
Simple Guide On Individual Voluntary Arrangement

**OFFICIAL RECEIVER'S OFFICE
HONG KONG**

An Alternative to Bankruptcy - Individual Voluntary Arrangements

Introduction

1.1 Legal framework

The Bankruptcy Ordinance provides for an Individual Voluntary Arrangement (IVA) as an alternative to bankruptcy. Application for IVA may be made by:

- (a) A debtor who has a problem with debt repayment; or
- (b) An undischarged bankrupt.

It involves application to the Court for an Interim Order during which no bankruptcy petition or other legal proceedings may be taken or continued against the debtor. The debtor is required to make a repayment Proposal to the creditors which, on approval, is binding on all creditors.

1.2 Advantages

- (a) For a debtor, the advantages of IVA, as compared to bankruptcy, are:
 - (i) A debtor can avoid the stigma of bankruptcy.

(ii) He/She will be free from the legal restrictions provided for under the Bankruptcy and other Ordinances.

(iii) He/She may be able to retain his/her job/profession.

(b) For the creditors, as compared with bankruptcy, they may expect better repayment from the debtor as the latter would have more incentive to make repayment.

1.3 Default

If the debtor provides false or misleading information in connection with the IVA or fails to comply with the obligations under the IVA, the Nominee, or any creditors, may still petition for his/her bankruptcy.

Procedures

2.1 Nominee

The debtor must find a person who is prepared to act as Nominee for him/her in relation to the IVA. The Official Receiver or some person who, in the opinion of the Court, has suitable experience and qualifications to perform the duties may act as Nominee.

2.2 Proposal

The debtor is required to prepare for the intended Nominee a Proposal on how he/she will repay his/her creditors. The contents of the Proposal as detailed in Rule 122C(2) of the Bankruptcy Rules are set out in Schedule 1. Subject to the agreement of the intended Nominee, an application to the Court for an Interim Order can be made.

2.3 Statement of Affairs

The debtor must also submit an up-to-date Statement of Affairs to the Nominee. If the debtor is an undischarged bankrupt and has already lodged a Statement of Affairs in the bankruptcy proceedings, he/she needs not submit a further Statement of Affairs unless required by the Nominee.

2.4 Interim order

(a) Upon the Court making an Interim Order, there is a 14-day period during which no bankruptcy or other legal proceedings may be taken or continued against the debtor without the permission of the Court.

(b) Where the debtor is an undischarged bankrupt, the Interim Order may contain the Court's directions on the conduct of the bankruptcy and the administration of the estate during the period for which the order is in force.

2.5 Nominee's report on the debtor's Proposal

- (a) At least 3 days before the expiry of the Interim Order, the Nominee must submit a report to the Court stating whether in his opinion a meeting of the creditors should be held to consider the Proposal and if so, the date, time and place of the meeting.
- (b) After receiving the Nominee's report, if the Court is satisfied that a meeting should be held, the Court can extend the Interim Order for a further period so that the Proposal can be considered by the creditors.

2.6 Creditors' meeting

At the creditors' meeting, the creditors will decide whether or not to approve the debtor's Proposal, with or without modifications. Since modifications require the agreement of the debtor and may involve substantive negotiations between the debtor and the creditors, it is essential for the debtor to attend the creditors' meeting. The approval or modifications of a Proposal at a creditors' meeting requires a majority in excess of 75% in value of the creditors present in person or by proxy and voting on the resolution. If the Proposal is approved at the creditors' meeting, it will bind every creditor who had notice of and was entitled to vote at the meeting whether or not he was present or represented. The Chairman of the meeting must submit a report to the court within 7 days of the meeting.

2.7 Challenge of meeting's decision

The debtor, the creditors, the Nominee, and in the case of an undischarged bankrupt, the Trustee or the Official Receiver may submit an application to the Court to challenge the decision of the meeting within 28 days after the submission of the Chairman's report to the Court.

Implementation

- 3.1** The approved Proposal is effective from the date of the creditors' meeting approving the Proposal. The Nominee appointed at the creditors' meeting takes control of all assets included in the arrangement.
- 3.2** Any bankruptcy petition, which has been stayed by the Interim Order, is deemed to have been dismissed 28 days after the Chairman of the creditors' meeting has made a report to the Court.
- 3.3** The Court may, upon application, annul the bankruptcy order with or without conditions after the approval of the Proposal.

