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0800 084 3841

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Is a Voluntary Arrangement right for me?

Introduction

1. Since June 2002, the regulators have required insolvency practitioners (IPs) to give this guidance leaflet to people thinking about making an individual voluntary arrangement (IVA). It aims to help you understand what is involved **before** you commit yourself.
2. The rules say that your IP should not have charged you any money in connection with an IVA before you have read this leaflet and had the opportunity to discuss any points or issues that you do not understand. But in complex cases, perhaps when you own a business, you might already have paid the IP or his firm for professional advice leading to a decision to consider an IVA. The IP should always offer you the choice of a personal meeting, either with the IP himself, or with a suitably experienced colleague who can give good advice.
3. This leaflet has been prepared by the Association of Business Recovery Professionals, also known as R3. It is not a full statement of the law, nor can it cover all circumstances. Accordingly R3 accepts no responsibility if you rely on this leaflet. You should always seek appropriate professional advice.

What is an IVA?

4. An IVA is an alternative to bankruptcy. Basically it is a contract between you and your creditors. The terms of your proposal to creditors may be very flexible, but creditors will reasonably expect their prospects of recovering money to be at least as good as in a bankruptcy. Further, they will expect the proposal to contain sanctions (such as a right to bankrupt you) if you do not fulfil your part of the bargain.
5. Your IP is likely to help you with your proposal to creditors, and initially he is known as your 'nominee'. If the creditors accept your proposal, an IP then becomes the 'supervisor' of the arrangement.
6. Your proposal will be voted on by the creditors at a creditors' meeting (except in the case of the 'fast-track' procedure mentioned in paragraph 16). Generally, if over 75% by value of your creditors who are represented at the meeting (in person or by proxy) vote in favour, the IVA will be implemented. Creditors may put forward changes to the proposal, but they cannot impose them on you – you can decide whether or not to accept them.
7. You are not legally required to attend the creditors' meeting, but in practice you should be there. Otherwise it will be impossible to agree any changes to the proposal. If last-minute changes are proposed, you should feel free to ask for reasonable time to think about them. If necessary, seek your IP's private advice outside the meeting about what is being proposed.
8. An IVA gives you an opportunity to avoid bankruptcy. If it is not approved, a creditor may bankrupt you. It follows that you should put forward the best offer you can to your creditors. You must be completely open and honest with your IP and the creditors, and **must** make a full disclosure of your complete financial circumstances.

What is bankruptcy?

9. A bankruptcy order may be obtained by any creditor owed more than £750, or you yourself may ask the court to make an order. In either case, the Official Receiver, a government official, will then contact you for details of your financial position. Subject to certain exemptions, bankruptcy means that your assets are sold and the money is used to pay your creditors as much as possible. The assets will be sold by the Official Receiver or an IP, as your 'trustee in bankruptcy'. Assets you will be allowed to keep include:
 - ordinary household contents;
 - a modest motor vehicle;
 - the benefit of a residential tenancy;
 - 'tools of trade' – things you need to pursue your trade or vocation;
 - any money you have in a pension fund. However, you should seek advice if the fund is large or if you are likely to be able to take the benefits of the fund in the next few years.
10. There are special rules regarding your home. Generally speaking, if you have equity in a house (i.e. it has a value in excess of any mortgages on the property), even if it is jointly owned, it may have to be sold. However, the trustee will be happy to discuss how to avoid a forced sale of the property, for example by selling your share to any joint owner or a friend or relative. The law encourages a trustee not to take any steps to force a sale through the court during the first 12 months of the bankruptcy, so you have a reasonable time to make any necessary arrangements. In addition, the trustee has three years from the date of the bankruptcy order to sell your house or otherwise deal with your interest in it, although this period can be extended by the court. If he does not do so within that time, the property will revert to you. If the value of your equity is less than £1,000 the trustee will not be able to force a sale.
11. If you own a house with little equity, you or any joint owner should consider seeking to buy out your share of the house from the bankruptcy **as soon as possible**. Otherwise, movements in property prices (or mortgage repayments) could produce an increased equity later – even after your discharge from bankruptcy – and the trustee could then seek full value for your interest. In most cases the cost of buying your share should be no more than the trustee's valuation and conveyancing fees.
12. If you have surplus income above the needs of yourself and your dependants, you will be expected to make contributions to your creditors for up to three years, and may be ordered to do so by the court. If you come into any money during the bankruptcy, such as an inheritance or a lottery win, that too will be available to your creditors.
13. In most cases the bankruptcy ends after one year, or even sooner if the Official Receiver decides to close his file early. The slate is then wiped clean and your creditors can make no further claims against you. This is known as discharge. There are some exceptions. For example, you may still have to pay any lump sum order made against you in divorce proceedings, any amount you owe under a student loan and any unpaid court fines. **Even if some of your assets remain unsold after the end of your bankruptcy, they will still remain available to your creditors and your trustee can still sell them.** The existence of the bankruptcy will also remain on record, e.g. at the Land Registry and with credit reference agencies. The trustee's powers survive discharge, as does your duty to co-operate.
14. Bankruptcy has different consequences for different people. A professionally qualified person such as a solicitor or accountant may have his practising certificate suspended because of his bankruptcy, and a bankrupt cannot act as a company director. People in such a position are much more likely to seek an IVA. However, in other cases an IVA may have fewer advantages and bankruptcy might be a better option for you. You should explore openly with your IP what is the right thing to do in your case. **Remember he can only advise you properly if he knows all the facts.**

