subsection (5) shall cease to have effect on the 4th anniversary of the date on which the bankrupt was adjudicated bankrupt.~~

Amend Section 85D(3) (3b) of the Bankruptcy Act 1988	(3B) Where the Court has made an order under section 85A(4), the bankruptcy payment order made under subsection (1) shall have effect for no longer than 5 years from the date of that bankruptcy payment order coming into operation, and where, during that bankruptcy payment order's validity, the court has varied that order under subsection (5) such variation shall not cause that order to have effect for a period of more than 5 years, ~~and in any event, any bankruptcy payment 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.]~~

1.3 Disclaimer of Onerous Property

This amendment is to remove the requirement of the Official Assignee ("OA") to obtain leave of Court when disclaiming property. This requirement can be burdensome, especially where the value of the property to be disclaimed is low. The proposed change would permit the OA to disclaim without requiring the leave of the Court

The removal of the requirement for Court leave would be balanced by new provisions requiring the OA to give notice in writing of the disclaimer to interested persons and persons under a liability not discharged by the Act in respect of the disclaimed property. The meaning of having an 'interest' in the property expressly includes anyone occupying the property as his/her principal private residence (note the existing definition of "principal private residence" in section 2(1) Bankruptcy Act is not used because its application is limited to the bankrupt

This is an important safeguard which aligns with the Constitutional protection for the dwelling. Any such person with an interest in the property or under an undischarged liability in respect of it would be entitled to apply to Court for (i) an order under the new subsection (4) or a vesting order under the existing subsection (7).

In this way, the Court would retain oversight and control over disclaimer where an interested person objects or raises concerns. This is much more efficient than requiring leave of the Court to be sought in every case of disclaimer, given that it can be expected that the majority of cases will be uncontroversial and will not give rise to objections or concerns.

This change would bring the Irish law more into line with the UK. The UK equivalent of S 56 does not require leave of the Court for disclaimer. The equivalent UK provisions are contained in s.315-321 of the UK Insolvency Act 1986.

Section	Proposed Solution/Legislative Amendments
Section 56(1) and (4)of the Bankruptcy Act 1988	**Amendment 1:** In subsection (1) of section 56, delete the words "with the leave of the Court and" **Amendment 2**: After subsection (1) of section 56, insert a new subsection as follows: "(1B) The Official Assignee shall give notice in writing of the disclaimer to each person who, to the Official Assignee's knowledge at the time of the disclaimer: (i) has an interest in the disclaimed property (including any person who is in occupation of or claims a right to occupy the property as that person's principal private residence (as defined in section 2 of the Personal Insolvency Act 2012 subject to the modification that a reference to the debtor shall be taken as a reference to that person)); or (ii) is under a liability not discharged by this Act in respect of the disclaimed property. **Amendment 3** Delete the existing subsection (4) of section 56 and replace it with the following**:** "(4) The Court may, on application by the Official Assignee at any time or on application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property before the end of the period of 14 days beginning with the day on which notice of the disclaimer was given, give such directions and make such other order in the matter as the Court thinks just."

1.4 Payment of Dividends

The ISI proposes to streamline the administration process on paying and notifying creditors of dividends and the winding up of estates in a number of ways:

a) An amendment to remove the requirement for the OA to obtain a Court order for the distribution of an estate. In line with changes to the Companies Act, which has removed Court liquidations from the scrutiny of the Examiners Office, placing greater duty on liquidators to notify creditors of asset liquidations, these changes will require the OA to service notice of dividend distribution on creditors, leaving the creditors with the power to apply to Court if dissatisfied with his distribution. The OA will not proceed to distribute until a creditor has had an opportunity (14 days) to apply to Court for an Order. If such an application is made by a creditor, the OA will not make any distribution without

leave of the Court. The process is similar to that in the UK, which will greatly streamline asset distribution to creditors by the OA, saving effort and substantial Court time.

b) An amendment to remove the requirement for newspaper publications and Iris Oifigiúil by the OA; replacing same with a notice on the ISI website or in such manner as may be prescribed. This is a solution similar to that introduced in recent years around the requirement of Bankruptcy applicants to publish details of statutory sittings.

c) An amendment to subsection (6) to allow the OA to pay expenses, fees, costs and preferential payments so far as the funds extend without need to apply to Court for an order in that regard(as is currently the case). Reference to "preferential payments" has been included in the new proposed text for subsection (6) to clarify that subsection (6) applies to a situation where there are insufficient funds available for distribution to the general creditors but some funds for distribution to preferential creditor. That is not clear in the current wording of subsection (6) which refers only to "expenses, fees and costs" and can be contrasted with the wording of subsection (1) which refers to "expenses, fees, costs and preferential payments".

Section	Proposed Solution/Legislative Amendments
Section 82 of the Bankruptcy Act 1988	**Amendment 1** Delete subsection (2) and replace it with the following: "(2) Within four working days of the filing referred to in subsection (1), the Official Assignee shall give notice to creditors of the filing by way of publication on the website of the Insolvency Service of Ireland [or in such other manner as may be prescribed] and provide particulars to creditors [in the prescribed manner] of how it is proposed to distribute the estate. (2A) The Official Assignee shall distribute the estate in the manner set out in the notice referred to in subsection (1) no earlier than fifteen days after the giving of such notice but no such distribution shall be made without leave of the Court where an application under subsection (3) has been made by a creditor."

	Amendment 2 Delete subsection (3) and replace it with the following: "(3) The Court may, on the application of a creditor make such order as it thinks fit for distribution of the estate or any part thereof by payment of the expenses, fees, costs and preferential payments as well as the relevant dividend and any such application shall be made within 14 days of the giving of the notice referred to in subsection (1)." **Amendment 3** Delete subsection (6) and replace it with the following: "(6) In any case where there are no funds, or in the opinion of the Official Assignee insufficient funds, available for distribution to the creditors, the Official Assignee may pay the expenses, fees, costs and preferential payments in that order so far as the funds extend. Where a balance remains, it shall be transferred to the account referred to in *section 84 (1)*."

1.5 Remove requirement to advertise notice of adjudication in Iris Oifiguil

1.5.1 Business Case

The statutory sitting was removed from the Rules of Court on June 1st 2016, having been already removed from primary legislation on commencement of Bankruptcy Amendment Act 2015.

Notice of persons adjudicated bankrupt are published after adjudication on the ISI website by the Bankruptcy Division. The primary purpose of this amendment is to streamline the process for individuals declared bankrupt and reduce unnecessary administrative work within the bankruptcy division.

1.5.2 Proposed Legislative Amendment

Section	Proposed Solution/Legislative Amendments
S17 (2) Amend	The Court shall cause notice of the adjudication to be published by the ISI on its website within seven days of adjudication.

1.6 The Official Assignee to be given the same investigative powers as the ISI as set out in section 30(9) of the Personal Insolvency Act.

1.6.1 Business Case

As the Office of Official Assignee (OA) has now merged into ISI (as Bankruptcy Division thereof), there is an anomaly in the Personal Insolvency Act S 30(9) providing investigative powers to ISI in relation to non bankruptcy processes, which are much wider than that provided under the Bankruptcy Act 1988 to the Official Assignee. What is proposed is the Bankruptcy Act to be changed, copying same powers as provided in S 30(9).

1.6.2 Proposed Legislative Amendment

Section	Proposed Solution/Legislative Amendments
New –18(2)	Insertion of the following provision into the Bankruptcy Act 1988 - 18(2) "Notwithstanding anything contained in any enactment, for the purposes of the performance of the functions of the Official Assignee, information held by the Department of Social Protection, other Departments of State, the Revenue Commissioners, local authorities or other State Bodies or agencies in relation to a bankrupt may be furnished to the Official Assignee"

1.7 Modernise creditor voting in bankruptcy matters in accordance with Personal Insolvency Act provisions.

1.7.1 Business Case

Section 39(3) refers to "three fifths in number and value of the creditors voting at the meeting". The number requirement should be dropped to reflect the voting approach in the Personal Insolvency Act. This proposal will ensure consistent voting bases across personal and corporate insolvency processes. The proposal will drop the number of the creditor majority requirement; replacing it simply with a requirement to obtain a majority in value of creditors. A further change in actual number majority required from current 60% to 65% will bring voting in

line with voting in the DSA and PIA processes under the Personal Insolvency Act. This will ensure consistency across all insolvency voting processes.

1.7.2 Proposed Legislative Amendment

Section	Proposed Solution/Legislative Amendments
S 39(3)	(3) If an offer of composition is made by or on behalf of the bankrupt and 65% in value of the creditors voting at the meeting, either in person or by an agent authorised in writing in that behalf, accept the offer or any modification of it, it shall be deemed to be accepted, and when approved by the Court shall be binding on all creditors of the bankrupt.

1.8 Modernise creditor voting in bankruptcy matters in accordance with Personal Insolvency Act provisions – Remove Number Requirement.

1.8.1 Business Case

Section 110 refers to "three fifths in number and value of the creditors voting at the meeting". The number requirement should be dropped to reflect the voting approach in the Personal Insolvency Act and in corporate insolvencies. The purpose is to allow easier appointment of private trustees, relieving the burden on the OA of having to administer all large estates. In bankruptcy cases, under S110, the majority in number requirement has been used by debtors to defeat creditors with 94% in value of creditors seeking to put in a trustee in bankruptcy, replacing the Official Assignee. It potentially will allow increased number of trustees being appointed, relieving the OA of many large estates which will be funded by the creditors. A further change in actual number majority required from current 60% to 65% will bring voting in line with voting in the DSA and PIA processes under the Personal Insolvency Act. This will ensure consistency across all insolvency voting processes

1.8.2 Proposed Legislative Amendment

Section	Proposed Solution/Legislative Amendments
S110	S 110 – "If at a hearing of the Court to be held within 3 weeks of the publication of the notice of adjudication pursuant to Section 17(2) on motion of a creditor on notice to all creditors - - or at any adjournment thereof, 65% in value of the

	creditors voting at the meeting, either in person or by a person authorised in writing in that behalf, by resolution declare that the estate of the bankrupt be wound up by a trustee and a committee of inspection, and appoint for that purpose a trustee and a committee of inspection of not more than five creditors qualified to vote at the meeting, the Court, on application being made to it in that behalf, may order that the property of the bankrupt be so wound up

1.9 Provide discharged bankrupts with same composition rights as undischarged bankrupts to get back properties unrealised by OA.

1.9.1 Business Case

The purpose of this to give an automatically discharged bankrupt the same composition rights as an undischarged bankrupt. Similarly, this proposal seeks to address an anomaly and lacunae in law where, unlike in the UK, an automatically discharged bankrupt does not have right to seek to do a composition with his/her creditors to have his/her unrealised estate re-vest in him/her. It is unfair that an automatically discharged bankrupt, does not have same right to have unrealised property re-vested in him/her on composition, as an undischarged bankrupt has on composition under Sections 41 of Bankruptcy Act 1988.

1.9.2 Proposed Legislative Amendment

Section	Proposed Solution/Legislative Amendments
S38	**38.**—The Court may, on the application of a bankrupt or of a person previously automatically discharged from bankruptcy under S 85 (1) of the Act, grant a stay on the realisation of his estate, for such time and under such conditions as it thinks fit, to enable him or any persons acting on his behalf to make an offer of composition to his creditors under *section 39* .
S 39	**39.**—(1) Where a stay on the realisation of the estate of a bankrupt or of a person previously automatically discharged from bankruptcy under S 85 (1) 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 or person previously automatically discharged from bankruptcy under S 85 (1) shall call a meeting of his creditors before the Court for the purpose of making an offer of composition to them. (2) The Court, on the application of a bankrupt, a person previously automatically discharged from bankruptcy under S 85 (1) or either of their personal representatives, shall on the report of the Official Assignee and in the

41(2)	absence of fraud, shall make an order vesting back in the former bankrupt any property which his creditors have agreed shall not form part of the composition —

1.10 To clarify that property definition in S 3, includes ownership of any record of bankrupt in any format.

1.10.1 Business Case

Purpose is to widen the definition of ***property*** in S 3 to include ownership of any record of the bankrupt in any format.

1.10.2 Proposed Legislative Amendment

Section	Proposed Solution/Legislative Amendments
S 3 – Interpretation section	Property' — a) includes money, goods, records in any format, things in action, land and every description of property, whether real or personal, b) includes obligations, easements and every description of estate, interest, and profit, present or future, vested or contingent, arising out of or incident to property, c) in relation to proceedings opened in the State under Article 3(1) of the Insolvency Regulation, includes property situated outside the State, and d) in relation to proceedings so opened under Article 3(2) of the Regulation, does not include property so situated;]

1.11 Abolish Bankruptcy Summons (costly in time and effort for Creditors & Court and reduce legal costs for creditors)

1.11.1 Business Case

To remove the requirement for a Petitioning Creditor to go through the preliminary bankruptcy summons process to issue a petition. This will save costs and Court time. In the UK this was abolished and greatly reduced legal costs and saved huge Court time, stripping away an unnecessary layer of Court process.

