

## **CONTENTS OF IVAS**

### **Overview**

The IVA proposal will become a legally binding agreement between the debtor and his creditors upon acceptance by 75% in value of the creditors, provided that no court objection is made and upheld. The debtor and creditors are free to make whatever provision they see fit, in the context of the framework of the IVA rules which set out the requisite contents and provide certain standard terms and conditions for inclusion.

The IVA Proposal will set out the terms on which creditors are to receive the proposed payments. The proposal will confirm that once the IVA has been successfully completed, the creditors will no longer be entitled to pursue the debtor for balance of their claim. The IVA is in full and final settlement

The proposal should explain its desirability and the reasons why creditors might be expected to agree to it. The proposal should give a comparison between the estimated outcome of the arrangement and bankruptcy, including comparative costs. It should make proposals in respect of after acquired assets.

### **Assets and Liabilities**

There must be a statement of affairs which must include details of all assets and liabilities, personal and business. It must include all national and international assets contingent and prospective assets together with a note as to the likelihood of realisation. Details of assets which are subject to mortgages, liens, reservation of title and hire purchase must be set out. Professional valuations are ideally required where appropriate and realistic property values must be given. The nominee should ensure that values are prudent. The costs of realisation must be included.

If it is proposed to exclude some of the debtor's assets, these must be set out. Some are excluded from bankruptcy such as tools of trade, domestic equipment etc. If other assets are proposed to be excluded, it should be explained how creditors are to be compensated (e.g. by a third party contribution or by a buy out of a debtor's share by a spouse). If assets are excluded because the realisation is too expensive or difficult, this should be justified.

If a third party is making a contribution, a letter of confirmation should be available. The nominee must ensure the third party has an opportunity to take advice.

The nature of the debtor's liabilities are to be set out. Claims and potential claims must be identified. Enquiries should be made by the nominee. The nominee should ideally contact each creditor with a view to obtaining particulars of the liability. A liability could be excluded but the proposal must say how it is to be dealt with.

The treatment of preferential and secured creditors and their associates must be set out. The rights of preferred creditors may not be reduced or excluded without their consent.

## **Key Terms**

The duration of the arrangement must be stated. For example, the relevant period may be two or three years where a proposal is for rapid sale and distribution. It may be longer if there is litigation, a depressed market or if proposals are based on paying out income from business revenue. Provision can be made for an extension of the period.

Provision for remuneration of the nominee and supervisor and their expenses must be made. The expenses are to be quantified and described.

The manner in which funds are to be held and banked must be dealt with. Funds should be paid to the supervisor and not the debtor. The supervisor should have power to open accounts and invest.

The manner in which the debtor's business is to be conducted must be explained. There may be provision for supervision by an IP (e.g. an obligation to provide

information, maintain accounts and records). It may be necessary to attach previous trading accounts, forecasts, cashflow statements and projections. If further credit facilities are to be drawn, it should be explained how they are to be paid.

Leases raise particular issues. It may be necessary to make arrangements to pay arrears of rent to ensure they can be assigned and sold. Otherwise the landlord may be able to take goods in satisfaction of rent or forfeit the lease.

The proposal should make a comparison between the estimated outcome of the arrangement and bankruptcy, including comparative cost. It should give proposal in respect of assets acquired, afterwards.

The proposal should state whether a committee of creditors is to be appointed and if so, what its duties will be. The proposal will confirm that once the IVA has been successfully completed, the creditors will no longer be entitled to pursue the debtor for balance of their claim. The IVA is in full and final settlement. The IVA should set out the requisite majorities required to pass the resolutions.

A proposal could itself provide for post acceptance amendments and variations. There may be a provision for creditors' meetings and voting on variations. Where no provision is made for an amendment it is debatable as to whether the proposal can be modified. It is likely the Court will direct a creditors meeting to be held, in these circumstances.

It may be prudent to deal with the following additional matters in the IVA proposal:-

- position regarding surplus funds;
- the position in relation to unpaid dividends;
- maintenance orders; contingent creditors;
- overseas creditors;
- tax liabilities on disposals.

## **Supervisor**

The details of the supervisor must be set out. The supervisor should be given power to call meetings. There should be rules in relation to distribution, payments and claims. There should be proposals for interim and final payments to creditors. The proposal should set out what would happen in the event of a default. This may include presentation of bankruptcy petition by the supervisor.

The supervisor's duty in relation to IVAs, is to ensure that that arrangement proceeds in accordance with the agreed proposal. The supervisor has a duty to keep all those interested in the arrangement informed of its progress. Where the supervisor carries on business, realises assets or administers or disposes of funds, he must, at least every 12 months, prepare a note of his receipts and payments together with comments. This must be sent to the Court debtor and all bound creditors.

The supervisor obtains his powers from the arrangement itself. The arrangement should ensure that the supervisor has sufficient powers to undertake his role.

If a supervisor or debtor consider that the terms of the arrangement cannot be achieved, he should take steps to discuss the situation. The proposal, could itself provide for post acceptance amendments and variations. There may be a provision for creditors meetings and voting on variations. Where no provision is made for an amendment, it is debatable as to whether the proposal can be modified. It is likely the Court would direct a creditors meeting to be held.

## **Termination and Default**

Upon completion of the arrangement, the supervisor must send all creditors notice of completion and a report to summarise all receipts and payments

The terms of the arrangement will set out what constitutes a default or failure of the arrangement and what should happen in these circumstances. It is usual for a bankruptcy petition to proceed.

There are three grounds for presenting a bankruptcy petition namely:-

- failure to comply with the IVA obligations;

- giving false misleading information or making a material omission;
- failing to comply with supervisor's reasonable requests.

The voluntary arrangement assets held in trust will continue to be held for the benefit of the arrangement creditors in a later bankruptcy. The arrangement creditors can prove in bankruptcy for so much of the debt which remains, after payment has been made of what has been recovered under the trust.

The trustee in bankruptcy may take possession of non arrangement assets on behalf of creditors. The arrangement creditors can prove in bankruptcy, for so much of the debt as remains after payment of what has been recovered from the trust.

---

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.