

## SCENARIO 2

### BANKRUPTCY – NEGATIVE EQUITY IN FAMILY HOME

**This sample scenario is designed to illustrate the basic features of bankruptcy, its effect on the family home where there is no equity and includes the possible outcome for both secured and unsecured debt.**

#### 1. LEO'S STORY

Leo is an area manager for a retail company who earns a monthly net income of €3,625. He is married to Nora who does not work outside of the home in order to take care of their children. They have three children at Primary School (aged 7, 5 and 4). They have a family car, which is required for Leo's work, and is valued at € 5,000 and furniture which is valued at € 1,500. Leo bought his family home four years ago. The house is held in Leo and Nora's joint names. It is worth € 150,000, and the outstanding mortgage is € 260,000. Leo has a total of € 88,000 in unsecured debt consisting of a personal loan (€ 70,000) and credit card debts (€ 18,000). His monthly debt commitments are as follows:

- 100% Mortgage repayment on his family home of € 1,475
- Unsecured debt repayments of € 1,300

He has attempted to enter into a Personal Insolvency Arrangement [PIA] but was unable to obtain agreement from his creditors. Leo is unable to pay his debts in full as they fall due and acknowledges he is insolvent.

Leo wishes to petition to adjudicate himself bankrupt.

## 2. LEO'S CURRENT INSOLVENT POSITION

| Assets               | Value            | Loan      | Monthly Income  |           |
|----------------------|------------------|-----------|---|-----------|
| Family Home          | € 150,000        | € 260,000 | Net Income  | € 3,625   |
| Car                  | € 5,000          |           |   |           |
| Furniture            | € 1,500          |           |   |           |
| Total                | <b>€ 156,500</b> | € 260,000 | Total   | € 3,625   |
| Debts                |                  |           | Monthly expenses  |           |
| Secured debts        |                  |           | Total Set Costs <sup>1</sup>                                    | € 2,040   |
| Family Home mortgage |                  | € 260,000 | Rent/Mortgage <sup>2</sup>                                      | € 1,475   |
| Unsecured debts      |                  |           | Childcare Costs <sup>2</sup>                                    | € 0       |
| Personal loan        |                  | € 70,000  | Reasonable Living Expenses                                      | € 3,515   |
| Credit Card debts    |                  | € 18,000  | Available for unsecured debt service (€ 3,625-€ 3,515)          | € 110     |
|                      |                  |           | Unsecured debt repayments                                       | (€ 1,300) |
| Total                |                  | € 348,000 | Deficit in meeting unsecured debt obligations (€ 110 - € 1,300) | (€ 1,190) |

## 3. ELIGIBILITY

Leo believes he is eligible for bankruptcy because

- ✓ Leo is unable to meet his obligations to his creditors.
- ✓ Leo has considered whether his circumstances could be more adequately dealt with through a PIA and Debt Settlement Arrangement [DSA] with regard to the nature and value of his affairs but he was unable to agree same with his creditors. Accordingly Leo will need to provide an affidavit proving this to the satisfaction of the Court.
- ✓ Leo must accompany the petition with a Statement of Affairs<sup>3</sup> which shows that his debts exceed his assets by at least € 20,000. In this case debts exceed assets by € 191,500 (€ 348,000 - € 156,500).

<sup>1</sup> The Official Assignee will have regard to the tables in the ISI "Guidelines on a reasonable standard of living and reasonable living expenses", available on the website ([www.isi.gov.ie](http://www.isi.gov.ie)). Leo's circumstances meet those covered by Table 6. "Two adult household, one or more children, vehicle" of the Guide (Two adults € 1,407.50 + One child (age 7) €207.12 + One child (age 8) €207.12 + One child (age 5) €207.12 + Third child adjustment €10.81 = €2,039.67). For illustrative purposes and ease for the reader, the RLE figure is rounded to €2,040.

<sup>2</sup> The Official Assignee will assess the reasonableness of mortgage, rent and/or childcare payments in accordance with the "Guidelines on a reasonable standard of living and reasonable living expenses".

