

November 2019



Applications to retain Membership following insolvency



Background

ICAS expects its Members to manage their personal finances appropriately. As a professional accountant, you should be aware that financial difficulties should not be ignored, and that it is wise to seek help if you find yourself in a situation where you are struggling to repay your debts.

This helpsheet is intended to provide information on who at ICAS you can contact if you find yourself in financial difficulty, and the possible impact on your Membership if you enter into an arrangement to repay your debts.

What constitutes insolvency?

The ICAS Rules define insolvency as follows:

“Any form or arrangement (statutory or non-statutory) for the purpose of management and repayment of a Member or Affiliate’s debts to his or her creditors”.

This definition covers more than just bankruptcy and trust deeds: it also includes Individual Voluntary Agreements (IVAs), Debt Arrangement Schemes and other forms of debt relief.

Who at ICAS can I contact for advice?

If you are contemplating some form of debt relief and are unsure if it would have an effect on your ICAS Membership, you should contact us for advice. Advice on the potential implications for your Membership can be sought from the Investigations Department who can be contacted on +44 (0)131 347 0271, or alternatively more general advice can be obtained from the Practice Support Department by telephone on +44 (0)131 347 0249 or by email at practicesupport@icas.com.

The Scottish Chartered Accountants’ Benevolent Association (SCABA) is a charity which supports CAs who are in need. SCABA can provide support which may be needed for a variety of reasons, such as ill health, redundancy, and debt. SCABA may be able to provide short, ongoing or temporary support grants if you are struggling financially. It can also assist you in locating a financial advisor to help you get things under control and ease the pressure.

More information on SCABA and how to apply for assistance can be found on the ICAS website using the search term ‘SCABA’. If you have any questions, please contact the Charity Administrator at: manager@scaba.org.uk or telephone +44 (0)778 043 5415

What will happen if I become insolvent?

You must inform ICAS immediately. Under ICAS Rule 3.13.2, a Member who becomes insolvent ceases to be a Member 14 days after the date of the insolvency event (e.g. the date on which a trust deed was signed, or the date of a court order of bankruptcy).

If you are authorised by ICAS to act as an insolvency practitioner, you must immediately stop acting in this capacity.

Can I apply to be retained in Membership if I become insolvent?

Yes. If you want to be retained in Membership, you must complete an application form, which is available on the ICAS website and can be found using the search term ‘retention’.

Once completed, you should send the form to complaints@icas.com Alternatively, you could send a printed copy to:

The Investigations Department
CA House
21 Haymarket Yards
Edinburgh EH12 5BH

The completed form must be returned to ICAS within 14 days of the date of the insolvency event (enclosing any relevant documents in support of your application). If you do not submit an application within this timescale, you will automatically cease to be an ICAS Member.

Who will handle my application?

Your application will be handled by a member of staff in the Investigations Department who will make enquiries on behalf of the ICAS Investigation Committee. Once sufficient enquiries have been undertaken, your application will be considered and determined by a Panel comprised of three members of the Investigation Committee.

What enquiries will be undertaken?

Enquiries will be undertaken to allow an assessment of whether retention is appropriate in the circumstances. This will normally involve contact with you and your trustee. You may be asked to attend a meeting at CA House to discuss your application in more detail.

Which factors will be taken into account when considering my application?

While each application will be considered on its individual facts and merits, the following factors are usually taken into account:

- The reasons why you became insolvent, including the nature of your debts, and the period of time for which they have been outstanding.
- Any steps you took to try to avoid insolvency.
- The level of debts and the identity of your creditors.
- The form of insolvency arrangement that you have entered into.
- Anything which demonstrates that your financial position was not caused by your actions.
- Any contributions you are making to your creditors, including the value and period of repayment and the likelihood of the arrangements being adhered to.
- Your cooperation with the trustee or other person appointed to oversee the insolvency arrangement.
- The reasons why you wish to be retained in Membership.

Please note that this list is not exhaustive. Also, it is important to understand that a single factor in relation to an insolvency might be deemed sufficiently serious as to require your application to be rejected (e.g. if you have significant debts, it may not matter if you have cooperated with your trustee and have good reasons to wish to be retained in Membership).

How relevant is the form of insolvency?

If you have been declared bankrupt / sequestrated, it is less likely that your application will be successful unless you are able to demonstrate that:

- There were circumstances outwith your control.
- The bankruptcy was not attributable to your own actions; and/or
- The circumstances were not reasonably foreseen.

If you have entered into an alternative form of insolvency arrangement – e.g. a Trust Deed, IVA or DAS – the Panel will pay close attention to the level of return to creditors (and in a DAS, the duration of the arrangements). An application is more likely to be accepted where there is less prejudice to creditors.

While the Panel will take account of the form of insolvency, it is important to understand that each application will be considered on the basis of its own facts and circumstances. It could be that a Member who has been declared bankrupt is retained in Membership as he or she was primarily responsible for the debts, while a Member in a DAS is removed from Membership due to having significant debts and a repayment plan lasting over 10 years.

How will my application be determined?

There are three main options available to the Panel:

- It may reject your application.
- It may accept your application.
- It may accept your application subject to certain conditions, for example, it may ask for the arrangement to be kept under review and/or for you to make regular reports to ICAS.

The Panel's decision will be confirmed in writing. Please note that there is no right of appeal.

Please note that there may be circumstances in which an individual is retained in Membership, but there is a referral to the Investigation Committee to consider a separate liability to disciplinary action under ICAS' Rules and Regulations. This could arise where the Panel considers that there are concerns over the Member's competence or ethical behaviour.

How long will the process take?

It is difficult to say, as the level of enquiries required will vary with each application. It will also depend on how quickly you respond to requests for information. We aim to deal with all applications without any undue delay.

If your application is received within the 14-day timescale, you will be retained in Membership pending the determination of your application. However, the Investigation Committee may seek to apply conditions and/or restrictions to your Membership while your application is being assessed.

Do I need to submit a retention application if I am a director of an insolvent company?

No. The retention process only applies to personal insolvency. However, all Members must be aware that corporate insolvencies may raise concerns over competence and conduct and is likely to need to be reported to ICAS under the reporting conditions in Regulation 3.1 of the Investigation Regulations.

Further guidance on such circumstances can be obtained from the Investigations Department.

Who should I contact to discuss the retention process?

The administration of the retention process is handled by the Investigations Department.

The three principal means of contact are as follows:

- By telephone: +44 (0)131 347 0271
- By email: complaints@icas.com
- By post: The Director of Investigations
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CA House
21 Haymarket Yards
Edinburgh
EH12 5BH



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