1.11.2 Proposed Legislative Amendment

Section	Proposed Solution/Legislative Amendments
Repeal S 8 & 9 Amend S11, 11A & 11 C	**11.**—(1) A person qualifying under section 7 shall be entitled to present a petition for adjudication against a debtor if— (*a*) the debt owing by the debtor to the petitioning creditor (or, if two or more creditors join in presenting the petition, the aggregate amount of debts owing to them) amounts to more than €20,000 (*b*) the debt is a liquidated sum, c) the debt, or each of the debts, is a debt which the debtor appears to be unable or unwilling to pay **11A** **Definition of inability to pay** (1)For the purposes of section 11(1)(c), the debtor appears to be unable or unwilling to pay a debt if, but only if, the debt is payable immediately and either— (a) the petitioning creditor to whom the debt is owed has served on the debtor a demand (known as "the statutory demand") in the form prescribed by the Rules of Court requiring him to pay the debt owing by the debtor to the petitioning creditor (or, if two or more creditors join in presenting the petition, the aggregate amount of debts owing to them) amounting to €20,001 or more or to secure or compound for it to the satisfaction of the creditor, at least 3 weeks have elapsed since the demand was served and the demand has been neither been complied with nor set aside in accordance with the rules, or (b) execution or other process issued in respect of the debt on a judgment or order of any Court in favour of the petitioning creditor, or one or more of the petitioning creditors to whom the debt is owed, has been returned unsatisfied in whole or in part.
	11B **Expedited petition.** In the case of a creditor's petition presented wholly or partly in respect of a debt which is the subject of a statutory demand under section 11A(1)(a), the petition may be presented before the end of the 3-week period there mentioned if there is a serious possibility that the debtor's property or the value of any of his property will be significantly diminished during that period and the petition contains a statement to that effect. 11C Proceedings on creditor petition (1)The Court shall not make a bankruptcy order on a creditor's petition unless it is satisfied that the debt, or one of the debts, in respect of which the petition was presented is a debt which, having been payable at the date of the petition or having since become payable, has been neither paid nor secured or compounded for to the satisfaction of the creditor. (2) In a case in which the petition contains such a statement as is required by section 11 (b), the Court shall not make a bankruptcy order until at least 3 weeks have elapsed since the service of any statutory demand under section 11A(1)(a). (3) Nothing in sections 11 to 11C prejudices the power of the Court, in accordance with the Court Rules, to authorise a creditor's petition to be amended by the omission of any creditor or debt and

	to be proceeded with as if things done for the purposes of those sections had been done only by or in relation to the remaining creditors or debts.

1.12 Enactment of provisions regarding EU Insolvency Regulation

1.12.1 Business Case

This amendment will clarify Bankruptcy Act amendment required by EU Insolvency Regulation 2000 – it is not sufficiently clear in the original enactment pursuant to EUIR.

1.12.2 Proposed Legislative Amendment

Section	Proposed Solution/Legislative Amendments
11(d)	. (d) (i) the debtor's centre of main interests is situated in the State, or (ii) the debtor's centre of main interests is situated in another specified Member State and the debtor has an establishment within the State, or (iii) the Insolvency Regulation does not apply to the proceedings and the debtor (whether a citizen or not) is domiciled in the State or, within 3 years before the date of the presentation of the petition, has ordinarily resided or had a dwelling-house or place of business in the State or has carried on business in the State personally or by means of an agent or manager, or 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.

1.13 Remove duplication requirement in S 46 for a cert to be issued by Proper Officer certifying vesting of bankruptcy assets in OA, when S 44 of Act states vesting is automatic on granting of adjudication order, which is the relevant proof.

1.13.1 Business Case

To improve effectiveness and efficiency of registration of vesting certs in the PRAI by the Official Assignee it is necessary to remove requirement for him to seek and obtain the Examiners Office issuing a cert which Examiners Office require the OA to draft and produce to it which it in turns signs simply and provides back to the Official Assignee in due course, which at times can take many weeks. This greatly increases the delays in filing of vesting certs. The OA on foot of his order of adjudication should be able to draft and file the vesting cert directly with the PRAI saving time and effort of all involved and substantially reducing the risk to bankruptcy assets being sold to bona fide purchasers for value without notice to loss of bankruptcy estate under S 46(2) of Act.

1.13.2 Proposed Legislative Amendment

Section	Proposed Solution/Legislative Amendments
Replace our S 46(1)	. **46**—(1) Where, according to law, any conveyance of land is required to be registered and such land vests in the Official Assignee under this Part, a certificate shall be issued by the Official Assignee on foot of the order of adjudication, certifying that the assets of the bankrupt vests in him and he shall cause the certificate to be registered as soon as may be as if it were a conveyance, and registration of the certificate shall have the like effect to all intents and purposes, as registration of a conveyance would have had. .

1.14 Provide for Appointment of a Second Bankruptcy Inspector

Amend Act (Sections 27, 28, 29, 62 and 128) such that any reference to Bankruptcy Inspector will be in plural rather than singular in most concise manner possible.

1.14.1 Business Case

The purpose of this amendment is to provide in Act for the appointment of a second (or more) Bankruptcy Inspector given the level of business increase for the position and national remit which now requires appointment of at least one or more Bankruptcy Inspectors. The Department has sanctioned the creation of a second position of Bankruptcy Inspector and an individual is currently acting as assistant in role subject to statutory amendment providing for the creation of the second post.

1.14.2 Proposed Legislative Amendment

Section	Proposed Solution/Legislative Amendments
Amend Section 3 F1 Interpretation of "Bankruptcy Inspector"	. **[**'Bankruptcy Inspector' means a person standing appointed for the time being— (i) to the position of Bankruptcy Inspector in the Office of the Official Assignee in Bankruptcy on the day before the coming into operation of section 29 of the Courts and Civil Law (Miscellaneous Provisions) Act 2013, or (ii) to the position(s) of Bankruptcy Inspector pursuant to section 12 of the Personal Insolvency Act 2012;**]**

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1.15 Provide for adjudications on foot of debtor petitions of debtors by the Insolvency Service without need of Court involvement except in case of objection by a creditor.

1.15.1 Business Case

The purpose of this amendment is to allow debtors petition for bankruptcy without need for Court involvement, as is common in most developed insolvency systems, whilst providing a creditor a right to object to the order by way of appeal to the Court. With bankruptcy numbers very low by international experience and falling annually despite the huge personal indebtedness of individuals in the State, it is clear that debtors clearly find the Court application process daunting and greatly discourages them from applying for bankruptcy. The removal of debtor applications for bankruptcy from the Court process however, should greatly incentivise them to apply for bankruptcy and deal with their debts. This will also greatly reduce the burden on the Courts in bankruptcy matters, as 90% of applications for bankruptcy are by debtors.

1.15.2 Proposed Legislative Amendment - Sections 15 and 11(4) and (5)

Section	Proposed Solution/Legislative Amendments
Substitute a new Section 15	**15**.— (1) A debtor may present an application to an Adjudicator for a bankruptcy order to be made against him or her. (2) Subject to *subsection (3)* and (4) where the application for adjudication is made by the debtor the Adjudicator may, where he considers it appropriate to do so, and where he 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. (3) Before making an order under *subsection (2)*, the Adjudicator 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 Insolvency Service, be more appropriately dealt with by means of— (*a*) a Debt Settlement Arrangement, or (*b*) a Personal Insolvency Arrangement, and where the Adjudicator forms such an opinion he may adjourn the hearing of the application to allow the debtor an opportunity to enter into such of those arrangements as is specified by the Adjudicator in adjourning the hearing.**]**

	(4) Before making an order under *subsection (2)*, the Adjudicator shall have verified to him by the Debtor that - (a) no bankruptcy petition is pending in relation to the debtor at the date of the determination, and (b) no bankruptcy order has been made in respect of any of the debts which are the subject of the application at the date of the determination (5) A debtor may within 21 days of the refusal of an Adjudicator to adjudicate him bankrupt, appeal such refusal to the Court, which appeal will be heard by way of rehearing. (6) A creditor may, within 21 days of the publication of the notice of the adjudicator order in the prescribed manner in accordance with section 17 on the website of the Insolvency Service of Ireland, appeal such order to the Court. (7) The Minister may, following consultation with the Insolvency Service, by regulations prescribe— (a) the manner in which the Adjudicator(s) shall exercise his functions, and (b) the procedures generally in relation to the administration of those functions.

Section	Proposed Solution/Legislative Amendments
Substitute new Sections 11 (4) and 11 (5) "	(4) A debtor may not make an application to an adjudicator for adjudication unless the application is accompanied by an affidavit sworn by the debtor that he has, prior to presenting the application, 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 make an application to an adjudicator for adjudication unless the application 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.]

1.16 Remove requirement for Section 61(4) order where Official Assignee selling property to bankrupt or spouse of bankrupt

1.16.1 Business Case

The purpose of this amendment is to clarify that there is no need for an application for a Section 61(4) order to be made seeking sanction of the Court, for the Official Assignee to dispose of a family home or shared home to a bankrupt, discharged bankrupt or spouse of a bankrupt or discharged bankrupt; given the purpose of the section is to protect their interests. This clarification will save the burden on the parties and the Court and the costs involved in processing these unnecessary applications.

1.16.2 Proposed Legislative Amendment – Section 61(4)

Section	Proposed Solution/Legislative Amendments
Amend section 61(4)	(4) Notwithstanding any provision to the contrary contained in subsection (3), no disposition of property of a bankrupt, arranging debtor or person dying insolvent, which comprises— (a) a family home (within the meaning of the Family Home Protection Act 1976) of the bankrupt or the bankrupt's spouse, or (b) a shared home (within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010) of the bankrupt or the bankrupt's civil partner (within the meaning of that Act), shall be made without the prior sanction of the Court unless such disposition is being made by the Official Assignee to the bankrupt, discharged bankrupt or spouse of the bankrupt or discharged bankrupt and any disposition made without such sanction shall be void.

2. PERSONAL INSOLVENCY ACTS

2.1 Debt Relief Notices

A number of policy and operational issues have been identified as follows:

- Term of supervision[1] – the equivalent supervision period in the UK for Debt Relief Orders is one year. In light of the reduced term of bankruptcy and the UK comparison, you may wish to consider reducing the supervision period for Debt Relief Notices. The supervision period for a DRN is currently three years. ISI data provided as part of this s.141 review submission in 2017 shows that DRN debtors have negligible income from which to make contributions to creditors and have little chance (less than 3%) that their circumstances will change during the three years such that they would be in a position to make a contribution. The ISI recommends that the supervision period be reduced to one year. The current period of bankruptcy of one year makes the DRN less attractive to those who could avail of it without recourse to bankruptcy. This term would also correspond to the duration of DROs in England, Wales and Northern Ireland. The proposal has the support of the ISI Consultative Forum.

- Asset Threshold[2] – the overall qualifying debt threshold increased last autumn from €20,000 to €35,000. There was no adjustment to the limit of assets. Accordingly, it is proposed that the €400 asset limit should also increase. In recent times, the equivalent limit in the UK moved from £300 to £1,000. The equivalent limit for Irish bankruptcy is €6,000. It should be noted that an increase in the value of a car retained by a DRN debtor can be increased, by regulation, without the need for changes to the primary legislation.
- Section 36 (3)[3] of the Act provides, subject to subsection (4) and (5), that the specified debtor whose income increases by €400 or more per month during the supervision period must surrender 50% of that increase to the ISI. The ISI has already dealt with a number of cases where a debtor, notwithstanding the increase in income, was still living below reasonable living expenses ("RLEs"). As the current provision makes no exception for such a circumstance, the debtor was obliged to surrender 50% of that additional income to the ISI. This raises a significant anomaly in the legislation, in that a situation could arise where a debtor is obliged to give up additional income while continuing to live below the RLEs, but had that same debtor applied for the DRN after the increase in income, he or she may still be eligible for a DRN and, as such, be able to utilise that additional income. (In the event that the supervision period for Debt Relief Notice is reduced, this issue would become less prevalent).

- Section 27 (1)[4] of the Act provides that a debtor who wishes to become a specified debtor shall submit to an approved intermediary a written statement disclosing "all" of the debtor's financial affairs. This provision further provides this statement shall include such information as may be prescribed by the ISI. The ISI proposes that the word "all" be deleted from this provision. The ISI is of the view, having received advice on the matter prior to prescribing this information, that the reference to "all " means

[1] This proposed amendment has been included in the Draft Head 24 of the Courts and Civil Law (Miscellaneous Provisions) Bill 2017 - Amendment of **section 34** of the Personal Insolvency Act 2012.
[2] This proposed amendment has been included in the Draft Head 21 of the Courts and Civil Law (Miscellaneous Provisions) Bill 2017 - Amendment of **section 26** of the Personal Insolvency Act 2012.
[3] This proposed amendment has been included in the Draft Head 25 of the Courts and Civil Law (Miscellaneous Provisions) Bill 2017- - Amendment of **section 36** of the Personal Insolvency Act 2012
[4] This proposed amendment has been included in the Draft Head 22 of the Courts and Civil Law (Miscellaneous Provisions) Bill 2017- - Amendment of **section 27** of the Personal Insolvency Act 2012

a full disclosure by the debtor of his financial affairs as there is no qualifying language in the section such as, for example "materially all". A significant amount of information is required to be provided to MABS as Approved Intermediaries to ensure that all of the debtor's financial affairs are disclosed. This has the practical consequence of adding a number of weeks to the DRN application process. The ISI believes, given the level of debt involved and the need to balance the interests of both debtors and creditors that a more practical approach should be adopted here and the deletion of the word 'all' would facilitate this approach.

