

Guide to Individual Voluntary Arrangements (IVAs)

What is an Individual Voluntary Arrangement (IVA)?

If an individual (the debtor) is unable to pay their debts when they fall due they can be described as insolvent. An IVA is a legally binding contract between a debtor and their creditors to repay some or all of their debt over a period of time. It is an alternative to other debt solutions such as a bankruptcy, debt management plans (DMP) and debt relief orders (DRO).

The terms of an IVA can be flexible, but creditors do expect their prospects of recovering money to be at least as good as in a bankruptcy. Creditors will want the IVA to contain sanctions (such as a right to bankrupt the debtor) if the debtor does not fulfil their part of the arrangement.

An IVA usually requires the debtor to pay monthly contributions to a supervisor over a period of five years. Alternatively, an agreement can be reached for a one off payment possibly by a third party which facilitates a much shorter period of arrangement.

Is it the right procedure?

We always offer an initial meeting or call with the debtor to discuss their options. After the debtor has engaged us we will happily discuss any concerns the debtor may have and arrange further meetings as necessary.

We will discuss the likely impact of each debt solution (IVA, bankruptcy, DMP and DRO) on the debtor and the debtor's assets, in particular the family home, and on third parties that may be affected. We look at the advantages and disadvantages of each option, and the likely costs of each so that the solution best suited to the debtor's circumstances can be identified. We will confirm this in writing and provide a financial comparison summary where possible.

If the debtor considers that an IVA is the right process they should read the R3 document 'Is a Voluntary Arrangement Right For Me' which is available on our website.

It is important the debtor understands the implications of an IVA and should discuss any concerns with us.

The four stages of a IVA

There are four distinct stages associated with an IVA

Advice

Initially we advise the debtor to determine the most appropriate procedure (if any) for the debtors individual circumstances. At this stage we will be working in the debtor's interests in the context of finding a workable solution to the financial difficulties.

Information on the various personal insolvency options can be found in our Guide to Personal Insolvency.

Preparation of the proposals

In the event that an IVA is the most appropriate procedure we assist the debtor in preparing an IVA proposals. We will ask the debtor for help:

- To provide sufficient information for creditors to understand the debtor's financial and trading history
- The debtor's background and financial history
- Why the debtor has become insolvent
- Any other attempts that have been made to solve the debtor's financial difficulties
- To provide a comparison of estimated outcomes of the IVA and the likely outcome if the IVA is not approved
- Where relevant, to provide sufficient information to support any profit or cash projections, subject to any commercial sensitivity

We will ask the debtor whether they understand the terms of the proposal and what their responsibilities are in relation to the proposal. We check that the debtor is happy for the proposal to be put to their creditors.

We may contact some of the higher value creditors for their views prior to finalising the proposal. We do this so their views can be taken into consideration when writing the proposal and therefore give the best opportunity of the proposal being approved by creditors. Please be aware, however, that HM Revenue and Customs do not normally engage until they have the finalised proposal.

In complicated or complex situations it may be advisable to apply for an interim order prior to sending proposals to creditors. If a creditor is threatening to petition for the debtor's bankruptcy and time is required to enable all creditors to consider an IVA proposal then an interim order will provide breathing space. There is an additional cost for an interim order and it may cause a delay in obtaining an arrangement.

There may be other complexities due to the nature of the debtor's trade, for example there are specific regulations that apply to licensed premises. We will always discuss these complications with the debtor so that the debtor understands the issues and any delays that they may cause.

It is important that a debtor makes full disclosure of all of his/her assets and liabilities. Debtors should be aware that it is an offence to make a false representation to creditors for the purpose of obtaining the approval of his/her creditors to a proposed voluntary arrangement. It is an offence whether or not the arrangement is approved by creditors.

Prior to accepting an appointment as nominee we are required to assess whether the debtor has sufficient understanding of the process of an IVA, its likely duration and the consequences, and whether there will be full co-operation and commitment from the debtor. A debtor is required to co-operate with the nominee and supervisor at all times.

Acting as Nominee

Once the proposal is finalised the debtor presents this to us and if we are satisfied that the proposal is achievable and that a fair balance is struck between the interests of the debtor and the creditors we will agree to act as the nominee.

