

ICE GUIDES

What is a Company Voluntary Arrangement?



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Introduction

This guide has been produced by Insolvency Consultancy Experts Limited and is mainly for the benefit of directors of UK Limited Companies. It is an honest no-nonsense practical information guide designed to help you understand the Company Voluntary Arrangement process. It is however, no substitute for sitting down with one of our Insolvency team but it does make that meeting more productive if you have taken the time to absorb some of the information prior to the assessment of your own company's circumstances.

Insolvency Consultancy Experts Limited is a leader in the field of Corporate Rescue, and its objective is to help businesses that have financial difficulties to resolve. Companies with turnovers from one hundred thousand to twenty million, in every type of business, form the basis of our client base.

The Basic Stuff

What is a Company Voluntary Arrangement?

Many directors when in financial difficulty should be asking - What is a Company Voluntary Arrangement? In our experience often directors wrongly place a company into Creditors Voluntary Liquidation ("CVL"), as opposed to progressing a Company Voluntary Arrangement, when a CVA may represent an opportunity to salvage the business of the company as a going concern, and to save the company itself.

A Company Voluntary Arrangement, also known as a CVA, is a formal insolvency procedure used to assist companies to carry on trading when in financial difficulties. The procedure is implemented according to Part 1 of the 1986 insolvency Act and the Insolvency Rules 1986. A Company Voluntary Arrangement in its simplest terms is a contract entered into by a company with its creditors regulated by the provisions of the Insolvency Act 1986.

Contrary to most sources of Company Voluntary Arrangement information that can be found on the internet, there is no statutory requirement that states that a company, that chooses to propose a Company Voluntary Arrangement, should be insolvent or unable to pay its debts.

However Company Voluntary Arrangement usually amounts to a contract entered in to by a company with its creditors to pay Xp in the £ over a period of time, or to create time (i.e. deferment of payments), to allow a company to restore its financial viability. It ought to be borne in mind that the creditors may not necessarily vote in favour of a Company Voluntary Arrangement if a company is not insolvent, since if a company is not insolvent creditors may question why they should agree anything other than their usual terms.

So asking – "What is a Company Voluntary Arrangement?" opens up huge possibilities for directors at a time when they may have given up any hope of keeping their company trading.

What is a Company Voluntary Arrangement definition?

A Company Voluntary Arrangement is a contract entered into between a company and its creditors, regulated pursuant to Part 1 of the Insolvency Act 1986. In practice a Company Voluntary Arrangement often amounts to a agreement whereby:

1. The company repays its creditors the amount owing to them over a period time.
2. Usually, if the company is insolvent, the company pays less than the total amount owed to creditors (i.e. it pays Xp in the £).
3. Monies to pay creditors, (paid into the Company Voluntary Arrangement) are usually generated from future profits by ongoing trading, thereby allowing the company to survive as a going concern.

Why does a Company Voluntary Arrangement work?

A Company Voluntary Arrangement works because the repayment plan is the best deal that a creditor could get. Creditors will usually vote in favour of a Company Voluntary Arrangement, as if it represents a better outcome than Liquidation.

Does my company need a Company Voluntary Arrangement?

If your company owes creditors, including HMRC, more than £20,000 and the cash flow of your company is so poor that you can't pay those creditors, then as long as there is potential for continued sales at a profit, your company may be suited to propose a Company Voluntary Arrangement.

The Heavy Stuff

What is the Company Voluntary Arrangement process?

The Company Voluntary Arrangement process starts once the directors have decided along with ICE, that a Company Voluntary Arrangement is the best course of action for all stakeholders.

The directors of the company instruct ICE to assist them in the Company Voluntary Arrangement process. ICE instructs a Nominee who must be a Licensed Insolvency Practitioner. The Nominee will assist the company in preparing proposals for a Company Voluntary Arrangement, which will include the drafting of a statement of affairs that details the financial position of the company, in conjunction with ICE and Fastspeed.

The Nominee will, subject to being satisfied with the contents of the proposals, convene a virtual creditors' meeting to vote on whether the Company Voluntary Arrangement ought to be approved. A copy of the proposal, and the Nominees report, is lodged at Court.

The Nominee then sends out Notices which contain a true copy of the Company Voluntary Arrangement to all known creditors of the Company for their consideration. The Notices must be sent out at least 14 days before the virtual meeting and include, the Company Voluntary Arrangement proposal along with a statement of affairs and a list of creditors with the debts listed, the nominees Report, a voting form, a notice of claim form and a proxy form.