15. You can put forward an IVA proposal even after a bankruptcy order has been made, with a view to 'annulling' (cancelling) the bankruptcy at an early stage if the IVA is accepted by the creditors. However, you run the risk of going bankrupt again if for some reason the IVA is not successfully concluded.

Who can act as a nominee/supervisor?

16. Unless you are bankrupt when you make the proposal, only an authorised IP can act as nominee or supervisor of an IVA. You can expect to see a licensed professional with training and qualifications demonstrating he is fit to hold an insolvency licence. Nearly always the person who acts as nominee will also act as supervisor. The IP or his firm should not have had a material professional relationship with you (e.g. acting as your accountant) before the IVA, as he would not then appear impartial. Alternatively, if you are bankrupt at the time you put forward the proposal, the Official Receiver can act as nominee and supervisor. In that case you may be able to take advantage of a simplified procedure called a 'fast-track' IVA, which does not involve a creditors' meeting or allow creditors to make any changes to the proposal. It still requires a 75% majority by value of creditors to approve the proposal.

In an IVA, what are the IP's responsibilities to me?

17. The IP's role changes as the case goes on. Right now, before you have committed yourself to anything, he is your professional adviser, with responsibilities only to you. It is up to him to help you make the right decision about what to do and, if you proceed with an IVA, to help you put your proposal to your creditors.
18. When you decide to go ahead, the IP becomes the 'nominee'. At this point the IP's role changes, and he has legal duties to the court and to creditors which may conflict with your interests. For example, if he thinks your proposals are not fit to put before a creditors' meeting, he is obliged to say this to the court, and the court may end the IVA procedure at that stage.
19. If the IVA is approved, the IP's role changes again. He is then the 'supervisor' of the IVA, and his responsibilities are mainly governed by the terms of the arrangement, but he still has responsibilities to the court. His position now is to be 'honest broker' – to act even-handedly between you and your creditors and to ensure that the terms of the proposal are fulfilled. If the proposal requires him to bankrupt you if you fail to deliver your part of the bargain – and creditors will probably insist on such a term – then that is what the supervisor must do.
20. So it is important that you understand how the IP's role changes as the case goes on. Don't be afraid to ask questions if you want clarification.
21. If you are dissatisfied, your IP or his firm should have a formal procedure for resolving complaints. You should ask for details of this procedure and, first, raise the matter with the IP or his firm. Many complaints arise simply because of misunderstandings, and can be resolved by both parties taking the time to go through the problem. But if the matter cannot be resolved in this way, you can raise it with your IP's regulator (he must tell you who this is – there is a list at the end of this leaflet). His regulator will then investigate the complaint on your behalf. The Insolvency Service, a government agency, has a leaflet called 'How to make a complaint against an insolvency practitioner'.
22. You also have a right to raise any complaint about your supervisor with the court, and the court may change any decision he has made. You should seek independent advice before going to court, as the court may order you to pay costs if it does not agree with your complaint.

