

CVA Creditor Document



Company Voluntary Arrangement (CVA)

What is a CVA?

A company voluntary arrangement (CVA) is a procedure under the Insolvency Act 1986 whereby a company concludes a binding agreement with its creditors to compromise its debts or rearrange its affairs. CVAs are often used to restructure leases of underperforming properties, most notably in the retail and leisure sectors, and come into force when a company's creditors approve a proposal in respect of that company.

Creditors – Secured and Unsecured

When a company enters insolvency, a defined hierarchy exists with secured creditors at the top. A secured creditor is generally a lender who holds a charge over a business or its assets. When a business becomes insolvent, sale of the specific asset over which security is held provides repayment for this category of creditor. Meanwhile, unsecured creditors are ranked after secured creditors and their money is recouped by selling other assets during the insolvency process. Landlords will usually be unsecured creditors of a company, and this means that a CVA allows for a company in financial distress to enter into a legally binding arrangement to compromise those unsecured liabilities.

The Nominee

A company will appoint an insolvency practitioner as 'nominee' in respect of the CVA proposal. The nominee's role is to assess whether the CVA contains full and accurate disclosure of the company's affairs, has a reasonable prospect of being implemented if approved and strikes a fair balance between the interests of the company and all its creditors.

The nominee files a copy of the CVA proposal in Court together with a report setting out the reasons why he or she recommends that creditors should consider and vote on the proposal. The proposal is then circulated to creditors.

There are a variety of voting methods available for CVAs under the Insolvency Rules 2016. Previously, the nominee would automatically convene a physical meeting of creditors but following a change to the Insolvency Rules in April 2017, a nominee can propose voting by correspondence or virtual meeting. However, creditors which meet certain criteria may request a physical meeting, which is, in practice, what usually happens.

Typically, a CVA proposal which compromises future rental liabilities will include a detailed formula for calculating the value of the landlord's claim. A breakdown of the component parts of that claim for CVA voting purposes should be attached together with a worked example.

Voting

To be approved, 75% by value of creditors voting must agree the terms of the CVA proposal. An additional vote is also undertaken whereby at least 50% in value of unconnected creditors (those not connected to the Company) must vote in favour for the CVA to be approved. Landlord creditors can cast their vote in advance using a proxy form, or vote on the day in person or through a nominated proxy. All creditors are bound by the overall voting result, not by how their particular vote is cast.

Further rights

An approved CVA can be challenged within 28 days of the date the result of the vote is filed in Court, normally the day of or after the decision. Grounds for a challenge can either be an alleged irregularity in the CVA procedure or unfair prejudice. For unfair prejudice, a creditor would need to demonstrate that their treatment is either worse than that of other creditors under the CVA, or is likely to be better under an alternative formal insolvency procedure such as administration or liquidation.

If the CVA is approved, it takes effect immediately and all creditors are bound by it irrespective of how they voted. The directors retain control of running the business and the nominee is appointed supervisor to ensure that the company meets its obligations under the CVA.

What to look for in a CVA

CVAs can be extremely lengthy documents and often prove daunting for even the most experienced landlords. The BPF has therefore put together the 'Top 10' key points that creditors should identify and consider before voting.

1. The company's financial position and an explanation as to how it arrived at that position should be clearly articulated in the CVA proposal, particularly the statement of affairs and whether the company is insolvent.
2. What is likely to happen to the company should creditors reject the proposal and why the CVA is a better option for landlords than administration or liquidation, including any illustrations provided of the outcomes of those options.
3. Any explanation of why the business will be sustainable after the CVA, including the quantum, certainty and source of new funding.
4. The justification of any different treatment between different creditors and the extent to which liabilities to non-landlord creditors are being compromised either under the CVA or otherwise.
5. Which premises will be closed, when will that happen and who will pay business rates after the closure.
6. The amount and duration of any rent reductions, whether rent reductions include payments already made by the company and whether the rent will be reviewed following expiry of the rent reduction period.
7. The treatment of dilapidations in relation to leases where either the tenant or the landlord exercises a break option granted under the CVA; whether dilapidations are compromised and, if so, whether this includes disrepair accruing prior or during the CVA or the remainder of the lease.
8. Whether the landlords of leases subjected to a rent reduction are given a break option, the timing of any landlord break options and the ease of operating them, including the amount of notice required and the period during which they can be exercised.
9. Whether there is a compromised lease fund to compensate compromised landlords of closed premises if the company becomes profitable in the future and, if so, the mechanism for that.
10. What will happen if the company defaults on its CVA obligations, the circumstances in which the CVA would be terminated and the impact of termination on the rent reductions and other compromises sought from landlords under the CVA (including whether rent reductions survive termination).