Once a decision has been reached by the creditors, the chairman of the meeting must inform the court as to the outcome, give notice to all of the creditors of the outcome and send a copy of the chairmans report to the Registrar of Companies.

On approval of the Company Voluntary Arrangement the Nominee then acts as the supervisor and the Company Voluntary Arrangement is implemented in accordance with the proposal.

Can HMRC debt be included in a Company Voluntary Arrangement?

A Company Voluntary Arrangement, once approved, will bind all creditors of the company. As such any monies owing to HMRC can be included in a Company Voluntary Arrangement. This includes all HMRC's debt often up to the date of the creditors meeting.

Can bounce back & CBIL loans be included in a Company Voluntary Arrangement?

Yes they can.

Will HMRC approve a Company Voluntary Arrangement?

When considering whether to vote in favour of Company Voluntary Arrangement proposals creditors will normally consider whether the same represent a better outcome than upon Liquidation. If they are satisfied this is the case, and that Company Voluntary Arrangement proposals are viable, creditors will usually take a commercial decision to vote in favour of a Company Voluntary Arrangement. HMRC attempts to maximise recoveries for the benefit of tax payers, and as such will vote in favour of Company Voluntary Arrangements if it believes it is the best alternative.

HMRC compare a proposed Company Voluntary Arrangement offer against a predicted liquidation payout. If a liquidation would result in a faster return of money or even a bigger payout then the chances are that HMRC may decide to reject the Company Voluntary Arrangement in favour of liquidation.

However, HMRC do consider other factors such as the trading history of directors, the circumstances that caused the need to propose a Company Voluntary Arrangement and the effect on closing the business, especially employee concerns.

Who can vote in a Company Voluntary Arrangement?

For a Company Voluntary Arrangement to be agreed, it requires to be accepted through a "one pound one vote" voting process. A meeting of creditors and shareholders is held. A creditor majority of 75% or more in debt value attributed to those present or by proxy is required in favour.

A second vote that excludes any connected creditors is then held. This vote will succeed as long as 50% or more of the creditors vote in favour of a Company Voluntary Arrangement.

A resolution must be passed by over 50% in value of the company's shareholders present, again in person or by proxy to approve the resolution to enter into the Company Voluntary Arrangement.

Can I vote in a Company Voluntary Arrangement?

If you are associated with the company, you can still vote in the first vote that requires a 75% or more plus majority vote to succeed. If you are not associated with the company but are an unsecured creditor you can vote.

Who proposes a Company Voluntary Arrangement?

The directors can propose a Company Voluntary Arrangement although an Administrator or Liquidator may make a proposal. Neither Creditors nor Shareholders have the right to propose a Company Voluntary Arrangement.

Who prepares a Company Voluntary Arrangement?

Proposals for Company Voluntary Arrangement are technically prepared by Fastspeed and the Nominee for the company, acting by its directors, under the provisions of Part 1 of the Insolvency Act 1986. In practice however the directors' supply the information required to the Nominee, who with assistance of his officers will prepared draft Company Voluntary Arrangement proposals for approval by the company. Sometimes the company's accountant provides certain information. When the proposal has been finalised it is then confirmed and signed off by the directors, making it their proposal.

The nominee prepares a report that recommends to the creditors the Company Voluntary Arrangement for approval at the creditors meeting, on a set date when the Nominee acts as Chairman of the meeting.

Does a court approve a Company Voluntary Arrangement?

A Court does not approve a Company Voluntary Arrangement, but CVA proposals along with the nominees report are filed at Court and then ratifies their validity by issuing a unique Court number. Court Enforcement Officers often request this Court number when they consider whether to wait for the meeting of creditors when they are chasing debts.

Can creditors stop a Company Voluntary Arrangement?

If a Company Voluntary Arrangement is approved by the requisite majorities of creditors, all creditors are bound by the terms of the arrangement, including any creditor who voted against the arrangement. However, any creditor or shareholder, under section 6 of the insolvency Act, may challenge a Company Voluntary Arrangement within 28 days of the date that the Chairman's report (confirming the date of approval of the Company Voluntary Arrangement) has been filed at Court. A Company Voluntary Arrangement can only be challenged on one of the two following grounds:

1. Material irregularity; or
2. Unfair prejudice.

What is the difference between a Nominee and a Supervisor?