<sup>3</sup> A Statement of Affairs is a document setting out the individuals assets, liabilities, income and expenditure at adjudication.

#### 4. DEBTOR JOURNEY TO ADJUDICATE HIMSELF/HERSELF BANKRUPT

|   |                             |  |
|---|-----------------------------|--|
| 1 | Pay fee                     | Transfer € 650 to the Official Assignee in the Bankruptcy Division of the ISI, either electronically or using an interbank transfer. The relevant account details are set out at Appendix 1: Official Assignee's Account Details   |
| 2 | Complete documents          | Prepare Petition, which must be verified by Affidavit and a Statement of Affairs. Both the Affidavit and Statement of Affairs must be sworn. Please read carefully the notes for completion of forms at <a href="http://www.isi.gov.ie/en/ISI/Pages/BankruptcyDocuments">www.isi.gov.ie/en/ISI/Pages/BankruptcyDocuments</a> .                                 |
| 3 | Get documents stamped       | The above documents must be stamped. Stamp Offices are located around the country, details of which can be found on : <a href="http://www.courts.ie/offices.nsf/webcobycounty?OpenView">www.courts.ie/offices.nsf/webcobycounty?OpenView</a><br>The necessary stamp duty must be paid and currently it is € 82.50 for the Petition and € 20 for the Affidavit. |
| 4 | Get court date              | File the stamped documents and Statement of Affairs in the Examiner's Office. You must bring the receipt for the € 650 payment to the Official Assignee with you. You will be provided with a Court date once the Examiner's Office is satisfied that all of your papers are in order for submission to the Court.   |
| 5 | Declared Bankrupt           | At the Court hearing the Judge, if satisfied that all qualifying requirements have been met, will make an order adjudicating you bankrupt. Normally you will be served with a copy of the Order of Adjudication (Bankruptcy Order) and Warrant of Seizure by the Bankruptcy Inspector in the Bankruptcy Division of the ISI on the same day.                   |
| 6 | Meet Official Assignee (OA) | An appointment will be arranged for you to attend the ISI. You will be interviewed about all of your assets and debts. You must fully co-operate with the Official Assignee and his staff in the administration of your estate.  |
| 7 | Statutory Sitting           | Place advert in Iris Oifigiúil & a national daily newspaper* publicising your bankruptcy and the date of your Statutory sitting in the High Court. Your creditors may attend the sitting and submit claims or send same to the Bankruptcy Division of the ISI.   |
| 8 | Next three years            | Periodic reviews (every 6 months) of your financial circumstances and ongoing obligation to co-operate with the Official Assignee and his staff in the administration of your estate.  |
| 9 | Discharged                  | Automatic discharge from bankruptcy after 3 years. Ownership of any unsold property or other assets remain with Official Assignee. If an Income Payment Order/Agreement has been made in your case, you must continue to comply with this for up to 5 years from date of Order/signing of Agreement.   |

\* The Companies (Miscellaneous Provisions) Bill 2013 contains a provision which, if passed, will provide an alternative to the requirement to advertise details of a petition for bankruptcy in a national newspaper. The provision provides for a person to publish details of the bankruptcy on the ISI website, at no cost.

## 5. DEBTOR JOURNEY TO BECOMING BANKRUPT

The following process was drafted in consultation with the Examiner's Office and reflects the documentary requirements of that office in relation to a bankruptcy application.

### The ISI Bankruptcy Division

- a) Leo (the applicant) will lodge € 650 electronically with the Official Assignee in the Bankruptcy Division of the ISI, for which he will get a receipt (details of this account are available in Appendix 1).

