

Briefing on Individual Voluntary Arrangements (IVAs)



This briefing paper aims to provide an overview of individual voluntary arrangements (IVAs), answer some of the frequently asked questions and address some common misconceptions about IVAs.

Background

Individual Voluntary Arrangements (IVAs) were introduced in the 1986 Insolvency Act, to provide individuals in financial difficulty with an alternative to bankruptcy. Modifications were made in the Enterprise Act 2003 to streamline the procedure. Over recent years there has been a significant increase in the number of IVAs undertaken.

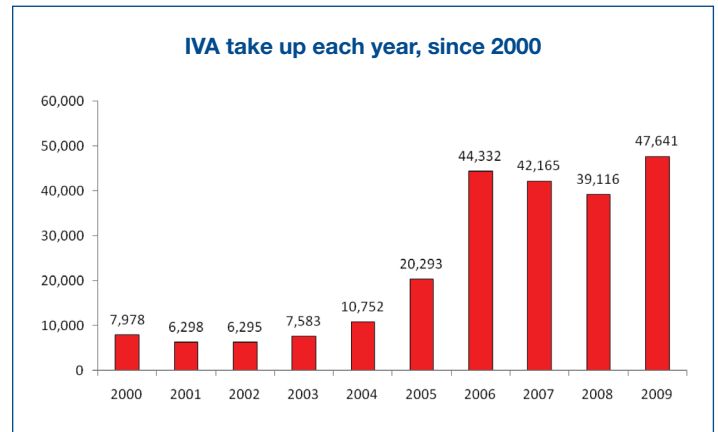
What is an IVA?

An IVA is a flexible procedure which allows a debtor to put a proposal to his/her creditors for a final satisfaction of his/her debts. An IVA may take any form, and be tailored to the debtor's circumstances. It will usually require the debtor to make funds available out of his/her assets, income, or both, and may also involve funds from third parties. In small consumer debt cases the arrangement usually simply involves monthly payments out of income.

How does an IVA work?

A debtor puts together a proposal for their creditors, in conjunction with a licensed Insolvency Practitioner (IP), based on the amount of their debt they can realistically pay. The proposals are submitted to creditors. In some cases it is possible to obtain an order of court to prevent creditors taking action against the debtor pending consideration of the proposal by the creditors. A meeting of creditors is then called and providing 75% or more of the creditors accept the proposal, the IVA will be implemented. An IVA can last for any length of time, but five years is a common period.

R3-The Association of Business Recovery Professionals is the UK's leading trade association for insolvency, business recovery and turnaround specialists in the UK. It represents 97% of licensed Insolvency Practitioners. Known also by its brand name 'R3', it promotes best practice for professionals working with financially troubled individuals and businesses. R3 has representation around the UK and provides a forum for debate on key issues facing the profession.



An IVA will normally include all the debtor's unsecured debts. The rights of secured creditors, such as mortgage lenders, cannot be affected without their consent, and they will usually remain outside the IVA.

The proposal is a formal document which becomes legally binding when approved. Despite the support of the IP in putting together the proposal, it is still the debtor's document. If the debtor makes misleading statements in order to obtain an IVA it could lead to the failure of the arrangement and the bankruptcy of the debtor.

What is the Insolvency Practitioner's (IP) role?

The role of the IP changes as a case goes on. When first approached, an IP acts as an advisor, outlining the options available to the debtor and the best course of action. Other options include bankruptcy or a debt management plan, where the debtor agrees to pay off the entire debt over an agreed period of time.

If a debtor decides to proceed with the IVA, the IP becomes the nominee - a "middle man" between the debtor and their creditors, brokering an agreement. The IP has a duty to the court at this point and is obliged to tell the court if he/she thinks the proposals put forward by the debtor are not fit to take to a creditors' meeting.

If the IVA is approved, the IP becomes the supervisor. The IP must now act even-handedly between the creditors and the debtors and ensure that both parties fulfil their part of the bargain. The supervisor must also issue annual reports to the debtor, the creditors and the court.

How are IVAs regulated?

IVAs are ultimately subject to the control of the court and are conducted in accordance with the strict requirements of the Insolvency Act and related legislation. IPs are licensed by one of eight regulating bodies in the UK. IPs are bound to follow

“For creditors, the costs of administering an IVA are considerably lower than in bankruptcy, which allows them a higher net return.”

the law and are continually monitored to confirm that they are complying with law and their professional regulations. IPs must hold a licence and have passed insolvency examinations to practise in the UK.

What are the benefits of an IVA?

An IVA is flexible and reflects a debtor's personal circumstances. In addition, the debtor does not suffer the restrictions imposed by bankruptcy, for example not being able to act as a director of a limited company. For creditors, the costs of administering an IVA are considerably lower than in bankruptcy, which allows them a higher net return.

What are the disadvantages of an IVA?

An IVA may last for up to five years, or even longer, whereas, under the Enterprise Act 2002, a bankrupt can be discharged within a year. If the IVA fails, it is likely that the debtor will become bankrupt. The debtor's credit rating can be affected for up to seven years. The debtor may have to re-mortgage his/her home.

What fees and costs are associated with an IVA?

A nominee's fee is usually a fixed sum, agreed before work starts on an IVA. This will include helping the debtor put together the proposal, making applications to the court and holding the creditors meeting.

A supervisor's fee varies depending on the nature of the IVA agreement. They can either be fixed sum, calculated as a percentage of funds coming into the arrangement or based on the costs of the supervisor and his/her staff.

There can be additional costs, for example, the fee for registering the IVA, valuation fees, solicitors' and agents' fees, capital gains tax, land registry searches, and the bond (insurance) that the supervisor is required to take out.

The 'mis-selling' debate.

When an IP is approached by a debtor, he/she is required to make sure that all options open to the debtor have been fully explained to them. Should the debtor want to pursue an IVA, the IP is required to make sure that the debtor has read and understood **Is an Individual Voluntary Arrangement Right for Me**, published by R3. A copy of the leaflet is available at <http://www.r3.org.uk/publications/>.

However, some concern has been expressed by lenders about the way the IVA process is marketed, especially by bulk operators (sometimes called 'IVA factories'). Key stakeholders, including insolvency professionals, banks and consumer groups, are currently attempting to draw together a set of guidelines to regulate this aspect of their activities. R3 are playing an active role in this debate.

It is important to bear in mind that an IVA is not a mechanism to enable people to avoid paying their debts who would otherwise be able to do so; it is an alternative process for resolving debt problems for people who would otherwise be facing bankruptcy.

What happens to the debtor after an IVA is finished?

On the successful conclusion of an IVA the debtor will usually be released from his debts. However, the credit rating of the debtor is usually adversely affected, with information about the IVA staying on their credit report for up to six years. Debtors may find it hard to get any credit.

For more information on IVAs contact R3:
Phone **020 7566 4215/03**
www.r3.org.uk