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Company Voluntary Arrangements (CVAs)

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Summary

Summary: Definition of a Company Voluntary Arrangement (CVA)

- A Company Voluntary Arrangement (CVA) is a statutory insolvency procedure which sees an insolvent company and its creditors agree the repayment of a portion of the company's debts over a specified period of time. The existing management stays in control of the company, while an insolvency practitioner reviews the CVA proposals and checks the terms of the CVA are met once approved.
- Although CVAs made up just 1.8% of insolvencies in 2017, they often involve well-known brands.

A CVA enables a viable company in financial difficulty to enter into a legally binding agreement with its unsecured creditors in which the company's debts are compromised. However, it is important to note that a CVA is only one of several insolvency procedures designed to rescue a company in financial difficulty and avoid liquidation.

Under this procedure, the company's directors, an administrator or a liquidator may make a proposal for a CVA which is then put before a meeting of creditors and shareholders for their approval. While an agreement is being pursued, the existing management stays in place. It is a relatively simple procedure with minimum court involvement.

There are many advantages to a CVA procedure, in particular, its flexibility. While a CVA must be administered by a licenced insolvency practitioner, it is not a requirement of a CVA that the company be insolvent, this means that action can be taken early at the first signs of distress. A CVA can stand alone or supplement other insolvency procedures, for example, administration. A CVA can even be proposed after a company has gone into liquidation.

It is fair to say that the potential benefit of a CVA differs according to the size of the company. Under current insolvency legislation, small companies in financial difficulty and proposing a CVA, have the option to apply to the Court for a moratorium (i.e. stop) order on creditor action while seeking agreement with their creditors to deal with their debts. Medium and large sized companies do not have this option. A 'small' company is defined by sections 382 of the Companies Act 2006 (as amended[1]) as one which satisfies two or more of the following requirements:

- a turnover of not more than £6.5 million;
- balance sheet total of not more than £3.26 million; and
- no more than 50 employees

The lack of any automatic moratorium is the main limitation of a CVA (few companies qualify as small companies for the moratorium) and although the Insolvency Service did consider extending the moratorium

[1] As amended by section 3(1) the *Companies Act 2006 (amendment) (accounts and reports) Regulations 2008*

to larger companies, the moratorium has not been extended to date. As a result, CVAs are sometimes combined with administrations to benefit from the moratorium arising under administration.

This briefing paper provides a detailed overview of the CVA procedure. It also provides a summary of the changes that affect CVAs introduced by the Small Business, Enterprise and Employment Act 2015, which received Royal Assent on 26 March 2015.

1. Introduction

Box 1: Relevant legislation

- The relevant legislation is the Insolvency Act 1986 (as amended) (IA 1986) and the Insolvency Rules (SI 1986/1925). Also of significance is the Insolvency Act 2000 (IA 2000) and the Enterprise Act 2002.
- It is important to note that while a CVA is implemented under the supervision of an insolvency practitioner, there is no statutory requirement that the company be insolvent.

In a nutshell, a CVA is an informal but legally binding agreement between a company and its unsecured creditors in satisfaction of some, or all, of its debts. A CVA is the corporate equivalent of individual voluntary arrangements (IVAs) for individuals.

The object of a CVA is to rescue a viable company in financial difficulties from liquidation (or, in some cases, to supplement administration). Company restructuring enables the repayment of unsecured creditors, either in part or in full over a period of time. The existing management can stay in place under a CVA and the company can continue trading. Once all the terms of the CVA have been carried out, and the company's liability to its unsecured creditors cleared, the CVA will usually come to an end.

There have been Government proposals to restructure the use of a moratorium in CVAs and Schemes of Arrangement.[2] These proposals are considered in detail in section 3 of this note.

Unlike small companies, medium and large sized companies cannot obtain a moratorium (i.e. stop) court order on creditor action whilst a CVA is being considered. Consequently, it is not unusual for CVAs to be combined with administrations to benefit from the moratorium arising under the administration.

[2] A scheme of arrangement is a statutory procedure pursuant to Part 26 of the Companies Act 2006, whereby a company may make a compromise or arrangement with its members or creditors. However, unlike a CVA, a scheme of arrangement can bind secured creditors even without their express consent if the requisite majorities are achieved.

2. CVA procedure

2.1 Who is eligible to start a CMA?

Box 2: Who can initiate a CVA?

A CVA can be proposed by:

- the directors of a company (under Part I of the IA 1986); the proposal to be voted on at meetings of the company's shareholders and creditors;
- the administrator (where a company is in administration[3]); or
- the liquidator (where a company is in compulsory liquidation)
- A CVA cannot be proposed by shareholders or creditors of the company.

