PERSONAL INSOLVENCY AGREEMENT

AN ARRANGEMENT WITH YOUR CREDITORS TO SETTLE YOUR DEBTS WITHOUT BECOMING BANKRUPT

HLB MANN JUDD
INSOLVENCY WA

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TOGETHER WE MAKE IT HAPPEN

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Who are we?

We are a dedicated insolvency accounting practice with extensive corporate and personal insolvency experience. Our firm is an independent member of HLB International and the HLB Mann Judd National Association – a worldwide organisation of respected accounting firms and business advisors.

We appreciate that managing a struggling business and juggling debt is distracting and stressful. We derive satisfaction and motivation by helping people understand their options and by creating a clear plan to escape a cycle of uncertainty and worry.

Greg is a Partner at HLB Mann Judd Insolvency WA with over 13 years of corporate and personal insolvency experience. Greg is a Registered Liquidator and manages the corporate and personal insolvency appointments managed by the firm.

Kim is a Partner at HLB Mann Judd Insolvency WA. Kim is a Registered Liquidator and Trustee in Bankruptcy with over 35 years of experience specialising in insolvency and reconstruction involving all types of personal and corporate administrations.

WHAT IS A PERSONAL INSOLVENCY AGREEMENT?

A Personal Insolvency Agreement (PIA), also known as a Part X (10), is a legally binding agreement between you and your creditors.

A PIA can be a flexible way to come to an arrangement to settle debts without becoming bankrupt.

A PIA involves the appointment of a controlling trustee to take control of your property and make an offer to your creditors.

The offer may be to pay part or all of your debts by instalments or a lump sum.

HOW DO I ENTER A PERSONAL INSOLVENCY AGREEMENT?

To enter into a PIA, you are required to appoint a Registered Trustee.
Your trustee will then:

- Assist you with making offers to your creditors;
- Recommend options to your creditors;
- Prepare the proposal and send it to your creditors to vote on; and
- Arrange a meeting of creditors within 25-30 days to vote on your proposal.

1. Creditor Vote

Your proposal will be considered at the creditors' meeting.
For creditors to accept the PIA proposal, a special resolution is required, meaning a majority of creditors in number and at least 75% in dollar value must vote in favour of the PIA proposal.

2. Outcome

If your proposal is successful and becomes a PIA:

- You must comply with the terms of the agreement and ensure you complete it by the due date;
- If you have problems making payments, you must contact your trustee as soon as possible;
- Your trustee informs creditors on the progress of your PIA; and
- Your trustee deals with the payments as set in the PIA.

If your proposal is unsuccessful and rejected by creditors:

- The Australian Financial Securities Authority (AFSA) notify you and your creditors of the outcome;
- The result appears on the National Personal Insolvency Index (NPII) permanently;
- You can't appoint another controlling trustee for 6 months without the Courts permission; and
- Your creditors are able to continue recovery action. If the debt is over $10,000, they can apply to the Courts to make you bankrupt.

CONSEQUENCES OF A PERSONAL INSOLVENCY AGREEMENT?

If you enter a PIA:

1. You are committing an act of bankruptcy, meaning a creditor can apply to the court to make you bankrupt should your PIA fail.
2. Your details will appear on the NPII permanently.
3. The details of the agreement will appear on your credit file for up to 5 years, or longer in some cases.
4. You are not able to deal with your property (e.g. house or car) without the consent of your controlling trustee.
5. You may be able to run your business, if the terms of the agreement allow.
6. You are not able to manage a corporation until the terms of the agreement have been finalised.
7. You are obliged to assist your trustee by providing information and documentation if requested.

"A Personal Insolvency Agreement is a flexible way to settle with your creditors and avoid going bankrupt."
- Greg Quin, Partner

WHAT DOES A PERSONAL INSOLVENCY AGREEMENT COVER?

A PIA releases you from unsecured debts once you complete your obligations under the agreement, however you may still be required to pay certain types of debts.

1. Unsecured Debts

An Unsecured Debt is not tied to any specific property (e.g. house or car), and can include:

- Credit and Store Cards;
- Unsecured Personal Loans and Pay Day Loans;
- Utility Bills;
- Overdrawn Bank Accounts;
- Unpaid Rent;
- Medical Fees;
- Legal Fees; and
- Accounting Fees.

A PIA does not release you from all Unsecured Debts, some of which include:

- Debts you incur by fraud;
- Debts under a maintenance agreement or order;
- Court-ordered fines; and
- HELP debts.

For any Unsecured Debts in which a PIA does not release you from, creditors are entitled to pursue you for any debt amount still owing after your obligations are complete and the agreement ends. Should you wish to be released from any such Unsecured Debt, your PIA must provide for your release from that specific debt.

2. Secured Debts

A Secured Debt is tied to specific property, such as a house or a car. Secured Debts usually allow for the creditor to repossess property you put up as security if you do not make your repayments.

It must be noted that a PIA may not necessarily release you from Secured Debts. Some examples of Secured Debts include:

- Mortgage;
- Car Loan;
- Hire Purchase Agreements; and
- Rent to Buy Agreements.

Your trustee must contact your secured creditors to discuss your intentions with the debt. If you are unable to maintain payments, you may be able to surrender the goods.

3. Joint Debts

A Joint Debt is a debt you share with another person. You can include them in an agreement, however a creditor can still pursue the other person for the debt. If both people have entered into respective PIA's, you should both include the debt in your proposals.

4. Tax Debts

Australian Taxation Office (ATO) debts can be included in a PIA, however the ATO is entitled to keep your tax refunds if you owe the Commonwealth a debt.

CONCLUSION

A PIA provides individuals a flexible alternative to bankruptcy.

However, the ability for an individual to enter into a PIA, rather than a bankruptcy, is typically dependent on whether or not the individual can guarantee a greater return to their creditors than what would be possible in a bankruptcy scenario.

Despite PIA's generally being preferred over bankruptcy, the potential adverse impacts of a PIA also must not be ignored. A PIA may affect one's employment, their ability to get credit and will also be permanently recorded on the NPII, which is a public register.

If you have any concerns regarding your personal financial position, please feel free to contact our office for a free confidential discussion about the options available to you.

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