All the way through the preparation stages and after the implementation of the Company Voluntary Arrangement, the directors remain in charge of the company. The difference between and Nominee and a Supervisor is simple. The Nominee, a licensed Insolvency Practitioner, assists the directors in the preparation of the Company Voluntary Arrangement proposal in conjunction with Fastspeed, prepares and files the Nominee's report at Court, and convenes creditors and shareholders' meetings.

Once the Company Voluntary Arrangement has been approved, the Nominee Changes his title to that of Supervisor. However, the creditors, at the meeting of creditors to consider approving a Company Voluntary Arrangement, can appoint another Licensed Insolvency Practitioner to act as Supervisor. The Supervisor takes no part in the management of the company and is confined to his role as stated within the Company Voluntary Arrangement proposal and is not a party to the agreement.

The difference between a Nominee and a Supervisor then is merely determined by the stage that the Insolvency Practitioner is at within the time frame of the Company Voluntary Arrangement. The role of a Supervisor in its simplest terms is to oversee the implementation of the Company Voluntary Arrangement.

Do banks support a Company Voluntary Arrangement?

If your bank has lent your company money on a secured basis then it cannot be included as a voting creditor in the Company Voluntary Arrangement. The bank's position would be protected and as such, would not suffer any loss as a result of the company entering into a Company Voluntary Arrangement.

However, your bank would be very upset if they found out about the Company Voluntary Arrangement from someone else. Banks do not like problems but prefer solutions.

Years of experience has taught many in the insolvency industry that banks should be told of the intention to propose a Company Voluntary Arrangement once a draft CVA proposal has been prepared. The proposal should show planned reductions in the bank lending facility.

Your Bank Manager, or the higher echelons of the bank, will understand that you are controlling the situation and normally wait for the outcome of the creditor's meeting. Sometimes they ask for small changes to the proposal that can often be accommodated. Bearing in mind that putting forward proposals for a Company Voluntary Arrangement will usually constitute a breach of most financial institutions' facility terms and conditions.

It is important that once any decision has been taken to be put forward Company Voluntary Arrangement proposals the company liaises with a company's bank to seek their views, and to deal with any requirements they may have.

Will my factoring company appoint an Administrator?

Most factoring companies or general lenders have a debenture that secures any lending that they make. The debenture allows an immediate appointment of an administrator to take over the company.

Preparation is the key to success. Nobody likes a void and those with power are the first to fill voids. Therefore, a casual remark to your factoring company of an intention to propose a Company Voluntary Arrangement may probably result in the administrators being called in. Calling a meeting with the factoring company and having ICE in attendance with a draft copy of the Company Voluntary Arrangement proposal will give them confidence. If as a director, you have a reasonable history with the factoring company they will probably wait for the outcome of the creditors meeting. It is not uncommon for relationships between ICE and lenders to prepare the ground for such a meeting.

Again, most factoring companies' terms and conditions will contain a clause providing that any insolvency event, including preparation of proposals for a Company Voluntary Arrangement, constitutes default of the factoring agreement. It is therefore important to liaise with any factoring companies at the appropriate juncture.

How long does a Company Voluntary Arrangement last?

A Company Voluntary Arrangement can last for any period of time, as no prescribed term for a Company Voluntary Arrangement is set out in the Insolvency Act 1986. In practice the duration of the Company Voluntary Arrangement, depending on the circumstances, can be between a few months and five years.

If a period is set for say, three years and the proposal does not intend to repay the creditors in full, the creditors may request that the Company Voluntary Arrangement be extended for a further two years. It would be difficult for a director to say no to this, as the creditors would be making their case based on the supporting evidence of the director's own cash flow projections contained within the proposal.

Can a Company Voluntary Arrangement finish early?

A Company Voluntary Arrangement can finish early by either the agreed contributions being paid early in one lump sum, maybe less a discount, or even a requested further dividend, through a variation to the scheme. Once the Company Voluntary Arrangement is completed the Supervisor issues a Completion Certificate.

Even More Detail!

Can a Company Voluntary Arrangement stop legal action?

