Carter Clark
Financial Recovery

Briefing Sheet

Company Voluntary Arrangement

A Company Voluntary Arrangement sets out an agreement between the company and its creditors to repay them either from third party funds or from future profits. It is based on preserving the company, rebuilding sales and profits and paying something back to creditors over a period of time. Current payments are frozen, improving cashflow. Directors remain in control, personal guarantees are not normally called in and the business is given the opportunity to survive.

The essence of a successful CVA is a viable business that can return to profitability. It demands a commercially structured deal plus the introduction of appropriate levels of working capital. Management has to accept that there will be change in the company and that they will require determination and hard work to make it succeed – a CVA is more difficult than liquidating the business.

Who can propose a CVA?

A CVA may be proposed by the directors of the company where a company is currently insolvent or is likely to become so in the near future. If the company is either in liquidation or administration, the liquidator or administrator can propose a CVA. Appropriate advisors are appointed to assist in the preparations of the proposal. During this period the company should not materially increase or decrease debts to current creditors, suppliers should be paid for supplies made, and the company continues its trading activity.

A company review – including its people, markets and systems – is undertaken and includes detailed financial forecasts so the creditors can decide whether to support the deal. The directors review the proposal and agree that it is appropriate, achievable and maximises creditors' interests. If they cannot agree with this, or if the process has highlighted weakness in the business plan, it is advisable to close the company.

How is the CVA carried through?

Once the proposal is drafted, the directors should then discuss the position with the company's' secured creditors. They will want to see how the company will repay their debts and be assured the business is viable.

Executive summary

A CVA does not suddenly bring security to a company that is not viable but it does allow protection of a distressed but viable company, in turn permitting an intended return to profitable trading. It aims to maximise creditor interest and has to be proposed in a way that is convincing both in the abstract and to the creditors involved.

While it can preserve the company, protect jobs and share-holder interests, a CVA demands determination and hard work to bring to a successful conclusion. It is an appropriate solution for situations where seeing off shortterm threats will produce longterm profitability.

Have a question?

Tel. 0845 686 0100
Fax. 020 8524 1457

recovery@carterclark.co.uk
www.carterclark.co.uk

During the planning period, current assets such as work in progress and debtors are collected and turned into cash to improve liquidity. This should be used to fund the difficult period between appointment of advisors and filing the document at court. Once filed, the proposal is distributed to all creditors on no less than 14 days notice before the creditors meeting can be held: this is usually at an independent venue.

The meeting, chaired by an independent Insolvency Practitioner, aims to allow the creditors to question the director's proposals. The creditors vote on the proposal and this is approved if a majority vote of 75% by value of the total value of creditors at the meeting (whether in person or by proxy) vote in favour. A second vote, excluding connected creditors, is taken and, provided that not more than 50% of creditors vote against the proposal, it is approved.

The creditors may wish to modify the proposal: if so, this needs to be approved by the majority voting mechanism. This often arises if HM Revenue & Customs wish to ensure future debts are paid on time, though other creditors may also ask for modification.

A shareholders' meeting is also held to decide whether to accept the proposal. The chairman must issue a chairman's report, within 4 days, to all creditors and the court, stating what happened, who voted and how they voted.

At this point all creditors are legally bound in relation to the debt in the proposal. No further legal action (except by leave of court) can be taken against the company. The company must make the agreed contributions to the Supervisors trust account used for debt payment: failure to do this is deemed a default and the company voluntary arrangement can be cancelled, usually leading to liquidation.

What can go wrong?

If the company is not performing well but appears still viable, it is possible to reconvene the creditors meeting to ask the creditors to consider amendments. If the advisor supervising the process has concerns, the court can be asked for directions. Normally it is the duty of the directors to inform the supervisor if there are any material changes to the company or its business.

What happens at the end of the CVA?

Once the agreed period is completed and the supervisor has issued the appropriate completion certificate, the company leaves the CVA. Remaining unsecured debts (where partial repayment was approved) are written off and the directors continue to run the business for the shareholders.

Have a question?

Tel. 0845 686 0100
Fax. 020 8524 1457

recovery@carterclark.co.uk

Carter Clark
Financial Recovery

