



May 2008

Personal insolvency agreements

A personal insolvency agreement (PIA) is a flexible way for a debtor to come to an agreement with creditors to settle debts without going bankrupt.

A debtor must be insolvent to propose a PIA. There are no income, asset or debt limits.

A PIA may involve one or more of the following which will result in creditors being paid in part or in full:

- a lump sum payment to creditors either from the debtor's own money or money from third parties (eg family or friends), or
- transfer of assets to creditors or the payment of the sale proceeds of assets to creditors, or
- a payment arrangement with creditors (this could include deferral of repayments).

HOW DOES IT WORK?

The debtor appoints a controlling trustee to take control of their property and put forward a proposal to creditors. Only a registered trustee, the Official Trustee (ITSA) or a suitably qualified solicitor can act as a controlling trustee.

The controlling trustee examines the proposal, makes enquiries into the debtor's affairs and reports to creditors. The report will advise creditors of the amount they can expect from the proposal compared to the amount they could expect if the debtor became bankrupt, and make a recommendation whether it is in the creditors' interest to accept the proposal as opposed to the debtor becoming bankrupt. The creditors are entitled to ask questions of the controlling trustee and share information with them about the debtor's affairs.

A creditors' meeting is held within 25 working days of the controlling trustee's appointment (30 working days if appointed in December) at a time and location convenient to creditors. If unable to attend, a creditor can be represented by a proxy or attorney, or participate by telephone if facilities are available.

The debtor must attend the meeting unless excused by the trustee. The creditors may ask the debtor questions before deciding how to vote. At the

creditors' meeting, creditors consider the proposal. Acceptance requires a 'yes' vote from a majority of creditors who represent at least 75% of the dollar value of the voting creditor's debts (referred to as a 'special resolution').

IF THE PROPOSAL IS ACCEPTED

If the proposal is accepted the creditors are bound by the terms of the agreement. Secured creditors' rights in relation to dealing with their security are not affected by a PIA.

A trustee (who may be different from the controlling trustee but must be either a registered trustee or the Official Trustee) is appointed to administer the agreement.

IF THE PROPOSAL IS REJECTED

If the proposal is rejected creditors will either:

- vote in favour of the debtor becoming bankrupt (the debtor does not have to accept this), or
- leave it up to the debtor to decide how to resolve their financial difficulties.

If the proposal is rejected or lapses, the debtor cannot appoint another controlling trustee for six months without leave of the court.

VARYING, TERMINATING OR SETTING ASIDE A PIA

A debtor can make a written request to their trustee to vary the terms of the agreement. The trustee sends a notice of the proposed variation to the creditors and, if none object in writing, the terms will be varied. If a creditor objects, a creditors' meeting can be called to consider the proposed variation.

Creditors, with the debtor's written consent, can vary the terms of an agreement by passing a special resolution.

An agreement can be terminated by the occurrence of an event specified in the agreement as causing termination.

An agreement can also be terminated by a resolution of the creditors where the trustee is satisfied that the debtor is not complying with their obligations.

The court can set aside or terminate an agreement in certain circumstances.

THE CONSEQUENCES OF PROPOSING AND ENTERING INTO A PIA

A debtor who appoints a controlling trustee commits an 'act of bankruptcy'. A creditor can use this to apply to court to make the debtor bankrupt if the attempt to set up a PIA fails. The appointment of a controlling trustee and the setting up of a PIA will be recorded on the National Personal Insolvency Index (NPII) forever. Details may also appear on a record held by a credit reporting organisation, such as Veda Advantage, for up to seven years.

Once a debtor has executed a PIA, the debtor is automatically disqualified from managing a corporation until the terms of the PIA have been complied with.

Once the debtor has appointed a controlling trustee, any existing creditor's petition to make a debtor bankrupt cannot proceed until the meeting of creditors is held to consider the debtor's proposal.

FEEES AND CHARGES

There is a fee payable to ITSA upon lodging a Controlling Trustee Authority form. A controlling trustee will charge a fee for examining the proposal, investigating the debtor's affairs, preparing a report to creditors and holding the creditors' meeting. The trustee of the PIA (who may be different to the controlling trustee) will also charge a fee for administering the PIA.

Funds realised by a trustee in an administration are subject to a realisations charge (a government levy) which is paid by the trustee directly to the government. Any interest earned on funds realised by the trustee is payable to the government.