### The Examiner's Office

- b) Leo or his solicitor will then prepare a Petition and a Statement of Affairs. The Petition must be verified by an Affidavit. Both the Statement and Affidavit must be sworn before a Commissioner for Oaths (after they have been checked by the Examiner's Office). These forms together with other relevant forms are available on the Courts Service website ([www.courts.ie](http://www.courts.ie)) and the ISI's website for completion by the applicant or their solicitor. The Affidavit sworn by him must include a statement that he has made reasonable efforts to reach a satisfactory arrangement with the creditors relating to his debts. The Statement of Affairs details his property, income and liabilities. Notes for completion of forms are available on the ISI website.
- c) When he has completed the forms he may submit them in draft format to the Examiner's Office for consideration to ensure that they are in order to be placed before the High Court. He can do this in person; by post or by email to the Examiner's Office. (Phoenix House, Phoenix St North, Smithfield, Dublin 7. Email: [examinersmail@courts.ie](mailto:examinersmail@courts.ie))  
**It is his responsibility to ensure that all his papers contain information that is true and accurate.**
- d) The Examiner's Office will check that he has completed the forms correctly and if all is in order they will return the forms to him to be sworn before a Commissioner for Oaths. If there are any errors or omissions in his draft forms, the Examiner's Office will notify him and return the forms to him for correction. Once he has made the appropriate corrections to the forms, he should then re-submit them to the Examiner's Office.

- e) When his forms are in order, he must take the forms and go to his local Stamp Office in his local Court district and pay the necessary stamp duty on them (currently € 82.50 for the Petition and € 20 for an Affidavit. A list of Stamp Offices around the country can be found here : [www.courts.ie/offices.nsf/webcobycountry?OpenView](http://www.courts.ie/offices.nsf/webcobycountry?OpenView)

If he wishes to proceed with his application he should submit the following list of documents to the Examiner's Office together with the receipt for the € 650 lodgement paid to Official Assignee's Office.

1. The **Petition** (Form no. 13, Appendix O, Rules of The Superior Courts) with accompanying Affidavit sworn by him, plus 2 copies. There is stamp duty due on the Petition of € 82.50. There is stamp duty of € 20.00 due on an Affidavit.
2. **His Statement of Affairs** (Form no. 23) plus 2 copies.  
Both the Statement of Affairs and Affidavit must be sworn by a Commissioner of Oaths (a nominal fee may apply).

In addition to the above documents, he will also be required to attach the following (partially completed) forms (e.g. name inserted) which will be fully completed after he is formally declared bankrupt:

3. **Order of Adjudication** (Form no. 15 Appendix O, Rules of The Superior Courts) and 2 copies. There is no stamp duty due on this form.
  4. **Warrant of Seizure** (Form no. 46 Appendix O, Rules of The Superior Courts) and 2 copies. There is no stamp duty due on this form.
  5. **Notice of adjudication and Statutory Sitting** (Form no. 19 Appendix O, Rules of the Superior Courts) and 2 copies. There is no stamp duty due on this form.
- f) When the relevant papers have been accepted by the Examiner's Office he will be given a Court hearing date by them.
- g) Dates are allocated based on the number of applications on the bankruptcy list and other factors.
- h) Once he has been given a Court date he must attend Court on that date – this will take place in the Four Courts in Dublin. The Court number will be available in the Court legal diary, available on the Courts Service website [www.courts.ie](http://www.courts.ie)
- i) Bankruptcy is a private and confidential process until he has been adjudicated bankrupt.

## Appearance at the High Court

- j) At the Court appearance if the Court is satisfied that all of his papers are in order, the Judge will adjudicate him bankrupt.
- k) The Court may advise him to make contact with the Bankruptcy Inspector on the day of his adjudication to progress his case.
- l) He is required to attend his statutory Court sitting in order to notify his creditors of his bankruptcy. He must undertake to pay the costs of placing an advertisement in Iris Oifigiúil and one national daily newspaper\* in order to notify creditors of his bankruptcy and the date of his statutory Court sitting.
- m) When the Court adjudicates him bankrupt, ownership of all his property will transfer to the Official Assignee including his interest in the family home.
- n) His unsecured creditors can no longer seek repayment directly from him. They must make a claim to the Official Assignee and all correspondence should be forwarded to him.
- o) His secured creditors can:
  - rely on security (i.e. sell property or allow mortgage be paid off) and not claim in bankruptcy
  - abandon security and claim for full debt in bankruptcy
  - sell or value their security and claim for the debt shortfall in the bankruptcy.