- **Section 26(2)(f)(ii)** – We propose that the eligibility criteria be changed so that a debtor is no longer ineligible due to giving a preference or entering into a transaction at an undervalue and instead add this to the grounds on which a creditor can make an objection during the supervision period. We think this is important as where an individual has been struggling with problem debt for a period of time it is likely that they will have at some stage preferenced a debt in order to heat their home or keep the electricity on. As it currently stands such actions make the debtor ineligible for a DRN.

2.2 Remove Court involvement in issuing DRNs, PCs, PC extensions, DSAs and PIAs

No.	Issue	Section	Proposed Solution/Legislative Amendment
1	The ISI recommends that DRNs, PCs, PC Extensions, DSAs, PIAs and Variations should be approved by the ISI rather than requiring a court to make an order for their approval. The ISI's s.141 submission to the Department of Justice and Equality (Appendix 4) set out a description of the current and proposed procedures in relation to these measures. Each member of the Consultative Forum supports in principle such an extension of the functions of the ISI. The ISI is of the view that such a	S31 and 33	Substitute text below for section 31: 31.— (1) Where the Insolvency Service, following its consideration under section 30—(a) is satisfied that an application under section 29 is in order, and that no further information or evidence for the purpose of its arriving at a decision is required, it shall—(i) issue a Debt Relief Notice to that effect,(ii) notify the approved intermediary to that effect, and(b) is not so satisfied, it shall notify the approved intermediary to that effect. Delete ss (2) to (6). Substitute the following text for section 33(1): 33.— (1) The Insolvency Service shall, as soon as practicable—(a) notify the approved intermediary concerned that the Debt Relief Notice has been issued,…subsections (b) to (d) remain as was. NB – An appeals mechanism for refusal to grant a DRN may need to be added. Maybe consider adding it in to s.42. Substitute the following text for section 61: 61.- (1) Where the Insolvency Service, following its consideration under section 60—(a) is satisfied that an application under section 59 is in order, and that no further information or evidence for the purpose of its arriving at a decision is required, it shall—(i) issue a protective

	change would result in a number of benefits. These benefits include: □ cost savings (for all parties in terms of fewer court hearings and related legal and travel expenses); □ time savings by streamlining the process. At present the Courts have variable sitting patterns, ranging from more than once per week to once a month, and cases may be subject to adjournments including for clarification of information or to facilitate the attendance of the ISI or a PIP where directed by the Court. A particular benefit would be in instances where the regularity of Court sittings is curtailed in some way, meaning cases can continue to be dealt with in a way that does not lead to workload pinch points at various stages in the time-restricted stages of the process. □ Appendix 3 Figures A3.6, A3.7 and A3.8 set out an analysis of how long it takes a debtor to secure a DRN, DSA and PIA		certificate to that effect, (ii) notify the personal insolvency practitioner to that effect, and (b) is not so satisfied, it shall notify the personal insolvency practitioner to that effect and request him or her, within 21 days from the date of the notification, to submit a revised application or to confirm that the application has been withdrawn. Delete ss (2) and (3). Remainder of s.61 will remain with exception of proposed amendments relating to s.61(7) and s.61(7A) of 24 March 2016. NB – An appeals mechanism for refusal to grant a DSA may need to be added. Maybe consider adding it in to an existing section. Substitute the following text for section 95: 95.- (1) Where the Insolvency Service, following its consideration under section 94—(a) is satisfied that an application under section 94 is in order, and that no further information or evidence for the purpose of its arriving at a decision is required, it shall—(i) issue a protective certificate to that effect, (ii) notify the personal insolvency practitioner to that effect, and(b) is not so satisfied, it shall notify the personal insolvency practitioner to that effect and request him or her, within 21 days from the date of the notification, to submit a revised application or to confirm that the application has been withdrawn. Delete ss (2) and (3). Remainder of s.95 will remain with exception of proposed amendments relating to s.95(7) and s.95(7A) of 24 March 2016.NB – An appeals mechanism for refusal to grant a PIA may need to be added. Maybe consider adding it in to an existing section.

	from commencement through to approval by Court. it takes 11 days for a PC to be approved by Court after the ISI issues its certificate of compliance and 10 days in the case of a DRN. The proposal that the ISI issue PCs and DRNs will virtually eliminate these days from the process; it takes an average of 119.5 days after a PC issues for an arrangement to be confirmed by court. The average length of a PC, allowing for extensions, is in the region of 80 days. The proposal that the ISI approve DSAs and PIAs will significantly reduce the 119.5 days and could realistically shorten this period by up to a month; consistency of approach in terms of administrative decision-making on the application of the statutory eligibility criteria and requirements; and an increase in the accessibility of the personal insolvency system, making it more accessible to debtors by ensuring that the system is a		

	largely out-of-court process (subject to an appeal to Court) as court involvement may inhibit insolvent debtors from considering availing of a solution. The Act provides for the balancing of competing rights and interests of various parties. The ISI submits that this balance will be maintained under this proposal. The Court will continue to play a crucial role in the process by hearing appeals. It is proposed that the ISI's existing function under the Act, of checking applications and its powers of investigation in relation to these matters, will be expanded upon (where necessary) in order for it to make the various approvals. The ISI acknowledges that an important factor to consider in relation to these new procedures is ensuring its compatibility with constitutional property rights and principles relating to the administration of justice. The ISI is of the view that the benefits of this		

	proposal can be achieved while still ensuring the continued protection of existing safeguards and rights. An application for a DRN shall be made by an Approved Intermediary on behalf of a debtor to the ISI. The ISI shall be given all necessary powers to consider an application for a DRN. Where the ISI is satisfied that the specified criteria have been satisfied and the debts specified are qualifying debts, it shall issue a DRN. Where the ISI is not satisfied, it shall refuse to issue a DRN. Where the ISI has refused to issue a DRN, the ISI shall set out the reasons for same and the Approved Intermediary on behalf of the debtor may, within a specified period and on specified grounds, appeal this decision to the appropriate Court. A specified creditor under a DRN who is aggrieved by the inclusion of its debt in a DRN may, within a specified period and on		

	specified grounds, appeal the ISI's decision to the appropriate Court.		

2.3 Delegation

As Personal Insolvency Practitioners deal with an increasing number of cases, it is essential that they can delegate certain tasks to staff while all the while retaining ultimate responsibility. While there are existing provisions within the legislation dealing with the delegation of certain administrative tasks, it is necessary to extend these to other areas such as the chairing of creditors meetings. Currently, practitioners are required to attend Court at levels not originally foreseen and often with relatively short notice. This then makes it problematic for practitioners to deal with prescheduled meetings with potential new clients or the chairing of creditors meetings. It is proposed that the delegation provisions be extended as follows:

Insert new section	Delegation and outsourcing by personal insolvency practitioner. **54A.** (1)Nothing in this Act shall be taken to prevent any natural person[1] (a) employed by a personal insolvency practitioner, or (b) otherwise under the control and supervision of a personal insolvency practitioner and having a common employer with that personal insolvency practitioner, from discharging any function (or performing any act in relation such function)

[1] Query whether this should be "individual". If the word "person" is used, this will permit delegation to companies and other legal persons. See section 18(c) Interpretation Act 2005.

54A[1] to the Personal Insolvency Acts	that is authorised or required by this Act to be discharged by a personal insolvency practitioner. [3,4] (2)Nothing in this Act shall be taken to prevent any person (other than a natural person referred to in subsection (1)) engaged by or on behalf of a personal insolvency practitioner from carrying out any activity associated with the functions of the personal insolvency practitioner.[5] (3) Notwithstanding subsection (1) or subsection (2), the personal insolvency practitioner concerned shall, for all purposes under this Act, remain responsible in all respects for his or her functions under this Act.

2.4 Domicile and Transfer of Jurisdiction

No.	Issue	Section	Proposed Solution/Legislative Amendment
1	The ISI has dealt with a number of cases where the debtor has not resided in the State within one year of the date of application nor had a place of business within one year of	S.5 Domicile	This proposed amendment has been included in the Draft Heads of the Courts and Civil Law (Miscellaneous Provisions) Bill 2017, as follows: Head 20 - Amendment of section 5 of the Personal Insolvency Act 2012 Provide that: Section 5 of the Personal Insolvency Act 2012 is amended by the insertion of the following subsection:

[1] This proposed amendment has been included in the Draft Head 28 of the Courts and Civil Law (Miscellaneous Provisions) Bill 2017 - Delegation and outsourcing by personal insolvency practitioner

[3] Cf. section 531AAF of the Taxes Consolidation Act 1997 which was inserted by section 2(11) Finance Act 2012:
"**Delegation of functions and discharge of functions by electronic means**

[4] AAF. Any act to be performed or function to be discharged by the Revenue Commissioners that is authorised or required by this Part or by regulations made under this Part may be performed or discharged by any one or more of their officers acting under their authority or may, if appropriate, be performed or discharged through such electronic systems as the Revenue Commissioners may put in place for the time being for any such purpose."

[5] Cf. Definition of "outsourced activity" in the Central Bank's Consumer Protection Code 2012.

	the date of application. The Courts have had difficulty in determining where such cases should be heard. The ISI proposes amending Section 5 (2) (a) such that there is a default court in such instances. It is suggested that the default court be the primary Circuit Court (i.e. Dublin). Business Case: Section 5(1) of the Personal Insolvency Acts 2012-2015 sets out provisions relating to the interpretation of 'appropriate court' in respect of applications made under Chapter 3 or 4 of Part 3 of the Act. Where the total liabilities of the debtor exceed €2,500,000 the application is to be made in the High Court and in any other case, in the Circuit Court. Section 89(4) provides that a Personal Insolvency Arrangement may be proposed by a debtor on the basis that it will be administered in common by a personal insolvency practitioner with one		"(2A) Where a debtor does not meet the requirements of subsection (2)(a) or (b), an application under this Act shall be made to the Dublin Circuit Court." Furthermore, in the context of jurisdiction, in an interlocking application where one of the debtors has liabilities in excess of €2,500,000 and that case is heard in the High Court, then the associated interlocking application(s) should also be heard in the High Court irrespective of the value of the total liabilities in the associated application(s). **Transfer of Jurisdiction** In that regard, and to provide for the possibility that a case could require to be transferred from the High Court to the Circuit Court, it is suggested that the amendment below be added. 1A.- If, during the course of processing the application, the value of the total liabilities determined in subsection 1(a) is amended to an amount above or below the €2,500,000 threshold following proof of debt or through other circumstance, the appropriate court will be the court in which the application is originally made. There is no specific provision in the Act for interlocking DSA cases, or interlocking DSA/PIA cases. Please refer to clause 6.4.4 of the ISI's "Section 141 Consultation ISI Submission to the Department of Justice and Equality June 2017", which recommends that the legislation be reworded to expand the circumstances in which interlocking applications can be made (i.e. DSA and DSA/PIA applications to be administered in common). If this amendment were granted then the amendment sought here would have to be reworded to include DSA and DSA/PIA applications administered in common. **Amendment** In Section 5 of the Act, replace subsection (1)(b) and add subsection (1)(c) as follows: (b) in any other case, the Circuit Court, except (c) where a Personal Insolvency Arrangement is proposed by a debtor pursuant to section 89(4)

	or more other Personal Insolvency Arrangements provided that the personal insolvency practitioner is of the opinion that they can be reasonably administered in common and that each Arrangement will contain sufficient detail on how each will operate. Interlocking applications are appropriate where two (or more) PIAs are to be administered in common - usually because of the financial relationship of the debtors involved. In a number of instances, one of the interlocking cases may have liabilities greater than €2,500,000 and is heard in the High Court and the associated interlocking case has liabilities less than €2,500,000 and is heard in the Circuit Court. Such a situation causes logistical and operational difficulties for the courts, practitioners and the ISI -- The appropriate court does not have all information relevant		and the Personal Insolvency Arrangement is to be administered in common with one or more Personal Insolvency Arrangements by a personal insolvency practitioner and subsection 1(a) applies in respect of one of the applications, the appropriate court in respect of the associated application or applications is the High Court.

	to the case- The case in either of the courts may have to be adjourned on a number of occasions so as to keep both cases at the same stage thus delaying progress on the cases concerned- For PIPs to administer interlocking cases, they require each of the cases to be at the same stage, e.g. the same start and end date of PC, the same start and end date of the Arrangements, etc. - If the ISI cannot register the PIA in the Register of Personal Insolvency Arrangements on the same date, the coming into effect date will be different for each of the applications. This will cause logistical difficulties for practitioners. In a recent hearing in the High Court, Counsel for the debtor requested that Judge Baker not perfect the Order until the date on which the interlocking case was being heard in the Circuit Court. Judge Baker commented that it was an unsatisfactory situation and queried why Counsel did not apply to have the		

	interlocking case transferred from the Circuit Court to the High Court. On being advised that it was not possible to do so as it was a jurisdictional issue, Judge Baker added that perhaps the only means of dealing with it was an amendment to the legislation. In that regard, the amendment across is proposed. **Extending the amendment to cover applications for PC** While Judge Baker's comments referred to a particular circumstance, i.e. the hearing of an application for s.115A review, we believe that this same approach to the jurisdictional issue should be applied at the initial PC application stage. While at present a PIP can exert some 'control' over the timing of the making of any such applications for PC so that to the greatest extent possible they are likely to be heard within the same broad time frame, expanding the application of this approach to include		

	PC application stage would ensure greater consistency in that regard.		

