Insolvency
Online

Guide to Company Voluntary Arrangement

The no nonsense guide to **Company Voluntary Arrangements**

[Limited Companies and LLPs]

Introduction

Welcome to our No Nonsense Guide to Company Voluntary Arrangements.

There is so much information out there on the web that even professionals in the insolvency sector can get bogged down in the sheer volume and detail of what can be downloaded at the touch of a button.

Working on the maxim “less is more”, we have set ourselves the task of producing a No Nonsense Guide to Company Voluntary Arrangements in fewer than 10 pages.

Needless to say, this document is really only a taste of the subject matter, but we trust that it will at least throw a light on the major issues relating to this important area of business rescue and turnaround.

We would say this wouldn’t we, but at **Insolvency-Online**, we are keenly aware that no two corporate insolvency situations are the same- the people having to try and deal with the difficult issues being faced are different for a start and we never take for granted the fact that trading businesses are run by people not machines.

As a firm of highly experienced Licensed Insolvency Practitioners, we really do have the full tool kit to either fix insolvent companies where possible or at least ensure that viable businesses can be sold to live to fight another day.

A Guide can help you get your thoughts in order, but at the end of the day, most directors require specific advice to address specific issues, so please never hesitate to make contact with me or any of my colleagues at **Insolvency-Online**.

Please also note that all our formal appointment takers are licensed as Insolvency Practitioners by the Institute of Chartered Accountants in England and Wales.

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1 General information

Definition of Company Voluntary Arrangement

A CVA is a formal insolvency process which allows for a company or Limited Liability Partnership ["LLP"] to come to a legally binding agreement with its creditors over the payment of its debts. The CVA takes the form of a contract between the company and its creditors and gives the company breathing space in which to trade out of its difficulties or achieve a better and cheaper realisation of its assets than liquidation. Most CVAs rely upon profits being generated and monthly contributions of surplus funds being paid into the CVA which are then in turn distributed to the creditors in accordance with the specific terms of the CVA Proposal [a kind of Business Plan].

The running of the company's affairs are left in the hands of the directors throughout the process and the role of the Licensed Insolvency Practitioner, known as the Supervisor, is very much that of honest broker and referee, ensuring that the terms of the CVA are adhered to by all sides.

Successful CVAs do save businesses and livelihoods. They are incredibly flexible and inclusive, ensuring, by their very openness, that creditors buy into the rescue procedure.

Legal protection in Company Voluntary Arrangement

In a "stand alone CVA" [i.e. one which is not proposed by an Administrator or Liquidator], protection from creditor action, by way of an initial moratorium, can be obtained by way of filing certain papers into court. It does not involve an application to court. The moratorium, which would prevent a Secured Creditor from appointing an Administrator without leave of the court, is only open to companies that can be defined as "small". A small company is one which fulfils two of the following three conditions:

(a) turnover less than £10.2 million per annum;
(b) Balance Sheet total less than £5.1 million; and
(c) having fewer than 50 employees

In practice, it is unusual for a company to require this protection as, at an early stage, the key creditors are engaged to ensure that they are in agreement with the proposed course of action, thereby negating the need for a moratorium.

When approved, a CVA binds all Unsecured Creditors of the company, even if the creditors did not bother to vote or voted against the directors' Proposal. Once approved, creditors will not be able to take any alternative action to recover their outstanding debt.

Objectives of Company Voluntary Arrangement

Unlike the Administration process, the insolvency legislation does not set down any specific statutory objectives for a CVA. The law in this area really is seeking to make it as easy as possible for a debtor company to reach agreement with its creditors.

Accordingly, the objectives tend to fall into 3 main categories, namely:

i. rescue of the company as a going concern

ii. orderly wind-down of a company's affairs [without the need for a formal liquidation process], thereby achieving a better result for the company's creditors

iii. exit route from an Administration

2 Company Voluntary Arrangement ["CVA"]

Process of placing a company into CVA

Practically speaking, the first formal step is usually for the Directors, at a properly convened board meeting, to resolve to put forward a Proposal to creditors to place the company into CVA. Such a step will normally have been reached after the directors have taken advice from a Licensed Insolvency Practitioner ["LIP"] who will have set out the options available to the company.

The LIP, working with the directors and often with the company's other professional advisers, will devise a Business Plan incorporating the fact that the company is likely to be placed into CVA. This Business Plan will effectively form the blueprint for the Proposal that the directors will in turn put to a formal meeting of creditors that will vote to either accept or reject the turnaround strategy.

Once the Proposal has been finalised, the LIP, who will now be acting in the capacity as the Nominee, will report to the court and will send the Proposal to shareholders and creditors to consider the directors' Proposal.

The directors’ Proposal to creditors

The Proposal is an absolutely key document in persuading creditors to give the directors an opportunity to turn around the company’s fortunes. It must clearly demonstrate on-going viability and set out realistic goals.

The Proposal will need to include an integrated financial model showing monthly profit and loss and cash-flow statements for the first 12 months of trading in the CVA together with a 2-5 year profit and loss forecast for the business. These forecasts will need to demonstrate profitability, cash generation and the sufficiency of working capital. The key assumptions of the forecasts need to be believable as creditors will rightly be sceptical of a Proposal that simply shows substantial profits going forward without adequate explanation as to how such profits and cash generation can be achieved, particularly given the recent trading history of the company.

In addition, the Proposal will contain a Statement of Affairs, which is in effect, a re-drawn balance sheet, clearly showing the company’s assets and liabilities.