## The ISI Bankruptcy Division

- p) The Official Assignee will negotiate an Income Payment Agreement or seek an Income Payment Order for the surplus of his income over his Reasonable Living Expenses. This agreement order will last for a period of up to 5 years.
- q) He will be automatically discharged from bankruptcy in 3 years.
- r) Ownership of any property or assets which are unsold remain with the Official Assignee after he is discharged, until they are sold.

\*The Companies (Miscellaneous Provisions) Bill 2013 contains a provision which, if passed, will provide an alternative to the requirement to advertise details of a petition for bankruptcy in a national newspaper. The provision provides for a person to publish details of the bankruptcy on the ISI website, at no cost.

## **6. POSSIBLE OUTCOME FOR LEO FROM BANKRUPTCY**

Leo has now been adjudicated bankrupt and all his property is now vested in the Official Assignee.

The Official Assignee will assess the current mortgage payments by Leo to ensure it is a reasonable accommodation expense in the circumstances. It is assumed in this scenario that the Official Assignee believes the mortgage repayments to be reasonable.

### **FAMILY HOME**

As the mortgage is being serviced Leo's mortgage bank has elected to stay outside bankruptcy and rely on its security.

The family home has a value of € 150,000 and there is an outstanding mortgage of € 260,000.

There is therefore no equity in the family home. As Leo's share of the family home is now vested in the Official Assignee, 50% of the family home belongs to the Official Assignee.

Nora will have the option to purchase the Official Assignee's interest in the family home for an agreed sum plus the Official Assignee's costs. As there is no value in the Official Assignee's interest in the property, he may choose to sell the family home to Nora for a reasonable sum. In determining a figure the Official Assignee will have regard to the value of the property, the amount of negative equity and how long the property may remain in negative equity. He will further have regard to the other assets and circumstances in the bankruptcy estate. The Official Assignee is bound to achieve the best possible return for the creditors and in that regard each individual case will be assessed differently. For the purposes of this scenario the Official Assignee values the interest at € 5,000 and estimates costs of € 2,500. The Official Assignee will have to apply to Court to sell this interest to Nora. If Nora cannot purchase the Official Assignee's interest this will remain vested in the Official Assignee.

### **OTHER ASSETS**

Leo has an entitlement to keep essential assets (e.g. car, furniture, tools of his trade) up to the value of € 6,000. If Leo's share of the furniture and car is in excess of this figure Leo must choose which of his assets to choose as essential assets.

### **INCOME**

The Official Assignee will seek an Income Payment Agreement shortly after adjudication for the surplus of Leo's income over his allowed Reasonable Living Expenses. This agreement, which will be reviewable every six months will last up to 5 years. The Official Assignee will assess the current

mortgage payments by Leo to ensure it is a reasonable accommodation expense in the circumstances. It is assumed in this scenario that the Official Assignee believes the mortgage repayments to be reasonable.

**Leo's monthly income and expenses after adjudication**

|                                |         |
|--------------------------------|---------|
| Net monthly income             | € 3,625 |
| Less                           |         |
| Total Set Costs                | € 2,040 |
| Rent/Mortgage                  | € 1,475 |
| Reasonable Living Expenses     | € 3,515 |
| Available to bankruptcy estate | € 110   |

For the purposes of this scenario it is assumed that Leo reaches an Income Payment Agreement with the Official Assignee and there is € 110 per month available to the bankruptcy estate after having deducted sufficient sums in respect of Reasonable Living Expenses.

There will be a total amount of € 4,110 (See Appendix A) available for unsecured creditors as a final distribution of the estate, and Leo has no repayment obligation for the remaining unsecured debt. Leo will be automatically discharged from bankruptcy after three years once he has fully cooperated with the Official Assignee.



