Carter Clark
Financial Recovery

Briefing Sheet

Thinking about an IVA?

Background

When thinking of how best to deal with either consumer or business debts, many questions often arise. This briefing sets out some of the things individuals need to consider.

What's involved?

An IVA is a formal scheme for dealing with personal debts introduced by the Insolvency Act 1986. A licensed Insolvency Practitioner, often in conjunction with existing professional advisors, helps prepare a proposal and convene a meeting of creditors. Debtors normally offer substantially less than 100p in the £1.

Most IVA's are based on contributions from future income typically over a three to five year period. Alternatively, a lump sum payment, from either a remortgage or third party funding, may enable a one off payment to creditors.

Other options?

Informal arrangements with creditors or filing for bankruptcy need to be considered.

Dealing with matters informally may be appealing in cases where debts are small. The problem is that creditors can refuse to be bound or come back later and ask for more. In addition, creditors owed greater than £5,000 can petition for bankruptcy.

The Enterprise Act 2002 radically changed the bankruptcy regime. In most cases bankruptcy will now last for 12 months. All unsecured debts (with the exception of some types of student loans and certain family court orders) are immediately cleared, together with contingent claims existing at the date of the bankruptcy order.

Bankruptcy restrictions

Whilst bankrupt, amongst other things, you cannot:-

- be a director of a company;
- trade under any other name;
- continue in certain professions or public office;
- incur credit of more than £500 without disclosing your status as an undischarged bankrupt.

Executive summary

Individual Voluntary Arrangements are an alternative to Bankruptcy. Often based on future contributions from income or third party funding, they are an effective tool in reducing the burden of personal debt.

This briefing sets out some of the things that need to be considered before asking an insolvency practitioner to assist with contacting creditors.

Have a question?

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Thinking about an IVA?

If Bankrupt, what happens to my assets?

If you are self employed, bankruptcy restrictions may make it very hard to continue trading. The bank account will be frozen, your assets may be taken over by your Trustee and employees dismissed.

If any equity exists in your home, it may eventually be sold. In the meantime, you will still need to pay the mortgage and any other secured debts to avoid repossession.

How can an IVA help?

Your proposal is rather like a contract between yourself and your creditors. It is flexible, and based upon what creditors could expect to receive if you were made bankrupt.

Protection from creditors

If creditors are pressing, a moratorium in the form of an Interim Order can be sought. This provides a breathing space whilst proposals are put together and presented to creditors.

What are the advantages of an IVA?

- If you own a business, you can continue to trade;
- You can continue to be a director of a limited company;
- Your house can be excluded and replaced by voluntary contributions from surplus income;
- Overall costs should be lower, and hence the return to creditors greater, than in bankruptcy;
- Only a majority of 75% of creditors are needed to agree the proposal;
- Once approved all creditors are bound by the terms of the IVA;
- A debtor can operate a bank account providing an overdraft facility is not included;
- A debtor is not subject to the restrictions imposed by bankruptcy;
- The stigma and publicity involved with bankruptcy are avoided.

What about the disadvantages?

To gain the support of creditors, you must offer a better return than would be available in bankruptcy. Voluntary contributions over perhaps five years are often required.

You must still keep up payments on any secured loans or mortgages.

If you do not keep to the terms of the IVA, your supervisor may have to fail your arrangement and petition for your bankruptcy.

The supervisor of the arrangement will be required to monitor your income and financial affairs, including such issues as after acquired property during the course of the IVA.

What do I need to do next?

Firstly, you need to realise that action needs to be taken to relieve the pressure of your debts.

Don't be tempted to continue 'robbing Peter to pay Paul' as the debts simply get bigger.

Taking out further credit cards or loans won't help the situation.

Arrange to see and Insolvency Practitioner. Take with you:

- A full list of what you owe;
- Check creditors details – correct names, addresses, reference numbers and amounts;
- Evidence of your current earnings;
- Be realistic with your summary of current income & expenditure and estimates of future increases;
- Don't be tempted to hide anything – you must make full disclosure about your assets and liabilities;
- Time is a vital ingredient – sooner or later creditors will seek to instruct bailiffs or petition for bankruptcy if you do not take control and seek help.

And finally..................

You are not alone. In 2020 approximately 82,000 individuals entered into voluntary arrangements and avoided bankruptcy.

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