

Dealing with Debt
The no nonsense guide to
**Individual Voluntary
Arrangements**

[including Partnerships]

Introduction

Welcome to our No Nonsense Guide to Individual Voluntary Arrangements ["IVAs"].

There is so much information out there on the web that even professionals in the insolvency sector can get bogged down in the sheer volume and detail of what can be downloaded at the touch of a button.

Working on the maxim "less is more", we have set ourselves the task of producing a No Nonsense Guide to IVAs in fewer than 10 pages.

Needless to say, this document is really only a taste of the subject matter, but we trust that it will at least throw a light on the major issues relating to this important area of personal insolvency rescue and turnaround.

Insolvency professionals tend to split this area of personal insolvency into two types of IVA- Consumer IVAs [sometimes known as a Straightforward Protocol Compliant IVA] and Business IVAs dealing with self-employed individuals or partnerships. At **Insolvency-Online**, we take each case on its own facts and hopefully come up with bespoke solutions to personal debt problems.

Each year tens of thousands of people enter into the IVA procedure which is universally recognised as the number one personal debt solution, avoiding the stigma of bankruptcy.

A Guide can help you get your thoughts in order, but at the end of the day, most people require specific advice to address specific issues, so please never hesitate to make contact with me or any of my colleagues at **Insolvency-Online**.

Please also note that all our formal appointment takers are licensed as Insolvency Practitioners by the Institute of Chartered Accountants in England and Wales.

Mike Bowell LIP

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1 General information

Definition of IVA

It is a formal insolvency process which allows for an insolvent Individual/Business Partners to come to a legally binding agreement with his/her creditors over the payment of his/her debts. The IVA takes the form of a contract between the Individual and their creditors and gives the Individual breathing space in which to deal with his/her financial difficulties. Most IVAs rely upon monthly contributions of surplus income being paid into the IVA which are then in turn distributed to the creditors in accordance with the specific terms of the IVA Proposal [a kind of Business Plan]. An IVA is suitable for Individuals in paid employment or those who are self-employed.

In an IVA where a business is being run, the business affairs are left in the hands of the Individual/Partners throughout the process and the role of the Licensed Insolvency Practitioner, known as the Supervisor, is very much that of honest broker and referee, ensuring that the terms of the IVA are adhered to by all sides.

Legal protection in an IVA

Protection from creditor action can be obtained by way of applying to court for an Interim Order which provides a moratorium in respect of legal action. The moratorium prevents bailiff action and the continuation of a Bankruptcy Petition and is clearly designed to prevent a viable IVA Proposal being destroyed by a selfish creditor. The freeze on such creditor action is usually granted until shortly after the Decision Date at which the IVA is accepted or rejected. The aim of this protection is to stop a selfish creditor from taking action that might ruin a plan that benefits all creditors.

Objectives of IVA

The insolvency legislation does not set down any specific statutory objectives for an IVA. The law in this area really is seeking to make it as easy as possible for an insolvent Individual/Partners reach agreement with creditors. Quite simply, an IVA is an alternative to Bankruptcy and the statistics clearly show that creditors achieve a higher rate of return under an IVA because the administration costs are so much lower.

In addition, an IVA avoids the restrictions and disqualifications that result from bankruptcy- e.g. the bar on becoming or remaining a company director or continuing to act in a professional capacity [a holder of a professional qualification should always seek guidance from their professional body as to their ability to continue practicing in either an IVA or a Bankruptcy].

Protocol compliant IVA

The IVA protocol, which commenced in January 2008, is a voluntary agreement which provides an agreed standard framework for dealing with straightforward consumer-based IVAs, aimed at increasing trust and confidence between the participants in an IVA and also improving the efficiency of the IVA process.

It was developed after extensive work and cooperation by those representing debtors, lenders, insolvency practitioners and regulatory and representative bodies.

The British Banking Association (BBA) has confirmed that its members will support the protocol. Creditors are expected to abide by the terms of the protocol in relation to proposals drawn up on that basis.

Insolvency-Online uses the Protocol terms for consumer-based IVAs and protocol terms for IVAs for self employed individuals.

A major plank of the IVA Protocol procedure is that there should be no circumstances where the insolvent Individual should be forced to sell their property instead of releasing equity for the benefit of creditors. Equity can be released by either re-mortgaging the property or extending monthly payments in the IVA for an additional 12 months [i.e. a 5 year IVA would be extended by a further 12 months].

2 Individual Voluntary Arrangement [“IVA”]

Process of entering into an IVA

In practice, a Licensed Insolvency Practitioner [“LIP”] will assist the Individual/Partners in drawing up a Proposal as to how it is intended that the claims of creditors will be settled, either in full or in part. The LIP, whose title is known as the Nominee, will file a report in court on the Proposal, stating that in his opinion, it has merit and should be put before the unsecured creditors.

The Nominee will send the Proposal to creditors.

The IVA Proposal to creditors

The Proposal is an absolutely key document in persuading creditors to give the Individual/Partners an opportunity to redress the financial position. It must clearly demonstrate ongoing viability and set out realistic goals.

In the case of a trading business, the Proposal will need to include an integrated financial model showing monthly profit and loss and cash-flow statements for the first 12 months of trading in the IVA together with a 2-5 year profit and loss forecast for the business. These forecasts will need to demonstrate profitability, cash generation and the sufficiency of working capital. The key assumptions of the forecasts need to be believable as creditors will rightly be sceptical of a Proposal that simply shows substantial profits going forward without adequate explanation as to how such profits and cash generation can be achieved, particularly given the recent trading history of the business.

In addition, the Proposal will contain a Statement of Affairs which clearly showing the Individual's/Partnership assets and liabilities.