2.5 Notification

This is a technical amendment but reflects an issue that has arisen on a number of occasions.

There appears to be a legal lacuna that allows a protective certificate to run indefinitely.

Section 76(1) and Section 113(1) provides that on receipt of the "*notification and accompanying documentation*", the ISI must notify the court and furnish it with the notification and documentation and record the approval of the arrangement in the Register.

Section 76(2) and Section 113(2) goes on to state that were the "*notification*" of the PIP is received by the ISI before the expiry of the period of the PC, the PC will continue in force until the DSA or PIA comes into effect or objections have been determined.

On a literal interpretation of section 76(2) and 113(2), a PIP could send in a notification in the absence of supporting documentation before the expiry of the PC and the PC would run indefinitely once received by the ISI.

Section	Proposed Solution/Legislative Amendments
Amend sections 76(2) and 113(2) of the Personal Insolvency Acts	Replace "notification" in sections 76(2) and 113(2) with "notification and accompanying documentation"

2.6 Generic Protective Cert

No.	Issue	Section	Proposed Solution/Legislative Amendment

1	At present a PIP, when applying for a PC on behalf of a debtor, must specify if it is for a DSA or PIA. A generic PC would enable the PIP to defer the decision as to the most suitable type of proposal for the debtor until all debtor information has been gathered and initial negotiations have taken place with creditors. The ISI recommends the introduction of a Generic PC to increase flexibility and the likelihood of a PIP securing a successful Arrangement.		Create a generic protective cert

2.7 Protective Certificate Extensions[1]

Pursuant to sections 61 and 95, Personal Insolvency Practitioners (PIPs) may seek a Protective Certificate for a period of 70 days. Sections 61(6)/95(6) permit a further PC extension not exceeding 40 days to be sought from the Court where the Court is satisfied that it is likely that the proposed Debt Settlement Arrangement/Personal Insolvency Arrangement will be accepted by the creditors and successfully completed by the debtor.

Sections 61(7) and 95(7) make provision for a second extension (or a third extension as the case may be if already extended under subsection (6)) not exceeding 40 days to be sought where the PIP has been appointed in accordance with sections 49(7) and 49 (9)[2] respectively, and the Court is satisfied that the extension is necessary to enable the newly appointed PIP to perform his or her functions under the Act.

Section 49(7) which, along with sections 49(8) and (9) was deleted by section 61 of the Courts and Civil Law (Miscellaneous Provisions) Act 2013, provided for the appointment of a second PIP to act for the debtor, where that original PIP appointed to act died or was otherwise incapacitated, resigned or was no longer entitled to perform the functions of a PIP.

[1] This proposed amendment has been included in Draft Heads 29 and 31 of the Courts and Civil Law (Miscellaneous Provisions) Bill 2017,

[2] The ISI understands the reference to section 49(9) in section 95(7) is a typographical error and should in fact have referred to section 49(7).

Notwithstanding the deletion of these sections, sections 61(7) and 95(7) still refer to sections 49(7) and 49(9) respectively rather than sections 49A, 49B and 49C (which were inserted by section 62 of the Courts and Civil Law (Miscellaneous Provisions) Act 2013).

In reality this means that the reference to section 49 (7) in section 61 (7) and section 49(9) in section 95(7) no longer applies as far as it was originally understood. As a consequence of this, some PIPs are now reading sections 61(7)/95(7) as simply saying "the personal insolvency practitioner has been appointed" and go on to apply sub clause (b) of subsection (7) seeking, and in some cases seeking and receiving a further PC extension.

The ISI suggests addressing the issue caused by the deletion of sections 49 (7) and 49 (9) in the manner set out below.

Having a limit on the maximum length of a protective certificate, which the ISI understands was the intention of the Legislature, should have the effect of 'concentrating minds' and achieving a solution that is acceptable to both sides in a reasonably short period of time. This should be the case, all the more so, as parties become increasingly familiar with the process. The ISI is of the view however that a further extension, where the PC has already been extended under: (a) sections 61(6)/95(6), or (b) sections 61(7)/95(7), could be of benefit in exceptional circumstances only.

In Examinership, the default period of protection (70 days) can be extended for 30 days. In exceptional circumstances the Court has the right to extend this period further – such an extension is very rare.

Accordingly, the ISI suggests a new provision in the manner set out below to facilitate a further PC extension in exceptional circumstances. The exceptional circumstances provision as proposed could only be used where the PC has already been extended as set out at (a) and (b) above and as demonstrated on the below chart, and could not be used to extend the original protective certificate issued pursuant to section 61(2)(a)/95(2)(a).

Finally, the ISI proposes the insertion, at section 61(7) and 95(7), of the words "by a personal insolvency practitioner," following the words "on application to that court" to ensure/confirm that PIPs have the right to make the necessary application to the Court without the necessity to appoint a solicitor. Sections 61(6) and 95(6) already expressly provide that the application can be made by PIPs, however as currently drafted there is no reference to the application being made by PIPs in section 61(7) and 95(7). The proposed new sections 61(7A) and 95(7A) also include reference to PIPs making the application.

Section	**Proposed Solution/Legislative Amendments**
Section 61(5) of the Act	In section 61(5) by substituting "*subsections (6)* , *(7)* and (7A)" for *"subsections (6)* and *(7)*"
Section 95(5) of the Act	In section 95 (5) by substituting "*subsections (6)* , *(7)* and (7A)" for *"subsections (6)* and *(7)*"
Section 61(7) of the Act	In section 61(7) by substituting "49A, 49B or 49C" for "49(7)"
Section 61(7) of the Act	In section 61(7), by the insertion of "by a personal insolvency practitioner," after "on application to that court"

Section 95(7) of the Act	In section 95(7) by substituting "49A, 49B or 49C" for "49(9)"
Section 95(7) of the Act	In section 95(7), by the insertion of "by a personal insolvency practitioner," after "on application to that court"
Section 61(8) of the Act	In section 61(8) by substituting "*subsections (7)* and *(7A)"* for "*subsection (7)*"
Section 95(8) of the Act	In section 95(8) by substituting "*subsections (7)* and *(7A)"* for "*subsection (7)*"
Section 61(9) of the Act	In section 61(9) by substituting "*subsections (6), (7)* and *(7A)"* for "subsection *(7)*"
Section 95(9) of the Act	In section 95(9) by substituting "*subsections (6)*, *(7*) and (7A) " for "*subsection (7)*"
Section 61(13) of the Act	In section 61(13) by substituting "*subsections (5)*, *(6), (7)* and *(7A)"* for "*subsections (5), (6)* and *(7)"*
Section 95(13)	In section 61(13) by substituting "subsections *(5)*, *(6), (7)* and *(7A)"* for "subsections *(5), (6)* and *(7)"*
New section 61(7A)	"(7A) Where a protective certificate has been extended under *subsection (6) or (7)*, the appropriate court may on application to that court by a personal insolvency practitioner, extend the period of the protective certificate by a further additional period not exceeding 40 days where the court is satisfied, by reason of exceptional circumstance, or other factors which are substantially outside the control of the debtor and the personal insolvency practitioner, it would be just to permit the extension."
New section 95(7A)	"(7A) Where a protective certificate has been extended under *subsection (6) or (7)*, the appropriate Court may on application to that court by a personal insolvency practitioner, extend the period of the protective certificate by a further additional period not exceeding 40 days where the court is satisfied, by reason of exceptional circumstance, or other factors which are substantially outside the control of the debtor and the personal insolvency practitioner, it would be just to permit the extension."

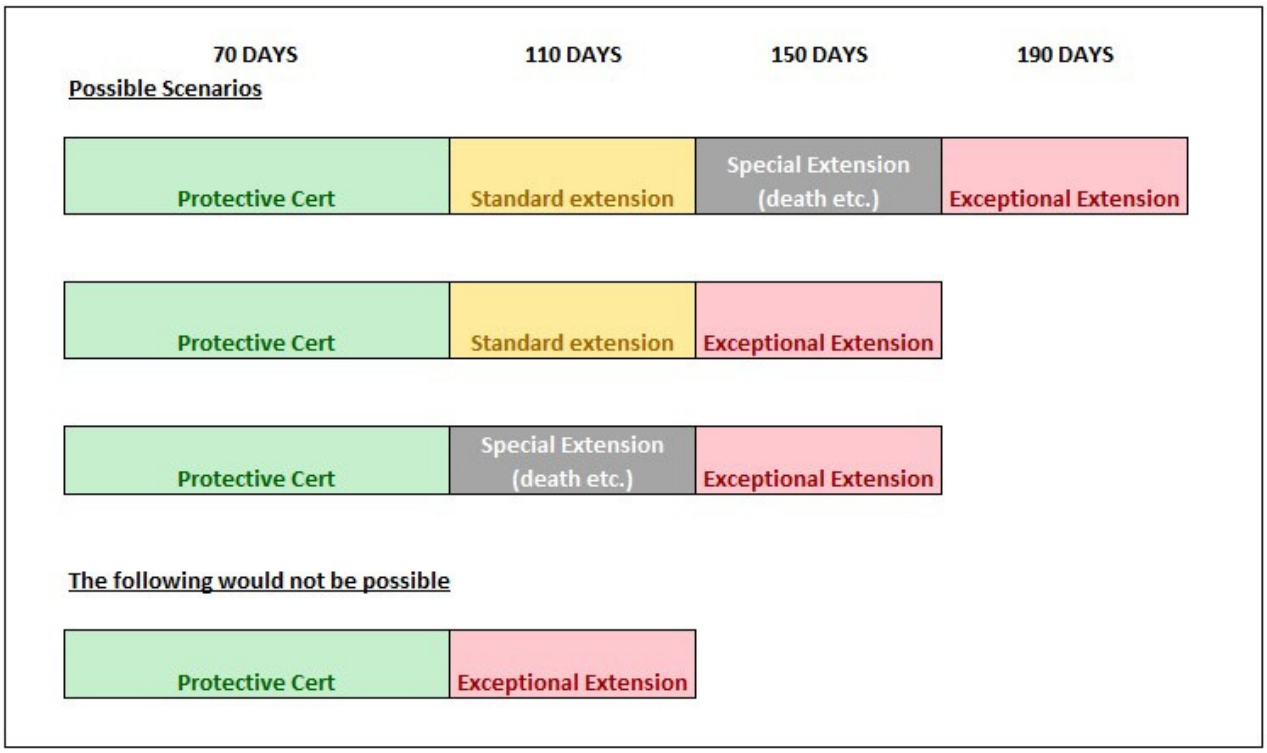

Chart Illustrating the Effects of Proposed Amendments

2.8 Notification re objections to PC Sections 63/97 right of appeal as respects protective certificate.

No.	Issue	Section	Proposed Solution/Legislative Amendment
1	The ISI recommends a minor but important amendment to address notifications that are required regarding an objection to a PC. In the case of a creditor's right to object or appeal the issue of the PC, the legislation (sections 63 and 97) does not provide for notification of the result to the ISI, PIP or specified creditors of the court's	S63	Add subsection (7) to s.63: The Registrar of the appropriate court shall notify the Insolvency Service, the personal insolvency practitioner and the creditor concerned where the Court (a) makes an order directing that the Protective Certificate shall not apply to the creditor concerned, (b) refuses to make an order directing that the Protective Certificate shall not apply to the creditor concerned, (c) On receipt of the notification under subsection (7) the PIP shall notify both the specified creditor concerned and the other specified creditors of that decision. Add subsection (7) to s.97: The Registrar of the appropriate court shall notify the Insolvency Service, the personal insolvency

	decision and this requirement should be added. In the event the ISI is given the power to approve PCs, an equivalent provision should be inserted so a notification will still issue to the PIP and specified creditor of the ISI's decision.		practitioner and the creditor concerned where the Court (a) makes an order directing that the Protective Certificate shall not apply to the creditor concerned, (b) refuses to make an order directing that the Protective Certificate shall not apply to the creditor concerned, (c) On receipt of the notification under subsection (7) the PIP shall notify both the specified creditor concerned and the other specified creditors of that decision.

2.9 Application to the appropriate Court for directions (Sections 31, 61 and 95)

The ISI is required, under sections 31(1)(a) (DRN), 61(1)(a) (DSA) and 95(1)(a) (PIA) to certify that an application is "in order" before referring the relevant application to the appropriate court. To be in a position to certify this, the ISI carries out a series of checks on each application to ensure the application and accompanying documents comply with the applicable statutory requirements. The ISI does not verify the factual data entries which are solely within the competence and control of the Personal Insolvency Practitioner (PIP) and his/her client. The ISI ensures that the mandatory requirements of the Act are met for the application made.

There have been some issues with courts around what that term "in order" actually means and a paper has been submitted to at least two courts setting out how the ISI verifies each application and arrives at its certification. Please find attached a copy of our submission which sets out these issues and our response to same.

Further, there has been an issue with MABS over preference payments and whether or not the ISI could either:

1. Send a qualified certificate over to courts or
2. Ask the court to deal with the preference point (or indeed any point) as a preliminary point for determination which, if approved, could lead to the full application going over to court.

In order to deal with the above mentioned issues, an amendment is sought by the ISI to allow the ISI make an application to the appropriate court for direction where an application has been submitted to the ISI and does not on its face appear to be "in order" as per the qualifications set out in the Act (and following the series of checks carried out by the ISI). On application by the ISI, the court may give such directions as it deems appropriate, make an order confirming it is order for the Insolvency Service to issue a certificate under section 31(1)(a)(i), 61(1)(a)(i),or 95(1)(a)(i) as applicable, or make such order as it deems appropriate.

