Bankruptcy Toolkit

Chapter 13: Alternatives to bankruptcy checklist

Financial Rights LEGAL CENTRE

Updated 6 June 2024

Note: This checklist is only a guide. It is your responsibility to read the relevant sections of the Bankruptcy Toolkit and check the up to date Indexed Amounts on the AFSA website[1], to provide comprehensive, accurate and up to date information to your client.

Client name:		Worker:	
Date:		File no.:	

Informal Debt Agreement with Creditor

Advantages

- ☐ Not a formal type of debt agreement so more flexible and less formalities required
- ☐ Can enable effective repayment through reduction of debt amount, extension of time, instalment or payment plan

Disadvantages

- ☐ If using a third party to negotiate, may be required to pay fees.
- ☐ Agreement may not be enforceable in a Court, depending on the nature of the contract
- ☐ Creditor may nevertheless seek bankruptcy meaning time spent negotiating this agreement is moot.

Declaration of Intention (Temporary Debt Protection)

Advantages

- ☐ 21 days breathing space
- ☐ Don't have to pay fee
- ☐ Doesn't necessarily have to proceed to bankruptcy (but can lead to Creditor's Petition)
- ☐ Pauses court enforcement (garnishee, sheriff seizure of goods on writ)
- ☐ Gives time to negotiate with creditors or get advice
- ☐ No NPII or credit report listing

Disadvantages

- ☐ Declaring Intention is an act of bankruptcy (which can lead to Creditor's Petition)
- ☐ Need to complete mini-statement of affairs
- ☐ Gives a point in time snapshot of debtor's affairs for future reference by Trustee if debtor does go bankrupt eventually

Debt Agreement

Requirements to enter a debt agreement

- ☐ Must be insolvent
- ☐ Must earn less than $105,009.45[2]
- ☐ Unsecured debts less than $140,012.60[3]
- ☐ Assets (equity only) less than $280,025.20[4]
- ☐ Must have had no bankruptcy, Debt Agreement or PIA in last 10 years

Advantages

- ☐ Will be released from interest (from the date of the Debt Agreement) and sometimes part of principal debts if agreement completed
- ☐ May keep home and other unprotected assets that would not be protected in bankruptcy
- ☐ Can remain a director of a company (can't if bankrupt or in PIA)
- ☐ Can hold key personnel role under Aged Care Act (can't if bankrupt or in PIA)
- ☐ Challenges to antecedent transactions don't apply (undervalue transactions, transfers to defeat creditors etc.)
- ☐ Future acquired property will not usually be affected (gifts, winnings, inheritances)
- ☐ No restrictions on overseas travel

Note 1, 2, 3 & 4: afsa.gov.au/professionals/resource-hub/indexed-amounts

Notes

Disadvantages

- ☐ Substantial fees upfront and ongoing
- ☐ No refunds if not accepted or not completed
- ☐ Entering a debt agreement is an act of bankruptcy (can lead to Creditor's Petition)
- ☐ Listed on NPII forever
- ☐ Listed on credit report for at least 5 years
- ☐ Many similar consequences to bankruptcy including impact on ability to get credit, access to services, insurance and potential impact on some forms of employment
- ☐ Can (and often does) last longer than bankruptcy
- ☐ Can cause hardship (will have to pay in accordance with agreement even if not earning enough to be required to pay contributions under bankruptcy)
- ☐ Secured creditors can still sieze and sell any assets held as security if you are behind in repayments
- ☐ Difficult to change when circumstances change – variation process similar to setting up agreement in the first place
- ☐ Not suitable for Centrelink recipients
- ☐ Serious non-completion risk (all advantages lost if not completed and bankruptcy likely)

Personal Insolvency Agreement (PIA)

Requirements to enter a PIA

- ☐ Must be insolvent
- ☐ Must have a connection to Australia
- ☐ Must have had no other PIAs in the previous six months

Advantages

- ☐ Will be released from interest and often part of debts if completed
- ☐ Home and other assets may be able to be retained (depending on agreement)
- ☐ Challenges to antecedent transactions may not apply (depending on agreement)
- ☐ Business may be able to keep trading
- ☐ Future acquired property will not usually be affected (gifts, winnings, inheritances)
- ☐ No restrictions on overseas travel

Disadvantages

- ☐ Very substantial fees (minimum $10,000 – $15,000)
- ☐ No refunds if not accepted or completed
- ☐ Entering a PIA is an act of bankruptcy (can lead to Creditor's Petition)
- ☐ Listed on NPII forever
- ☐ Listed on credit report for at least 5 years
- ☐ Cannot remain a director of a company (until agreement obligations completed in full)
- ☐ Many similar consequences to bankruptcy including impact on ability to get credit, access to services, insurance and potential impact on some forms of employment
- ☐ Non-completion risk – bankruptcy likely

Notes