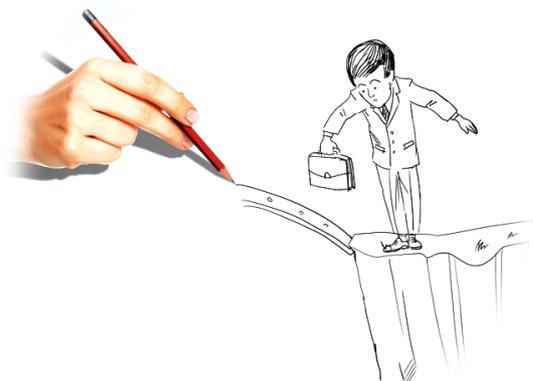


# ITB7 Individual Voluntary Arrangement



## individual voluntary arrangement

### introduction

Individual insolvencies account for the most common number of insolvency cases by far. Generally speaking, everyone has heard of "bankruptcy" although this is sometimes confused with corporate insolvency as the American system refers to almost all types of insolvency as "bankrupt".

In the UK personal insolvency has two forms – bankruptcy (which is covered in ITB2) and an Individual Voluntary Arrangement, or "IVA".

### what is an IVA?

A Voluntary Arrangement can relate to an individual, a partnership or a company. A Company Voluntary Arrangement and Partnership Voluntary Arrangement are similar to each other, but the processes are sufficiently different from individuals that this ITB will just examine an IVA.

Simply speaking, an IVA is a formal agreement which is proposed (the "proposals") by an individual to their creditors to repay part or all of their debt to their creditors over a period of time. It is a formal, legally binding agreement between the debtor and their creditors that allows all parties to be sure how the creditors will be paid.

The advantage of an IVA is that it can be very flexible – the proposals can include or exclude anything (e.g. assets and liabilities) so long as the general body of creditors agree to this. Creditors are also able to modify proposals, providing the debtor agrees to those modifications. Generally speaking, an IVA will involve either monthly contributions from a debtor, or a lump sum payment, or a combination of both in order generate a pot of funds that is then distributed equally among creditors. The duration of an IVA is anywhere between 12 months and 5 years, depending on the proposals. They are rarely longer than 5 years.

As part of the process, an Insolvency Practitioner is nominated by the debtor as the 'Nominee' to review the debtor's proposals to ensure they are likely to succeed – on a practical basis the Nominee will usually draft the proposals for the debtor. Following agreement by creditors, the Nominee becomes the Supervisor to 'supervise' the implementation of the IVA.

Once an IVA is agreed it is binding on all creditors, even if they did not vote on it, and no further action can be taken by creditors to enforce debts due to them up to the date of agreement. Debts incurred after the date of agreement must still be paid in full by the debtor.

It is also important to remember that an IVA can be entered into by a debtor either before or after they are made bankrupt. It is usually more beneficial to enter an IVA before bankruptcy, but a form of IVA is still available after a debtor has been made bankrupt.



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## types of IVA

### interim order IVA

An Interim Order is an Order made by the Court that provides protection to a debtor from any legal action by creditors, whilst an IVA is proposed and considered by their creditors. An Interim Order specifically provides that:

- no bankruptcy petition relating to the debtor may be presented or proceeded with; and
- no other proceedings, and no execution or other legal process, may be commenced or continued against the debtor or his/her property except with the leave of the Court.
- an Interim Order can also be obtained by a bankrupt which suspends the bankruptcy process whilst IVA proposals are considered.

The Interim Order operates for a set period of time (typically 28 days, but can be longer) and prevents any creditor from precipitating matters (e.g. by presenting a bankruptcy petition) or gaining an unfair advantage over anyone else. The object of the Interim Order is to provide a level playing field for both the debtor and their creditors to be treated equally.

It gives the debtor time to prepare their proposals and to hold a meeting of creditors to gain approval of those proposals. Once the IVA is approved, the Interim Order ceases to have effect. If the IVA is not approved, the Interim Order ceases after its set period and legal action can once again be taken by creditors or the bankruptcy process continues.

### non-interim order IVA

If there is no need for an Interim Order, e.g. no creditors are threatening legal action, then an IVA can be proposed without an Interim Order. The advantage to this is it removes a layer of time and cost from the whole process.