This enhancement could be achieved by amending the relevant sections as set out below:

Section	**Proposed Solution/Legislative Amendments**

Section 31(1)[1]	In section 31(1), by substituting the following for paragraph (b): "(b) is not so satisfied that an application under *section 29* is in order, it shall – (i) notify the approved intermediary to that effect, or (ii) make an application to the appropriate court for directions in relation to a matter arising in connection with the Insolvency Service's consideration of the application under *section 30*."**
New Section 31(1A)	(1A) An application under subsection (1) shall be made by the lodging by the Insolvency Service of a notice with the appropriate court, on notice to the approved intermediary.
New Section 31(1B)	(1B) On an application under this section the court may do one or more of the following- (a) give the Insolvency Service such directions as it deems appropriate, (b) make an order confirming it is order for the Insolvency Service to issue a certificate under section *31(1)(a)(i),* or (c) make such other order as it deems appropriate.

[1] This proposed amendment has been included in the Draft Heads of the Courts and Civil Law (Miscellaneous Provisions) Bill 2017, as follows:

Head 23 - Amendment of section 31 of the Personal Insolvency Act 2012

Provide that:

Section 31 of the Personal Insolvency Act 2012 is amended by:

the substitution of "or" for "and" in subsection (1)(a) subparagraph (iii),

the substitution of the following for subsection (1) paragraph (b):

"(b) is not satisfied that an application under section 29 is in order, it shall –

(i) notify the approved intermediary to that effect, or

(ii) make an application to the appropriate court for directions in relation to a matter arising in connection with its consideration of the application under section 30."

inserting the following subsections after subsection (1):

"(1A) An application under section 31(1) shall be made by the lodging by the Insolvency Service of a notice with the appropriate court, on notice to the approved intermediary.

(1B) On an application under section 31(1) the court may do one or more of the following-

(a) give the Insolvency Service such directions as it deems appropriate,

(b) make an order confirming that it is in order for the Insolvency Service to issue a certificate under section 31(1)(a)(i), or

(c) make such other order as it deems appropriate."

Section 61[1]	In section 61(1), by substituting the following for paragraph (b): "(b) is not so satisfied that an application under *section 59* is in order, it shall – (i) notify the personal insolvency practitioner to that effect and request him or her, within 21 days from the date of the notification, to submit a revised application or to confirm that the application has been withdrawn, or (ii) make an application to the appropriate court for directions in relation to a matter arising in connection with the Insolvency Service's consideration of the application under *section 60*."
New Section (61(1A)	(1A) An application under subsection (1) shall be made by the lodging by the Insolvency Service of a notice with the appropriate court, on notice to the personal insolvency practitioner.
New Section (61(1B)	(1B) On an application under this section the court may do one or more of the following- (a) give the Insolvency Service such directions as it deems appropriate, (b) make an order confirming it is order for the Insolvency Service to issue a certificate under section *61(1)(a)(i),* or (c) make such other order as it deems appropriate.
Section 95	In section 95 (1), by substituting the following for paragraph (b): "(b) is not so satisfied that an application under *section 93* is in order, it shall – (i) notify the personal insolvency practitioner to that effect and request him or her, within 21 days from the date of the notification, to submit a revised application or to confirm that the application has been withdrawn, or (ii) make an application to the appropriate court for directions in relation to a matter arising in connection with the Insolvency Service's consideration of an application under *section 94*.**"**

[1] This proposed amendment has been included in the Draft Head 29 of the Courts and Civil Law (Miscellaneous Provisions) Bill 2017

New Section 95(1A)	(1A) An application under subsection (1) shall be made by the lodging by the Insolvency Service of a notice with the appropriate court, on notice to the personal insolvency practitioner.
New Section 95(1B)	(1B) On an application under this section the court may do one or more of the following- (a) give the Insolvency Service such directions as it deems appropriate, (b) make an order confirming it is order for the Insolvency Service to issue a certificate under section *95(1)(a)(i),* or (c) make such other order as it deems appropriate.
Sections 31(1)(a)(iii), 61(1)(a)(iii), and 95(1)(a)(iii).	Should the reference to "and" in all of these sections be replaced by "or"?

2.10 Typographical /technical amendments

A small number of cross-references contained within the Act are incorrect and are listed below:

No.	Issue	Section	Proposed Solution/Legislative Amendment
1	The maximum duration of a PIA is 6 years accordingly the test of a reasonable prospect of a debtor becoming solvent should reference a 6 year period.	Amend section 54(d) of the Personal Insol**v**ency Acts	Replace the last two words of this section "5 years" with 6 years.
2	The term "speciality judge(s)" is an erroneous term, the correct term is "specialist judge".	Amend section 10 (11) and 10(12) of the Courts of Justice Act 1947 (as inserted by section 194(*c*) of the Personal Insolvency Act 2012)	

3	Section 169(1)(b) provides that a person aggrieved by a decision of the ISI not to cause an investigation of a matter the subject of the compliant can appeal that decision to the Circuit Court. However, the section referred to does not refer to the "declining" of the ISI to carry out an investigation.".	Amend Section 169(1)(b)	Replace "section 178(2)" with "section 178(3)".
4	Section 172(a) refers in error to section 161(f).	Amend section 172(a)	Replace "section 161(f)" with "section 161(1)(h)".
5	Section 119A(13) provides that an application to the Court to vary an arrangement confirmed under section 115A must be made not less than 14 days after receiving the creditors rejection. This leaves the date for applying for such a review by the Court open ended.	Amend section 119A	Replace the words "not less" with "not later".

2.11 Amendment of section 43 (creditor objection)[1]

This amendment is required to clarify the grounds of objection of a creditor to an application by a debtor for a Debt Relief Notice.

The ISI recommends a change to the eligibility criteria for a DRN so that a debtor is no longer ineligible due to entering into a transaction at an undervalue or giving a preference to a person. This amendment is important since it is likely that an individual who has been struggling with problem debt for a period of time will at some stage have preferred one creditor over another in order to pay for utilities, for example, heat their home or keep the electricity on. In order to protect creditors' interests, the above amendments will require the inclusion of a further amendment which will add, as a ground for objection by a creditor, entering into a transaction at an undervalue or giving a preference to a person during the supervision period. This proposal has the support of the Consultative Forum.

Issue	**Section**	**Proposed Solution/Legislative Amendment**
The grounds of objection of a creditor to an application by a debtor for a Debt Relief Notice.	Amend section 43 of the Personal Insol**v**ency Acts	Section 43, subsection (3) paragraph (b) of the Personal Insolvency Act 2012 is amended by the substitution of the following for subparagraph (vi): "(vi) the specified debtor, by his or her conduct within the period of 6 months ending on the application date, arranged his or her financial affairs primarily with a view to being or becoming eligible for the issue of a Debt Relief Notice; (vii) the specified debtor entered into a transaction with a person at an undervalue that has materially contributed to the debtor's inability to pay his or her debts (other than any debts due to the person with whom the debtor entered the transaction at an undervalue); (viii) the specified debtor gave a preference to a person that has had the effect of substantially reducing the amount available to the debtor for the payment of his or her debts (other than a debt due to the person who received the preference)."

[1] This proposed amendment has been included in the Draft Head 26 of the Courts and Civil Law (Miscellaneous Provisions) Bill 2017 - Amendment of **section 43** of the Personal Insolvency Act 2012 (creditor objection)

		In order for these provisions to take effect, s.26(2)(f) will require to be deleted, and this deletion is provided for in Head 21.

2.12 Power to an appropriate Court to order the amendment of a DRN.

The ISI recommends that it be granted, without the need for any court application:

a) the power to amend a DRN – this would cover minor administrative amendments to the personal and financial details appearing on the DRN, such as creditor title

b) the ability to add in additional debts, not included or overlooked by the debtor at the time the DRN application was made, or to alter the debt amount in a DRN provided the total of all debts do not exceed the statutory threshold of €35,000.

The effect of this change would be to free up Court time in making what are usually only minor changes to the DRN, as well as administration time and cost in the ISI in not having to prepare and file Court documents prior to any such hearing. Any DRN change contemplated by the ISI during the supervision period over which there might be uncertainty would still require, under the provisions of section 41 of the Act, an application to Court for general directions in relation to it. The effect of such a change would also assist in the context of a proposed change to the supervision to one year in ensuring that any changes are made in a timely manner without having to wait for a suitable Court date.

S.39 already covers amending a DRN, but only for minor amendments. It would be beneficial for ISI to be able to make them directly rather than incurring court costs. It would also be appropriate to allow for the inclusion of an additional debt to ensure that all debts of DRN debtor are dealt with in DRN in event that some debts may be left out at application stage. A number of cases have arisen where an omitted debt has turned up after the DRN issued.

No.	Issue	Section	Proposed Solution/Legislative Amendment

1	Grant power to Court to order the amendment of a Debt Relief Notice	Substitute Section 39(1)	Substitute section 39(1) An appropriate court may, on application to it by the Insolvency Service made during the supervision period concerned, order the amendment of a Debt Relief Notice where it is satisfied that such an amendment is necessary in order to address an ambiguity in, or to rectify an error in or omission from, that Notice. The Insolvency Service may, during the supervision period concerned, make amendment to a Debt Relief Notice where it is satisfied that such an amendment is necessary in order to address an ambiguity in, or to rectify an error in, or omission from, that Notice.
2	Where Court not order amendment of Debt Relief Notice this change in that event be welcome (While this may seem to contradict the proposal in Item 1, this change to s.41(4) would be welcome in the event of Item 1 not being acceptable.)	Amend 41(4)	Amend 41(4) The power conferred on the court under subsection (3)(d), section 42(3)(d),section 43(5)© and section 44(4)(d) does not include the power to specify in a Debt Relief Notice, as a specified qualifying debt, any debt that was not included in the schedule referred to in section 29(2)(d) or in any information provided, or documents submitted, by the specified debtor, or on his or her behalf, for the purpose of his or her application for that Notice except for debts up to a ceiling of €35,000.

2.13 Extension of periods for ISI to disburse funds received under S.36 (2) or (3) or S.37

The time limits in S.38 are too short for the Insolvency to discharge its obligations under above sections and extensions of relevant time periods will allow a reasonable time to do so.

No.	Issue	Section	Proposed Solution/Legislative Amendment

1	Time period too short to enable Insolvency Service discharge its obligations	s.38(2)(b)	s.38(2)(b) - Substitute 'six months' for 'one month'.
2	Time period too short to enable Insolvency Service discharge its obligations	s.38 (3)(b)	s.38 (3)(b) - Substitute 'six months' for 'one month'.
3	Time period too short to enable Insolvency Service discharge its obligations	s.38(4)	s.38(4) – Substitute 'six months' for 'one month'.

2.14 The definition of 'excludable debt' be deleted from section 2 – "Interpretation"

No.	Issue	Section	Proposed Solution/Legislative Amendment
1	The ISI recommends that the definition of 'excludable debt' be deleted from the Act in section 2 – "Interpretation"	S 2	The ISI recommends that the definition of 'excludable debt' be deleted from the Act in section 2 – "Interpretation" and that the wording in sections xx, xx, xx and xx be amended to take account of the absence of an 'excludable debt' category).
2	Delete S 58	S 58	The removal of the 'excludable debt' category would also allow for the deletion of sections 58 of the Act

3	Delete S 92	S 92	The removal of the 'excludable debt' category would also allow for the deletion of 92 of the Act

2.15 Eligibility criteria for a Debt Relief Notice - Section 26(8)(b).

No.	Issue	Section	Proposed Solution/Legislative Amendment
1	Currently, a debtor is ineligible to apply for a DRN if they have applied for a PC within 12 months of the DRN application date. It might be considered that this should be amended to if a PC has been "granted" within the previous 12 months, as it seems like an unnecessary restriction.	26(8)(b)	Substitute "has been granted" for "has applied for"

2.16 Introduce sanctions for breach of DRN protection by creditors - Section 127

No.	Issue	Section	Proposed Solution/Legislative Amendment
1	There is no penalty for creditors who breach the terms around the issue of a DRN - creditors continue to pursue a debtor for payment/make deductions from a debtor (e.g. DSP payments, Board	S127	Add extra subsection to sec.127 if non-compliance is deemed to be an offence or perhaps add extra subsection to sections 35, 62, 79, 96 and 116. Add 1A or 2.— A person who is a specified creditor under Chapter 1 is guilty of an offence if he or she— (a) intentionally fails to comply with an obligation under section 35, or in the alternative add subsections to sections

	Gais/ESB payment cards). No sanction exists other than ineffectual reprimand or contact from ISI. Any creditor doing this is breaching their own obligations; perhaps a fine payable to ISI and/or reprimand or any non-compliance of the Act in this regard could be brought by the PIP or the ISI to the attention of the Court issuing the relevant order in respect of the debtor's debts could be incorporated into the legislation. Similar provisions could be added in respect of specified creditors breaching of obligations under sections 62, 79, 96 and 116.		35(10), 62(9), 79(13), 96(13) 116(13) Where a specified creditor under chapter ……does not comply with the provisions under this section the Insolvency Service may make an application to the appropriate court for an order for the enforcement of the provisions of this section.