On receipt of the draft CVA proposals, creditors will have time to consider and understand what the CVA potentially means for their business. Creditors should take the opportunity between receiving the draft proposals and the creditors meeting to ask the nominee some key questions relating to the CVA.

The attached "Landlord Creditor's Request for Information" sets out the information that creditors should expect to receive prior to the CVA creditors meeting. This is intended to be a standard document that landlords can provide to nominees on receipt of a CVA proposal if they do not feel they have been provided with the requisite information.

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Company Voluntary Arrangements: Landlord Creditor's Request for Information



Please provide the following information in relation to the company and the proposed CVA:

1. Financial information

- 1.1 Most recent set of audited accounts
- 1.2 Most recent set of management accounts
- 1.3 The shortfall (if any) by which the assets/realisations of the company fail to meet creditor claims, including a breakdown
- 1.4 Total central overheads, including how this amount is allocated across the portfolio
- 1.5 What the company's debt has been used for in the past 3 years
- 1.6 What dividends have been paid in the last 3 years
- 1.7 By reference to cash flow analysis, for how long the company could continue to trade without implementing the CVA proposal
- 1.8 The position of the company's lenders if the CVA is not implemented

2. Property specific information

- 2.1 Trading figures including EBITDA on a store by store basis
- 2.2 Details of each stores ERVs, including details of who prepared them and the key underlying assumptions used

3. CVA proposals

- 3.1 The rationale behind the allocation of properties included in the CVA into different categories, including:
 - (a) Why different properties are to continue to trade or close, or trade at a reduced rent
 - (b) The amounts of any rental discounts applied to different properties
 - (c) Any compromises to rent reviews
 - (d) Any compromise to dilapidations
 - (e) Any other compromises, including guarantees
 - (f) Rights to determine given to the company and the landlord and any conditions applied (including the period during which the right can be exercised)
 - (g) Any other key terms
- 3.2 Rates mitigation for the landlords of closed stores
- 3.3 Any upside opportunity for compromised landlords to benefit from a successful turnaround of the business including:
 - (a) If there is a fund for compromised landlords, the calculation of the amount of that fund
 - (b) If there is a return to compromised landlords by reference to a percentage of future profits, how the percentage figure and profits threshold (if any) were arrived at
 - (c) If it is a fixed fund rather than a percentage of profits then why
- 3.4 Additional compensation for compromised landlords if the business is sold after the CVA is approved
- 3.5 The ability, if any, for the landlord to terminate the CVA in the event of default (e.g. failure to pay the CVA rent)
- 3.6 Conditions for termination of the CVA, including the treatment of the compromises under the CVA in the event of termination and/or the subsequent appointment of an administrator or liquidator

4. Viability
 - 4.1 What experience the directors have in turning around a distressed business
 - 4.2 Plans for new openings, capital expenditure and expansion if the CVA is approved
 - 4.3 The source of funding to make the CVA financially viable (and proof of funds)
 - 4.4 The company's EBITDA forecasts if the CVA is implemented

5. Claims and voting information
 - 5.1 The total creditor positions
 - 5.2 The total quantum of any secured debt
 - 5.3 A narrative of recent correspondence / discussions with the secured debt provider(s), to include any indication of whether they would continue to support the business in CVA
 - 5.4 The total of any unsecured debt to include a breakdown of:
 - (a) landlords claims by category
 - (b) pension creditors
 - (c) HMRC/rates creditors
 - (d) connected creditors
 - (e) trade creditors
 - (f) if relevant, critical and non-critical creditors
 - (g) secured creditors (to the extent that their debt is unsecured)
 - (h) other creditors
 - 5.5 Details of any correspondence/ discussions that have occurred with the creditors above
 - 5.6 The justification for any differential treatment between creditors
 - 5.7 The basis of the methodology for valuing landlords' claims, including:
 - (a) the calculation of any assumed amounts including void and rent free periods, dilapidations, reletting costs and ERVs
 - (b) the rationale for any deductions being made to any class of claims, including discounts for NPV and other discounts to reflect rule 15.31(3) of the Insolvency (England & Wales) Rules 2016

6. Alternatives to the CVA
 - 6.1 An explanation of why the CVA is a better option for landlords than administration (particularly in terms of the number of stores likely to be closed in an administration)
 - 6.2 Whether it would have been possible to propose a CVA on different (less onerous) terms
 - 6.3 What attempts have been made to refinance the company's debts
 - 6.4 What attempts have been made to market the company for sale and the outcome
 - 6.5 Other relevant information to include:
 - (a) Any transactions with associated stakeholders
 - (b) Relevant potentially antecedent transactions
 - 6.6 Any other relevant information

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