

## QUESTION

I am involved in a business venture that has collapsed. I had provided personal guarantees to suppliers and the bank and am willing to pay as much as I can from my assets. However, is there any way I can reach an accommodation with the creditors and avoid bankruptcy?

## ANSWER

Given the number of companies collapsing in the country and the increasing use of personal guarantees, there are many people in a similar situation to you.

There are various alternatives to bankruptcy if there is a reasonable possibility that some or all of your creditors will accept less than the full amount owed to them. One alternative in Sections 87-109 of the Bankruptcy Act 1988 (as amended) involves an arrangement with creditors under the control of the court.

The other alternatives are arrangements outside the control of the court (voluntary arrangements) such as: reaching an accommodation with your creditors in which they all agree to accept part payment in full settlement of their claims, or the transfer by agreement with the creditors of valuable property or assets to a trustee for the benefit of the creditors generally, so that the proceeds of sale of the property can be distributed among them.

In circumstances where debtors have significant liabilities and insufficient assets to meet those liabilities, creditors, who accept representations from a debtor to this effect, are often willing to accept the reality that a voluntary arrangement is the best outcome. This is especially the case where the list of creditors is not extensive.

Where voluntary arrangements are not acceptable to all creditors, Section 87 of the Bankruptcy Act allows the debtor who is unable to meet his or her commitments to make an arrangement with creditors under the control of the court. Under this procedure, a debtor must bring a High Court petition for an arrangement, setting out the reasons for the inability to pay his debts and requesting that his property be protected from any action until further order.

The High Court may grant an order protecting the debtor from any action or other process (including a bankruptcy summons) until further order.

If this order is granted, the court directs the debtor to call a preliminary meeting of creditors and, at this meeting, the creditors are presented with a statement of the debtor's assets and liabilities and the debtor's proposal for dealing with his debts.

The proposal must be to pay an amount on all of the debtor's debts. Following the preliminary meeting, the court will direct a private sitting before the court for the purpose of considering the proposal. The creditors are given notice of the private sitting.

If, at the private sitting, three-fifths in number and value of the creditors vote to accept the proposal or any modification of it, it is deemed to be accepted by all creditors subject to court approval. If approved by the court, the proposal is binding on the debtor and on all creditors at the date of the petition and who were notified of the sitting.

Once the proposal is effected - and provided there has been no fraud - the court will issue a certificate discharging the debtor from his liabilities to all creditors who received notice of the proposal. If the proposal is rejected, the court may adjudicate the debtor bankrupt.

The arrangement procedure enables a debtor experiencing financial difficulties to avoid the disqualifications of becoming bankrupt and - with some exception - gives some privacy which helps protect standing and credit.

Each week, financial, legal and business advisers will answer your questions on a range of small business issues. If you are facing a business dilemma or simply need a sounding board, contact Company Matters. Questions should be sent to: Company Matters, The Sunday Business Post, 80 Harcourt Street, Dublin 2. E-mail: [companymatters@sbpost.ie](mailto:companymatters@sbpost.ie)