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Debt Agreements

A debt agreement is a binding agreement between a debtor and their creditors where creditors agree to accept a sum of money which the debtor can afford.

Payment by the debtor is based on their capacity to pay having regard to all their income and household expenses.

A debt agreement is an **option to assist debtors with unmanageable debt**. They are released from their debts when they complete all payments and obligations under the agreement. A debt agreement may provide for:

- weekly or monthly payments from the debtor's income
- deferral of payments for an agreed period
- the sale of an asset to pay creditors, and/or
- a lump sum payment to be divided among creditors.

WHO CAN PROPOSE A DEBT AGREEMENT?

Debtors can lodge a debt agreement proposal if they:

- have paid the government lodgement fee in full or have an arrangement with ITSA about payment in arrears
- are insolvent (unable to pay their debts as and when they fall due)
- have not been bankrupt, had a debt agreement or given an authority under Part X of the Bankruptcy Act in the last 10 years
- have unsecured debts, assets and after-tax income for the next 12 months all less than set limits.

CONSEQUENCES OF PROPOSING A DEBT AGREEMENT

- A debtor who proposes a debt agreement commits an act of bankruptcy. A creditor can use this to apply to court to make the debtor bankrupt if the proposal is not accepted by creditors.
- The debtor's name and other details appear on the National Personal Insolvency Index (NPII), a public record, for the proposal and any debt agreement.
- The ability of the debtor to obtain further credit is affected. Details may also appear on a credit reporting organisation's records for up to seven years.
- During the voting period creditors cannot take debt recovery action or enforce a remedy against the debtor or the debtor's property; and must suspend deductions by garnishee on debtor's income.

THE CONSEQUENCES OF A DEBT AGREEMENT

- The debtor is not bankrupt.
- All unsecured creditors are bound by the debt agreement and are paid in proportion to their debts.
- The debtor is released from most unsecured debts when they complete all their obligations and payments.
- Secured creditors may seize and sell any assets (eg a house) which the debtor has offered as security for credit if the debtor is in default.
- Creditors cannot take any action against the debtor or property of the debtor to collect their debts.
- The agreement does not release another person from a debt jointly owed with the debtor.

WHAT IS THE PROCEDURE?

STAGE 1: INFORMATION

The debtor must read the Prescribed Information about the alternatives and consequences of bankruptcy and debt agreements. This is available from ITSA.

STAGE 2: PROPOSAL IS LODGED AND FEE PAID

The debtor completes and lodges three forms with ITSA: a debt agreement proposal; an explanatory statement; and a Statement of Affairs. They must be received by ITSA within 14 days of being signed and the lodgement fee must be paid in full. Your administrator will be able to advise you on the amount and assist you with how to pay the lodgement fee.

If an administrator consents to administer the debt agreement they must lodge a certificate that they have reasonable grounds to believe that the debtor has disclosed all the information required and is likely to be able to make the payments due over the period of the agreement.

STAGE 3: PROPOSAL IS SENT TO CREDITORS TO ASSESS AND VOTE ON

ITSA checks that:

- the lodgement fee has been paid in full
- the debtor is eligible to lodge a debt agreement proposal

- the debt agreement administrator is eligible to administer debt agreements
- every question on each of the three forms is answered.

ITSA sends the proposal and explanatory statement to creditors, asking them to detail their debts and to vote on the proposal.

Creditors then assess the proposal and vote. Any questions are referred to the debt agreement administrator.

A secured creditor (holding security like a hire purchase agreement or mortgage) is entitled to vote and receive dividends on any unsecured part of their debt. Alternatively a secured creditor may chose not to receive a dividend and rely on their security. Secured creditors' rights in relation to dealing with their security are not affected by a debt agreement.

STAGE 4: ITSA CHECKS AND COUNTS THE VOTES

For a proposal to be **accepted**, ITSA must receive 'yes' votes from a majority in value of the creditors who vote.

If the proposal is accepted by creditors the debt agreement administrator is responsible for:

- collecting payments from the debtor
- keeping creditors and debtors informed
- paying dividends to creditors
- telling ITSA when the debt agreement is completed.

If the proposal is **not accepted** by creditors:

- it remains on the NPII and on the records of credit reference agencies
- creditors are able to commence recovery action including for accrued interest.

CAN A DEBT AGREEMENT BE VARIED OR TERMINATED?

A **variation** proposal may be lodged if the debtor's circumstances have changed.

A **termination** proposal may be lodged by the debtor or a creditor if the terms of the debt agreement are not being carried out.

Creditors vote on a proposal to vary or terminate in the same way as they vote on the original proposal. If it is not accepted by creditors, the terms of the debt agreement remain in force.

The agreement is **automatically terminated** if:

- the debtor has not made any payments for six months after a payment is due, or
- the debtor does not complete their payments within six months of the completion date of the agreement.

The **effects** of terminating a debt agreement include:

- creditors can commence or recommence recovery action against the debtor, and
- the termination of the debt agreement is registered on the NPII.

The debtor, a creditor or ITSA may apply to the court for an order to terminate a debt agreement. Creditors may apply for an order that the debtor be made bankrupt.

WHEN DOES A DEBT AGREEMENT END?

A debt agreement ends when:

- the debtor has completed all their obligations and payments, or
- the court orders the debt agreement be terminated or declared void, or
- the debt agreement is terminated by creditors.

ADMINISTRATOR FEES AND CHARGES

Debt agreement administrators and other advisers may charge a fee for providing information and preparing debt agreement forms. Debt agreement administrators also charge a fee for receiving and distributing the money. This must be taken as a percentage of each payment made by the debtor.

Funds realised by an administrator are subject to a realisations charge (a government levy) which is paid by the administrator directly to the government. Any interest earned on funds realised by a registered debt agreement administrator is payable to the government.

GOVERNMENT LODGEMENT FEE

The Government decided that a fee should be payable on presentation of lodgement of a debt agreement proposal. The fee commences on 1 January 2011.

The government lodgement fee may be paid to an administrator who has an account with ITSA. The administrator will be invoiced on a regular basis.

You should confirm the status of the proposed fee with your administrator