Reading the proposal carefully

23. The proposal is a formal legal document which, when approved, becomes legally binding, and many points must be covered as a matter of law or best practice. Other points will be included because creditors tend to demand them. If such points were not covered, creditors would be less likely to vote in favour.
24. Unfortunately this means the proposal itself may be a long, technically complex document. Again, don't be afraid to ask questions. And you should certainly **go through the proposal in as much detail as you need to before signing it**. It is the most important document in the IVA, and will govern everything that happens afterwards. It is difficult, and sometimes impossible, to make changes later on. Even though your IP will probably help you draft the proposal, **it remains your proposal, and you could be prosecuted if it is misleading**.

Fees and costs

25. The proposal must contain details of what will be paid to the IP for acting as nominee and as supervisor. A separate fee is payable for the IP's work in each of these roles.
26. The nominee's work will include helping you with your proposal, the necessary application(s) to court to start the IVA process, liaison with your creditors and holding the creditors' meeting. The nominee's fee will usually be a fixed sum, agreed with you before he begins work on your proposal. Sometimes the fee will be split between work done as nominee and work done before that stage, as intended nominee.
27. The supervisor's costs depend in part on the nature of the proposal and what he needs to do to implement the arrangement. In all cases he must report the results of the creditors' meeting to you, the court and to all creditors. He must also issue annual reports to these people. Sometimes he may have to do work which was not foreseen in the proposal, for example if a creditor takes a dispute to court, if a lot of work has to be done to agree tax liabilities or if you break your proposal's promises to creditors. You can contact your supervisor at any time, and **you should do so if you have any problem delivering your part of the bargain**.
28. The supervisor's fees may be stated as a fixed sum, as a percentage of funds coming into the arrangement, or by reference to the time costs of the supervisor and his staff. If the supervisor's fees are fixed on a time-cost basis, they will probably be stated in the proposal as an estimate, rather than a binding quotation, because no one can predict future events with certainty. However, you will want to have details of the charge-out rates of the IP and his staff.
29. Make sure you understand what basis is being used in your case, and that you are content with it. It is up to you to fix the basis of the supervisor's fees in the first instance as this will form part of your proposal to creditors. The level of the supervisor's fees will also affect the return to your creditors under the arrangement. If you are unsure of anything, don't hesitate to ask for clarification about the costs of the process.
30. Both the nominee and supervisor can charge you for various disbursements (additional expenses) that may be incurred while the IVA lasts, and they should give you details of any likely disbursements in your case. For instance, there is a fixed fee for registering an IVA with the Department for Business Enterprise and Regulatory Reform, and the supervisor is also required by law to take out a bond (insurance) for which he pays a premium. Depending on the case, other charges may arise such as legal or valuation fees. In particular, if the supervisor needs to instruct solicitors in relation to any problem with your arrangement, the legal fees will generally be paid out of the funds in your arrangement. This includes any legal work that arises if you don't keep to the terms of your arrangement.

31. If the Official Receiver acts as your nominee, you will have to pay a deposit to cover his fixed fee for acting as nominee and registering the arrangement. He will also charge a fee for acting as supervisor calculated as a percentage of the amount of money received during the arrangement.

What can go wrong?

32. An IVA can go wrong at any time. Your creditors may reject your proposal at the first meeting, and you will be back to square one. You should only consider an IVA if you think major creditors are likely to support your proposal. Your IP can advise further and, if necessary, discuss the matter first with the major creditors.
33. If the arrangement is approved, it could still fail later for unexpected reasons. You might then still face bankruptcy in two or three years. You should therefore take care not to agree to anything that is not realistic and achievable.

Before speaking to my IP, I paid fees to someone else

34. Often people seek advice from others before being introduced to an IP. They may talk to a professional adviser such as a solicitor or accountant, a banker, a citizens advice bureau, or a debt counsellor or consultant. Some of these people reasonably expect to be paid for their advice. Only you can decide whether you have received value for money. If you are not certain, you should discuss it with your IP. If your previous adviser recommended an IVA, and has been paid a fee, ask your IP to state in your proposal which organisation gave that advice and how much you paid them.

