



Factsheet - Bankruptcy - General Alternatives To Bankruptcy

Informal Arrangements

An informal arrangement is an agreement between the debtor and their creditors and is often entered into if the debtor would not benefit from bankruptcy. The type of agreements that can be made include:

- a suspension of debt repayments for an agreed period; or
- an agreement that the debtor repay their debts by instalments over a period of time.

The debtor can either contact the creditors directly, explain their financial position to them and suggest the details of the agreement that the debtor can make with them, or they can seek the assistance of a financial counsellor or solicitor to do this on their behalf.

It is better for creditors to reach a compromise with the debtor about business debts. This allows them to avoid becoming bankrupt.

This type of arrangement is not legally binding on the debtor or their creditors. If the creditors change their minds or the debtor cannot keep up the repayments, the creditors are entitled to pursue repayment of the debt, or debts, in the normal manner.

Formal Agreements

Formal alternatives to bankruptcy are found under Parts IX and X of the Bankruptcy Act 1966 (Cth) [‘the Act’], are binding on both the debtor and their creditors and are administered by a registered trustee, a debt agreement administrator or the Insolvency and Trustee Service of Australia (ITSA). Part IX debt agreements are by far the most common type of formal agreements used in Tasmania.

Part IX Debt Agreements are a low cost flexible alternative to bankruptcy. These must be made by a majority of creditors at a creditor’s meeting and are binding. However, no agreement filed as an alternative to bankruptcy will exempt the debtor from any liability under a maintenance order or agreement. Debt agreements are not as restrictive as bankruptcy, as the debtor is not considered to be bankrupt. They take a shorter time to administer so the creditors are paid sooner, and allow the debtor to retain some of their assets or continue to operate their business. The debtor may also preserve their credit rating.

Part X Personal Insolvency Agreements under the Act can be expensive. A registered trustee will require a debtor to pay some money up front to cover their initial costs and expenses. A debtor could expect to pay a minimum of \$2000 for these initial costs and expenses.

When a debtor authorises a trustee, accountant or solicitor to organise a debt agreement under Part IX or a personal insolvency agreement under Part X of the Act, it gives the debtor the same protection as bankruptcy in relation to action by creditors.

RELEVANT LEGISLATION

Bankruptcy Act 1966 (Cth)

CONTACTS

Insolvency and Trustee Service Australia (ITSA)

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Page Last Revised : Monday, February 6, 2006

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