

## **PART C: PRINCIPLES OF INSOLVENCY - PERSONAL INSOLVENCY**

### **Part C1 – Personal Insolvency – Individual Voluntary Arrangement (“IVA”)**

#### General effect of the procedure

An IVA is an agreement between a debtor and his creditors which either compromises, or provides a framework for the settlement of, his debts.

The process is commenced by a debtor putting IVA proposal to his creditors.

An IVA comes into force if more than 75% (by value) of those creditors attending the creditors' meeting, to consider the proposal, vote in favour of it.

When an IVA comes into effect, it binds all creditors who were entitled to be notified of the IVA proposals, even if they voted against the IVA or did not, in fact, receive notice of the proposals.

Generally, a debtor undergoes a 3 stage process before an IVA is implemented.

The first stage would be for the debtor to apply, on the basis of a proposal for a voluntary arrangement, to court for an interim order preventing his creditors from initiating or continuing formal bankruptcy or other legal proceedings. If the debtor's application is granted, a moratorium is created during which the debtor, usually with the help of an insolvency practitioner (“the Nominee”), will prepare his proposals for an IVA to be distributed to his creditors.

The second stage is the meeting of creditors at which the IVA proposal is considered and voted upon. In most circumstances, the Nominee is appointed as the Supervisor of the IVA.

The final stage is for the IVA to be implemented on the terms agreed by the creditors.

#### Roles of the Nominee and Supervisor – Powers and Duties

A debtor's IVA proposal must provide for some person, the Nominee, to act in relation to the IVA.

The Nominee must, before the interim order ceases to have effect, submit to the court a report stating:

1. Whether in his opinion, the IVA proposal has a reasonable prospect of being approved and implemented and whether a creditors

meeting ought to be held.

2. If it is to be summoned, the date, time and place at which he proposes that the meeting ought to be held.

The Nominee's report must be based on information provided to him by the debtor.

In preparing his report, the Nominee must consider whether the IVA has a reasonable prospect of being approved and implemented. In arriving at his conclusion, the Nominee can take into account:

1. The debtor's attitude.
2. The likelihood of the debtor adhering to the terms of the proposal.
3. Whether the proposal is fair to creditors / the debtor.
4. Whether the IVA is an acceptable alternative to bankruptcy.

The Nominee must deliver his report to court not less than 2 days before the interim order ceases to have effect (which is at the end of 14 days beginning on the day of the making of the order). It must be accompanied by a copy of the IVA proposal and a copy / summary of a statement of affairs.

Where the Nominee reports to court that a meeting of creditors ought to be summoned, the Nominee shall summon every creditor of the debtor whose claim the Nominee is aware of, to the meeting.

The Nominee will usually act as the chairman at the meeting. The creditors may:

1. Approve the IVA proposal in the form it is presented;
2. Approve the IVA proposal in an amended form; or
3. Reject the IVA proposal

For any resolutions to be passed approving the proposal or a modified version of it, there must be a majority in excess of 75% in value of creditors present in person or by proxy and voting on the resolution.

Upon an IVA proposal being approved with or without modification, a Supervisor, usually the Nominee will be appointed to oversee the implementation of the IVA.

Unlike for other office holders, the Insolvency Act 1986 does not specify the extent of the powers of a Supervisor. As such, these ought to be clearly specified in the IVA proposal.

If the Supervisor acted as chairman at the creditors meeting (then in his capacity as Nominee), he has a number of reporting obligations to the

court, to creditors and to the secretary of state.

Moreover, the Supervisor is required to keep accounts and records of his acts and dealings in connection with the IVA.

### Comparisons with Bankruptcy

There are a number of differences between an IVA and Bankruptcy. Some of these are set out below:

1. An IVA is more informal than Bankruptcy in that it does not require much Court involvement;
2. A Supervisor has fewer powers / duties under the IA 1986 than a Trustee in Bankruptcy;
3. An IVA requires the support / consent of a majority of a debtors creditors before it can be implemented whilst a Bankruptcy Order can be made on the petition of one creditor;

The two procedures are also similar in a number of ways, including:

1. Both procedures aim to repay a debtors creditors whether in part or in full;
2. Both procedures require the involvement of an independent third party, namely a Supervisor or a Trustee in Bankruptcy;
3. Both procedures result in the debtor receiving a “fresh start” following their completion

### Position of secured and unsecured creditors

From the date of the creditors meeting at which an IVA is approved, an IVA binds all the creditors of the debtor who:

1. Voted for the IVA.
2. Voted against the IVA.
3. Attended the creditors' meeting called to consider the IVA proposal, but who did not vote.
4. Were notified of the creditors' meeting, but did not attend.
5. Were entitled to notice of the creditors' meeting, but did not in fact receive such notice.

Every creditor who is bound by an IVA is treated as if it had agreed to be bound by it. As such, the creditor is taken to have accepted the terms of the IVA in satisfaction of its debt.

An IVA cannot affect the rights of a secured creditor of the debtor, unless the secured creditor agrees to the IVA doing so.

The usual way in which a secured creditor signals its intent to be bound by the terms of the IVA is by valuing its security at nil and submitting a proof of debt, for voting and dividend purposes, as an ordinary unsecured creditor.

#### Default / Failure of IVA

In the event of a default or the failure of an IVA, the Supervisor may petition for the bankruptcy of a debtor. To successfully petition, the Supervisor must demonstrate one of the following grounds:

1. That the debtor has failed to comply with the terms of the IVA.
2. That the debtor submitted misleading or false information in support of his IVA proposal.
3. That the debtor has not complied with the reasonable requests of the Supervisor.

The IVA will usually set out the precise consequences of the debtor's failure to comply with its terms and what discretion, if any, the Supervisor has about whether to petition for the debtor's bankruptcy.

The IVA may also provide that, on default, the debtor's creditors are no longer bound by the IVA and may take their own action against the debtor for the balance of the debts due to them.

In some circumstances, the Court may Order that the IVA should continue, despite the debtor's breach of its terms and the Supervisor's petition.

#### Completion – Successful IVA

When an IVA has been fully implemented and completed in accordance with its terms, the Supervisor need only attend to certain housekeeping matters to bring his role to an end. These include sending:

1. A Notice to all of the creditors of the debtor confirming that the arrangement has been fully implemented.
2. A copy of his report summarising all receipts and payments made by him in pursuance of the IVA