

PART IX DEBT AGREEMENTS

Overview

This part of the Bankruptcy Act (1966) was introduced in December 1996. The purpose of the introduction of Part IX was to provide a means for consumer debtors to enter into an agreement with their creditors rather than enter bankruptcy. The reasons that the Part IX procedure is preferable to bankruptcy can include:

- The avoidance of certain disabilities such as the ability to be a company director, the dissolution of a partnership agreement or the need to disclose bankruptcy to a credit provider;
- Under a Part IX agreement a debtor avoids bankruptcy and any transactions which could be avoided under the Bankruptcy Act remain unchallenged;
- Support may be offered from friends, relatives or sympathetic creditors by delaying payment or becoming a contributor;
- The ability of the debtor to continue trading may result in an increased dividend to creditors;
- As a court is not involved it is less expensive than bankruptcy; and
- The debtor can begin afresh without having been declared bankrupt.

Who Can Enter A Part IX Agreement?

An insolvent debtor may use Part IX as long as they have not been declared bankrupt or been party to a debt agreement or subject to a property control authority in the past 10 years, their debts do not exceed \$80,262 (20 March 2008), the value of their property does not exceed \$80,262 (20 March 2008) and/or their after tax income does not exceed \$60,196 (20 March 2008).

The Debt Administrator

Anyone can act as the debt administrator as long as they pass a basic eligibility test that covers tests of honesty and character. The debt administrator is then bound by statutory duties regarding responses to requests from those bound by the agreement, reporting duties to the Official Receiver and creditors within certain deadlines.

The Process

The process begins by giving the Official Receiver a written proposal that outlines the debtor's property, how the property is to be dealt with and an authority to the administrator to carry out the proposal. Limitations on the proposal are that all creditors must rank equally, property cannot be transferred to creditors and the creditors cannot be paid more than 100 cents in the dollar. Contingencies can be included in the agreement. Once the proposal is checked by the Official Receiver and found to be in order it is accepted by the Official Receiver.

Once accepted the proposal is registered on the National Personal Insolvency Index. The Official Receiver then writes to all affected creditors giving them the proposal and asking them whether they accept or reject it and to send their response to a nominated person. Acceptance is achieved if the majority in value of creditors agree, otherwise it lapses.

The debt agreement proposal is an act of bankruptcy. This is important as it can form the basis of a creditor's petition but if the agreement is accepted by creditors then there is no opportunity for a creditor's petition to be issued, continued or a creditor enforcing a remedy against the person or property while it is still on foot.

The legislation envisages that the debt agreement will terminate when all the proposals have been met and the debtor is released from further obligations. However, a creditor may request in writing that an agreement be terminated but this must be accepted in the procedural manner as described above. The court may also terminate an agreement if the debtor fails one of the terms of the agreement and it is in the interests of creditors to do so or if carrying out the terms of the agreement will cause injustice or undue delay to the creditors. Also the agreement must be terminated if the debtor falls into default by six months or the debtor becomes bankrupt.