

A photograph of a lighthouse with a black base, a red middle section, and a white top section, situated on a stone pier extending into the sea under a blue sky with scattered clouds.

Viewpoint

Business recovery and insolvency

The first step in addressing financial concerns is to recognise and act on warning signs at an early stage.

Regain control of your financial situation

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Challenge area

- Business experiencing cashflow problems?
- Creditors demanding payment of outstanding accounts and threatening legal action?
- Finding it hard to remain within your overdraft limit?
- Bank making demands?
- Inherited company liabilities as a result of personal guarantees provided?
- Recently been made redundant?

If your answer to any of these questions is 'yes', BDO Kendalls can help put your mind at ease, protect your interests and help you regain control of your affairs.

New perspectives

When should you get help?

The first step in addressing financial concerns is to recognise and act on warning signs at an early stage. The earlier you act, the greater your options and chances of averting a financial crisis.

More options than you might think bankruptcy is not the only option for those individuals experiencing financial difficulties. Some other alternatives which may be available to you can include:

- Business reviews
- Personal Insolvency Agreements; and
- Debt Agreements.



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Businesses Reviews

If you own a business in your own right or in partnership, a business review can help you to identify problems before they get too serious.

If the results of a BDO Kendalls business review shows your business can be turned around, we'll then work with you to develop and implement appropriate strategies to return your business to profitability.

Strategies may include restructuring the business and or its finances, disposing of non-performing divisions/ assets, strengthening the management team, mergers and acquisitions.

Personal Insolvency Agreements

A Personal Insolvency Agreement (PIA), also known as a Part X Agreement, is a formal agreement with creditors outside of bankruptcy.

A PIA provides breathing space from creditors and the opportunity to put together a proposal to them regarding repayment of their debts over time. These repayments may come from some or all personal assets and income or other sources.

Essentially a Controlling Trustee takes control of the individual's property, and provides creditors with an opinion as to whether acceptance of the PIA is in their best interests. The PIA is considered at a meeting of creditors. If the PIA is accepted by the creditors, a Trustee is then appointed to carry out the terms of the PIA. Acceptance of a PIA at a creditors' meeting means:

- release from debts to the extent specified in the PIA;
- all unsecured creditors are bound by the agreement regardless of their individual vote;
- unsecured creditors are unable to take further legal action.

Importantly a PIA can help individuals get back on their feet and continue to operate towards profitability if in business, without the burden of pre-existing liabilities and creditor pressure.

Debt Agreements

Individuals who satisfy the following may be able to enter a Debt Agreement (DA) without becoming bankrupt:

- Unsecured debts and assets are each less than \$72,381.40 (indexed); and
- After-tax income for the next 12 months is expected to be less than \$54,286.05 (indexed), The process of entering a DA involves submitting a proposal (similar to the PIA proposal) to the Insolvency and Trustee Service of Australia (ITSA). ITSA then sends the proposal to creditors to either accept or reject the agreement via a postal vote.



If a compromise is unable to be reached with creditors, the final option is usually bankruptcy.

A DA Administrator is appointed to:

- inform the individual of the consequences of entering a DA; and
- assist with paperwork and lodgements with ITSA and if the DA is accepted, ensure the terms are carried out.

Acceptance of a DA means:

- release from all provable debts;
- all unsecured creditors are bound by the DA regardless of their individual vote; and
- unsecured creditors are unable to take further legal action.

Bankruptcy

If a compromise is unable to be reached with creditors, the final option is usually bankruptcy. Bankruptcy provides relief from creditors and release from liabilities that exist at appointment. There is often a misconception that upon bankruptcy all of the personal assets are automatically seized. The truth is that bankrupts are entitled to keep certain assets, for example:

- Most ordinary household or personal items;
- Tools used to earn an income to a specified limit;
- Vehicles to a specified value;
- Certain superannuation and life assurance policies; and
- Certain assets of sentimental value. Bankruptcy can be initiated by the individual in question through a debtor's petition.

To apply to become bankrupt a debtor's petition nominating a Trustee and a statement of affairs needs to be lodged with ITSA. Alternatively, creditors can apply to the Court to make a person bankrupt (creditors petition).

Legal considerations

With the exception of the business review, all other options outlined involve a formal appointment under the Bankruptcy Act. Therefore an understanding of the legal ramifications associated with these may assist where more than one option is available to you.



Related links

[BDO Kendalls Business recovery and insolvency](#)

Legal Consideration	PIA	DA	Bankruptcy
Appointment recorded on the public record for life and possibly on commercial credit reference organisation records for seven years. This can have an effect on the individual's ability to obtain credit.	Yes	Yes	Yes
Disqualification from managing a corporation during appointment.	Yes	No	Yes
Acts of bankruptcy may be relied upon by creditors to apply to the Court to have the individual made bankrupt in the event that the given agreement fails. Acts of bankruptcy committed:			
*Signing the Controlling Trustee authority	Yes	n/a	n/a
*Debt Agreement proposal lodgement and acceptance	n/a	Yes	n/a
Required to make contributions out of income.	Optional	Optional	Subject to thresholds
Require permission to leave Australia.	n/a	n/a	Yes
Disclosure of appointment when applying for credit or buying goods or services on credit or by cheque if the amount exceeds \$4,000 (approx).	n/a	n/a	Yes
If in business and trade under a business name other than their own, must inform everyone they deal with that they are an undischarged bankrupt.	n/a	n/a	Yes
Period of the appointment.	Specified in PIA	Specified in DA	3 years unless annulled prior

About the author

George is a Partner in the Business Recovery & Insolvency Services Division here at BDO, having practiced in the area in excess of 25 years. With broad based experience in all aspects of accounting and finance, George specialises in the area of business recovery providing services ranging from business reviews and workouts to both formal and informal appointments over distressed businesses. George has experience working in a range of industries including primary industry, hospitality, retail, service, manufacturing, property, construction and health.

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