

## Individual voluntary arrangement

### Overview

An **IVA** is a flexible procedure that allows a debtor to agree with creditors to a scheme that provides a better recovery than bankruptcy under the circumstances.

An IVA has to involve either a composition (ie creditors receiving less than they are owed) or a scheme of arrangement (ie a rescheduling of the debtor/s liabilities). The terms are binding on all creditors if the requisite majorities approve the terms at a meeting. In either case, creditors would need to be convinced that it offered a better outcome than a winding up to be prepared to approve it.

IVAs work well in situations because they are flexible and can be tailored to the particular circumstances. In many cases however, particularly involving consumer debt where the restrictions placed upon a bankrupt are not regarded as onerous, many debtors prefer to enter into bankruptcy, which offers a shorter timescale to release from liabilities and lower future commitments.

### How does the procedure work?

IVAs are initiated by the debtor as a means of avoiding bankruptcy. Rarely, the Official Receiver can also propose an IVA following the passing of a bankruptcy order, although after April 2004 there will now be a new fast-track IVA procedure available to the Official Receiver.

The debtor drafts proposals to creditors as to how their debts will be discharged, normally by payment of less than 100% or through a delay in payment over a period of some years. Most debtors are best advised to seek the professional guidance of an insolvency practitioner to do so.

The debtor then arranges for an independent insolvency practitioner (the nominee) to be appointed, normally the same person who helped him to draft the proposals. His function is to certify that the proposal satisfies the disclosure requirements, assess whether the financial information is correctly stated and that the IVA has a reasonable prospect of being approved and implemented.

If the position requires it because of pressing liabilities, the debtor is able to petition the court for an interim order which protects him from creditor action whilst the nominee carries out his function.

If the nominee then believes it is appropriate to proceed with the proposal, he reports this to the court and calls meetings of shareholders and creditors at 14 days' notice to consider the terms of the IVA.

Creditors can put forward modifications to the proposals. Creditors will approve the proposals (with any modifications) if at least 75% by value vote in favour.

The proposals are implemented under the supervision of an insolvency practitioner (the supervisor) who normally has no executive powers but is required to declare whether the debtor is in practice implementing the proposals.

A creditor who is entitled to enforce security cannot be prevented from doing so at any time. Unless the preferential creditors agree otherwise, the IVA must provide for them to be paid in full before anything is paid to other unsecured creditors.

A supervisor has no powers to manage the debtors' affairs, except in the unlikely event that the proposals provide for them.

This document explains the relevant position only in general terms and omits details less commonly experienced for the sake of brevity. It is not intended to be used as formal advice about your actual situation, for which you should consult us specifically and not rely upon this document. Portland would be pleased to advise you formally and you should contact one of the directors listed on the website at [www.portfbs.co.uk](http://www.portfbs.co.uk) to arrange this or telephone our main switchboard on 01489 550440. Portland regrets it is unable to accept any responsibility to anybody who seeks to rely on this document.

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The supervisor has no powers or duty to investigate the events leading up to his appointment and cannot bring the various actions that a trustee can to recover assets. The debtor is required to make a formal declaration to the effect that there are no events that could be challenged by a trustee if one were to be appointed.

Advantages	Disadvantages
<ul style="list-style-type: none"> <li>▪ Cost effective and flexible.</li> <li>▪ The debtor remains in charge; the supervisor only ensures he does what he has committed to do. This normally allows for lower cost than bankruptcy.</li> <li>▪ The Crown respects the spirit of the IVA and is prepared to agree to deferred terms over an extended period, normally five years, whereas outside a IVA it normally restricts any such period to around six months</li> </ul>	<ul style="list-style-type: none"> <li>▪ Does not bind in hostile chargeholders or finance companies, which can still exercise their security.</li> <li>▪ Does not protect the debtor against eviction by the landlord if a lease allows forfeiture upon insolvency.</li> <li>▪ It can be difficult to persuade creditors to accept proposals where the proposals are not commercially realistic compared to other options available.</li> <li>▪ In many situations, bankruptcy is a softer option. This allows a debtor to be release from liabilities within 2-3 years with no more commitment than the realisation of his assets. Creditors can insist that an IVA continues for more than three years and that extra recoveries are secured compared to bankruptcy.</li> </ul>

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