CVA

In this article Richard Bottomley gives an overview of what Company Voluntary Arrangements ("CVAs") are, when they are used and the advantages and disadvantages to the company and creditors.

What is a CVA?

A CVA is a procedure that may help a company to address its financial difficulties by coming to a compromise, or other arrangement, between a company and its creditors under Part I of the Insolvency Act 1986. It can permit a company to settle its debts by paying only a proportion of the amount that it owes to creditors, and/or to come to some other arrangement with its creditors over the payment of its debts.

Who is eligible for a CVA?

A company is eligible for the CVA procedure if it is a company registered under the Companies Act 2006; a LLP; a company incorporated in a member state of the EEA; or a company not incorporated in an EEA member state but having its centre of main interests in a EEA member state (other than Denmark).

How to implement a CVA

If the relevant company is not in administration or liquidation, its directors may propose a CVA to the company's shareholders and creditors. If the relevant company is in administration or liquidation, the administrator or the liquidator, as the case may be, may propose a CVA. A proposal for a CVA should nominate a person to supervise the implementation of the CVA, who must be a qualified insolvency practitioner ("the nominee"). Those proposing the CVA prepare a document setting out the proposals. They generally do so with the assistance of the nominee. The proposals document is then delivered to the nominee.

Where the nominee is not a liquidator or an administrator of the company the nominee is required, ordinarily within 28 days of being given notice of the proposal, to submit a report to the court as to whether, in the nominee's opinion, the proposal should be considered by the company's creditors and members. If so, the nominee has to seek a decision of the company's creditors by way of a decision procedure and a decision of the company's members at a meeting of those members.

If an administrator or a liquidator is the nominee, the nominee does not need to report to the court first before seeking a decision of the creditors and convening a members' meeting. The persons making the proposal must give the nominee a statement of the company's affairs.

The company's shareholders can approve the proposals by a simple majority in value. However, if the company's creditors approve the proposal, the CVA will be implemented irrespective of how the shareholders voted.

The CVA proposal will be implemented if it is approved by at least 75% (by value) of the company's creditors who respond in the decision procedure, unless those voting against it include more than 50% (again by value) of all the unconnected creditors whose claims are admitted for voting.

A creditor is unconnected unless the convener or chair decides that the creditor is connected with the company; in deciding whether a creditor is connected reliance may be placed on the information provided by the company's statement of affairs or otherwise in accordance with these Rules; and the total value of the unconnected creditors is the total value of those unconnected creditors whose claims have been admitted for voting.

A CVA cannot affect the right of a secured creditor to enforce its security, except with its consent. Unlike preferential creditors, secured creditors cannot vote on a CVA, save to the extent their debt is unsecured. This effectively means that debt owed to secured creditors cannot be compromised by a CVA and must be dealt with by direct negotiation or paid in full.

The company's shareholders can approve the proposals by a simple majority in value. Whether or not they do so, however, if the company's creditors approve the proposal, the CVA will be implemented

A CVA binds all creditors who are entitled to vote in the decision procedure (including dissenting parties) or who would have been entitled to vote if they had had notice of the decision procedure.

Consequences of Breach of a CVA

CVAs may "end prematurely" under the IA 1986. CVAs most commonly fail when a company is in breach of its terms. CVAs are a statutory contract and the effect of any breach should be dealt with by the terms of the CVA as to what amounts to a breach and whether failure is automatic upon breach or supervisor can choose to continue the CVA. CVAs will usually have terms that upon its failure creditors are no longer bound by the agreement, supervisor can distribute CVA assets and petition for company's liquidation. Where a CVA has been terminated the supervisor must, within 28 days, serve notice of the same on all members, (formerly) bound creditors, the court and the registrar of companies as well as a report summarising all receipts and payments re CVA and reasons for the termination.

Advantages of a CVA

1. The CVA procedure is intended to allow companies to avoid potentially terminal insolvency proceedings by coming to a binding agreement or compromise with their unsecured creditors.

2. The directors continue in possession and control of the day-to-day business of the company, although they must comply with the terms of the CVA.

3. A CVA binds all creditors who are entitled to vote in the decision procedure (including dissenting parties) or who would have been entitled to vote if they had had notice of the decision procedure. This means that a CVA, once approved, binds both known and unknown creditors in relation to debts which the CVA is drafted to encompass

4. CVA is a relatively informal insolvency procedure and does not need to involve the court unless there are formal challenges to the CVA or it is otherwise litigated. CVAs are therefore potentially cheaper than other, more formal, insolvency procedures, and this may mean that more funds are available for the creditors.

Disadvantages of a CVA

1. Unlike an administration, a CVA does not automatically result in a statutory moratorium to protect the company from creditors taking action to recover their debts while the proposal for an arrangement is being drawn up and considered. Since 26 June 2020, the company can apply for a Part A1 moratorium. The moratorium can be obtained through a court filing without creditor consent but can only endure for a maximum of 40 business days without such consent or a court order.

2. CVAs are not binding on secured or preferential creditors without their consent.

3. A CVA cannot facilitate a distribution of company assets to its members if that distribution is otherwise unlawful under the CA 2006.

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