

Company Voluntary Arrangement (CVA)

A Company Voluntary Arrangement (CVA) is a procedure under the Insolvency Act 1986 whereby a company concludes a binding compromise with its creditors in order to enable it to continue trading.

The first stage is for the company to prepare proposals ('the Proposal') which it submits to a nominee ('the Nominee') – usually an Insolvency Practitioner ('IP') – for scrutiny.

Next, if satisfied that the Proposal merits consideration by the creditors, the Nominee prepares a report containing comments on the Proposal, which is then filed in Court. The Nominee's report and the Proposal are subsequently distributed to all known creditors and shareholders.

To be approved, 75% by value of creditors voting must agree the terms of the CVA Proposals. An additional safeguard prevents a Proposal being approved if more than a half in value of unconnected creditors vote against it.

CVAs are often used to compromise property leases of underperforming sites – most notably in the retail and leisure sectors.

On behalf of its members, the BPF has on a number of occasions entered into discussions with a Nominee in order to put forward the landlords' position and ensure its members' interests in the CVA are protected so far as is possible.

Over time an informal protocol has developed whereby a Nominee of a CVA consults with the BPF in advance of the Proposal being distributed in order to identify particular issues that may need to be addressed to maximise the likelihood of the CVA being approved.

This protocol appears to work well and the BPF is keen to see it adopted in all cases where landlords make up a significant element of the creditor body in a particular case.



CVA Protocol

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Prior to the announcement of a CVA, a late stage draft of the Proposal is shared with a member of the BPF's Insolvency Committee. The BPF recognises that confidentiality is essential in such matters and, where appropriate will be prepared to enter into a non-disclosure agreement ("NDA").

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The Proposal should be shared with the BPF in sufficient time to ensure there is the opportunity for the BPF to review and suggest revisions where appropriate. It is anticipated three business days should be sufficient.

3

The key issues for landlords, and which should be addressed in the Proposal, are as follows:

- The basis of valuation proposed for the landlords' claims (and corresponding voting rights)
- The basis of stratification where different options being offered, e.g. different properties continuing to trade or closing and/or different rental discounts being applied
- Terms which enable the landlord or tenant to terminate the lease outside of any existing lease provisions, and any conditions attached
- Compensation offered
- Relevant antecedent transactions
- "Clawback" - any opportunity for compromised landlords to benefit from a successful turnaround of the business"
- Rent reviews
- Rent repayments
- The effect on any guarantors
- Liability for rates
- Payments in lieu of dilapidations, and basis for calculation
- The ability, if any, for the landlord to terminate the CVA in the event of default
- If there have been previous failures, an explanation of the CVA stands a better chance of success
- As required by the legislation, 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)
- If relevant, the source of funding to make the CVA financially viable
- An explanation of why the business will be sustainable post-CVA
- The justification for any differential treatment of critical and non-critical trade and other creditors
- Conditions for termination of the CVA, to include the treatment of the CVA and landlord compromises in the event of a subsequent Administrator or Liquidator appointment

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CVA Proposals are often lengthy, detailed technical documents. In cases where there are a significant number of landlords, consideration should be given to providing a separate summary which pulls the key issues together in one place.

IPs wishing to take advantage of this protocol should contact the BPF at first instance for guidance or to share Proposals.

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