Other than having no Interim Order, the process is the same as an Interim Order IVA where proposals are put to creditors, a meeting of creditors is held to approve the proposals and the IVA is implemented.

It should be noted that an IVA, when used by someone who is already bankrupt, can only be used by an undischarged bankrupt. A person will usually be automatically discharged from their bankruptcy within 12

months of the bankruptcy order (ITB2 provides further detailed information on this). Accordingly there is only a relatively short period where a bankrupt can utilise an IVA. Once they are discharged from bankruptcy, an IVA in any form cannot be used, unless it is for new debts incurred after a Bankruptcy Order.

### fast-track IVA

This type can only be used by an undischarged bankrupt and again is subject to being agreed within the 12 month discharge period. It is similar to the other types of IVA, but is less flexible as there is no meeting of creditors and creditors cannot modify the proposals. The terms of the IVA are therefore fixed and creditors must consider the proposals on a "take it or leave it" basis, indicating approval or otherwise by a set date.

Needless to say, there are relatively few fast-track IVAs in existence because of their inflexible nature.

### getting approval for an IVA

An IVA (of whatever type) must be approved by a debtor's creditors and the rules on voting on the proposals are often misunderstood.

A full copy of the IVA proposals are sent to the creditors and a date fixed for a meeting of creditors to consider them. At the meeting, creditors vote for the approval or otherwise of the proposals and can also vote to modify them on the basis of £1 = one vote.

The proposals are approved (with or without modifications by creditors) if 75% or more of the creditors voting at the meeting approve them.

This should not be confused with 75% of the total value of creditors and is illustrated as follows:

Voting Illustration	£'s
Total creditors	10,000
Total creditors voting	6,500
Of which voting "yes" (>75% of voting creditors)	5,500

The £5,500 is greater than 75% of the voting creditors, rather than the total creditors. In this instance the IVA would be approved. When voting, votes from "connected" creditors are excluded. This prevents, for example, family members or associated creditors "forcing" an unfair IVA onto other creditors.

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## advantages

- An IVA proposed before bankruptcy will, if agreed, prevent any further action by creditors in enforcing their debt. This will obviously prevent a debtor from being made bankrupt.
- An agreed IVA (including a fast-track IVA), if proposed whilst a debtor is an undischarged bankrupt, will allow the debtor to apply for an annulment of the bankruptcy order. This effectively expunges any record of bankruptcy from the debtor's history.
- Whilst an IVA is still damaging to a person's credit record, it tends to be less so than a bankruptcy, particularly if the IVA is successful and the terms of the IVA are met with appropriate payments made to creditors.
- An IVA is likely to result in more money going back to creditors than a bankruptcy.
- There is more opportunity for a debtor to retain their major asset, usually their home, by reaching agreement with creditors on how to release value from that asset. It is more likely that a re-mortgage can be obtained if a debtor is in an IVA than in bankruptcy.

## disadvantages

- A fast-track IVA is inflexible and will often not be approved by creditors.
- Creditors are able to modify proposals put forward (except with a Fast Track IVA), which can be detrimental to the debtor. However, creditors can also make the modifications work in their favour by allowing more funds to be generated than originally proposed. A well drafted IVA should result in few, if any, modifications.
- There is no "minimum" level of debts needed for an IVA. However, depending upon the complexity of the IVA, the costs of implementing proposals can sometimes result in an IVA providing a lesser return to creditors than a bankruptcy. Creditors are unlikely to approve an IVA on this basis.
- An individual's credit rating is still damaged even if a sensible IVA is agreed.
- If for any reason an IVA fails, e.g. because the debtor has not kept to the terms agreed, this failure is likely to result in the debtor being made bankrupt by the Supervisor.
- Creditors cannot take further enforcement action once the IVA is agreed and must wait for the terms to be completed. Post-IVA debts must be paid in full in the normal course of events.

Please see the flow chart on the last page.

## there is no substitute for expert advice

I have been advising individuals and businesses suffering financial distress since 1986, a substantial part of that time having been spent within the Insolvency and Business Recovery practices at two of the "Big Four" UK accountancy firms.

In that time I have come across many instances where an IVA has proven to be a blessing in disguise for individuals who may have no idea of what they can do, or who to turn to.

