

WHAT ARE THE MAJOR CONSIDERATIONS FOR AN IVA(INDIVIDUAL VOLUNTARY ARRANGEMENT) OR BANKRUPTCY?

- If assets are held by the debtor (particularly the family home), an IVA is probably more flexible.
- If the debtor wishes to continue trade an IVA would be more suitable.
- The debtor cannot be a director whilst bankrupt but could be in an IVA.
- If the debtor's household income exceeds his reasonable domestic needs an IVA may be more appropriate.
- If the debtor is employed in a professional capacity his professional body is more likely to allow him to continue to have status through an IVA.
- A bankruptcy order is advertised in the local press. No such advert is placed with an IVA.
- The debtor effectively appoints the Insolvency Practitioner dealing with his IVA but has no say in the appointment of his Trustee.

WHAT TO DO NEXT?

Call us for a free consultation – we will be delighted to help.
Telephone **01922 722 205**
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BANKRUPTCY – WHAT IS IT?

Bankruptcy is a formal act of insolvency. It is a mechanism whereby an individual can be protected from his creditors that he cannot pay. This situation may arise through business debts, or unsecured borrowing such as credit cards or loans or a combination of both.

A bankruptcy order can be initiated either by the individual (the debtor) as a debtor's petition or by one of his creditor's as a creditors' petition. There is a court fee in respect of the debtor's petition but it does have the advantage that the timing can be controlled by the debtor.

This is a court procedure. Once a bankruptcy order is made the Official Receiver (OR) - a Civil Servant, will be appointed to deal with the bankrupt's affairs. Depending upon the complexity of these affairs the OR has a decision to make whether he thinks an Insolvency Practitioner should be appointed Trustee.

This can either be done by calling a formal meeting of creditors (within 12 weeks), or by a Secretary of State appointment whereby the OR will put an Insolvency Practitioner's name forward to the major creditors. So long as these creditors support the proposed appointment this appointment will proceed.

This will NOT be a practitioner of the choice of the debtor and in practice he could be situated anywhere in England or Wales.

The Trustee's role is to realise the Bankrupt's assets, agree creditor claims, distribute any dividends and investigate any appropriate issue regarding the debtor's affairs.

BUSINESS

When a business is unincorporated a proprietor is personally liable for all the business debts. This means that an unincorporated trader has unlimited liability and may have to dispose of all of his assets to meet the amounts due to his creditors. When a proprietor or partners of a business cannot pay the debts of the business as they fall due it is said to be insolvent.

A business can get into financial difficulties for many reasons; cashflow, such as a large bad debt, or loss of a major contract. There can be other personal factors which have a knock on effect to the business; illness or marriage breakup for example. It is vital to seek professional guidance as soon as such a financial situation is identified. Unsecured lending can exacerbate this position. A proprietor may have borrowed on credit cards or loans to financially support the business. Again, there will be unlimited liability for such debt.

CONSUMER DEBT

Unsecured lending to Individuals through credit cards or loans has also become a feature of our modern economy. There is often a fine dividing line between being able to manage such debt or not. Events happen that can, overnight, have devastating consequences; illness, redundancy, marriage breakup, business problems..... or simply, it can be a culmination of problems that compound over a period of time to the reality that household ends cannot be met without further borrowing.

At Griffin & King we understand this is a traumatic time for anyone confronted with these problems. We have the experience to help guide debtors through the minefield of personal insolvency. Call us for a free consultation with Insolvency Practitioner Tim Corfield to see how we can help.

WHAT IS THE EFFECT OF THE BANKRUPTCY ORDER ON THE INDIVIDUAL?

- As soon as the Bankruptcy order is made all the assets of the bankrupt vest in the Trustee. The only assets the bankrupt can retain are 'the tools of his trade', necessities such as clothing and bedding and certain pension rights.
- The 'assets' will include the debtor's interest in his home. Where the debtor resides with his family a period of 12 months is allowed before proceedings can be taken by the Trustee. It may be possible to negotiate with the Trustee to purchase the Trustee's interest in the property.
- Part of the bankrupt's future income will need to be paid to the Trustee if it is excessive in terms of his reasonable domestic needs. This is unlikely to exceed three years.
- If any assets are acquired by the bankrupt up to one year from the date of the order (after acquired assets), the Trustee can claim these as part of the Bankrupt's estate.
- Business assets, such as debtors or stocks will be realised for the benefit of creditors
- Credit in excess of £500 cannot be taken without the bankrupt advising his potential creditor of his bankrupt status.
- The bankrupt must not act as a director or be involved in the management of a company without leave of the Court.
- The bankrupt will be automatically discharged after one year from the date of the Bankruptcy Order or earlier if the Trustee has completed his enquiries into the affairs of the debtor.