

# **Company Voluntary Arrangements (CVA)**

## **What Is A Company Voluntary Arrangement?**

A legally binding agreement between a company and all or certain of its preferential and unsecured creditors whereby the company makes a formal offer towards repayment of its liabilities. A totally flexible arrangement, the CVA does not have to provide for full repayment of all liabilities only more than could otherwise be expected were the company to proceed into liquidation.

## **Who Can Benefit From A Company Voluntary Arrangement?**

Below are examples of those companies that may expect to benefit from the CVA procedure. At Central Corporate Recovery we understand that no two companies are identical, therefore if your company doesn't fit into these categories, do not hesitate to engage us to undertake our free business review.

Young companies who have experienced trading difficulties since start up, who are forecasting increased future profitability but remain under severe creditor pressure.

Companies who have experienced one off problems such as bad debts that have seriously affected the financial position of an otherwise historically profitable business.

Companies that need to restructure including introducing redundancy measures to return to profitability but do not have the cash required to undertake the restructuring process.

Companies that wish to wind down trading in an orderly fashion thus enhancing the return to creditors as a result of increased asset realisations thus avoiding the stigma and costs associated with liquidation.

## **The Procedure in Brief**

Proposals for a CVA are usually made by directors of a company unless it is subject to an Administration Order or a Liquidator has been appointed in which case the duly appointed Administrator or Liquidator may seek the agreement of a CVA.

In practice, CVA proposals are drafted by the directors with the assistance of a Licensed Insolvency Practitioner known as the Nominee.

The proposals are then circulated to court, creditors (including prospective and contingent creditors) and the shareholders, calling meetings of creditors and shareholders on a minimum clear 14-day notice period.

More often than not proposals, once approved, provide for a stay of execution from creditors to enable the company to continue trading, a percentage of profits generated post

CVA being paid to the Supervisor of the CVA for a period designated within the proposals for the benefit of the creditors included in the CVA.

A CVA is a totally flexible procedure, can simply be utilised to avoid the higher costs of liquidation and can on occasions be combined with the introduction of one of the refinancing products contained within this web site.

The CVA is subject to agreement of 75% in value of those creditors entitled to and who vote either in person or by proxy at the meeting.

Requires the approval of the majority in value of shareholders.

Directors remain in control of the company after the approval of the CVA.

More often than not upon approval of the CVA the Nominee becomes Supervisor whose responsibility is to ensure compliance with the proposals and distribution of the funds to creditors.

## **Key Components for a Successful CVA**

Honesty and transparency as to the affairs of the company within the proposals.

It must offer a higher return to creditors than could otherwise be expected were the company to proceed into insolvent liquidation.

If the CVA is based on continued trading, a viable business that can return to profitability and sufficient working capital.

Be realistic, unless there are extraordinary grounds for the failure of the business such as experiencing bad debts, creditors will rightly be sceptical of proposals including projections which show significant profits being generated without adequate explanation.

Determination and hard work of all parties.

## **Advantages of CVA**

### *The Company*

Companies may now make an application to court for a moratorium preventing creditors from taking enforcement action against it whilst proposals for a CVA are put to creditors. The benefit of the moratorium will be to provide additional breathing space between filing in court of the proposals and the date of the creditors' meeting, a period which, prior to the introduction of the moratorium often resulted in creditors instigating enforcement action, to secure their position outside of a CVA.

The scope of the moratorium is similar to an administration moratorium (see administration section)

Provides breathing space once the CVA is in place, to reorganise and restructure the company without the threat of creditor action.

Costs are significantly less than those that would be expected to incur in an Administration.

No requirement to advertise either on letterhead or in newspapers that the company is subject to a CVA. Please note however, if wishing to benefit from the moratorium when it becomes law, you will be required to disclose the fact that the company is subject to the moratorium on all documents circulated by it during the normal course of trading.

### *Directors*

The directors remain in control of the day-to-day affairs of the business.

The Supervisor is not required to undertake an investigation into the affairs of the company and unlike a liquidation is not required to submit a report to the Disqualification Unit of the Department of Trade and Industry.

A supervisor cannot bring fraudulent or wrongful trading actions against directors, nor can a Supervisor bring an action pursuant to S238, 239 and 212, transactions at an undervalue, preferences or misfeasance. Please refer to Director's responsibilities page within this web site.

Provides directors with continued income.

### *Creditors*

Provides an opportunity to recover more of the money lost than could otherwise be expected in a liquidation.

If continued trading of the company is envisaged enables the creditor at its discretion to continue a trading relationship with the company benefiting from future sales.

## **Disadvantages of CVA**

### *The Company*

Many CVA's fail due to the high level of expectations and strict conditions imposed by creditors.

Difficulties are often encountered by the company in obtaining credit from suppliers post CVA, resulting in it experiencing cash flow difficulties. This can lead to early failure of the CVA.

### *Directors*

Creditors often seek to restrict the level of director's remuneration and benefits often resulting in them becoming disillusioned with the whole procedure resulting in early failure of the CVA.

### *Creditors*

No opportunity for full investigation into the affairs of the company.

Supervisor unable to pursue directors for action in relation to fraudulent or wrongful trading, transactions at undervalue, preferences or misfeasance.