### Leo's position before and after bankruptcy

| Assets              | Before bankruptcy | Dividend        | Debt write down | After OA Income Payment Order | Repayment % |
|---------------------|-------------------|-----------------|-----------------|-------------------------------|-------------|
| Family Home         | € 150,000         |                 |                 |                               |             |
| Car                 | € 5,000           |                 |                 | € 3,000 <sup>1</sup>          |             |
| Furniture           | € 750             |                 |                 | € 750 <sup>2</sup>            |             |
| <b>Total</b>        | <b>€ 156,500</b>  |                 |                 | <b>€ 3,750</b>                |             |
| <b>Debts</b>        |                   |                 |                 |                               |             |
| Secured debts       |                   |                 |                 |                               |             |
| Family Home         | € 260,000         |                 |                 |                               |             |
| Unsecured debts     |                   |                 |                 |                               |             |
| Personal loan       | € 70,000          | € 3,269         | (€ 66,731)      | € 0                           | 5%          |
| Credit card debts   | € 18,000          | € 841           | (€ 17,159)      | € 0                           | 5%          |
| Bankruptcy Fees     |                   | € 7,490         |                 |                               |             |
| <b>Total (100%)</b> | <b>€ 348,000</b>  | <b>€ 11,600</b> | <b>€ 86,951</b> | <b>€ 0</b>                    |             |
| Deficiency/Surplus  | (€ 191,500)       |                 |                 | € 3,750                       |             |

The Official Assignee deducts the following fees from the bankruptcy estate [the debtor is not liable for these fees] prior to making a distribution:

|                    |                      |
|--------------------|----------------------|
| Administration Fee | € 2,000              |
| Realisation Fee    | € 4,990 <sup>3</sup> |
| Distribution Fee   | € 500                |
| <b>TOTAL FEE</b>   | <b>€ 7,490</b>       |

<sup>1</sup> For the purposes of this scenario it is assumed the car has depreciated €2,000 over the course of the bankruptcy.

<sup>2</sup> Assumed Leo owns 50% of the furniture with Nora.

<sup>3</sup> The Realisation Fee is calculated based on a sliding scale as follows: Administration Fee amount @ 0%, the next €1,500 @ 100%, the next €6,500 @ 50%, the balance up to €1m at 15% and the balance thereafter at 1%.

## 7. LEO'S POSITION AFTER MEETING HIS DUTIES AND OBLIGATIONS UNDER BANKRUPTCY

- g) Leo's accommodation costs / mortgage repayments are reasonable as assessed by the Official Assignee having regard to the ISI Reasonable Living Expenses Guidelines.
- h) The family home is held in Nora's sole name and Leo pays the mortgage going forward.
- i) Leo will have repaid a certain percentage of his unsecured debts and the remaining amount is written off. This represents a 5% return for the unsecured creditors based on amounts outstanding prior to Leo being adjudicated bankrupt.
- j) Leo is solvent.
- k) After three years Leo will be automatically discharged from bankruptcy. The Official Assignee may object to automatic discharge where the individual has failed to co-operate or has failed to disclose assets.
- l) After 5 years of making income payments to the bankruptcy estate Leo's Income Payment Agreement will cease. The proceeds of these payments will then be distributed by dividend to the unsecured creditors.

## 8. APPENDICES

### Appendix A: Dividend Payment to Unsecured Creditors

| Assets Realised                  |                 |                |                   |
|----------------------------------|-----------------|----------------|-------------------|
| Family Home                      | € 5,000         |                |                   |
| Income Contribution              |                 |                |                   |
| € 110 x 60 months                | € 6,600         |                |                   |
| Dividend Calculation             |                 |                |                   |
| Total Assets Realised in Estate  | € 11,600        |                |                   |
| Less Costs and Fees              | (€ 7,490)       |                |                   |
| Available to unsecured Creditors | € 4,110         |                |                   |
| Unsecured Creditors              |                 | Dividend Paid  | Percentage Return |
| Personal loan                    | € 70,000        | € 3,269        | 5%                |
| Credit Card                      | € 18,000        | € 841          | 5%                |
| <b>Total</b>                     | <b>€ 88,000</b> | <b>€ 4,110</b> |                   |