

Company voluntary arrangements in England and Wales – a creditor's guide

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1. Introduction

Insolvency is a complex process whose boundaries are defined by legal requirements and case law. It can be difficult for those unfamiliar with insolvency to understand the reasons why decisions are taken by insolvency practitioners, and what impact a company's insolvency might have on them. The purpose of this document is to provide creditors with some context to help them understand the process better, what they may expect in terms of information provision, and their rights as creditors of an insolvent company.

2. What is a company voluntary arrangement (CVA)?

Companies may only seek a CVA when they are in financial difficulties. They must be insolvent, which means that either the value of the debts they owe is more than the value of the assets they own, or that they have insufficient available funds to pay the debts they owe as they become due for payment.

A CVA is a rescue procedure for a company in financial difficulties. The company will seek to enter into a legally binding agreement with all or a certain number of its preferential and unsecured creditors in respect of the debts it owes to them. Usually, it will offer to repay a proportion of its liabilities either immediately or over a period of time. By doing so, it will hope to avoid administration or liquidation, and the proportion of its debts repaid to creditors is expected to be greater than if the company was to be subject to either of those proceedings.

Unlike most other insolvency procedures where insolvency practitioners are placed in control of the company, the directors will remain in control. Although (usually at least two) insolvency practitioners are appointed, their role is to oversee the implementation of the CVA; they are referred to as the Supervisors.

A company enters a CVA following the approval of the proposals by a decision of its creditors. In most cases the proposals to creditors will be prepared by the directors, but it is also possible for proposals to be put to creditors if the company is already in an insolvency process by its administrator or liquidator.

3. What do the Nominees do?

If they wish to propose a CVA, the directors of the company will need to choose the Nominees and either provide them with their proposal for a CVA, or (more usually) work with the Nominees to draft a CVA proposal together. Nominees are (usually at least two) insolvency practitioners whose duty is to ensure that the CVA proposal is feasible, fair to both the creditors and company, and is fit to be considered by the creditors, as well as being an acceptable alternative to a formal insolvency.

When the Nominees are satisfied that the proposal should be put to the creditors, they will file a report to court and call meetings of the company's members and unsecured creditors to vote on the CVA proposal within 28 days of the report to court, by sending notice of the meeting to all creditors of the company, together with a copy of the proposal documents.

At the meeting of creditors, usually chaired by one of the Nominees, at least 75% by value of the unsecured creditors must vote in favour of the CVA proposal for it to be approved. If the proposal is approved, the chairperson will report the outcome to the court and creditors, and the CVA will be implemented with effect from the meeting date. The Nominees will then become the Supervisors, unless the proposal nominates someone else.

4. What do the Supervisors do?

The Supervisors' role is to oversee the CVA, and ensure that its terms are implemented. This will usually include the following matters:

- agreeing creditors' claims and distributing a dividend to them in accordance with the terms set out in the CVA proposal; and
- if the CVA proposal is for the company to continue to trade and make contributions which will be distributed to the CVA creditors, ensuring that such contributions are received.

If it becomes clear that the terms of the CVA proposal are not able to be met, the Supervisors may consider seeking creditors' agreement to a variation of the proposal terms, or, if required by the terms of the proposal, the Supervisors may terminate the CVA, in which case the company is likely to enter administration or liquidation.

If the CVA is successful, the Supervisors will notify creditors of its completion and will cease to act.

5. What will happen to my debt?

Subject to the terms of the CVA, debts due to unsecured creditors at the date of approval of the CVA will typically be dealt with by the Supervisors, who will agree such debts and issue any distribution to creditors in accordance with the terms of the approved proposal.

Debts incurred by the company after the date of approval of the CVA are the responsibility of the company, and should be paid in line with the agreed terms of trade and any relevant terms of the CVA.

6. What information will I receive?

The Nominees will notify all known creditors of the proposed CVA and meeting of creditors. The outcome of the meeting will be notified to creditors as soon as possible following the meeting.

A report on the progress of the CVA and the prospects of its successful completion will be sent to all creditors within two months of each anniversary of the CVA commencement, and a final report will be sent at the end of the CVA.

It is AlixPartners' policy to upload reports and other documentation for creditors onto the firm's creditor information portal at <https://www.alixpartnersinfoportal.com>, in accordance with the Insolvency (England and Wales) Rules 2016 and in order to save costs to the insolvent estate. Notification of reports and other information posted to the portal may be sent to creditors, but in any event log-in details to access the portal will be circulated to creditors. Reports posted to the portal will be provided in hard copy if requested by a creditor.

7. What will happen after the arrangement is finished?

If the CVA is completed successfully, the Supervisors will cease to act, giving notice to all creditors. At this point, if the CVA was initiated by the company, and not by an administrator or liquidator, the company will no longer be subject to an insolvency process and will hopefully have put its financial troubles behind it.

If the CVA is unsuccessful, the Supervisors will terminate the CVA. The proposal terms will usually dictate what steps they should take in addition to this, but in many cases the terms will state that the company is to be wound up or placed into administration.

8. What rights do I have as a creditor?

Once it has been agreed by the requisite majorities of members and unsecured creditors, the CVA terms become binding on all unsecured creditors who had notice of and were entitled to vote at the meeting, even if they voted against the proposals.

If a member or creditor believes that they have been unfairly prejudiced by the terms of the CVA, or that there has been some material irregularity at or in relation to either the meeting of members or creditors, they may seek to challenge the decision of the meeting to approve the CVA in court. Such a challenge must however be made within 28 days of the CVA approval being reported to the court, or if they were not notified, within 28 days of becoming aware that a meeting had taken place.

At the meeting of creditors to consider a CVA proposal, a creditors' committee may be appointed if the creditors so wish, which must consist of at least three and not more than five creditors. Any creditors' committee would receive reports from the Supervisors and may meet periodically.

If a creditor wishes to receive further information to that provided in the progress reports provided by the Supervisors, they may request it and the Supervisors will respond accordingly.

If you are unhappy with the Supervisors' handling of the case, either in respect of your claim or otherwise, you should first contact the Supervisors to try to resolve the problem.

The Nominees and Supervisors are insolvency practitioners licensed in the UK. Should your complaint be unresolved after you have raised it with them and you think they are guilty of professional misconduct, you may take the matter up with their regulating body, which is the Insolvency Practitioners Association.

9. A guide to the Supervisors' fees

The Supervisors' fees are usually paid out of the funds which are contributed to the CVA estate out of income generated during the CVA by the company, or as a one off contribution from the company's assets, or by a third party.

The basis upon which the Supervisors may be paid can be by reference to their time costs, as a percentage of the value of funds realised, or as a fixed fee. A combination of these bases may also be used.

The Supervisors' fees will usually be fixed as part of the CVA proposal. If a creditors' committee is formed, it may be given the responsibility of agreeing the Supervisors' fees.

If a creditor is dissatisfied with the fees charged by the Supervisors, the CVA proposal terms may provide what action can be taken. If there is no such provision, a creditor who is dissatisfied by any act, omission or decision of the Supervisors may apply to the court.

Further guidance for creditors may be found at <https://insolvency-practitioners.org.uk/regulation-and-guidance/creditors-guides-to-fees>.

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