



FACTSHEET NO. 3

INDIVIDUAL VOLUNTARY ARRANGEMENTS

INTRODUCTION

An individual voluntary arrangement (IVA) is a possible alternative to bankruptcy. It is a formal arrangement through the county court to pay an agreed amount in settlement of your debts over a shorter period of time. Typically it will last between 3 and 5 years with any outstanding amount being written off. They can be set up as a monthly payment arrangement, a lump sum or a combination of both. It will be suitable where, after taking into account your income and expenditure (not including creditors) you have a fairly substantial amount left over to offer towards your creditors and/or have a lump sum or assets which could be included.

THE PROCEDURE

The proposal for an IVA must be made to the creditors by a licensed insolvency practitioner (IP). This is usually an accountant or solicitor who is authorised to set up an IVA. Once an IP has agreed to make the proposal for you they can apply to the county court for an interim order. This stops your creditors from starting bankruptcy proceedings against you. It also stops any other enforcement action with the court's permission, whilst the interim order is in place.

WARNING From 1 January 2003 you can put forward an IVA proposal without applying for an interim order first. This may reduce costs but means your creditors can still take enforcement action against you until the IVA is agreed.

REMEMBER You can ask for an IVA even after you have gone bankrupt, see the section on 'Fast Track IVAs'

The IP sends the IVA proposal to your creditors and arranges a creditors meeting giving the creditors fourteen days notice. Check with your IP and make sure that all your creditors have been contacted. If creditors have not received notice of the meeting they do not have to stick to the terms of the IVA and can pursue you for their debt separately. At the meeting, creditors have to vote on whether they will accept the IVA. Often the creditors send their vote to the IP without attending the meeting.

For the proposal to be accepted, 75% of your creditors, by value (i.e. 75% worth of your total indebtedness rather than 75% by number of creditors) must agree. The rest are then bound by the terms of the IVA regardless of how they voted. Because of this, if one of your creditors totals more than 25% of the amount you owe to all of your creditors and votes against the proposal, the IVA will not be accepted.

Sometimes creditors will haggle over the terms of the IVA and ask you to pay more; or include assets you do not wish to include. For example; if you have equity in your property, they may wish to include this as part of the IVA requiring you to realise the equity at some point in the future. Make sure you understand what is required with regard to any property you own before agreeing to the proposal.

Fees

The fees for setting up an IVA can be quite expensive, typically around £4,000 or more. It is important to shop around to make sure you are getting the best deal. Many IP's will offer an initial free meeting to assess whether an IVA is a suitable option for you. They may advise you that it is an unsuitable option at this meeting as there is no point incurring the costs of an IVA if it is likely to fail. Some IP's will only accept payment up front where others will allow them to be paid as part of the monthly payments within the terms of the IVA.

Advantages for the debtor

Any debtor facing the threat of bankruptcy would be well advised to consider an IVA, since a bankruptcy order will inevitably lead to the loss of any realisable assets he/she possesses. Bankruptcy may also make it difficult to run your particular business. Many people have strong feelings about the stigma of bankruptcy and fear publicity and the loss of status.

A bankruptcy order involves a number of disadvantages which an IVA can avoid, so the following benefits should be considered.

- There is no ban on continuing to obtain credit, subject to agreement with the supervisor.
- Existing bank and building society accounts can be kept open although many of the main banks close trading accounts.
- There will be no effect on employment: a company director will not need to resign and professionals such as solicitors and accountants can continue to practice.
- May enable a business to continue trading.
- There is a possibility to negotiate with creditors regarding assets so it may be

possible, for example, to keep the family home or preserve pension entitlement.

- Any changes the creditors wish to make to the proposal require the consent of the debtor.
- If you have a lump sum available or a high available income, it is a way of getting your creditors to write off a proportion of the debt with the power of the court.

Disadvantages to the debtor

- Unless your proposal is accepted by the creditors, initial fees paid to the insolvency practitioner will be lost making your situation worse.
- If you do not keep to the terms of the IVA, the IP or one of your creditors can make you bankrupt.
- Creditors may ask you to include assets as part of the IVA. For example, if you own your own home, it is standard for IVA agreements to include a clause that you will get your property valued after a set number of years with a view to giving most or all of the value or 'equity' in your house to your creditors. If you are unable to raise the value of this equity you may be asked to remortgage or risk losing your property.
- If you are paying through monthly instalments, you can not guarantee that you will be able to keep to this long term.

Fast Track IVA

From April 2004, under the Enterprise Act, there are new rules on how to get an IVA after you are made bankrupt. You can apply for a Fast Track IVA by putting a proposal to the official receiver even after you are bankrupt. The official receiver may agree to act as supervisor of the IVA if they feel it will produce a better deal for your creditors than they would receive through bankruptcy.

- There are set fees for this process so costs are reduced.
- There is no formal creditors meeting.
- The proposal is sent by post and creditors can either take it or leave it.
- The IVA cannot be modified.
- If the IVA is agreed, the official receiver will annul (void) your bankruptcy order.
- If your IVA fails the creditors can make you bankrupt again but the official receiver will not take any further action.

PUBLIC REGISTER

Records of IVAs are kept on a public register. To find out if someone has an IVA, records can be searched by anybody including members of the public either in person, by post or by fax. A copy of the search form can be printed from the website below or you can ask the Insolvency Service to send you a form. Your IVA will remain on the register until it is completed or terminated.

The Individual Insolvency Register

The Insolvency Service
 5th Floor, West Wing
 45-46 Stephenson Street
 Birmingham
 B2 4UP
www.insolvency.gov.uk

CREDIT REFERENCE AGENCIES

Records of IVAs are held for six years on credit reference agency files. The IVA is marked 'complete' by the credit reference agency when they are informed of this by the IP supervising the IVA. Make sure you send a copy of the letter from the IP to the credit reference agencies so that your file is updated.