2.17 Notification re creditors meeting - Section 70

Calling of creditors' meeting - Section 106

No.	Issue	Section	Proposed Solution/Legislative Amendment
1	There is no provision in the Act for what happens post a DSA/ PIA procedure coming to an end in the situation where the creditors' meeting does not take place	S70 and S106	Add a subsection after 70(3): (4) (1) Where the DSA/PIA procedure has been deemed to have come to an end the PIP shall notify the ISI and the specified creditors within 21 days. (5)Where the Insolvency Service receives the notification referred to in subsection(1), it shall, within 3 months of the date on which the protective certificate ceases to be in force

	before the expiry of the PC.		remove from the Register of Protective Certificates all information recorded in it in respect of the protective certificate. Add a subsection after 106(3): (4) (1) Where the DSA/PIA procedure has been deemed to have come to an end the PIP shall notify the ISI and the specified creditors within 21 days. (5) Where the Insolvency Service receives the notification referred to in subsection(1), it shall, within 3 months of the date on which the protective certificate ceases to be in force remove from the Register of Protective Certificates all information recorded in it in respect of the protective certificate.

2.18 Interlocking/joint applications – DSA and PIA

Section 55(3) - Debt Settlement Arrangement: General Conditions.

Section 89(3) - Personal Insolvency Arrangement: General Conditions.

No.	Issue	Section	Proposed Solution/Legislative Amendment
1	Where there are two (or more) debtors who are jointly liable for all of the debts to be included in a DSA or a PIA, a joint application can be made. An interlocking application would be appropriate where two (or more) PIAs are to be administered in common - usually because of the financial relationship of the debtors involved. Examples would be a couple or business partners, where they are jointly liable for some - but	S55 and S89	Add the following text after section 55(3): (4)Without prejudice to subsection (3), a Debt Settlement Arrangement may be proposed by a debtor on the basis that it will be administered in common by a personal insolvency practitioner with one or more other Debt Settlement Arrangements provided that, in the opinion of the personal insolvency practitioner:(a) the other Debt Settlement Arrangements can reasonably be administered in common because of the financial relationship of the debtors concerned;(b) the terms of each of the Debt Settlement Arrangements to be administered in common specify in sufficient detail how such administration will operate, including—(i) the treatment of joint and individual assets and the treatment of joint and individual debts;(ii) whether the approval of one Debt Settlement Arrangement is to be contingent on the approval of any other Debt Settlement Arrangement; (iii) the effect of the failure or early

	not all - of the debts to be included in the PIA. There is no specific provision in the Act for interlocking DSA cases, or interlocking DSA/PIA cases. In practice, there have been several DSA cases that, while individual, are interlocking in all but name, with usually two linked debtors. The current provisions have proven problematic in a number of cases. Often, the court will want to be aware of any case that is related to another case being dealt with, so they can understand the overall picture in a household. Should the ISI be given the function of approving DSAs/PIAs, it would be of assistance to be able to cross-check the information contained in any related applications. For example, in many cases a husband and wife may have 99% of their debts in joint names (usually the mortgage) and there may be one minor unsecured debt (such as a credit card, in only one name). This has required two applications managed in an interlocking fashion		termination of one Debt Settlement Arrangement on any other Debt Settlement Arrangement, in particular, as to whether it is a condition of each Debt Settlement Arrangement that for it to be considered as having been successfully completed other Debt Settlement Arrangements are also required to be successfully completed; and(iv) where a joint payment is to be received from two or more debtors, how that payment is to be apportioned between the creditors under each Debt Settlement Arrangement.(v) whether the approval of one Debt Settlement Arrangement is to be contingent on the approval of any other Debt Settlement Arrangement;(vi) the effect of the failure or early termination of one Debt Settlement Arrangement on any other Debt Settlement Arrangement, in particular, as to whether it is a condition of each Debt Settlement Arrangement that for it to be considered as having been successfully completed other Debt Settlement Arrangements are also required to be successfully completed; and(vii) where a joint payment is to be received from two or more debtors, how that payment is to be apportioned between the creditors under each Debt Settlement Arrangement.(5)The administration of a Debt Settlement Arrangement in common with one or more other Debt Settlement Arrangements in accordance with subsection (4) shall be without prejudice to the applicability of the remainder of this Part to each such Debt Settlement Arrangement.(6)(a) A Debt Settlement Arrangement shall not contain any terms that would release the debtor from an excluded debt or otherwise affect such a debt.(b) A proposal for a Debt Settlement Arrangement shall not include any terms that, if contained in a Debt Settlement Arrangement that came into effect, would contravene paragraph (a). (6) Unless otherwise expressly stated, a reference in this Chapter to a debt is a reference to an unsecured debt and a reference to a creditor is a reference to an unsecured creditor.

	notwithstanding the fact that the dividend to such an unsecured creditor is minimal. Also in many interlocking cases, PIPs tend to treat income, expenditure, and the proposed creditors' dividend under the arrangement as joint for the purposes of the Arrangements. This has caused some confusion for the courts as to whether these figures relate to each individual case, or are joint figures. In a sample of 70 cases (35 pairs of interlocking cases), approximately 75% of that sample (26 pairs of interlocking cases) had less than 10% of the value of debt which was not shared debt, with 89% having less than 20% of debt value which was not shared. A rewording is recommended to expand the circumstances where interlocking applications can be made (i.e. DSA and DSA/PIA applications to be administered in common). It is recommended that the description of a joint application for both DSAs and PIAs be amended to include:		

	a) two or more debtors who are jointly party to a number of debts, and b) two or more debtors who are jointly party to all of the debts to be covered by a DSA/PIA (s.53/89). There is also merit in providing the ability to interlock a DSA with a PIA. Could consideration also be given to allowing a DSA to be converted to a PIA and vice versa without the need to make a new application. A recent Court decision ordered that a PIA be converted to DSA.		

2.19 Creditors' meeting adjournments - Section 72 (4) & 109(6)

No.	Issue	Section	Proposed Solution/Legislative Amendment
1	The ISI recommends that the legislation be amended to cater for two adjournments. This would be helpful to facilitate the passing of arrangements by allowing for further consideration of an amended proposal, as long as the adjournment takes place within the standard PC period, or any extension granted	S72 and S109	72(4) An adjournment for the purpose of preparing an amended proposal for a Debt Settlement Arrangement pursuant to subsection (2) may occur twice only in the course of the period of validity of a protective certificate (including any extension of such period). 109(6) An adjournment for the purpose of preparing an amended proposal for a Personal Insolvency Arrangement pursuant to subsection (4) may occur twice only in the course of the period of validity of a protective certificate (including any extension of such period).

	to it. A number of cases have arisen where such flexibility would have been of benefit to all parties involved. It would be helpful to facilitate the passing of arrangements to allow two adjournments as long as all take place inside 70-day period, or any extension granted to it. A number of cases have arisen already where such flexibility would have been of benefit to all parties involved. This would be dependent on all parties to the arrangement being in agreement.		

2.20 Court Review – amend proposal and refer back to creditors meetings for consideration if necessary

No.	Issue	Section	Proposed Solution/Legislative Amendment
1	Since the introduction of s.115A allowing for a court review of a PIA proposal rejected by creditors, since the commencement of the provisions, there has been a significant volume of applications (over 1500 to date) being made, with many cases still going through court case management. The process has given rise to a new and growing	S 115A	Based upon experience of court hearings to date, the ISI recommends that the Court that has heard the review should have the power to refer its considerations back to a creditors' meeting for further consideration.

	body of insolvency case law, which should, in time, assist the speed with which cases can be dealt with, as more issues of law become clearer. The Courts do not currently have the power to amend proposals voted on (a fact that has been commented on by judges in both the Circuit and High Courts), which, with the time being taken to conclude cases, can often see major changes in circumstances. This proposed amendment could allow for such changes to be taken into accounts and voted on again.		

2.21 Timeline for applying for a variation of a PIA approved under s.115A

No.	Issue	Section	Proposed Solution/Legislative Amendment
1	Section 119A of the Personal Insolvency Act 2012 (amended by Personal Insolvency (Amendment) Act 2015) provides for the variation of a PIA confirmed by order under section 115A. Subsection (13) provides: 'An application for an order under this section shall be made not less than 14 days	S 115A	This proposed amendment has been included in the Draft Heads of the Courts and Civil Law (Miscellaneous Provisions) Bill 2017, as follows: Head 33 - Amendment of section 119A of the Personal Insolvency Act 2012 Provide that: Section 119A of the Personal Insolvency Act 2012 is amended by the substitution of the following for subsection (13): "(13) An application for an order under this section shall be made not later than 14 days after receipt by the personal insolvency practitioner of the notice of the creditor referred to in subsection (9) ... ,"

	after receipt by the personal insolvency practitioner of the notice of the creditor referred to in subsection (9) ... ,'. It is recommended that an amendment be made, the purpose of which is to replace the words 'not less' with 'not later', clarifying the time frame for applying for a variation order. As currently drafted, the date for applying for such an order is open ended. Section 119A of the Personal Insolvency Act 2012 (amended by Personal Insolvency (Amendment) Act 2015) provides for the variation of a PIA confirmed by order under section 115A. Subsection (13) provides: 'An application for an order under this section shall be made not less than 14 days after receipt by the personal insolvency practitioner of the notice of the creditor referred to in subsection (9) ... ,'. It is recommended that an amendment be made, the purpose of which is to replace the words 'not less' with 'not later', clarifying the time frame for applying for a variation order. As currently		

	drafted, the date for applying for such an order is open ended.		

2.22 Court review – timeline for creditor objection

Section 115A - Court review of proposed Personal Insolvency Arrangement

No.	Issue	Section	Proposed Solution/Legislative Amendment
1	Following a rejection of a s.115A application in which the creditor lodged their objection to the application outside the 14-day period referred to in the Act, the High Court (in the Hickey case) confirmed that under the existing wording, a creditor was not obligated to file their objection within the 14 days, but could do so at any time up to the time the application is heard in Court. Under the current wording of section 115A(3), the understanding of the provision is taken to be that the creditor can object to a review application, and must do so within 14 days of receiving the notice referred to in section 115A(2): (2) A notice to a creditor under subsection (2) shall be accompanied by a notice indicating that	S 115A	Substitute the following text for s.115A(3): (3) A notice to a creditor under subsection (2) shall be accompanied by a notice indicating that a creditor wishing to object to the application shall, within 14 days of the date of the sending of the notice, lodge a notice with the appropriate court, indicating that the creditor objects to the application, and setting out the creditor's reasons for this.

	he or she may, within 14 days of the date of the sending of the notice, lodge a notice with the appropriate court, setting out whether or not the creditor objects to the application, and the creditor's reasons for this. The ISI believes that this uncertainty is hot helpful or equitable and believes it is appropriate to recommend amendment to the timeline within which a creditor may object to an application by a debtor under section 115A(3).		

2.23 Removal of the MARP eligibility criterion

No.	Issue	Section	Proposed Solution/Legislative Amendment
1	One of the debtor eligibility criteria (section 91(1)(g)) for a PIA is that a borrower must co-operate with the mortgage lender under the MARP process approved by the Central Bank of Ireland to the extent that the borrower and lender have been unable to agree an alternative repayment arrangement or, that having entered an alternative repayment arrangement in good	Section 91	Delete s91(1)(g)

	faith, the debtor is unable to comply with the alternative. The debtors to whom the subsection is addressed are those who are in ongoing contact with their mortgage provider and are seeking to address their debt situation with the mortgage provider. This cohort is the cohort most likely to seek the services of a PIP to try to negotiate a debt solution with the mortgage provider. In order to seek the engagement of the remaining 'hard to reach' cohort of those with arrears over 720 days, the ISI recommends that this eligibility criterion be removed. It is important to note that all applications to the ISI are overarched by the provisions of the Act which require the utmost good faith from the debtor, and that the information provided is true, complete and accurate, as reflected in the current declaration.		

2.24 Removal of the €3million secured debt threshold

Section 5 - Appropriate court.

Section 91 - Eligibility criteria for a Personal Insolvency Arrangement.

No.	Issue	Section	Proposed Solution/Legislative Amendment
1	A debtor eligibility criterion [section 91(1)(a)] for a PIA is that the debtor's aggregate of secured debts cannot exceed €3 million. An exception is where all the secured creditors of the debtor consent in writing, then the €3 million threshold does not apply. The ISI does not have data on the number of potential PIA cases that have not proceeded because secured debts exceeded €3 million and the consent of all creditors was not forthcoming. The €3 million cap is cited on occasion, including at the Consultative Forum, by PIPs as a barrier for some debtors with significant personal debts availing of a PIA. The debt landscape and the balance sheet position of financial institutions has changed significantly since 2012. The core protections for creditors contained within the Act will continue to apply in all cases. These include that, not least, a creditor must not be unfairly prejudiced. In light of the careful	Section 5 Section 91	Substitute the text below for section 5(1)(a) 5.— (1) In this Act "appropriate court" means— (a) where the application is made under Chapter 3 or 4 of Part 3, and the total liabilities of a debtor determined on the basis of the Prescribed Financial Statement completed by the debtor concerned in respect of the application concerned are in excess of €5,000,000 [€10,000,000], the High Court, and Substitute the text below for section 91(1)(a) (a) subject to subsection (4), that the aggregate of the debts of the debtor which are secured debts is less than €5,000,000 [€10,000,000]; Substitute the text below for section 91(4) (4)(a) Where all of the creditors who are secured creditors consent in writing the limit of €5,000,000 [€10,000,000] referred to in subsection (1)(a) shall not apply. (b) Secured creditors shall have 21 days within which to confirm consent in writing. If no response if received from a secured creditor, consent will be deemed to have been given. © The personal insolvency practitioner shall notify the creditor(s) concerned of the deemed consent within 21 days.

	balance between debtor and creditor rights already struck within the Act and the fact that a PC provides simply for a suspension of creditor enforcement action on a short term basis (not usually exceeding 70 days), the ISI recommends that the €3 million provision be removed. In the alternative, the ISI recommends that the requirement for all creditors to consent be amended to require the active rejection by a majority of creditors within a specified timeframe. Delays are occurring in interlocking cases where one is heard in the Circuit Court and the other in the High Court. If the thresholds were increased, it is likely that a greater number of cases could be heard together, reducing the number of such occurrences. It is proposed, therefore, to make two/three amendments on this subject. 1. Increase the threshold before a case is heard by the High Court to €5m (€10m?), which could reduce the number of cases going to different jurisdictions.		

