



A creditor's guide to Company voluntary arrangement (‘CVA’)

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A licensed insolvency practitioner ('IP') has given you this because you, or your business, may be owed money by a company that is in a CVA.

This guide aims to help you understand your rights as a creditor and to describe how best these rights can be exercised. It is intended to relate only to England and Wales. It is not an exhaustive statement of the relevant law or a substitute for specific professional or legal advice.

We have made every effort to ensure the guide is accurate, but R3 cannot accept responsibility for the consequences of any action you take in reliance on its contents. If, having read the guide, you remain in any doubt about your rights, you should consult a licensed insolvency practitioner or solicitor.

We hope that you will read this guide carefully and consider whether taking an active role as a creditor in this case could benefit you or your business.

In what circumstances does a company find itself in a CVA?

When a company is facing financial difficulties, it can use this process which allows the company to come to a binding agreement with its creditors over the payment of its debts, to pay all or part of the amount owing, over a fixed period of time, usually so that the company can survive and continue trading. CVAs are overseen by a licensed IP but the company's directors stay in charge of the company.

How can a company be placed into a CVA?

The company's directors, an administrator (where the company is in administration) or a liquidator (where the company is in liquidation) may make a proposal to the company and its creditors for a CVA.

CVAs are most often proposed by a company's directors. To propose a CVA, the directors must approach a licensed IP to act as a 'nominee'. The nominee's role is to give an opinion as to whether the CVA proposal has 'a reasonable prospect of being approved and implemented'. If the nominee agrees that the CVA would meet this test, a report on this opinion is filed at court and the proposal is put to the creditors of the company. The person acting as the nominee will frequently assist with the drafting of the CVA proposal but in the role of an advisor, separate to their role as nominee.

The nominee will send creditors a copy of the CVA proposal and accompanying documents to enable creditors to vote whether to approve the CVA proposal. The proposal is considered and voted on with not less than 14 days' clear notice of the decision date, by way of one of the following permitted decision procedures:

- Virtual meeting (although creditors have the right to request a physical meeting, if certain conditions are met).
- Correspondence.
- Electronic voting.

For the proposal to be approved, more than 75% by value of creditors who vote in the decision procedure need to vote for the approval of the proposal. If this 75% threshold is met, and not more than 50% of the total value of the 'unconnected' creditors vote against the approval of the proposal, the CVA becomes binding upon the company and all its unsecured creditors (even those who voted against the proposal). On approval of the CVA, the nominee is re-designated as the supervisor of the CVA and is empowered to implement its terms. The supervisor then reports the result of the CVA decision to court and Companies House. Secured creditors are only bound if they agree to be bound.

What is the purpose of a CVA?

The primary purpose of a CVA is to allow a company to negotiate with its creditors, mainly those without security (i.e. unsecured creditors) and avoid potentially terminal insolvency proceedings by coming to a binding agreement. Typically, the aim will be to generate cashflow whilst maintaining the business as going concern. A CVA is a rescue tool for a company that is burdened by debt where it is anticipated that the directors will be able to trade out of their current financial problems, importantly having taken steps to address the problems that caused the financial difficulties in the first place.

The CVA is an extremely flexible option for dealing with financial problems. The form a CVA takes will depend on the terms of the proposal agreed by the creditors. For example, a CVA may involve delayed or reduced payments of debt over a set period of time (usually between two-five years), capital restructuring, or an orderly disposal of assets.

In cases where a company has a number of sites, for example a retail chain with multiple shops, a CVA may be used to terminate lease agreements on poorly performing outlets, and/or to reduce rents on remaining sites in order to ensure the ongoing survival of the company.

What information should a CVA proposal contain?

A proposal should contain the following information:

- a) sufficient information for creditors to understand the company's financial and trading history,
- b) the roles of the directors and key employees and their future involvement in the company including the background and financial history of the directors where relevant,
- c) any additional specialist assistance which may be required by the company which will not be provided by any supervisor appointed, and the reason why such assistance may be necessary,
- d) if the company has become, or is about to become, insolvent, why it has become insolvent,
- e) any other attempts that have been made to solve the company's financial difficulties, and the alternative options considered, both prior to and within formal insolvency by the company,
- f) a comparison of the estimated outcomes of the CVA and the outcome if the CVA is not approved,

g) where relevant, sufficient information to support any profit and cash projections, subject to any commercial sensitivity,

h) an explanation of the role and powers of the supervisor,

i) details of any discussions that have taken place with key creditors,

j) where it is proposed that certain creditors are to be treated differently, an explanation as to which creditors are affected, how and why,

k) an explanation of how debts are to be valued for voting purposes, in particular where the creditors include long term or contingent liabilities,

l) the estimated costs of the CVA including the proposed remuneration of the nominee and the supervisor and the bases for those estimates,

m) the costs of any additional specialist assistance which will not be provided by any supervisor appointed,

n) the identity of the source of any referral of the company, the relationship or connection of the referrer to the company and, where any payment has been made or is proposed to the referrer, the amount and reason for that payment,

o) details of the amounts and source of any payments made, or proposed to be made, to the nominee and the supervisor or their firms in connection, or otherwise, with the proposed CVA, directly or indirectly and the reason(s) for the payment(s),

p) an explanation of how debts which it is proposed are compromised will be treated should the CVA fail,

q) the circumstances in which the CVA may fail, and

r) what will happen to the company and any remaining assets subject to the CVA should the CVA fail.