There is a prescribed list of information that must be included in the Proposal, but above all else, it has to be a “selling document”, clearly demonstrating to all parties, in as honest and transparent a way as possible, that allowing the company to continue trading will give creditors a much higher return than if the company was simply placed into liquidation.

Approval of CVA/meeting of creditors

The introduction of the Insolvency [England and Wales] Rules 2016 [“the Rules”] on 6 April 2017 has sought to remove the need for a physical meeting of creditors although one can be summoned if certain criteria are met. Creditors have to be given due notice of a Decision Procedure and given a Decision Date which means the date when a decision is to be made in a Decision Procedure. Effectively, the Rules aim to achieve “non-meeting” decision processes completed by correspondence which include email and electronic voting and resolutions by correspondence.

The creditors must be given at least 14 clear days’ notice of the Decision Process. The creditors will vote on whether or not to accept the Proposal and may seek to impose modifications.

The CVA must be approved by a majority of over 75% [by value] of the Unsecured Creditors voting. Accordingly, if the requisite majority is achieved, any creditor that voted against the CVA or did not bother to vote is still bound by the terms of the agreed CVA.

Attitude of Secured Creditors

A Secured Creditor, for example, one holding a floating or a fixed charge over the company's assets, is not bound by the CVA, unless it has expressly agreed to the arrangement. Accordingly, there is absolutely no point in convening a meeting of creditors, unless and until the Secured Creditor [which is usually a bank holding a debenture over the company's assets] has been brought "on side" at an early stage so that it can clearly see how its debt is going to be treated within the terms of the CVA. In our experience, banks are more than willing to support credible turnaround plans that, in effect, will enhance the value of their security during the process.

Attitude of HM Revenue & Customs ["HMRC"]

Since September 2003, HMRC has not retained the status of Preferential Creditor in respect of any part of its claim. Accordingly, like any other Unsecured Creditor, it will be keen to see that a CVA Proposal is viable and will maximise realisations for creditors. In our experience, HMRC tends to be supportive of the CVA process. Nevertheless, moves are afoot to grant HMRC a preferential status in respect of certain taxes and it is envisaged that this amendment to the laws will occur in 2020.

Role of directors post commencement of CVA

On commencement of the CVA, the Nominee usually becomes the Supervisor. In almost all cases, the management of the company is exercised by the directors, without let or hindrance.

The directors remain the responsible party and naturally they will need to ensure that their own personal position is not at risk from claims for restitution at a later date should the CVA fail and additional creditor debt incurred.

Effect of a CVA

When approved, a CVA binds all Unsecured Creditors of the company, even if the creditors did not bother to vote at the meeting of creditors or voted against the directors' Proposal. Creditors will not be able to take any alternative action to recover their outstanding debt.

In CVAs where the company is to continue trading to generate profits for the benefit of the bound creditors, the directors will be left to get on with the running of the business, whilst the Supervisor will agree the claims of creditors and pay out dividends on a periodical basis [usually every 6 months]. In addition, the Supervisor is legally obliged to report to creditors on an annual basis.

3 Modifying and varying a CVA

Length of a CVA

There is no minimum or maximum period of time laid down in the legislation.

Where the aim is to rescue the company as a going concern, the procedure will last as long as it takes to repay the creditors in full within a reasonable period of time [say 1-3 years]. However, where it is not envisaged that creditors will be paid in full, but the aim remains to restore the company to financial health, normally the creditors will require a period of 5 years, with monthly or quarterly payments of surplus monies being paid into the CVA for their benefit.

Can the CVA be modified?

As previously mentioned, the creditors can seek to modify the directors' Proposal at the outset, but as one can imagine, with arrangements that may last up to 5 years, circumstances can change and alterations to the original scheme could be required.

After approval, the CVA can only be varied if the Proposal itself contains relevant provisions allowing for modifications. Usually, the Supervisor will have been granted limited powers to vary the terms of the CVA, but in the case of significant modifications, a well-drawn Proposal will contain provisions outlining the circumstances in which the Supervisor can approach creditors with a view to adjusting the terms of the CVA to fit changed circumstances. Such provisions will usually require a report to creditors and a Decision Procedure and Decision Date on which the proposed alterations will be voted upon.

It is common practice to require modifications to be approved by a majority of over 75% [by value] of the Unsecured Creditors voting on such modifications.

4 A brief word on the alternatives

In the area of turnaround and reconstruction, the following procedures could be considered:

- Administrative Receivership – can only be contemplated if there is a holder of a pre-15 September 2003 fixed and floating charge (usually a bank or other secured creditor). The Chargeholder may appoint an Administrative Receiver (who must be a licensed Insolvency Practitioner) to recover the money it is owed. The Administrative Receiver takes over the management of the business prior to selling the business and its assets.

Administration (ADMIN)-appointment of an Administrator to manage the company's affairs - please refer to our No-Nonsense Guide on Administration for a complete review of the process.

5 FAQs

Please refer to the Help & Advice section of our web-site to review frequently asked questions regarding the CVA process.

Contact Us

We accept that making that initial contact with a professional can be very difficult for directors who have been trying their best, for probably several months, to resolve a company's distressed financial position.

It is our job to give you the right advice and ensure that, as far as possible, the directors' decision making cannot be challenged at a later date.

We really are a good team to deal with, so please do not hesitate to contact us:

Tel: 020 8549 9915

Email: enquiries@insolvency-online.co.uk

Disclaimer:

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