



Debt Agreement Service Newsletter October 2009

Major Creditor forum

This six-monthly forum of major creditors in Sydney now meets with all four business lines of ITSA to consider issues of mutual interest. The September 2009 forum examined experience with the debt agreement system in the last financial year. Many questions were raised about ITSA's services. The next forum is planned for March 2010 again in Sydney. For those interested ITSA's in reviewing the operation of the system over the last 12 months, ITSA's annual report on the operation of the Bankruptcy Act with is now available on ITSA's website.

eSolve Phase 3 IT Project

The DAS component of ITSA's new computer system, "eSolve", is on schedule with implementation planned for April 2010. This included the electronic data transfer function. IT Project Manager George Quarmby distributed, after consultation with major creditors and administrators, two papers on requirements for electronic data transfer (EDT) and a paper on Web access explaining how EDT would be governed. George is always available on 02 6270 3459 to answer questions from your IT personnel.

For those with larger volumes of proposals and voting eSolve Phase 3 will provide accuracy in lodgement and savings in receiving and sending data electronically. For questions and feedback on eSolve Phase 3, please contact Vanessa Goodey on 07 3360 5435 or <mailto:vanessa.goodey@itsa.gov.au>

National Manager Debt Agreement Service

Andrew Robinson will be the National Manager, Debt Agreement Service until mid 2010. Some of you will have met Andrew in his role as National Manager of ITSA's regulatory arm. Digby Ross will be on extended leave. Andrew welcomes your feedback and can provide assistance on 07 3360 5401 or <mailto:andrew.robinson@itsa.gov.au>.

New Debt Agreement System forms

All seven redesigned forms for the implementation of eSolve Phase 3 may now be used. The statement of affairs is now far shorter. Please contact Andrea Anderson on 07 3360 5434 or Anneke Browne on 07 3360 5446.

Status of debts in the Explanatory Statement

A meaningful status of debt is not being shown on many Explanatory Statements. The status of 'over limit', 'struggling' and 'next payment due' does not give any evidence of the debtor being in arrears and insolvent. This leads to delays in obtaining clarification from the debtor or the administrator to allow the proposals to be sent to creditors. Using the status types listed on the Explanatory Statement allows proposals to be sent to creditors quickly. If debts are not in arrears other evidence of insolvency must be explained.

Council rates

Council rates are secured by a first charge over land and cannot share in dividends. Essential services provided to property such as sewers, water and garbage collection must be paid. Where a debtor proposing a debt agreement has a debt of unpaid rates, a local council will be a *secured creditor* as defined in section 5 of the Bankruptcy Act.

The council may take court proceedings to recover unpaid rates by selling the land when rates for a number of years are unpaid. Obtaining a judgment does not alter the nature of the debt; the debt remains secured.

Council charges for provision of goods and services provided by councils for a fee are not rates and are ordinary unsecured debts.

Voting on variation and termination proposals

When completing the Claim and Voting form for proposals to vary or terminate, creditors vote for the amount of debt owing at the date when the proposal was entered on the National Personal Insolvency Index (NPII). Creditors must not deduct the amount of dividends received for the period of the debt agreement and are entitled to vote for the full amount of the debt owing when the proposal was entered on the NPII.

Incorrect Completion Dates on proposals

Too often an incorrect completion date is shown on proposals. This results in incorrect information being sent to creditors and impacts the debtor when their debt agreement is terminated through six-month arrears default. Where the completion date of the proposal has been incorrectly calculated, the proposal will be rejected.

DAPA Liaison

On 8 October 2009 representatives from ITSA's Regulation & Enforcement, Information & Registry and DAS business lines hosted the inaugural formal quarterly liaison meeting with the Debt Agreement Practitioners' Association (DAPA) in Sydney. The meeting was particularly fruitful with discussions involving formalising the liaison meetings and agenda, possible use by DAPA members of the ITSA top 20 creditors address, DAPA concerns regarding creditor dividend rate requirements, the DAPA website, information and training needs and the DAPA complaint handling system. The next meeting is scheduled for February 2010.

Feedback

ITSA values feedback about any aspect of the debt agreement system. Andrew Robinson, National Manager of the DAS can be contacted on (07) 3360 5401 and Vanessa Goodey, Assistant National Manager on (07) 3360 5435. Please continue to direct your queries on individual proposals to the DAS team.

Do you have a question about the law and practice relating to proposals which we can answer in the newsletter?