	2. PIPs are currently experiencing difficulties in the area of creditor consent, whereby, the secured creditors are not responding to the request for consent to have an arrangement proposal deal with aggregate secured debts over €3m in a timely manner, thereby delaying the progress of a case (or stopping it altogether where consent is denied). If this threshold were to be increased to €10m before consent of creditors needed, it would assist. 3. Further, a time limit could be imposed on a secured creditor responding to a PIP request tom exceed the threshold (say 21 days), and will be deemed to have been given if no response within that time.		

2.25 Removal of the cut-off date of 1 January, 2015

No.	Issue	Section	Proposed Solution/Legislative Amendment
1	Section 115A provides debtors with the facility to request a court review of a proposed arrangement rejected by creditors. The section is focused on those in home	S. 115A(18)	The ISI recommends that the date set out in the definition of "relevant debt" should be removed. The ISI recommends that the cut-off date of 1 January 2015, referred to in the definition of relevant debt as set out in the Act, should be removed as the ISI is of the view that it deprives some insolvent debtors of a debt resolution mechanism.

	mortgage arrears and a rebalancing of the rights of this group with those of secured creditors. To be eligible to avail of the facility a debtor must have a "relevant debt", the definition of which refers to a debtor who was in arrears with his or her payments to a secured creditor on or before 1 January 2015. The cut-off date was considered recently in the High Court (Hill Case), when Baker J concluded that missed payments did not necessarily amount to arrears with payments and that an alternative payment arrangement is one that amends the contractual terms of the mortgage. Some stakeholders have argued that having a cut-off date of 1 January 2015 is inequitable since the purpose of the legislation is to provide all insolvent debtors with a resolution mechanism. The insertion of 1 January 2015 in legislation was explained in the Committee stage debates as being there 'to avoid any negative impact on new mortgage lending'. A case can be made that		

	there are sufficient creditor safeguards within the Act to more than counter any negative effect on new mortgage lending.		

2.26 Removal of 'excludable creditor' category – Ss 2, 28, 58 and 92

No.	Issue	Section	Proposed Solution/Legislative Amendment
1	Excludable debt is defined in the Act (section 2) as including debts to the Revenue Commissioners, the Department of Social Protection, local authorities (rates and household charges), the Health Service Executive and management companies of multi-unit developments. A creditor whose debt is defined as excludable must consent to their debt being included in an insolvency solution. In many cases creditors will withhold their consent. For example, the Revenue Commissioners in general will only consent if tax returns are up to date and there are no other excludable creditors or such excludable creditors have consented. The Department of Social Protection will not consent in any	Section 2 Section 28 Section 58 Section 92	The ISI suggests that the definition of excludable debt be deleted from the Act. The ISI recommends that the definition of 'excludable debt' be deleted from the Act in section 2 – "Interpretation" - and that the wording in sections 25, 26. 29, 36, 71, 75, 78, 82, 107, 115, 115A, and 119 be amended accordingly to take account of the absence of an 'excludable debt' category). The removal of the 'excludable debt' category would also allow for the deletion of sections 58 and 92 of the Act.

	circumstances to its debt being included in an arrangement. Allied to excludable debt is preferential status. For example, the Revenue Commissioners have the general protection of preferential debt for tax and interest for the fiduciary taxes (VAT/PAYE/PRSI/RCT) for the 12-month period up to the date of the PC. The concept of excludable debt does not exist in other jurisdictions. To avail of an insolvency solution a debtor must be insolvent as defined under the Act. The concept of excludable debt means that an insolvency solution can only address some, but not all, of a debtor's debts and that the insolvency solution cannot be said, in certain instances, to return a debtor to solvency if excludable debt has to be dealt with outside of the solution, either during the term of the solution or beyond its term. In addition, the point is made that creditors holding preferential status are doubly indemnified under the Act. The ISI does not have data on cases where		

	the withholding of creditor consent led to the abandonment of consideration of a solution although anecdote suggests this happens.		

2.27 Proof of Debt – S 64 and 98

No.	Issue	Section	Proposed Solution/Legislative Amendment
1	There is a degree of confusion among practitioners over how a creditor, who does not provide Proof of Debt before the creditors' meeting takes place, is to be dealt with. The section provides that Paragraphs 1 to 22 of Schedule 1 to the Bankruptcy Act 1988 can be read to allow PIPs to have the same functions and powers as the Official Assignee. Section 64(2(b) & section 98(2)(b) provide that where Proof of Debt is not produced following the request from the PIP, the creditor cannot vote at the meeting or share in the distribution. However, 64(2)(c) & 98(2)(c) appear to allow for inclusion when Proof of Debt is presented after the	S64 and S98	It is recommended that amendments be made which would require creditors to: i. return proof of debt within 14 days, before the creditors' meeting, and ii. apply to court to have proof of debt accepted in the event the 14-day deadline is not met. With regard to disputes over proof of debt, an issue that has arisen in a number of cases is that where such proof is in dispute, there is no mechanism to allow a PIP bring a case to court, a mechanism that exist for a creditor. It is further recommended that the relevant Paragraphs of Schedule 1 to the Bankruptcy Act that apply to PIPs (currently 1 to 22) be expanded to include Paragraph 24 (re: Secured Creditors) so that a PIP can have a right of audience in the court where any disputes arise regarding proof of debt.

	arrangement is in place. The lack of clarity is in relation to the interpretation of 64(2)(c) and 98(2)(c). Having provided under sections 64(2)(b)/98 (2)(b) that a creditor not providing Proof of Debt is not entitled to vote or share in the dividend, sections 64(2)(c)/98(2)(c) provide that they can, but is unclear as to how it would work in practice.		

2.28 Notifications from Court where PIP application made to Court to have the Arrangement terminated

Section 83 - Application to appropriate court to have Debt Settlement Arrangement terminated.

Section 122 - Application to appropriate court to have Personal Insolvency Arrangement terminated.

No.	Issue	Section	Proposed Solution/Legislative Amendment
1	Sections 83(4) and 122(4)) provide that the registrar notifies the ISI and the ISI notifies the PIP regarding the outcome of a court hearing in a creditor application to terminate an arrangement. In other court hearings in the Act, the usual process is that the registrar notifies both the ISI and the PIP.	S83 and S122	Substitute the following text for s.83(4): (4) Where the appropriate court makes a decision under subsection (3)— (a) the Registrar of the appropriate court shall notify the Insolvency Service and the personal insolvency practitioner of the decision, and (b) the personal insolvency practitioner, on receipt of the notification under paragraph (a), shall notify the specified creditors concerned of the decision. Substitute the following text for s.122(4): (4) Where the appropriate court makes a decision under subsection (3)—

	The other sections where the court registrar notifies the ISI and the PIP simultaneously in this regard are as stated in the preceding paragraph. An amendment is sought to ensure consistency with other provisions where the legislation provides that the court registrar notifies the ISI and the PIP. In the event this function reverts to the ISI, the ISI would be the notifying party to the PIP.		(a) the Registrar of the appropriate court shall notify the Insolvency Service and the personal insolvency practitioner of the decision, and (b) the personal insolvency practitioner, on receipt of the notification under paragraph (a), shall notify the specified creditors concerned of the decision.

2.29 DSA/PIA deemed to have failed

Section 84 - Debt Settlement Arrangement deemed to have failed after 6 month arrears default.

Section 123 - Personal Insolvency Arrangement deemed to have failed after 6 month arrears default

No.	Issue	Section	Proposed Solution/Legislative Amendment
1	Where the DSA/PIA Arrangement is deemed to have failed under section 84 or 123 as appropriate, the legislation is unclear when exactly the PIP should notify the ISI. It is recommended that the wording be amended to bring a definite timescale within which such	S84 and S123	Substitute the following text for s.84(1): 84.- (1) Where the debtor is in arrears with his or her payments for a period of 6 months the Debt Settlement Arrangement shall be deemed to have failed and shall terminate where the personal insolvency practitioner notifies the Insolvency Service, the debtor and the specified creditors of such default, such notification to be given within 21 days of the date of the deemed failure. Substitute the following text for s.123(1): 123.- (1) Where the debtor is in arrears with his or her payments for a period of 6 months the

	notification should be made – 14 days would be consistent with similar timelines in the Act. In addition, specified creditors do not require to be notified under these sections, it would be preferable to include them in such notification.		Personal Insolvency Arrangement shall be deemed to have failed and shall terminate where the personal insolvency practitioner notifies the Insolvency Service, the debtor and the specified creditors of such default, such notification to be given within 21 days of the date of the deemed failure.

2.30 DSA/PIA Registers

Section 34(1) - Duration of Debt Relief Notice

Section 78 - Coming into effect of Debt Settlement Arrangement.

Section 115 - Coming into effect of Personal Insolvency Arrangement.

No.	Issue	Section	Proposed Solution/Legislative Amendment
1	Section 34(1) provides that a Debt Relief Notice remains in effect from the date on which it is recorded in the Register of Debt Relief Notices. This is different to the case of the PC under s.61(5)/s.95(5), where PCs become effective for a period of 70 days from the date of issue by the Court. DSAs and PIAs also become effective upon being registered by the ISI in the respective	S 34, 78 and 115	Substitute the following text for s.34(1): (1) Subject to this section, the period for which a Debt Relief Notice shall remain in effect ("supervision period") is the period of 3 years from the date on which it is issued by the appropriate court under section 31(2). Substitute the following text for s.78(8): (8) The Debt Settlement Arrangement shall come into effect upon the date approved by the appropriate court, and be so registered in the Register of Debt Settlement Arrangements Substitute the following text for s.115(8): (8) The Personal Insolvency Arrangement shall come into effect upon the date approved by the appropriate court, and be so registered in the Register of Personal Insolvency Arrangements.

	Registers (s.78/s.115). To ensure a consistent approach to the effective date of all such Court approvals and in order to reduce the risk of possible delays in the coming into effect of Arrangements, an amendment is sought to make DRNs, DSAs and PIAs effective from the date of issue by the Court. In the event that responsibility for this function transfers to the ISI, it is recommended that the effective date for the arrangement is the date of issue by the ISI, rather than the date on which it is registered in the Register. Sections 78(8) and 115(8) provide that the DSA/PIA "come into effect upon being registered in the Register".		

2.31 Procedure when creditors' meeting for a DSA/PIA does not take place prior to PC expiry

No.	Issue	Section	Proposed Solution/Legislative Amendment

1	There is no provision in the Act for what happens post a DSA/ PIA procedure coming to an end in the situation where the creditors' meeting does not take place before the expiry of the PC	S 70 and 106	Add a subsection after 70(3): (4) (1) Where the DSA/PIA procedure has been deemed to have come to an end the PIP shall notify the ISI and the specified creditors within 21 days. (5)Where the Insolvency Service receives the notification referred to in subsection(1), it shall, within 3 months of the date on which the protective certificate ceases to be in force remove from the Register of Protective Certificates all information recorded in it in respect of the protective certificate. Add a subsection after 106(3): (4) (1) Where the DSA/PIA procedure has been deemed to have come to an end the PIP shall notify the ISI and the specified creditors within 21 days. (5) Where the Insolvency Service receives the notification referred to in subsection(1), it shall, within 3 months of the date on which the protective certificate ceases to be in force remove from the Register of Protective Certificates all information recorded in it in respect of the protective certificate.

2.32 Procedure where proposal not approved at creditors' meeting and DSA/PIA procedure deemed to have come to an end.

No.	Issue	Section	Proposed Solution/Legislative Amendment
1	There is no provision in the Act for PIP to notify ISI and specified creditors of the non-approval of the proposal at the creditors' meeting, of date of PC ceasing to be in force at date of creditors' meeting and for ISI to remove details from PC Register within 3 months of date PC ceases to be in force.	S72 and S108	Add a subsection after s.72(7): (8) (a) Where a DSA has not been approved in accordance with section 73, or deemed under subsection (7) to have been approved, the personal insolvency practitioner shall as soon as practicable after the meeting has concluded notify the Insolvency Service and each creditor concerned of the non-approval of the proposal and of the ceasing of the PC to be in force. (b)Where the Insolvency Service receives the notification referred to in subsection(1), it shall- (c)Within 3 months of the date on which the protective certificate ceases to be in force remove from the Register of Protective Certificates all information recorded in it in respect of the protective certificate.

