

COMPANY VOLUNTARY ARRANGEMENT II

CVA Content

The CVA proposal should be formulated in much the same way as an IVA proposal.

A CVA proposal may involve directors and/or third parties injecting funds into the company. It is essential that directors make full and accurate disclosure in their statement of affairs, in the proposal and at the creditors meeting. The directors must establish that trading will be viable. They will face the consequences of wrongful trading, if they do not do so.

There must be grounds to believe that the company can return to profitable trading. There must be evidence that the company can rely on the continued support of creditors, suppliers, banks etc.

The directors should prepare cash flow statements, a business plan and projections. There should be independent confirmation that the bank will support the proposal. Other sources of funds may be available. The degree of support from suppliers, management, staff etc. is critical. Particulars of directors' guarantees should be stated. A false proposal or statement of affairs is a criminal offence.

The conduct of the business will be of importance to the creditors. The IP supervisor will supervise but will not manage the business. There should be duties on the company's management to provide the supervisor with regular information and accounts. The supervisor should have general powers to implement the terms of the CVA.

The proposal must set out how much the unsecured creditors will get if the company went into liquidation. This is so the creditors can meaningfully compare the promises in return for what they might get in a CVA.

Director's Proposal for CVA

Where the company is not in administration or liquidation, it is a matter for the directors to propose a CVA. The directors prepare the proposal and send it to the IP who is to act as nominee. A statement of affairs must also be furnished. The IP may then decide to accept or reject the proposal. The nominee must file the following in Court within 28 days:-

- ❖ copy of the proposal;
- ❖ summary of statement of affairs;
- ❖ report stating whether the CVA has a reasonable prospect of being approved;
- ❖ whether or not the IP considers a meeting of the creditors should be called and
- ❖ if the meeting is to be summonsed, the proposed date and place of the meeting;
and
- ❖ comments on the proposal.

Within 28 days of receiving the proposal, the nominee is required to file his comments in Court. The nominee should comment on whether certain conditions are met. This includes:

- ❖ comment on directors' attitude and co-operation;
- ❖ basis of asset valuations;
- ❖ comments on the directors' estimate of liabilities;
- ❖ information on major unsecured creditors;
- ❖ result of discussion with secured creditors;
- ❖ estimates of the results for creditors if the CVA is approved;
- ❖ why the CVA is more beneficial than alternative insolvency proceedings and
- ❖ the likely effect of the proposal being rejected.

There is no hearing at this stage. Until the date of delivery of the report to the Court, the directors may amend their proposals with the written consent of the IP.

Meetings

When calling a meeting of creditors and shareholders, notice must be sent to all creditors mentioned in the statement of affairs or any other creditors of which the nominee is aware. The notice must include the copy of the proposal, comments on the proposal, statement of affairs and proxy. 14 days' notice must be given.

A meeting must be held not less than 14 and not more than 28 days from the filing of the report. The creditors' meeting must be held first. The members' meeting may be held within the following 7 days. The Chair of the meeting reports the outcome to Court. All those notified of the meeting are notified of the outcome.

The votes are calculated in accordance with the amount of the debt at the date of meeting. In the case of unliquidated or unascertained claims, the creditor may vote and his debt will be valued at £1 unless the Chair agrees to put a higher value. In the case of an administration, the votes are calculated according to the amount of the creditor's debt at the date the company went into administration.

Secured creditors cannot vote in relation to the secured element of their claim. Three quarters of the votes cast at the creditors meeting are required to approve or modify the proposal. Any other resolution requires a simple majority. The decision of a creditors' meeting has effect, even if the members meeting reach a difference decision.

Objections to the arrangement can be made by any creditor or member within 28 days of the filing of the Chair's report. The Court can reverse or confirm the Chair's decision or order another meeting to be held, but only if there is unfair prejudice or immaterial irregularity.

The Chair prepares a report on the meeting within 4 days and must file it in Court. If the CVA is approved, a copy of the report must be sent to the Registrar of Companies. The report should state whether the proposal was approved by the creditors and the members. It should set out details of the resolutions made and the decisions taken. It should set out a list of creditors and members present and represented.

Coming into Effect

A voluntary arrangement comes into effect when approved by both a meeting of the creditors and of the members of the company. The approved voluntary arrangement binds every person who had notice of and was entitled to vote at that meeting, whether or not present. If members vote against the proposal approved by the creditors, the CVA takes effect subject to the right of the members.

An application may be made to Court on the grounds that the voluntary arrangement as approved unfairly prejudices the interests of a creditor or member of the company or that there was some material irregularity. The persons entitled to apply are those entitled to vote at the meetings, a replaced nominee or any person replaced as administrator or liquidator. The application must be made within 28 days of the Chair's report to the Court.

Course of CVA

The IP as supervisor must maintain records of all proceedings, documents, resolutions, decisions etc. Minutes etc. should be held and retained. The Chair of the meeting must prepare a report containing details of whether the proposal has been accepted, any modifications or resolutions made and a list of the creditors.

The supervisor must report at least every 12 months, and prepare an abstract of receipts and payments. These must be sent to the Court, the Registrar of Companies, the company and creditors bound by the CVA and the company's auditors. It must be accompanied by his comments on the progress of the arrangements.

Following completion of the CVA, the supervisor must send notice to all creditors and members, that it has been fully implemented together with reports of receipts and payments. He must also send a copy of the notice and report to the Registrar of the Companies and Court within 28 days.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.

© Lavelle Coleman 2009