Association of Personal Insolvency Practitioners
solving debt for a fresh start

Association of Personal Insolvency Practitioners
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Central Bank of Ireland
PO Box 559
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By Email to: mortgagesubmissions@centralbank.ie

Re. Association of Personal Insolvency Practitioners Submission in response to Central Bank of Ireland "Call for Evidence Based Submissions on the Loan-to-Value and Loan-to-Income Regulations"

Dear Sirs,

The Association of Personal Insolvency Practitioners ("APIP") is the largest representative body for Personal Insolvency Practitioners ("PIPs") authorised and regulated by the Insolvency Service of Ireland ("ISI").

The Personal Insolvency Arrangement ("PIA") mechanism as provided for in the Part 3, Chapter 4 of the Personal Insolvency Acts 2012 to 2015 is the insolvency scheme designed to provide a holistic resolution of insolvencies for those debtors who are unable meet payments relating to secured debt after their household's Reasonable Living Expenses ("RLEs") have been deducted from their net income, including but not limited to the mortgage on a family home.

PIPs encounter a multitude of varied circumstances when insolvent debtors present for advice and assistance in being returned to solvency in a fair, transparent, and equitable manner short of bankruptcy. While the personal insolvency legislation is designed to facilitate relief for debtors who are cash flow insolvent [unable to meet financial commitments as and when they fall due], the reality is the majority of debtors in need of a formal intervention are also balance

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sheet insolvent [assets worth less than their liabilities]. When it comes to non-performing family home mortgages, a significant majority of cases presenting to PIPs suffer from both mortgage arrears and negative equity in relation to their family home.

There are many triggers for a debtor resulting in first contact with a PIP, but increasingly the main trigger is the progression of legal proceedings by creditors. These legal proceedings fall into two main categories:

1. Civil Bill for repossession of a family home
2. Creditor seeking judgement for unpaid debts

For the creditor with a non-performing family home mortgage the ultimate resolution [once the mortgage has been deemed unsustainable by the creditor, and the debtor is not willing to voluntarily surrender the family home] is proceedings for possession of the home before the relevant Court. Section 2(2) of the Land and Conveyancing Law Reform Act 2013 provides a final safety valve for relevant stakeholders in the repossession process, being an adjournment of proceedings to allow the debtor the opportunity to consult with a PIP towards having a PIA approved by the relevant Court.

In the period from September 2013 to November 2015 for a PIA to be approved by the relevant Court it was a pre-requisite for a majority of creditors to vote in favour of the arrangement proposed by the PIP on behalf of the debtor. The Personal Insolvency (Amendment) Act 2015 introduced a Court Review Process for a Vetoed PIA [ref. S.115A]. This effectively removed the creditor veto in a PIA (once normally controlled by the secured creditor that owned the mortgage on the debtor's family home).

A PIA provides for a holistic treatment of a debtor's insolvency, encompassing both unsecured and secured debts, including a family home mortgage; and restructures a debtor's debts in context of their Reasonable Living Expenses ("RLEs"). A debtor's RLE calculation is the barometer of the sustainability of a PIA, the family home mortgage payments provided for in the PIA for the duration of the arrangement and beyond to the end of the term of the restructured mortgage contract.

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The introduction of the S.115A Court appeal mechanism for a vetoed PIA should be considered a paradigm shift in the options available to an insolvent debtor. **In considering the treatment of negative equity in a PIA in context of the new legislation the APIP committee deemed it necessary to seek Counsel opinion on the matter. In this regard we attach to this submission the Opinion of Keith Farry B.L. which we feel <u>goes to the very heart of the considerations the Central Bank will involve itself with in reviewing its Loan-to-Value and Loan-to-Income Regulations</u>, i.e. if there were to be further property price drops in the Irish property market, what will happen to the negative equity if a debtor is unable to continue with mortgage payments as per contract; and what would the impact be on a financial institution's balance sheets.**

Kindly confirm safe receipt of this submission on behalf of the Association of Personal Insolvency Practitioners.

Yours sincerely,

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