

STATUTORY INSTRUMENTS

2016 No. 1024

The Insolvency (England and Wales) Rules 2016

PART 8

INDIVIDUAL VOLUNTARY ARRANGEMENTS (IVA)

CHAPTER 2

Preparation of the debtor's proposal for an IVA

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

Proposal for an IVA: general principles and amendment

8.2.—(1) A proposal must—

- (a) identify the debtor;
- (b) explain why the debtor thinks an IVA is desirable;
- (c) explain why the creditors are expected to agree to an IVA; and
- (d) be authenticated and dated by the debtor.

(2) The proposal may be amended with the nominee's agreement in writing at any time up to the filing of the nominee's report with the court under section 256, or the submission of the nominee's report to the creditors under section 256A(1).

Proposal: contents

8.3. The proposal must set out the following so far as known to the debtor—

Assets	(a) the debtor's assets, with an estimate of their respective values; (b) which assets are charged and the extent of the charge; (c) which assets are to be excluded from the IVA; and (d) particulars of any property to be included in the IVA which is not owned by the debtor including details of who owns such property and the terms on which it will be available for inclusion;
Liabilities	(e) the nature and amount of the debtor's liabilities; (f) how the debtor's liabilities will be met, modified, postponed or otherwise dealt with by means of the IVA and, in particular— <ul style="list-style-type: none">(i) how preferential creditors and creditors who are, or claim to be, secured will be dealt with,(ii) how creditors who are associates of the debtor will be dealt with,(iii) if the debtor is an undischarged bankrupt, whether any claim has been made under section 339 (transactions at an undervalue),

(1) Section 256A is inserted by paragraph 7 of Schedule 3 to the Insolvency Act 2000 (c.39).

	<p>section 340 (preferences)(2), or section 343 (extortionate credit transactions)(3) and, if it has, whether, and if so what, provision is being made to indemnify the bankrupt's estate in respect of such a claim; and</p> <p>(iv) if the debtor is not an undischarged bankrupt whether there are circumstances which might give rise to a claim as referred to in subparagraph (iii) if the debtor were made bankrupt and, where there are such circumstances, whether and, if so what, provision will be made to indemnify the bankrupt's estate in respect of such a claim;</p>
Nominee's fees and expenses	(g) the amount proposed to be paid to the nominee by way of fees and expenses;
Supervisor	<p>(h) identification and contact details for the supervisor;</p> <p>(i) confirmation that the supervisor is qualified to act as an insolvency practitioner (or is an authorised person) in relation to the debtor and the name of the relevant recognised professional body which is the source of the supervisor's authorisation;</p> <p>(j) how the fees and expenses of the supervisor will be determined and paid;</p> <p>(k) the functions to be undertaken by the supervisor;</p> <p>(l) where it is proposed that two or more supervisors be appointed, a statement whether acts done in connection with the IVA may be done by any one or more of them or must be done by all of them;</p>
Guarantees and proposed guarantees	<p>(m) whether any, and if so what, guarantees have been given in respect of the debtor's debts, specifying which of the guarantors are associates of the debtor;</p> <p>(n) whether any guarantees are proposed to be offered for the purposes of the IVA, and if so what, by whom and whether security is to be given or sought;</p>
Timing	<p>(o) the proposed duration of the IVA;</p> <p>(p) the proposed dates of distributions to creditors, with estimates of their amounts;</p>
Type of proceedings	(q) whether the proceedings will be main, territorial or non-EC proceedings with reasons;
Conduct of business	(r) if the debtor has any business, how that business will be conducted during the IVA;
Further credit facilities	(s) details of any further proposed credit facilities for the debtor and how the debts so arising are to be paid;
Handling of funds arising	<p>(t) the manner in which funds held for the purposes of the IVA are to be banked, invested or otherwise dealt with pending distribution to creditors;</p> <p>(u) how funds held for the purpose of payment to creditors, and not so paid on the termination of the IVA, will be dealt with;</p> <p>(v) how the claim of any person bound by the IVA by virtue of section 260(2)(b)(ii) will be dealt with;</p>

(2) Section 339(1) is amended by paragraph 31 of Schedule 19 to the Enterprise and Regulatory Reform Act 2013 (c.24) and section 340 is amended by paragraph 32 of that Schedule.

(3) Section 343(1) is amended by paragraph 36 of Schedule 19 to the Enterprise and Regulatory Reform Act 2013.