We will set a date for the creditors' to make a decision to consider the proposal and send all creditors a copy of the proposal together with the nominee's report and comments.

In making our report we will ensure that we have obtained from the debtor sufficient information to make an assessment of an IVA as a solution, and to enable us to prepare a report, including:

- The measures taken by the debtor to avoid recurrence of their financial difficulties, if any
- The likely expectation of key creditors
- The effect of the IVA on third parties where their view may have an effect on the viability of the IVA; and proportionate investigations into, and verification of, income and expenditure and assets and liabilities

Our nominee's report will include whether or not:

- The debtor's financial position is materially different from that contained in the proposal, explaining the extent to which the information has been verified
- The IVA is manifestly unfair
- The IVA has a reasonable prospect of being approved and implemented

It is common for creditors to propose modifications to proposals prior to the decision of creditors. When significant modifications are proposed it is sometimes necessary to adjourn the decision in order to ascertain whether the debtor and other creditors are in agreement with proposed modifications. Any adjournment will cause a delay in obtaining agreement to the proposal.

The nominee confirms with the debtor that they understand the impact and implications of any modifications on the IVA and its viability. The debtor will need to decide whether they consent to those modifications. In the absence of the debtor's consent the IVA cannot proceed.

75% by value of those creditors voting on the proposals need to agree to them (with or without modifications) and if this majority is obtained there is a second count, this count excludes connected creditors, and if at least 50% by value of the remaining creditors vote in favour the IVA is approved and implemented.

If creditors do not approve the proposals then the debtor may want to consider other alternatives such as petitioning for their own bankruptcy. Alternatively a creditor may take further steps to recover their debt and this could include petitioning for the debtor's bankruptcy. Please be aware, even if the proposals are not approved by creditors, that the adviser and nominee will not normally refund any fee paid in respect of their work. If the fee remains unpaid it will be a liability of the debtor that will still need to be paid.

Acting as Supervisor

Once creditors have approved the IVA (with or without modifications) then it is normal for the nominee to take on the role of the supervisor of the arrangement.

It is possible for a creditor, the debtor or a nominee to challenge the decision of a creditors and if they can demonstrate to the satisfaction of the court that the arrangement unfairly prejudices the interests of a creditor or there has been some irregularity at or in relation to the meeting, then the court may order that the arrangement is revoked, suspended or make other such order as it thinks fit. Such challenges are rare but will usually take place within 28 days of the approval of the arrangement.

As supervisors we will carry out the actions as set out in the proposals, with the main part of our work normally being the collection of a monthly payment from the debtor, the regular distribution of funds to creditors, monitoring the debtor's compliance with the IVA and reporting to creditors. In some instances we may supervise the realisation of a major asset such as a property or third party contribution either in addition to or instead of a monthly contribution.

The proposal sets out what is required of the debtor and provided the debtor is able to comply with the terms of the IVA then, at the end of the duration of the arrangement, the debtor will receive a certificate of compliance. Most creditors are not entitled to pursue the debtor following the successful conclusion of the arrangement, however this does not apply to certain creditors including secured creditors (e.g. the mortgage company), providers of student loans and any deferred creditors.

If at any time during the arrangement it becomes apparent to the debtor that they will not be able comply with the terms of the arrangement then they should immediately notify the supervisor. Sometimes the proposal provides discretion to supervisor to allow the debtor to, for example, defer a monthly contribution. If however, there is no discretion or all the permitted discretion has been exercised then it may be necessary to convene a further meeting of creditors to propose a variation to the arrangement.

Sometimes it is not possible for debtors to be able to successfully adhere to the terms of the arrangement or creditors may not be willing to approve a variation to the terms of the proposal. The supervisor will then have to issue a certificate of non compliance and in such circumstances the supervisor may be required to petition for the bankruptcy of the debtor.

Further Information

Further information on personal insolvency options can be found in our Guide to Personal Insolvency.

All our insolvency practitioners are licensed to act by the ICAEW.

Please contact one of our team for more information or to discuss any financial difficulties you may be experiencing.

Meet the Team



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The information in this newsletter must not be relied upon in any specific case.