As a Fellow of the Association of Business Recovery Professionals (also known as "R3" - Rescue, Recovery and Renewal) you can be assured that I am an expert in my field and will be able to help with an individual's needs.



## Get in touch



Please call me for further information or to arrange a free initial meeting.

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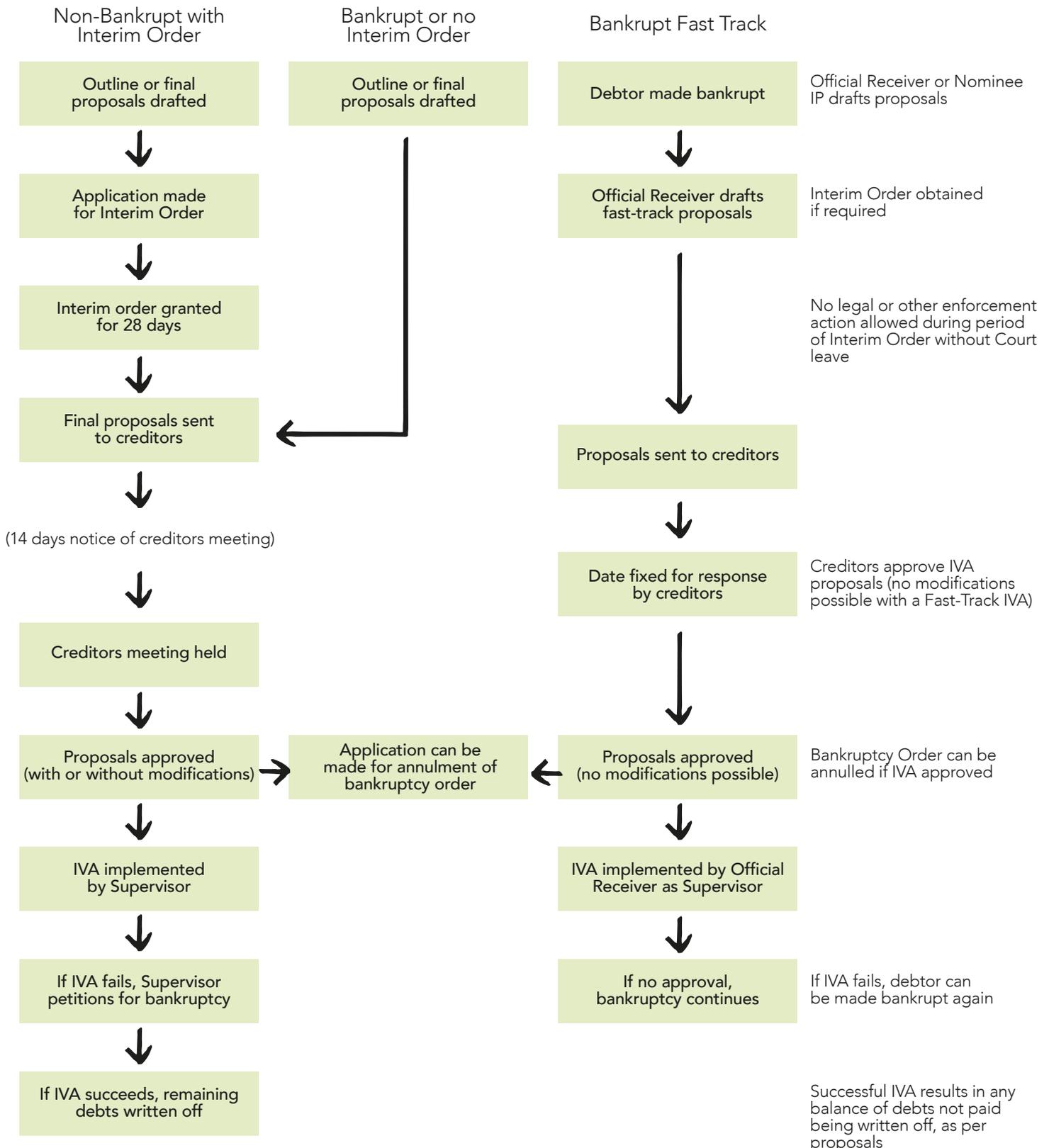
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## the IVA process



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