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Company voluntary arrangements (CVA)

Overview

A **CVA** is a powerful tool that can be useful for creating a breathing space from creditors' actions whilst an orderly reconstruction or disposal of assets takes place or simply to allow the company to survive by achieving profitability and making contributions to repay creditors over a period of time.

A CVA has to involve either a composition (ie creditors receiving less than they are owed) or a scheme of arrangement (ie a rescheduling of the company's liabilities). The terms are binding on all creditors if the requisite majorities approve the terms at a meeting. In either case, creditors would need to be convinced that it offered a better outcome than a winding up to be prepared to approve it.

CVAs work well in many situations because they are flexible and can be tailored to the particular circumstances. Where they tend to fail, it is because the directors leave it too late, the company's business is inherently not viable, because management deficiencies are not addressed or because the company cannot find the necessary funding for trading, including taking into account more restrictive terms from concerned suppliers.

How does the procedure work?

CVAs are normally initiated by the directors acting as a board and can also be proposed by an administrator as a means of concluding his appointment. Rarely, a liquidator can also propose a CVA.

The directors (or an administrator) draft proposals to creditors as to how their debts will be discharged, normally by payment of less than 100% or through a delay in payment over a period of some years.

Unless there is an administrator, the directors arrange for an independent insolvency practitioner (the nominee) to be appointed. His function is to certify that the proposal satisfies the disclosure requirements, assess whether the financial information is correctly stated and that the CVA has a reasonable prospect of being approved and implemented. If the nominee then believes it is appropriate to proceed with the proposal, he reports this to the court and calls meetings of shareholders and creditors at 14 days' notice to consider the terms of the CVA.

Shareholders and creditors can put forward modifications to the proposals. Creditors will approve the proposals (with any modifications) if at least 75% by value vote in favour. The shareholders' resolution requires a simple majority.

The proposals are implemented under the supervision of an insolvency practitioner (the supervisor) who normally has no executive powers but is required to declare whether the directors are in practice implementing the proposals.

A creditor entitled to appoint a receiver is not prevented from doing so at any time. Unless the preferential creditors agree otherwise, the CVA must provide for them to be paid in full before anything is paid to other unsecured creditors.

This document explains the relevant position only in general terms and omits details less commonly experienced for the sake of brevity. It is not intended to be used as formal advice about your actual situation, for which you should consult us specifically and not rely upon this document. Portland would be pleased to advise you formally and you should contact one of the directors listed on the website at www.portfbs.co.uk to arrange this or telephone our main switchboard on 01489 550440. Portland regrets it is unable to accept any responsibility to anybody who seeks to rely on this document.

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The speed of the process depends on the time taken to prepare the proposals (say three days) and the 14-day meeting notice period. The company has no protection from its creditors in the meantime, unless it qualifies for the moratorium procedure when it has wide court protection from any legal or other creditor process including distraint initially for a 28 day period.

The moratorium procedure became available from 1 January 2003. It currently only applies to small companies, ie those that satisfy two of the following conditions: (i) net assets below £1.4m, (ii) turnover below £2.8m and (iii) less than 50 employees. A qualifying company secures the 28 day moratorium simply by filing the proposal and documents at court but in the period before the creditors' meeting, there are obligations placed on the directors and particularly the nominee who has to be satisfied continually that the CVA has a reasonable prospect of being approved and implemented. As a result, it is probably best only to use the moratorium if it is clear that the protection is necessary. Even then, it is likely that the revised administration procedure implemented by the Enterprise Act 2002 will be more expedient.

A supervisor has no powers to manage the company's affairs, except in the unlikely event that the proposals provide for them. The directors retain the powers they previously had unless limited by the proposals.

Although the approval of a CVA prevents creditors taking action in respect of their debts, in practice the company may find suppliers prepared to allow less credit in the future. It will probably still need additional funds to trade within the CVA period.

The supervisor has no powers or duty to investigate the events leading up to his appointment and cannot bring a wrongful trading action. He does not report to the DTI. The directors are required to make a formal declaration to the effect that there are no events that could be challenged by a liquidator if one were appointed.

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Advantages	Disadvantages
▪ Cost effective and flexible. ▪ Directors remain in charge; the supervisor only ensures they do what they have committed to do. This normally allows for the lowest cost of all the procedures apart from striking off. ▪ The procedure is intended to ensure a breathing space from creditor action, which might in itself be sufficient to save the company within the current ownership if future profits can be generated and/or a refinancing takes place. ▪ Even if a disposal of the company and/or business is unavoidable, then the breathing space should ensure a proper marketing process and the best prospects for obtaining the sales price. ▪ The Crown respects the spirit of the CVA and is prepared to agree to deferred terms over an extended period, normally five years, whereas outside a CVA it normally restricts any such period to around six months	▪ Does not bind in hostile chargeholders or finance companies, which can still exercise their security (unless the CVA is done in conjunction with administration). ▪ Would not protect the company against eviction by the landlord if a lease allows forfeiture upon insolvency. ▪ The process can last for some time if required to repay creditors and this can damage the goodwill, although unlikely in retail situations. ▪ The company still needs to move forward to the benefit of creditors. The directors do not have protection from future criticism for wrongful trading. ▪ It can be difficult to persuade creditors to accept proposals where the proposals are not commercially realistic compared to other options available. ▪ The company is sometimes exposed to creditor action in the period before the meeting approves the proposals, depending on the action that creditors have already taken (unless the CVA is done in conjunction with administration or a moratorium).

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