Unlike an Administration (see Insolvency Consultancy Experts Limited Guide in relation to Administrations) a Company Voluntary Arrangement does not confer a moratorium (i.e. protection from legal action in its simplest terms) unless a moratorium is expressly sought pursuant to s1A of the Insolvency Act 1986 and Schedule A1 of the Insolvency Act 1986. However only eligible companies can apply for a moratorium, namely small companies, as defined at s382(3) Companies Act 2006.

Also, under the Corporate Insolvency and Governance Act 2020, which was rushed through Parliament at the time, there is provision for a moratorium and for the inclusion of Secured Creditors.

Once a Company Voluntary Arrangement has been approved then legal action can only continue by consent of a court, which is very rare.

Will a Company Voluntary Arrangement stop a winding up petition?

It is a judge that may decide to allow a Company Voluntary Arrangement the chance to delay a winding up petition when the petition is heard in Court. A winding up petition has a good chance of being adjourned to the next Court date after the set date of the meeting of creditors. This allows the creditors to decide the fate of the company.

If the adjournment of the winding up petition is opposed by a proven majority of creditors, that could control the vote in the Company Voluntary Arrangement creditor's meeting, then the judge would probably consent to the winding up of the company.

Does a Company Voluntary Arrangement stop a Court Enforcement Officer?

A Court Enforcement Officer can continue action against a company prior to having the Company Voluntary Arrangement approved if there is no statutory moratorium in place. Most Court Enforcement Officers are reasonable and once they have seen proof that a Company Voluntary Arrangement has been filed in court then they often step back and await the outcome of the creditor's meeting, especially if they are acting for HMRC.

Can a Company Voluntary Arrangement open a frozen bank account?

Once a Company Voluntary Arrangement has been accepted the company bank account will be reopened. If the company has a winding up petition, then the bank will reopen the account once they have received written evidence that the winding up petition has been dismissed.

During the preparation stages of a Company Voluntary Arrangement, an application can be made to Court for a validation order if a winding up petition has been presented that would allow specific payments to be made out of the company bank account at a time when it has been frozen. The Court will consider the payments proposed to be made during the period of validation, and will order the same be allowed to be made subject to being satisfied that it would be in the best interests of all stakeholders. This usually involves the company demonstrating there would be no loss to the creditors if such payments are validated.

Can I put redundancies into the Company Voluntary Arrangement?

Redundancies can be made during the preparation of a Company Voluntary Arrangement and included within the arrangement. Redundancy and lieu of notice claims are met by the redundancy payments office (RPO). Redundancies can also be made during the accepted Company Voluntary Arrangement with the RPO meeting the payments, as long as the payment is not more than 10% of the Company Voluntary Arrangement scheme debt.

Can I put contracts and leases into a Company Voluntary Arrangement?

Any contracts, asset leases, loans and landlord liabilities can be included into a Company Voluntary Arrangement.

The Advantages and Disadvantages of a Company Voluntary Arrangement

What are the advantages of a Company Voluntary Arrangement?

- A framework that legally binds the creditors without constricting the content or nature of the deal.
- Protection from Court action upon approval
- Continue trading & saving the company as a going concern
- Reduction of debt (sometimes up to 75% written off at end of CVA)
- Dramatically improves cash flow
- Approved the CVA is not advertised
- All interest and charges are frozen on unsecured debts
- No new banking required
- Not court intrusive
- Fast implementation even with a winding up petition in place
- Insolvency Practitioner does not investigate Director's conduct, although the Nominee will have to deal with any breach of directors duties in the Nominee's report
- Directors stay in control
- Creditor unanimity not required
- Secured creditors unaffected
- Workable across all EU
- Avoids Liquidation or Administration
- Option to terminate leases and contracts
- Option to make redundancies
- Retain tax losses
- Costs and fees normally taken from Monthly CVA contributions
- Variations to the CVA can be made if the company still struggles

What are the disadvantages of a Company Voluntary Arrangement?

- Formal insolvency agreement and so the CVA will be listed on the credit file
- Failure to make agreed contributions could result in a winding up petition
- Risk of having customer contracts terminated if they are notified of the CVA
- Risk of secured creditors appointing an Administrator

Summary

This guide is not intended as an instruction manual for a company director to make a critical decision on the insolvency route to follow in the event of cash flow difficulties. It is merely a guide to advance knowledge, prior to a meeting, for the purpose of making such a decision.

We hope that we have covered the main areas of Company Voluntary Arrangements that you may have been looking for. Should you require further information or help then we are only a telephone call away.

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