What are the powers and duties of a supervisor?

The supervisor will check whether the terms of the CVA are being met by the company. The proposal will set out the functions that the supervisor will carry out. Typically, a supervisor will be responsible for:

- monitoring the performance of the CVA,
- identifying any departures from the terms of the CVA and taking prompt action in accordance with the terms,
- collecting contributions from the company,
- agreeing creditors' claims,
- paying dividends to creditors.

Does the supervisor pay creditors the money owed to them?

Debts and liabilities due to creditors prior to the approval of the CVA are effectively 'frozen' and once the proposal is approved a creditor is prevented from taking steps against the company for the monies owing to them. The supervisor will collect funds from the company and pay dividends to creditors in accordance with the terms set out in the approved CVA proposal.

How does a CVA come to an end?

A CVA comes to an end after either:

- The terms of the CVA have been successfully complied with, i.e. all liabilities have been dealt with in accordance with the terms of the proposal, or if the supervisor is satisfied that the CVA has substantially fulfilled its aims. A notice of implementation will be issued by the supervisor; or
- The company does not satisfy the terms of the CVA, for example, if it is unable to keep up with monthly payments. In these circumstances, the CVA should have provisions for how to deal with its termination. A notice of termination will be issued by the supervisor. A CVA which terminates may lead to the company entering a subsequent insolvency procedure such as liquidation.

In both scenarios, the final report and notice of implementation or termination has to be delivered to the members of the company, creditors bound by the CVA and the registrar of companies and filed in court.

Is the supervisor bound by contracts entered into by the company prior to appointment?

No, the supervisor is not. The company may remain bound by such a contract where it is not terminated as a result of or pursuant to the CVA. However, once bound by a CVA, a creditor is prevented from taking steps against the company for the monies owing to them under that contract as at the date the CVA is approved.

Is the supervisor liable for sums due under contracts entered into by the company subsequent to appointment?

No, the contract is with the company. The supervisor does not manage the business or take on any personal liability. Where that contract is entered into by the company after the approval of the CVA proposal, the counterparty to the contract will not be bound by the CVA.

As an unsecured creditor, what information am I entitled to?

During the CVA process, you will receive information from the supervisor and be asked to provide information to the supervisor as follows:

- A copy of the proposal and accompanying paperwork to enable you to vote whether to approve the proposal (with or without changes/modifications you may propose before you can agree to the approval of it). The proposal will contain details of the nominee's and supervisor's proposed remuneration and expenses.
- A copy of the nominee's comments on the proposal and recommendation to creditors.
- Notification of whether the proposal was approved and any modifications made to it.
- A request for details of your claim and notification regarding dividend payments.
- Annual reports.
- Final report.

This information may be uploaded to a secure website. Access details will be provided by the nominee or supervisor.

Can creditors form a creditors' committee?

No.

Can a creditor initiate or continue legal actions against a company in a CVA?

Creditors may apply to the court (within 28 days of the report on the outcome of the members' and creditors' meetings/decision procedure being filed at court) if the CVA's terms are unfairly prejudicial or if there was some material irregularity in the procedure leading up to its approval.

After this time has expired, broadly speaking, an unsecured creditor cannot initiate or continue legal actions against the company in a CVA where the debt or liability arose prior to the date the proposals were approved.

The CVA binds creditors who voted against its implementation and will even bind creditors who are unaware of the CVA. A creditor may however bring a claim against the company in respect of a debt incurred post appointment.

How is the nominee and supervisor's fee determined?

R3 has produced a separate guide explaining an IP's remuneration, which is available from the IP or the R3 website.

What should I do if I am dissatisfied with the supervisor's handling of the case?

You should first contact the supervisor to try to resolve the problem. If you are still not satisfied, you may be able to make an application to court.

If you think that the supervisor is guilty of professional misconduct, you should contact his/her regulatory body (see the box below).

R3 is the UK's leading trade association for licensed insolvency practitioners and business recovery professionals. R3 does not license or discipline its members; this is the responsibility of the practitioner's regulatory body. The regulatory bodies are:

The Institute of Chartered Accountants in England and Wales

Tel: 01908 248100 www.icaew.co.uk

The Insolvency Practitioners Association

Tel: 0330 122 5237 www.ipa.uk.com

The Institute of Chartered Accountants of Scotland

Tel: 0131 347 0100 www.icas.org.uk

Chartered Accountants Regulatory Board

Tel: 028 9043 5858 www.carb.ie/en/CARB/

Disclaimer

Information in this guide is intended to provide an overview only and relates to Company Voluntary Arrangements in England and Wales. It is not a replacement for seeking advice specific to your circumstances.