Fees and Expenses

- 4.1 The debtor is required to deposit with the Nominee an initial sum of \$12,150 to cover the fees, expenses and remuneration to be incurred by the nominee in connection with the work done by him in respect of the voluntary arrangement.
- 4.2 When applying to the Court for an Interim Order, the debtor has to pay a court fee in accordance with the rates set out in Item 12 in Table A of the Bankruptcy (Fees and Percentages) Order.

Offences

5. The debtor commits an offence if he/she makes any false representation or commits any other fraud for the purpose of obtaining the approval of his/her creditors to an IVA Proposal. A person guilty of such offence is liable to a fine at level 2 and to imprisonment for 6 months.

Enquiries

6. If further information is required, please contact us :

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SCHEDULE 1

CONTENTS OF PROPOSAL

Bankruptcy Rules (Cap. 6) Rule	Description of the Contents
122C(2)	<p>The following matters shall be stated, or otherwise dealt with, in the proposal –</p> <p>(a) the following matters, so far as within the debtor's immediate knowledge –</p> <p>(i) his assets, with an estimate of their respective values and the basis of that estimate ;</p> <p>(ii) the extent (if any) to which the assets are charged in favour of creditors ;</p> <p>(iii) the extent (if any) to which particular assets are to be excluded from the voluntary arrangement ;</p> <p>(b) particulars of any property, other than assets of the debtor himself, which is proposed to be included in the arrangement, the source of such property and the terms on which it is to be made available for inclusion ;</p> <p>(c) the nature and amount of the debtor's liabilities (so far as within his immediate knowledge), the manner in which they are proposed to be met, modified, postponed or otherwise dealt with by means of the arrangement and (in particular) –</p>

Bankruptcy Rules (Cap. 6) Rule	Description of the Contents
	<p>(i) how it is proposed to deal with creditors of the debtor in respect of debts that are given priority under section 38 of the Ordinance and creditors who are, or claim to be, secured ;</p> <p>(ii) how associates of the debtor (being creditors of his) are proposed to be treated under the arrangement ; and</p> <p>(iii) in Case 1 whether, to the debtor's knowledge, claims have been made under section 49, 50 or 71A of the Ordinance, or there are circumstances giving rise to the possibility of such claims, and in Case 2 whether there are circumstances which would give rise to the possibility of such claims in the event that he should be adjudged bankrupt,</p> <p>and, where any such circumstances are present, whether, and if so how, it is proposed under the voluntary arrangement to make provision for wholly or partly indemnifying the insolvent estate in respect of such claims ;</p> <p>(d) whether any, and if so what, guarantees have been given of the debtor's debts by other persons, specifying which (if any) of the guarantors are associates of his ;</p> <p>(e) the proposed duration of the voluntary arrangement ;</p>

Bankruptcy Rules (Cap. 6) Rule	Description of the Contents
	<p>(f) the proposed dates of distributions to creditors, with estimates of their amounts ;</p> <p>(g) the amount proposed to be paid to the nominee (as such) by way of remuneration and expenses ;</p> <p>(h) whether, for the purposes of the arrangement, any guarantees are to be offered by any persons other than the debtor, and whether (if so) any security is to be given or sought ;</p> <p>(i) the manner in which funds held for the purposes of the arrangement are to be banked, invested or otherwise dealt with pending distribution to creditors ;</p> <p>(j) the manner in which funds held for the purpose of payment to creditors, and not so paid on the termination of the arrangement, are to be dealt with ;</p> <p>(k) if the debtor has any business, the manner in which it is proposed to be conducted during the course of the arrangement ;</p> <p>(l) details of any further credit facilities which it is intended to arrange for the debtor, and how the debts so arising are to be paid ;</p>

Bankruptcy Rules (Cap. 6) Rule	Description of the Contents
	<p>(m) the manner in which it is proposed that the nominee of the arrangement should be remunerated, and his expenses defrayed ;</p> <p>(n) the functions which are to be undertaken by the nominee of the arrangement ;</p> <p>(o) the name, address and qualification of the person proposed as the nominee of the voluntary arrangement, and confirmation that he is (so far as the debtor is aware) experienced and qualified to act as a nominee in relation to the voluntary arrangement either as trustee or otherwise for the purpose of supervising its implementation.</p>