			(d) the date on which the protective certificate ceases to be in force shall be the date the date of the creditors' meeting. Add after section 108(8): (9) (a)Where a PIA has not been approved in accordance with section 109 or deemed under subsection (8) to have been approved the personal insolvency practitioner shall as soon as practicable after the meeting has concluded notify the Insolvency Service and each creditor concerned of the non-approval of the proposal. (b)Where the Insolvency Service receives the notification referred to in subsection(1), it shall- (c) Within 3 months of the date on which the protective certificate ceases to be in force remove from the Register of Protective Certificates all information recorded in it in respect of the protective certificate. (d) the date on which the protective certificate ceases to be in force shall be the date the date of the creditors' meeting.

2.33 Requirement to register approval of DSA/PIA at creditors' meeting

No.	Issue	Section	Proposed Solution/Legislative Amendment
1	There is a requirement on the ISI to register the approval of the DSA/PIA at the creditors' meeting before the Court approved the Arrangement in sections 76 and 113 is creating duplication for a very short period of time, especially where PC still in place and protections apply. The provisions of the	S76 and 113	Delete paragraph 1(b) of s.76. Delete paragraph 1(b) of s.113.

	sections dealing with objections should be allowed to run their course before the ISI is required to register the DSA/PIA.		

2.34 Validity of period of PC post-creditors' meeting

No.	Issue	Section	Proposed Solution/Legislative Amendment
1	Resolve confusion between S.61/95(13) which state that the PC stays in force following creditors' meeting until it ceases to have effect when Arrangement comes into effect and S.76(2)/113(2) which seem to imply that the PIP's notification to ISI following creditors' meeting must be received before the expiry of PC in order for PC to stay in force.	S76 and 113	Delete words "before the expiry of the period of the protective certificate," Substitute "such protective certificate' with "the protective certificate". Delete words "before the expiry of the period of the protective certificate," Substitute "such protective certificate' with "the protective certificate".

2.35 Follow-on procedure where Court refuses to approve coming into effect of DSA/PIA

No.	Issue	Section	Proposed Solution/Legislative Amendment
1	Where the appropriate Court refuses to approve a DSA/PIA arrangement there is no follow-on	S78 and 115	Substitute the following text for s.78(7): (7)(a) On receipt of a notification under subsection (6) of the approval of the coming into effect of the Debt Settlement Arrangement, the Insolvency Service shall register the Debt

	procedure specified in Act.		Settlement Arrangement in the Register of Debt Settlement Arrangements. (b) On receipt of a notification under subsection (6) of the refusal of the coming into effect of the Debt Settlement Arrangement, the procedure comes to an end and the protective certificate ceases to be in force. The Insolvency Service, within 3 months of the protective certificate ceasing to be in force, shall remove details from the Register of Protective Certificates and Register of Debt Settlement Arrangements. (c) the date on which the protective certificate ceases to be in force shall be the date of the creditors' meeting. Substitute the following text for s.115(7): (7)(a) On receipt of a notification under subsection (6) of the approval of the coming into effect of the Personal Insolvency Arrangement, the Insolvency Service shall register the Debt Settlement Arrangement in the Register of Debt Settlement Arrangements. (b) On receipt of a notification under subsection (6) of the refusal of the coming into effect of the Personal Insolvency Arrangement, the procedure comes to an end and the protective certificate ceases to be in force. The Insolvency Service, within 3 months of the protective certificate ceasing to be in force, shall remove details from the Register of Protective Certificates and Register of Personal Insolvency Arrangements. (d) the date on which the protective certificate ceases to be in force shall be the date of the creditors' meeting.

2.36 Outcome after a DSA/PIA objection is upheld by the court

No.	Issue	Section	Proposed Solution/Legislative Amendment
1	Other (Court upholds a DSA/PIA objection) Section 77	S77 and 114	Add the following text after s.77(3): (4)(a) The registrar of the appropriate court shall notify the Insolvency Service and the personal insolvency practitioner and the specified creditor concerned,

	Coming into effect of Debt Settlement Arrangement. Section 114 Coming into effect of Personal Insolvency Arrangement.		(b) On receipt of this notification, the personal insolvency practitioner shall notify all specified creditors, (c) the Insolvency Service shall remove all details from the Register of Protective Certificates and Register of Debt Settlement Arrangements, and (d) the date on which the protective certificate ceases to be in force shall be the date of the decision of the appropriate court. Add the following text after s.114(3): (4)(a) The registrar of the appropriate court shall notify the Insolvency Service and the personal insolvency practitioner and the specified creditor concerned, (b) on receipt of this notification, the personal insolvency practitioner shall notify all specified creditors, (c) the Insolvency Service shall remove all details from the Register of Protective Certificates and Register of Personal Insolvency Arrangements, and (d) the date on which the protective certificate ceases to be in force shall be the date of the decision of the appropriate court.

2.37 Voting at a DSA Creditors' meeting

No.	Issue	Section	Proposed Solution/Legislative Amendment
1	Section 73 (Voting at a DSA creditors' meeting), ss(4) (see note below) states: "A creditor who is a connected person of the debtor may not vote in favour of a proposal for a Debt Settlement Arrangement at a creditors' meeting.".	S73	Substitute the following wording for s.73(4): (4) A creditor who is a connected person of the debtor may not vote in favour of a proposal for a Debt Settlement Arrangement at a creditors' meeting but may vote against the proposal. Note: s.73(3) was deleted by s.70 of the Courts and Civil Law (Miscellaneous Provisions) Act 2013, and therefore it would suggest s.73(4) should now be s.73(3), but neither the unofficial consolidated version nor the Irish Statute Book entry confirm this.

	However, s.108(5) (Voting at a PIA creditors' meeting) states: "A creditor who is a connected person of the debtor may not vote in favour of a proposal for a Personal Insolvency Arrangement at a creditors' meeting but may vote against the proposal.". It leaves open the possibility of interpretation that a DSA connected creditor may not vote against the proposal in the same way as in a PIA, and might benefit from a consistent approach		

2.38 Change required to the provisions of section 115A (9) – single creditor, no class

No.	Issue	Section	Proposed Solution/Legislative Amendment
1	There is an unintended consequence arising in the context of being able to bring a valid s.115A in accordance with the relevant provisions of the Act in circumstances where although at PC stage a debtor has more than one specified creditor who is eligible to vote at the creditors' meeting. This is referred to as a multi-	S115A(9)	We believe the addition of a further paragraph in s.115A(9) as set out below would deal with the difficulty: S.115A (9) (h) – "Where more than one creditor is entitled to vote, but only one creditor votes, the requirement for at least one class of creditor to have accepted the proposed Arrangement, by a majority of over 50 per cent of the value of the debts owed to the class, shall not apply."

	creditor case. However, where only one of those eligible creditors actually votes, there is a difficulty that arises in terms of meeting the requirements of s.115A(9) that brings the risk of a review application being ineligible. Section 115A(9)(g) provides that "The court, following a hearing under this section, may make an order confirming the coming into effect of the proposed Personal Insolvency Arrangement only where it is satisfied that—(a) the terms of the proposed Arrangement have been formulated in compliance with section 104, (b) having regard to all relevant matters, including the terms on which the proposed Arrangement is formulated, there is a reasonable prospect that confirmation of the proposed Arrangement will—(i) enable the debtor to resolve his or her indebtedness without recourse to bankruptcy,(ii) enable the creditors to recover the debts due to them to the extent that the means of the		

	debtor reasonably permit, and (iii) enable the debtor—(I) not to dispose of an interest in, or (II) not to cease to occupy, all or a part of his or her principal private residence,(c) having regard to all relevant matters, including the financial circumstances of the debtor and the matters referred to in subsection (10)(a), the debtor is reasonably likely to be able to comply with the terms of the proposed Arrangement, (d) where applicable, having regard to the matters referred to in section 104(2), the costs of enabling the debtor to continue to reside in the debtor ’s principal private residence are not disproportionately large, (e) the proposed Arrangement is fair and equitable in relation to each class of creditors that has not approved the proposal and whose interests or claims would be impaired by its coming into effect, (f) the proposed Arrangement is not unfairly prejudicial to the interests of any interested party, and (g) other than where the proposal is one to which section 111A		

	applies, at least one class of creditors has accepted the proposed Arrangement, by a majority of over 50 per cent of the value of the debts owed to the class." The difficulty that arises is the ability to meet the requirements of s.115A(9)(g) in circumstances where only one creditor votes – the majority clause cannot be met, meaning the application is likely to fail. PIPs have, in some cases, been trying to get around this difficulty by bringing the application as an application under s.111A, which is a section specifically aimed at a single-creditor case (i.e. where there is only one creditor entitled to vote from the outset). In a recent case in the Circuit Court, which was refused on this ground and which was later appealed to the High Court (Leonard O'Hara), the creditor argued a preliminary point that the application was being made erroneously under s.111A. The creditor's objection was upheld on this ground. It is also important to note that		

	the process regarding the voting of (or support from, if dealt with under s.111A) a creditor is subject to different procedural requirements, depending on whether they are a single- or multi-creditor. The ISI has consistently taken the view that a multi-creditor case (as interpreted by the ISI) cannot be turned into a single-creditor case by virtue of only one of a number of creditors actually voting, and the relevant procedures must be adhered to for each set of circumstances, or they risk being ruled ineligible by the Courts. The main differences between the processes relate to the requirement to hold a creditors' meeting (required for more than one creditor) and the requirement to notify the PIP of their support or otherwise by a single creditor. However, while the High Court noted that it could not be certain whether it was intended by the Oireachtas that the section be interpreted in the way it has been, it does appear inconsistent, in		

	circumstances where a specific provision has been inserted into the Act to provide for circumstances where there is only one creditor, that by virtue of the action of a creditor (or more than one) that leaves only one creditor voting that it would not also provide for such a scenario. While we do not have absolute numbers affected by the decision, who can now no longer continue with their application and must start the process again in 12 months, if at all, it does appear that anecdotally there could be up to 60 cases affected, and the provision remains an obstacle to a debtor being able to bring a case to Court for review. It is recommended that an amendment be proposed to the Department.		

2.39 S 52(2)(b) – How to reword or interpret section given there is no single *credit rating* mechanism?

No.	Issue	Section	Proposed Solution/Legislative Amendment
1	The PIP has a responsibility to advise the debtor as to 'the general effect of	s52(2)(b)	For discussion: should ISI ask for an amendment here as there is no single credit rating mechanism?

	making a proposal for, and of entering into, an arrangement, including as to the effect on the debtor's credit rating'.		ISI engaging with CCR officials in CBI on how to reword section given there is no single credit rating mechanism.

2.40 Remove restriction in S103(2) relating to debt for equity solutions to allow Court review

No.	Issue	Section	Proposed Solution/Legislative Amendment
1	Equity participation — or debt for equity as it is commonly referred to — is a debt forbearance measure included in the Central Bank of Ireland's Code on Conduct on Mortgage Arrears (CCMA), and in the Personal Insolvency Act. Section 102(6) provides that a Personal Insolvency Arrangement may include a range of terms in relation to the secured debts. One of these, relating to equity participation, is at s.102(6)(f), which provides "(f) that the principal sum due on the secured debt be reduced provided that the secured creditor be granted a share in a the debtor's equity in the property the subject of the security." In recent hearings relating to	S103	This could be achieved through the following amendment: Amend s.103(2) as follows: "(2) A Personal Insolvency Arrangement which includes terms providing for — (a) retention by a secured creditor of the security held by that secured creditor, and (b) a reduction of the principal sum due in respect of the secured debt due to that secured creditor to a specified amount, other than through a proposal that includes terms providing for equity participation, shall not, unless the relevant secured creditor agrees otherwise, specify the amount of the reduced principal sum referred to in paragraph (b) at an amount less than the value of the security determined in accordance with section 105."

	s.115A reviews, there have been a number of cases in which argument has been made by debtors that the effect of the secured creditor being assigned a share in the equity of the property in return for a reduction in the value of the principal debt owed to the secured creditor has had the unintended consequence of being interpreted as being in conflict with section 103(2), which provides, "(2) A Personal Insolvency Arrangement which includes terms providing for — (a) retention by a secured creditor of the security held by that secured creditor, and (b) a reduction of the principal sum due in respect of the secured debt due to that secured creditor to a specified amount, shall not, unless the relevant secured creditor agrees otherwise, specify the amount of the reduced principal sum referred to in paragraph (b) at an amount less than the value of the security determined in accordance with section 105. " It is understandable that		

	protection is offered to the creditor in s.103 to ensure that the principal debt owed to a secured creditor is not reduced to unrealistic levels in the proposal in circumstances where there is no transfer of ownership (in the form of equity) involved. However, it would appear that where a secured creditor is being assigned an equity share in such secured property, the effect of the principal debt being reduced below the current market value is an unintended consequence, and not one that is encompassed by the restriction provided for in s.103(2) by having to obtain the consent of the creditor before a proposal containing equity participation can be approved. The effect of this interpretation in the courts has been that a number of 'debt for equity' cases (approx. 60) have fallen foul (or are likely to do so) of this restriction and have failed (or will fail) to be considered for review under s.115A. An amendment that would allow for the debt for equity		

	scenario cases to be excluded from the restriction would be a measure that would allow for a greater number of proposals to be considered under s.115A. In any event, the court would still be able to consider, as part of its consideration under s.115A, to decide if the inclusion of such a provision is unfairly prejudicial.		