There is a prescribed list of information that must be included in the Proposal, but above all else, it has to be a "selling document", clearly demonstrating to all parties, in as honest and transparent a way as possible, that allowing the Individual/Partners to continue trading will give creditors a much higher return than if they were made bankrupt.

Approval of IVA/Meeting of Creditors

The introduction of the Insolvency [England and Wales] Rules 2016 ["the Rules"] on 6 April 2017 has sought to remove the need for a physical meeting of creditors although one can be summoned if certain criteria are met. Creditors have to be given due notice of a Decision Procedure and given a Decision Date which means the date when a decision is to be made in a Decision Procedure. Effectively, the Rules aim to achieve "non-meeting" decision processes completed by correspondence which include email and electronic voting and resolutions by correspondence.

The creditors must be given at least 14 clear days' notice of the Decision Process. The creditors will vote on whether or not to accept the Proposal and may seek to impose modifications.

The IVA must be approved by a majority of over 75% [by value] of the Unsecured Creditors voting. Accordingly, if the requisite majority is achieved, any creditor that voted against the IVA or did not bother to vote is still bound by the terms of the agreed IVA.

Attitude of Secured Creditors

A Secured Creditor, for example, a mortgage company holding a charge over the Individual's home, is **not bound** by the IVA, unless it has expressly agreed to the arrangement. In our experience, as long as the monthly mortgage payments are made, such Secured Creditors are happy to rely upon their security and take no part in the IVA.

Attitude of HM Revenue & Customs ["HMRC"]

Since September 2003, HMRC has not retained the status of Preferential Creditor in respect of any part of its claim. Accordingly, like any other Unsecured Creditor, it will be keen to see that an IVA Proposal is viable and will maximise realisations for creditors. In our experience, HMRC tends to be supportive of the IVA process. Nevertheless, moves are afoot to grant HMRC a preferential status in respect of certain taxes and it is envisaged that this amendment to the laws will occur in December 2020.

Effect of IVA

When approved, an IVA binds all Unsecured Creditors of the company, even if the creditors did not bother to vote or voted against the Proposal. Creditors will not be able to take any alternative action to recover their outstanding debt.

In IVAs where the Individual/Partners continue trading to generate profits for the benefit of the bound creditors, the debtors will be left to get on with the running of the business, whilst the Supervisor will agree the claims of creditors and pay out dividends on a periodical basis [usually every 6 months]. In addition, the Supervisor is legally obliged to report to creditors on an annual basis.

3 Modifying and varying an IVA

Length of an IVA

There is no minimum or maximum period of time laid down in the legislation.

Usually the IVA runs for a period of 5 years and at the end of that period the creditors, if they have not been paid in full, will write off the balance of their debt.

Can the IVA be modified?

As previously mentioned, the creditors can seek to modify the initial Proposal at the outset, but as one can imagine, with arrangements that may last up to 5 years,

circumstances can change and alterations to the original scheme could be required.

After approval, the IVA can only be varied if the Proposal itself contains relevant provisions allowing for modifications. The Supervisor will approach creditors with a view to adjusting the terms of the IVA to fit changed circumstances. Such provisions will usually require a report to creditors and a Decision Procedure and Decision Date at which the proposed alterations will be voted upon.

4 A brief word about Partnerships [“PVA”]

PVAs give a business partnership the chance to reach agreement with creditors, in the same way as an IVA. The procedures are broadly the same. In most cases, the individual members of the partnership will also propose inter-locking separate IVA arrangements in respect of their personal assets and liabilities.

5 A brief word on the alternatives

- Bankruptcy – an Individual is made bankrupt by a court either on the Individual’s application or more usually on the application of a creditor. Discharge from bankruptcy is usually automatic after 12 months. All assets vest in the Trustee in Bankruptcy and it is his role to realise assets for the benefit of creditors. Steps will be taken to sell a matrimonial home after 12 months, when the interests of the creditors are deemed to prevail over those of the occupants. During the period of bankruptcy, there are certain rules called “bankruptcy restrictions” that the Bankrupt must follow, for example, he cannot act as a director of a limited company or obtain credit in excess of £500 without first advising the provider that he is a bankrupt. It is a criminal offence to break the restrictions.
- DRO [Debt Relief Order] – the DRO is designed for Insolvent Individuals who have no assets [less than £1,000], little surplus income [less than £50 per month] and liabilities of less than £20,000. The court is not involved in DROs which is a scheme run by The Insolvency Service [a government agency]. The DRO lasts for 12 months and during that time creditors named in the order cannot take action to recover their debt. At the end of the period, the debts listed in the DRO will be discharged and the Insolvent Individual will be free from those debts.
- Administration Orders – the Individual’s total debts must not be more than £5,000 and one of the creditors must have obtained a County Court Judgement. On the application of the Individual, the court may make such an order [the

Administration Order], requiring the debtor to pay weekly or monthly payments into court and the court will then disburse the monies to the creditors.

- DMP [Debt Management Plan] – a DMP is an informal arrangement between the Individual and his creditors. It is not legally binding and usually no part of the outstanding debt is written off. In addition, interest may continue to run on outstanding debts. It is particularly useful if the Individual needs a short stay [say 6-9 months] to sort out his financial affairs so that he can recommence payments at the normal contractual rate with each creditor.

6 FAQs

Please refer to our web-site at www.iva.insolvency-online.co.uk to review frequently asked questions regarding the IVA process.

Contact Us

We accept that making that initial contact with a professional can be very difficult for individuals who have been wrestling with their debts for many months or some cases years.

It is our job to give you the right advice and ensure that you can look forward to a debt free future.

We really are a good team to deal with, so please do not hesitate to contact us:

Tel: 020 8549 9915

Email: enquiries@insolvency-online.co.uk

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