The crucial point to note is that the CVA proposal must not unfairly prejudice the interests of any creditor or affect the rights of any secured creditors.

Except in so far as a CVA must amount to a "*composition in satisfaction*" of the company debts or "*a scheme of arrangement of its affairs*", there is little in the IA 1986 (or Insolvency Rules 1986) as to the form the CVA must take. This means that it is entirely possible for a CVA to deal with unsecured creditors in different ways. However, the CVA proposal (or any subsequent modification) must not unfairly prejudice the interests of any creditor and cannot affect the rights of secured creditors to enforce on their security nor affect the priority of payment of preferential creditors without their consent.

Box 3: Criteria for setting up a CVA:

In general terms, before a CVA can be proposed (and agreed) the following criteria must usually be satisfied:

- The return to creditors must be demonstrably better than in an alternative insolvency process (a comparison will be provided as part of the proposal) and within a comparable time scale. The company must also have sufficient working capital to trade and to pay day-to-day expenses. (In effect, the company must still be viable.)
- It must be demonstrated that the cause of a company's financial difficulty has been addressed and is unlikely to be repeated.
- The support of key creditors has been obtained and agreement reached with key suppliers over credit terms following the CVA's implementation.

[3] An administration is an insolvency rescue procedure set out in Schedule B1 to the Insolvency Act 1986 (as amended). An administration automatically triggers a statutory moratorium, giving the company a breathing space in which to reorganise, refinance or effect a sale of its business

2.2 Role of the nominee/supervisor of CVA

Box 4: Role of the nominee/supervisor of the CVA

- A CVA must be administered by a licenced insolvency practitioner.
- Before the CVA proposal has been approved, the insolvency practitioner is known as the 'nominee'; after approval, he is known as the 'supervisor'.

  The agreed CVA is between the company and its unsecured creditors; the nominee/supervisor is not a party to the agreement.

If an administrator or liquidator is the nominee (i.e. in circumstances where the company is already in administration or liquidation), meetings of the company and of the creditors can be called without the need to report to the Court. There is no time limit for this.

The situation is different in cases where the CVA proposal is being made by the directors of a company (i.e. the nominee is not an administrator or liquidator). In such cases, the directors will work with the nominee to prepare a CVA proposal setting out the terms of the compromise. Various information must be provided to the nominee to consider the merits of the CVA, including a statement of the company's affairs. The nominee will then submit a statement to directors confirming whether the CVA is viable. The nominee must also prepare a statement to be submitted to the Court stating whether the proposed CVA has a reasonable prospect of being approved and implemented and should be put to a meeting of creditors and shareholders. There are two possibilities:

- **Positive nominee's report**

  Where the nominee's report is positive, the nominee must summon a meeting of the company and its creditors either within 28 days of the nominee's report being filed or, in the case of a small company, from the date the moratorium takes effect. In both cases, at least 14 days' notice should be given.

  A copy of the written proposal is sent to company creditors and to shareholders. The proposal must set out full details of the company's assets and liabilities, and how it intends to deal with secured and preferential creditors.[4] For example, proposals might involve: delayed or reduced repayments of debt (for example, the payment of less than 100p in the pound in full settlement); capital restructuring; an orderly disposal of assets; or the creation of a trust over some or all of the company's assets.[5] Modifications may be suggested by creditors or members prior to the meetings to consider the CVA proposal.

[4] For the purposes of a CVA, preferential debts are unsecured debts which, by statute, are to be paid in priority to all other unsecured debts (wages due to employees is an example of a preferential debt). A secured debt means that the creditor has the legal right to repossess the goods or property that a loan or debenture is secured against (a mortgage is an example of a secured debt).

[5] The possible existence of a trust should be considered by any party when purchasing from a company subject to a CVA

It is important to note that if different results are reached in the members' and creditors' meetings, the results of the creditors' meeting will prevail.

- **Negative nominee's report.**

  Where the report is negative, the company is not barred from seeking a second opinion from another nominee. During this period, the directors of the company remain in charge of the day-to-day management of the company. It is also important to note that the Court's role is principally administrative (unless there are contentious issues to resolve).

Generally, a CVA will either be contribution based (e.g. £5,000 per month for five years) or a lump sum can be paid often from a third party to enable a prompt distribution. The former is more common and, with the agreement of creditors, provision can be made within the proposal for an early termination if the contributions are paid in advance.