Other proposals	<p>(w) whether another proposal in relation to the debtor has been submitted within the 24 months before the date of the submission of the proposal to the nominee—</p> <p>(i) for approval by the creditors and, if so,</p> <p>(aa) whether that proposal was approved or rejected,</p> <p>(bb) whether, if approved, the IVA was completed or was terminated, and</p> <p>(cc) in what respects such a proposal, where rejected, differs from the current proposal;</p> <p>(ii) to the court in connection with an application for an interim order under section 253(4) and, if so, whether the interim order was made;</p>
Other matters	<p>(x) any other matters which the debtor considers appropriate to enable creditors to reach an informed decision on the proposal.</p>

Notice of nominee's consent

8.4.—(1) A nominee who consents to act must deliver a notice of that consent to the debtor as soon as reasonably practicable after the proposal has been submitted to the nominee under section 256(2) or 256A(2).

(2) The notice must state the date the nominee received the proposal.

Statement of affairs (section 256 and 256A)

8.5.—(1) The statement of affairs which the debtor is required to submit to the nominee under either section 256(2) or 256A(2) must contain—

- (a) a list of the debtor's assets, divided into such categories as are appropriate for easy identification, and with each category given an estimated value;
- (b) in the case of any property on which a claim against the debtor is wholly or partly secured, particulars of the claim and of how and when the security was created;
- (c) the names and addresses of the preferential creditors with the amounts of their respective claims;
- (d) the names and addresses of the unsecured creditors, with the amounts of their respective claims;
- (e) particulars of any debts owed by the debtor to persons who are associates of the debtor;
- (f) particulars of any debts owed to the debtor by persons who are associates of the debtor; and
- (g) any other particulars that the nominee in writing requires to be provided for the purposes of making the nominee's report on the proposal to the court or to the creditors (as the case may be).

(2) The statement must be made up to a date not earlier than two weeks before the date of the proposal.

(3) However the nominee may allow the statement to be made up to a date that is earlier than two weeks (but no earlier than two months) before the date of the proposal where that is more practicable.

(4) If the statement is made up to an earlier date the nominee's report must explain why an earlier date was allowed.

(5) The statement must be verified by a statement of truth made by the debtor.

(4) Section 253 subsection 5 is omitted by paragraph 2 of Schedule 19 to the Enterprise and Regulatory Reform Act 2013 (c.24).

(6) Where the debtor is an undischarged bankrupt and has already delivered a statement of affairs under section 288(5) the debtor need not submit a statement of affairs to the nominee under section 256(2) or 256A(2) unless the nominee requires a further statement of affairs to supplement or amplify the earlier one.

Application to omit information from statement of affairs delivered to creditors

8.6. The nominee, the debtor or any person appearing to the court to have an interest may, if any information in the statement of affairs would be likely to prejudice the conduct of the IVA or might reasonably be expected to lead to violence against any person, apply to the court for an order that specified information be omitted from any statement of affairs required to be delivered to the creditors.

Additional disclosure for assistance of nominee

8.7.—(1) If it appears to the nominee that the report to the court under section 256(1)(6) or to the creditors under section 256A(3)(7) cannot properly be prepared on the basis of information in the proposal and statement of affairs, the nominee may require the debtor to provide—

- (a) more information about the circumstances in which, and the reasons why, an IVA is being proposed;
- (b) more information about any proposals of the kind referred to in rule 8.3(w);
- (c) information about any proposals which have at any time been made by the debtor under Part 8 of the Act(8); and
- (d) any further information relating to the debtor’s affairs which the nominee thinks necessary for the purposes of the report.

(2) The nominee may require the debtor to inform the nominee whether and in what circumstances the debtor has at any time—

- (a) been concerned in the affairs of a company wherever incorporated or limited liability partnership which has become the subject of insolvency proceedings;
- (b) been made bankrupt;
- (c) been the subject of a debt relief order; or
- (d) entered into an arrangement with creditors.

(3) The debtor must give the nominee such access to the debtor’s accounts and records as the nominee requires to enable the nominee to consider the debtor’s proposal and prepare the report on it.

(5) Section 288(1) is amended by paragraph 18 of Schedule 19 to the Enterprise and Regulatory Reform Act 2013 (c.24) and (2A) is inserted and (3) and (4)(b) are amended by paragraph 15 of Schedule 6 to the Deregulation Act 2015 (c.20).

(6) Section 256(1)(aa), (5) and (6) are amended and (1)(b) is omitted by paragraph 61 of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26).

(7) Section 256A(3) is amended by paragraph 4 of Schedule 19 to the Enterprise and Regulatory Reform Act 2013 and paragraph 62 of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26).

(8) Part 8 is amended by paragraph 2 of Schedule 6 to the Deregulation Act 2015 (c.20), paragraphs 2 to 4 of Schedule 19 to the Enterprise and Regulatory Reform Act 2013 (c.24) and sections 134 and 135 and paragraphs 61 to 72 of Schedule 9 to the Small Business Enterprise and Employment 2015 (c.26).