What about my credit rating?

35. Reasonably enough, credit-rating agencies do not make much distinction between a bankruptcy and an IVA. Unpaid debts will affect your creditworthiness, regardless of what legal process is used to deal with the problem. However, if an IVA is successfully concluded, that fact will be recorded on any status report and may be more favourable from the point of view of any future credit provider. It is your responsibility to ensure your record is updated.

Conclusion

36. Your IP understands that this may be a distressing time for you and has assisted many people in your situation before. His judgement and experience can help to make sure you do the right thing from now on. Here is a suggested agenda to discuss with the IP:
 - Your financial position
 - What creditors can realistically expect to be paid
 - Bankruptcy – pros and cons
 - IVA – pros and cons
 - Likely creditor support
 - Are there other options?
 - Fees and costs
 - Agreed way forward

Further information

R3

The Association of Business Recovery Professionals

8th Floor, 120 Aldersgate Street, London, EC1A 4JQ

T 020 7566 4200 F 020 7566 4224 E association@r3.org.uk W r3.org.uk

The Insolvency Service

PO Box 203, 21 Bloomsbury Street, London, WC1B 3QW

T 020 7291 6772 T 020 7291 6773 E Central.Enquiryline@insolvency.gsi.gov.uk W insolvency.gov.uk

Both organisations issue various publications to help debtors and creditors.

The Regulatory Authorities

The Association of Chartered Certified Accountants

Professional Standards, 2 Central Quay, 89 Hydepark Street, Glasgow, G3 8BW

T 0141 534 4175 F 0141 534 4237 E members@accaglobal.com W accaglobal.com

The Insolvency Practitioners Association

Valiant House, 4-10 Heneage Lane, London, EC3A 5DQ

T 020 7623 5108 F 020 7623 5127 E secretariat@insolvency-practitioners.org.uk

W insolvency-practitioners.org.uk

The Institute of Chartered Accountants in England & Wales

Professional Conduct Department, Metropolitan House, 321 Avebury Boulevard,

Milton Keynes, MK9 2FZ

T 01908 546 235 E psocomp@icaew.com W icaew.com

The Institute of Chartered Accountants in Ireland

Dublin

CA House, 83 Pembroke Road, Ballsbridge Dublin 4, Ireland

T 00353 (0)1 637 7200 F 00353 (0)1 668 0842 E ca@icai.ie W icai.ie

Belfast

Chartered Accountancy Regulatory Board, The Linenhall, 32-38 Linenhall Street, Belfast, BT2 8BG

T 028 9032 1541 F 028 9031 9320 E ca@icai.ie W icai.ie

The Institute of Chartered Accountants of Scotland

Insolvency department, CA House, 21 Haymarket Yards, Edinburgh, EH12 5BH

T 0131 347 0288 F 0131 347 0114 E enquiries@icas.org.uk W icas.org.uk

The Law Society

113 Chancery Lane, London, WC2A 1PL

T 0870 606 2555 or 0845 608 656 E contact@lawsociety.org.uk W lawsociety.org.uk

The Law Society of Scotland

26 Drumsheugh Gardens, Edinburgh, EH3 7YR

T 0131 226 7411 F 0131 225 2934 E lawscot@lawscot.org.uk W lawscot.org.uk

The Law Society of Northern Ireland

96 Victoria Street, Belfast, B4 5BS

T 028 90 231614 F 028 90 232606 E info@lawsoc-ni.org W lawsoc-ni.org

The Secretary of State for Business, Enterprise and Regulatory Reform

Insolvency Practitioner Unit, Cannon House, 18 Priory Queensway, Birmingham, B4 6BS

T 0121 698 4000 E ipu.email@insolvency.gsi.gov.uk W insolvency.gov.uk

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R3
The Association of Business
Recovery Professionals
8th Floor
120 Aldersgate Street
London
EC1A 4JQ

T 020 7566 4200
F 020 7566 4224

E association@r3.org.uk
W r3.org.uk