ALTERNATIVES TO A VOLUNTARY ARRANGEMENT

Self-negotiating

This is the procedure similar to all debt counselling services, whereby a financial statement is prepared to show income and outgoings. Creditors are defined as priority and non-priority depending upon enforcement powers. Any available income after payment of essential housing outgoings is utilised to negotiate payment of priority debts, including payments of mortgage arrears etc. Any balance left for non-priority creditors is divided on a pro-rata basis. Such repayment arrangements may have to continue for a very long time, depending upon the financial circumstances of the debtor. See our self-help pack 'Dealing with your business debts' for more information.

Administration orders

If total unsecured debts are £5,000 or less and a county court judgment has been obtained by a creditor, the debtor can apply to the local county court for an Administration order to be made. You apply on form N92, which is available from the court. Details are provided of income and household outgoings, together with a list of all creditors. It is possible to include council tax arrears and magistrate court fines, in the list of creditors.

An offer can be made by the debtor for monthly or weekly payments, or the court will decide how much the debtor can afford. The payment is made to the court, which deducts a small amount for administration and distributes the balance amongst the creditors.

REMEMBER

No further action can be taken by the creditors to enforce payment whilst the Administration order is in force.

If an Administration order is granted it is possible to apply to the court for a Composition order that is an order that payments be made for a limited period, usually three years. The court may grant a composition order when there is a little foreseeable prospect of an improvement in the debtor's financial circumstances and the rate of payment means that debt could not be cleared for a very long time.

FACTSHEET

For a fact sheet on 'Administration orders' phone Business Debtline on **0800 197 6026**.

Bankruptcy

A creditor who is owed at least £750 may petition for a bankruptcy order to be made, or a debtor may lodge his/her own petition. Whether a bankruptcy order is made on a creditor or debtor's petition makes no difference to the way in which the assets of the debtor will be dealt with.

ADVICE

Bankruptcy orders are dealt with in a separate leaflet, which explains in detail the fees payable, the function of the official receiver or trustee in bankruptcy and the way in which assets are realised for the benefit of creditors. If you are consider going bankrupt please phone Business Debtline on **0800 197 6026**

Full and final settlements

If you have a lump sum available you may be able to negotiate an amount to pay your creditors an amount less than the balance outstanding in full and final settlement of the debt. This would usually depend on whether you can convince the

creditor that it is beneficial for them to accept a one off reduced amount rather than trying to pursue the debt over a long term as there is no affordability.

FACTSHEET

For a fact sheet on 'Full and final settlements' phone Business Debtline on **0800 197 6026**.

CHOOSING AN INSOLVENCY PRACTITIONER

If you are thinking about entering into a voluntary arrangement (VA) with your creditors you will need to engage the services of an insolvency practitioner (IP). An IP will usually be an accountant who has qualified as an IP and is a member of one of seven authorised professional bodies.

There are three types of voluntary arrangement: an individual voluntary arrangement (IVA) which covers personal debts, a partnership voluntary arrangement (PVA) which covers debts of a partnership and a company voluntary arrangement (CVA) for the debts of a limited company.

IPs advertise their services in local newspapers, telephone directories and more recently on the internet. Some citizen's advice bureaux maintain a list of IPs in their area. Most IPs offer an initial free consultation, either face-to-face or by telephone to see whether your financial circumstances are suitable for a VA. Before you arrange to meet an IP you should check that their initial advice is free.

If you are advised that a VA is appropriate for your financial circumstances (and you want to make the commitment to one) you will need to choose an IP to do the work.

We strongly recommend that you find out about the fees you will be charged before you agree to

an IP starting the necessary work. You need to ask:

- how much it will cost to set up the arrangement (this is called the ‘nominee’s fee’);
- what will be the ongoing annual charge for supervising the arrangement (this is called the ‘supervisor’s fee’);
- will the IP accept payment of his/her fees by instalments or will they agree to take their fees out of the monthly payments you will make on an VA;
- do the fees include ‘disbursements’ – these are additional expenses such as court fees, room hire, postage and any other charges involved in setting up an VA.

It is often a good idea to shop around and see what other IPs will charge before deciding which one to instruct. Once you have decided on an IP, ask him or her to inform you in writing of their fees and how these will need to be paid.

It is very important that you feel comfortable working with the IP you select. You will need to develop a close working relationship with the IP and will be sharing with them your personal financial details.



HELP

Give Business Debtline a ring on **0800 197 6026** to discuss your concerns with an experienced debt adviser.



INFORMATION

The Insolvency Service maintains a list of all authorised IPs. If you want to know which professional body an IP belongs to, you can call the Insolvency Service on **020 7291 6772**.

COMPLAINTS AGAINST INSOLVENCY PRACTITIONERS

To complain about an IP you need to find out which authorising body they are registered with. This should be given to you by your IP. You should first make your complaint in writing to your IP. If you are still not happy then write to the authorising body or your IP. There is a useful leaflet called ‘How to make a complaint against an insolvency practitioner’ you can get this from the Insolvency Service at www.insolvency.gov.uk or phone us on **0800 197 6026**.



INFORMATION

For further information on IVAs or other areas regarding business debts please phone Business Debtline on **0800 197 6026**.

Remember: You can always contact us for advice about any difficulty you have in dealing with your debts.

Freephone 0800 197 6026 Website www.bdl.org.uk

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Registered office 21-26 Garlick Hill London EC4V 2AU