

## IMPORTANT CHANGES TO TERMS & CONDITIONS

### Summary of Changes

#### TABLE OF CONTENTS FOR STANDARD CONDITIONS - PART VI: ARRANGEMENT ASSETS (No.14)

Current: After acquired assets

Revision: Assets and after acquired assets

#### PART I – INTERPRETATION – DEFINITIONS

Addition 1: “property” has the meaning given to it in Section 436 of the Act;

Addition 2: “the Supervisor” is the person or persons for the time being appointed to supervise the implementation of the arrangement

#### PART I – INTERPRETATION – THE CONDITIONS

Current: The conditions are part of the arrangement. If any ambiguity or conflict arises between the conditions and the Proposal and any modifications to it, then the Proposal (whether modified or not) will prevail.

Revision: The conditions are an integral part of the arrangement. In the event of any ambiguity or conflict between the conditions and the proposal and any modifications to it, then the proposal (as modified) shall prevail.

#### PART V – THE SUPERVISOR’S FUNCTIONS, POWERS ETC – SUPERVISOR’S DUTIES (No. 10 Pt.3)

Current: The Supervisor must pay you (the debtor) any funds he/she holds representing dividend cheques that are still un-cashed 6 months after payment of the final dividend.

Revision: The Supervisor must pay you any funds he/she holds representing dividends that are still un-cashed 6 months after payment of the final dividend. Once this has been paid to you the creditors have no further claim to these funds.

***What this change means:*** Put simply, any refund made to you from funds that we have attempted to pay to creditors as dividends but remain ‘un-cashed’ (i.e. not banked) 6 months after the last dividend payments are made are yours to keep. The creditors cannot ask for these funds at a later date.

#### PART VI – ARRANGEMENT ASSETS – ASSETS AND AFTER ACQUIRED ASSETS (Sub-heading)

Current: After-acquired assets

Revision: Assets and after acquired assets

Addition: Property other than excluded assets belonging to or vested in you at the date of commencement of the arrangement which would form part of your estate in bankruptcy shall be subject to the arrangement.

## **PART VII – DIVIDENDS AND CLAIMS – DIVIDEND AND CLAIMS** **(No. 17 Pt.6)**

Current: Where any creditor agrees, for whatever reason, to make a repayment to the debtor during the continuance of the arrangement, then that payment shall be used solely in reduction of that creditor's claim in the first instance. If such repayment results in the creditor's claim being entirely extinguished (after the application of set off) any surplus will be treated as an after acquired asset and offered to the Supervisor for the benefit of the arrangement.

Revision: Where Section 323 of the Act applies and a creditor is obliged, for whatever reason, to make a payment to you during the continuance of the arrangement, then that payment shall be used first in reduction of that creditor's claim. If such application results in the creditor's claim being entirely extinguished any surplus will be treated as an asset of the arrangement and paid to the Supervisor for the benefit of the arrangement.

***What this change means:*** This section has been clarified and explains what happens should any creditor be required to make payment to you during the term of the Arrangement, for example, through a PPI claim. Your obligations under the Arrangement remain the same in that should you receive any funds from successful PPI claims, they will be paid to your Supervisor.

## **PART X – CONDITIONS WHERE TAX AUTHORITIES ARE CREDITORS** **(No. 26)**

Current: While the arrangement is in force, you must offset against HMRC's claims in the arrangement any tax/excise/VAT or other repayments that become due to you from HMRC for periods for which claims may arise under the arrangement. Similarly, you must offset any remaining surplus against the claims of other government departments before offering them to the Supervisor for the benefit of the arrangement.

You must offset any repayments for any later periods against any post-approval debts due to HMRC. Any remaining surplus will then be treated as a windfall and offered to the supervisor for the benefit of the arrangement.

Revision: Any repayment due to you from HMRC relating to a period before the arrangement was approved shall be applied firstly against the HMRC claim in the arrangement. Any surplus will be repaid to you and you must pay it to the Supervisor for the benefit of the arrangement. Any repayment due to you from HMRC relating to a period after the arrangement was approved shall be applied firstly against other sums owed to HMRC for the post arrangement period. Any surplus will be repaid to you and you will pay it to the Supervisor for the benefit of the arrangement.

