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Annulment

WHAT IS ANNULMENT?

Annulment is the cancellation of a bankruptcy.

There are three ways a bankruptcy can be annulled:

- i. The creditors' debts including interest and trustee's fees and expenses are paid in full.
- ii. Your creditors accept a composition or arrangement which is an offer of something less than payment in full.
- iii. Application to the court in some limited circumstances.

Effects of annulment

- Your annulment is recorded on the public record, the National Personal Insolvency Index (NPII) database, forever.
- Assets not needed by your trustee to pay your creditors, expenses and fees will be returned to you.

I. ANNULMENT BY PAYMENT IN FULL

Your bankruptcy will be annulled providing:

- your creditors, and any interest payable on debts to creditors, and the realisations charge, and your trustee's expenses and fees have **all** been paid in full.

Contact your trustee to find out how much you will be required to pay. The money required for payment in full usually comes from the sale of assets by your trustee or from a source not otherwise available to the trustee, such as money provided by a relative. Your bankruptcy will be annulled on the date the final payment is made from your estate.

II. ANNULMENT BY COMPOSITION OR ARRANGEMENT

Compositions and arrangements are offers made by bankrupts through their trustees to finalise their debts. The creditors vote on whether or not to accept such offers. An offer:

- may involve assets already in the bankruptcy
- may include other money or assets that would not normally be available to creditors, such as money provided by a relative.

These offers benefit creditors as they receive a dividend that would not be otherwise available.

All creditors will receive an equal rate of dividend unless your offer provides otherwise.

Your written and signed offer must be lodged with the trustee:

- setting out the terms
- providing for the payment of the trustee's fees and expenses.

Before finalising your offer and asking your trustee to call a creditors' meeting to formally consider it, you should discuss:

- the requirements for making an offer with your trustee
- any proposed offer with major creditors to find out if it is acceptable.

Your trustee may:

- require a deposit to cover the expenses and fees of the meeting, or
- refuse to call a meeting if the offer does not make adequate provision for the payment of trustee's fees that have been approved by creditors and cannot be taken out of the estate.

Creditors' meeting

Your trustee may call a meeting of creditors to consider and vote on your offer. Each creditor will be sent:

- a notice and agenda of the meeting
- a copy of your offer
- your trustee's report.

You must attend the meeting if requested to do so by your trustee. You may amend the terms of your offer at the meeting but not in any way that would reduce the trustee's fees.

Trustee's report

The report to creditors must state whether they will benefit if the offer is accepted and tell them:

- who is providing the funds
- details of assets, realisations, and dividends
- the trustee's fees and expenses
- details of your conduct and financial dealings.

Creditors' acceptance of offer

Acceptance requires a 'yes' vote from a majority of voting creditors as long as they represent at least 75% of the claims in dollar value.

If your offer is accepted

Your bankruptcy will be annulled immediately and:

- your trustee's fees and charges will be paid
- your creditors will be paid.

All creditors with debts that can be claimed in your bankruptcy are bound by the terms of the offer.

If your offer is rejected

Your bankruptcy will continue. Your trustee will:

- keep funds covering the expenses and fees of calling the meeting from any deposit
- refund any money provided for the offer.

Variation of composition or arrangement

Your creditors can agree to vary your composition or arrangement.

Setting aside and termination

Your creditors or trustee can apply to the Federal Court or Federal Magistrates Court to set aside your composition or arrangement if:

- it is unreasonable
- it does not comply with the Bankruptcy Act
- you have supplied misleading or false information, or
- you are in default of any of the terms.

Your creditors or trustee can petition to make you bankrupt again at the same time as applying to have your composition or arrangement set aside or terminated.

III. ANNULMENT BY COURT ORDER

If you think you should not have been made bankrupt or should not have lodged your debtor's petition, you may apply to the court to have your bankruptcy annulled. You should obtain your own legal advice about this.