

COMPANY VOLUNTARY ARRANGEMENTS - ARE THEY THE ANSWER?

The 1986 Insolvency Act introduced a new procedure called a Company Voluntary Arrangement ('CVA'). In essence, it allows a Company to survive by putting forward a proposal to its creditors which must be agreed by 75% in value. The CVA is effectively a contract between the Company and its creditors and sets out how trading is to be conducted in the short to medium term.

The use of CVA's over the last thirty years has been limited but has provided a useful way of Companies avoiding either liquidation or administration.

The advent of online shopping, coupled with difficult trading conditions on the High Street has recently seen a large number of CVA's being put forward in both the retail and restaurant sectors. Companies which have had proposals approved by creditors include Select, Homebase, Jamie's Italian and Prezzo. The main purpose for proposing a CVA in these sectors is to allow a Company to either return unprofitable leases or renegotiate the rents on properties that are to be retained. In the case of BHS, the proposal provided for the various properties to be divided into three categories offering Landlords differing rents in the future depending upon the perceived profitability of each store.

Needless to say Landlords are not big fans of CVA's but very often are faced with the unenviable choice of either accepting a lower rent or an empty property. Concerns have been raised by Landlords who, whilst being prepared to support CVA's which genuinely give breathing space to restructure and raise new funds, are not willing to accept reduced rents merely to improve the operating profits of a reasonably performing Company.

The advent of CVA's has also caused real concern amongst solvent retailers who see competitors apparently obtaining an unfair advantage by reducing the level of rent paid. Some have called for CVA clauses to be inserted into leases allowing a reduction in the level of rent if a neighbouring store obtains a reduction through a CVA.

However, a word of warning needs to be mentioned. Recent research into the success of CVA's has revealed that of 552 CVA's commencing in 2013, only 18.5% had been fully implemented. Whilst 16.5% were still ongoing, 65% were terminated without achieving their intended aims with 24% failing within 18 months.

CVA's continue to be a useful restructuring toolkit but a fair balance has to be struck between a Company and its creditors, especially Landlords who, at times, feel that CVA's are being misused to their detriment.

Please note that should your clients require any confidential advice regarding this or any other insolvency matter they are welcome to contact one of our Partners. An initial consultation is provided free of charge and without obligation. Also, if you or any of your colleagues require any clarification regarding insolvency law or procedure, please do not hesitate to contact us.

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