***What this change means:*** This section has been clarified. The revised wording states that any funds due to you from HMRC which relate to a period before the IVA is approved (the initial meeting of creditors date), should be used to reduce HMRC's claim in the Arrangement. Anything left over (where the rebate exceeds HMRC's claim) must be paid to the Supervisor. Any funds due to you from HMRC for a period after the IVA is approved, shall be used to reduce any other money owed to HMRC, with any remaining to be paid to the Supervisor.

## **PART X – CONDITIONS WHERE TAX AUTHORITIES ARE CREDITORS** **(No. 27)**

Current: If the debtor was a non-trading debtor and has not traded during the tax year in which the IVA was agreed and if there are no outstanding returns due to HM Revenue and Customs (HMRC) and no contact has been made by HMRC with the Supervisor within 4 months after the effective date, the Supervisor has the discretion to disregard the requirement in paragraph 25 of the standard conditions to not make a non preferential dividend before the Supervisor has admitted the HMRC final claim. If the Supervisor commences payment of dividends, notification should be sent to HMRC and funds may be retained to pay an equivalent dividend to HMRC based on the amount shown in the statement of affairs.

Revision: If you **were not self-employed** and have not traded during the tax year in which the IVA was agreed and if there are no outstanding returns due to HM Revenue and Customs (HMRC) and no contact has been made by HMRC with the Supervisor within 4 months after the effective date, the Supervisor has the discretion to disregard the requirement in paragraph 25 of the standard conditions to not make a non-preferential dividend before the Supervisor has admitted the HMRC final claim. If the Supervisor commences payment of dividends, notification should be sent to HMRC and funds may be retained to pay an equivalent dividend to HMRC based on the amount shown in the statement of affairs.

***What this change means:*** *The words in bold have been updated for clarity.*

## **Annex 6 the equity release clause**

*Clause dealing with home equity (net worth)*

Revision:

In the last year of the arrangement, (normally 6 months from the end of the arrangement) an open valuation will be carried out on the property by an independent professional valuer.

If that valuation shows that 85% of my interest in the property (after deducting my share of the mortgage and/or secured loans) is less than £5,000 (net of all costs to take out a new mortgage) then I need contribute no more to the arrangement in respect of the property.

If that valuation shows that 85% of my interest in the value of the property (after deducting my share of the mortgage and/or secured loans) is £5,000 or more (net of all costs to take out a new mortgage loan), then I will seek to remortgage my interest in the property and introduce this money into the arrangement. **Remortgage includes other secured lending such as a secured loan.** However, the amount that I have to borrow and pay into the arrangement is subject to the following limits:

- The remortgage amount will be a maximum of 85% of my loan to value (LTV).
- The incremental cost of the remortgage, including cost of any new repayment vehicle, will not exceed 50% of the monthly contribution at the review date.
- The net worth released will not exceed 100p in the £ excluding statutory interest.
- The remortgage term does not extend beyond the later of my State retirement age or the existing mortgage term.
- The amount of the money introduced into the arrangement will be the mortgage proceeds less the costs of the remortgage, including any costs to redeem any existing mortgage and/or secured loan.
- The increased amount that I have to pay because of the remortgage will be deducted from the remaining monthly contributions in the arrangement.
- If the increased amount that I have to pay at any time following the remortgage means that the required contribution to the arrangement falls below £50 per month, monthly contributions are stopped, and the IVA is concluded.

I will provide a broker or prospective lender with my written consent authorising them to keep my Supervisor fully informed of progress throughout the re-mortgage process.

If I am unable to obtain a new mortgage, this will not be viewed as a failure to comply with the terms of the IVA and my Supervisor will have the discretion to consider accepting one of the following alternative proposals:

- A third party sum equivalent to 85% of my interest in the property, or
- 12 additional monthly contributions (with the aggregate sum paid to the supervisor being limited to 85% of my interest in the property).

## Protecting creditors interests

To protect the interests of creditors my Supervisor will register a restriction against the property at HM Land Registry. To facilitate this, I will provide the Supervisor with signed form RX1 within 3 months of the approval of the IVA. Failure to do so following one month's written notice to me from the Supervisor requiring me to remedy the default will constitute a breach.

***What this change means:*** Where your proposal was drafted to include an obligation to introduce the 'net worth' of a property by way of remortgage, the wording above will replace that originally drafted and modified by creditors. This revised wording applies the standard IVA protocol guidelines to releasing 'net worth' in property (these are outlined in full by annex 6). The revised wording for 2014 clarifies that where you are obligated to 'remortgage' your property during the Arrangement, such attempts will include a review of other secured lending including secured loans (as highlighted above in bold).