

WILL IT BE HARDER TO END UP IN BANKRUPTCY?

Throughout the centuries, bankruptcy has been the most well known and most feared of the personal insolvency processes with the outcome being either public hanging, debtor's prison or the loss of all personal possessions!

In 1986, a new Insolvency Act was introduced which attempted to rehabilitate those persons who found themselves in bankruptcy. New measures included an automatic discharge after three years and many personal items such as clothing, books and tools of trade being exempt. In addition, the amount a creditor had to be owed before a bankruptcy petition could be presented was set at £750. Whilst this was a reasonable sum 30 years ago, there has been no increase in the limit since then.

It is proposed that as from the 1 October 2015, the limit be increased to £5,000 representing an approximate 675% increase on the previous figure. The Government's stated aim is to preserve bankruptcy, which has the most significant consequences, for those with sizeable debts. The current £750 threshold meant that previously creditors were able to use the threat of bankruptcy to obtain payment of fairly modest amounts with the debtor somehow sourcing sufficient funds. However, this was not always possible and there have been occasions whereby a person has ended up in bankruptcy with their home being sold merely because they were unable to settle a debt of less than £750.

Whilst potential bankrupts may be rejoicing at these changes, creditors with debts of less than £5,000 are left with limited options. One would be an informal arrangement with the debtor but with no statutory framework to ensure that any agreement was adhered to. The other option would be formal Court proceedings in the small claims Court resulting in a judgement being obtained which ultimately could be enforced by the High Court Enforcement Officer. Given that the increase in the threshold is planned for 1 October 2015, some creditors may however be inclined to issue bankruptcy petitions in the next few months in order to take advantage of the lower limit.

There are also plans to increase the threshold in relation to debt relief orders (DRO) which is an alternative to bankruptcy. The DRO regime is an administrative rather than Court based process and is designed to offer debt relief to individuals who would otherwise be excluded from existing procedures. Currently, a DRO is available to those persons whose liabilities are below £15,000 and whose assets are less than £300. As from 1 October 2015, these limits will increase to £20,000 and £1,000 respectively. In addition, a vehicle worth no more than £1,000 will also be permissible.

Whilst the above represents good news for debtors, creditors will feel that their ability to use the bankruptcy regime has been severely curtailed leaving them frustrated as to how to recover fairly modest debts.

Please note that should your clients require any confidential advice regarding this or any other insolvency matter they are welcome to contact one of our Partners. An initial consultation is provided free of charge and without obligation. Also, if you or any of your colleagues require any clarification regarding insolvency law or procedure, please do not hesitate to contact us.