Personal Insolvency, Debt Management and Debt Enforcement

In 2010, the Commission published an Interim Report on Personal Debt Management and Debt Enforcement (LRC 96-2010) and its final Report on Personal Debt Management and Debt Enforcement (LRC 100-2010) (3rd Programme of Law Reform, Project 2). These Reports followed the Commission's Consultation Paper on Personal Debt Management and Debt Enforcement (LRC CP 56-2009).

The Commission's final Report on Personal Debt Management and Debt Enforcement (LRC 100-2010) made 200 recommendations for reform, and also includes a draft *Personal Insolvency Bill* and the draft Heads of a Bill to amend the *Bankruptcy Act 1988*. Among the recommendations made in the Commission's Report are.

1. *Debt Enforcement Office to oversee non-judicial debt settlement system*. A small Debt Enforcement Office would oversee throughout the State the proposed new non-judicial debt settlement arrangements. This would provide an efficient and cost-effective solution to personal insolvency that takes account of the rights of both creditors and debtors. The new process will probably be of most use to individuals who have relatively modest debt levels and assets (including small business-related debts). Under the Commission's proposals, 60% of creditors must agree to any proposed debt settlement, so cases involving wealthy (or formerly wealthy) individuals will still probably end up in the High Court-based bankruptcy process.

2. *Two new processes: Debt Settlement Arrangement and Debt Relief Order*. The Debt Enforcement Office would include a small independent unit, the Debt Settlement Office, which would license a panel of Personal Insolvency Trustees, appointed after a public tendering procedure and subject to statutory standards. A Personal Insolvency Trustee would manage a *Debt Settlement Arrangement*, which would be for debtors who "can pay" at least some of their debt. In a Debt Settlement Arrangement, creditors and a debtor would make a legally binding commitment in which the debtor would repay an agreed amount of personal debt to creditors over a period of up to 5 years. At the end of this, the debt would be deemed to be repaid in full. The Debt Settlement Arrangement process would only be available to a person who acts in good faith and makes full disclosure of all their assets; if they do not, the process will automatically end and the debtor could be prosecuted. If the debtor complies with the Debt Settlement Agreement, at the end of it he or she would be able to make a "fresh start" without having any damage to their personal credit rating. For debtors whose circumstances are so bad that they have virtually no prospect of paying back any debt (the "can't pay" debtor or "no assets, no income" situation), the Debt Enforcement Office, with the assistance of the Money Advice and Budgeting Service (MABS), could make a *Debt Relief Order*. This would be a once-off Order, and would simply recognise the reality of an indebtedness that cannot be repaid within a foreseeable time period. Unless circumstances changed dramatically for the debtor, the effect of this Order is also that the debt is deemed to be discharged.

3. *Proportionate and holistic debt enforcement mechanisms*. The Debt Enforcement Office would have to ensure that any debt enforcement mechanism is proportionate (the least restrictive and most effective) and that the debtor is left with a minimum standard of living for him/her and any dependants. In addition, any mechanism must be based on a complete picture of the person's

indebtedness (the holistic approach to debt). This ensures that an appropriate balance is made between the creditors and the debtor in a specific case. It also means that creditors and debtors do not become involved in the expensive, and often fruitless, debt enforcement processes currently in place. The Debt Enforcement Office would be able to use a wide variety of enforcement mechanisms. These include: instalment orders, attachment of debts orders; attachment of earnings orders; and goods seizure orders. These can also be used in combination with each other, where appropriate. These would also replace outdated processes that date back many centuries. For example, the goods seizure order would replace the current procedure known as "execution against goods" and the order known as "*fieri facias*." The fieri facias order (sometimes abbreviated to "*fi fa*") originated in medieval times when court orders were issued in Latin. The officer carrying out the order, traditionally a Sheriff, was ordered "*quod fieri facias de bonis et catallis, etc*." The literal translation of these Latin words is "that you cause to be made of the goods and chattels, etc". This meant, in effect, that the sheriff "make good" or obtain enough money to repay the debt owed to comply with the amount specified in the creditor's court order (judgment order). The Commission also recommends abolishing completely imprisonment for non-payment of debt, even for those who "can pay." The Commission sets out in the Report the many arguments against the use of imprisonment in debt cases, which largely echo the valuable and long-standing work of the Free Legal Advice Centres (Flac). The Commission recommends that those who "can pay" and wilfully refuse to obey a court order should still be prosecuted but that the appropriate sanction is a community service order. This would replace the *Debtors (Ireland) Act 1872* and the *Enforcement of Court Orders Acts 1926 to 2009*.

4. *Judicial personal insolvency law: reform of the Bankruptcy Act 1988*. The Commission proposes a number of significant reforms in the current judicial (High Court based), bankruptcy system, currently regulated by the *Bankruptcy Act 1988*. The judicial bankruptcy process remains a suitable mechanism to deal with large and complex cases or those that can't be resolved using the proposed non-judicial process (for example, because a debtor did not act in good faith). The main recommendations are: automatic discharge from bankruptcy after 3 years, subject to (a) leaving the bankrupt's full estate (including any house) in the bankruptcy; and (b) allowing the High Court's Official Assignee in Bankruptcy to order the bankrupt make repayments for up to 5 years; increase from €1,900 to €50,000 the minimum debt level required to bring a creditor's bankruptcy petition; significant reduction in number of priority debts in bankruptcy (including Revenue debts); introduce system for bankruptcy similar to the procedures for the restriction and disqualification of company directors.

5. *Regulation of debt collection undertakings*. A licensing system would be introduced to regulate debt collection undertakings, which representative bodies in the sector have already supported. This would also put existing voluntary codes of practice on a statutory footing. The licensing system would also deal with unprofessional debt collection undertakings and, more worryingly, debt collectors who engage in criminal acts such as harassment. The Commission considers that the regulation of debt collection undertakings should be seen in the wider context of the proposed regulation of money advisers which may form part of a *Central Bank Reform Bill* due to be published shortly. While money advice and debt collection involve different activities, they are closely connected and the Commission suggests one regulatory body should be responsible for both.