2.3 Acceptance of a CVA proposal

To be accepted, the proposal requires the approval of the requisite majorities of the company's creditors and shareholders, being:

- in the case of creditors, a majority in excess of 75 per cent in value[6] of a company's creditors present in person or by proxy and voting at a meeting to approve the CVA;[7]
- in the case of shareholders, more than 50 per cent in value of the company's shareholders present in person or by proxy and voting at a meeting on the resolution to approve the CVA (i.e. a simple majority)

If there is a difference of decision between the creditors and the shareholders, the decision of the creditors will take precedence, subject to any order of the Court.

If the proposal is approved, the insolvency practitioner will move from the role of nominee to supervisor, and will be responsible for the implementation of the CVA. The authority of the supervisor derives from the terms of the CVA (which will be individual to each case).

There is limited involvement by the Court in an approved CVA; it is only necessary for copies of certain documents to be lodged at Court to be available for public inspection. (Specifically, the nominee must prepare and file at court a report within 4 days of the meetings on the conduct and result of the meetings.)

6 In calculating majorities at a creditors' meeting certain votes are left out of account, including where notice of the claim has not been given and where the claim, or part of it, is secured

7 CVA is approved by 75% in value of creditors present in person or by proxy and voting on the proposal and not opposed by more than 50% of independent creditors - i.e. those who are not associates

2.4 What is the effect of a CVA on creditors?

The main effects of a CVA on the body of creditors are as follows:

- If the proposal is approved, the CVA will legally bind all creditors who were entitled to vote, whether or not they had notice of the creditors' meeting.[8]
- Dissenting creditors and creditors whose votes are required to be left out of account[9] are therefore bound by a resolution of the requisite majority.
- However, secured and preferential creditors will not be bound unless they have given their consent.
- If the company is in administration or liquidation, the Court may 'stay' (i.e. temporarily stop) the proceedings and give specific directions to facilitate the implementation of the CVA. The winding up of the company is not, however, rescinded but simply stayed.

Once bound by a CVA, a creditor is prevented from taking steps against the company that the terms of the CVA prohibit. Typically, these will be drafted to prevent the creditor from recovering any debt that falls within the scope of the CVA other than through an agreed mechanism set out in the CVA, or to enforce rights against the company that arise from the company's failure to pay the debt in question in full.

2.5 Optional moratorium for small businesses

The Insolvency Act 2000 (IA 2000) introduced a CVA moratorium for companies during the proposal stage prior to the meetings. However, only companies falling within the definition of 'small companies' qualify for an optional moratorium under a CVA.

A small company will be eligible for a moratorium if it satisfies two of three qualifying conditions laid down by section 382 and 465 of the Companies Act 2006. These three conditions are:

- a turnover no greater than £6.5 million;
- balance sheet assets no greater than £3.26 million; and
- no more than 50 employees[10]

A moratorium suspends the power of creditors to take certain actions against a company or its property. In broad terms, the effect of the CVA

8 Prior to the *Insolvency Act 2000* coming into force, a CVA bound only those creditors who had notice of the proposal and were entitled to vote at the creditors' meeting. This caused problems where creditors could not be traced or subsequently came to light. Pursuant to the amendments introduced by the Insolvency Act 2000, the CVA now binds not only creditors who had notice of and were entitled to vote at the creditors' meeting but also creditors who would have been entitled to vote had they received such notice. In effect, CVAs bind both known and unknown creditors of the company.

9 In calculating majorities at a creditors' meeting certain votes are left out of account, including where notice of the claim has not been given and where the claim, or part of it, is secured

10 It should be noted that some companies involved in specialised financing arrangements are specifically excluded from eligibility so that certain secured creditors are not prevented from exercising their enforcement rights

moratorium is to prevent the company being wound up or placed into administration, security being enforced or legal actions being commenced or continued. In effect, the company is given a breathing space.

Although a CVA proposal cannot affect the right of a secured creditor to enforce its security, where a CVA moratorium is triggered, that secured creditor cannot enforce their security for the duration of the moratorium without consent of the court.

Box 5: How does a small business apply for a moratorium?

Under the provisions of the IA 2000, for a small company to apply for a moratorium, the directors and nominee need to file certain documents in court, including:

- the proposal for the voluntary arrangement;
- a statement of the company's affairs;
- a statement that the company is eligible for a moratorium;
- a statement from the nominee giving his consent to act; and,
- critically, a statement from the nominee that, in his opinion, the proposed CVA has a reasonable prospect of being approved and implemented, and the company is likely to have sufficient funds available to it during the proposed moratorium period to enable it to carry on its business

The moratorium begins when the nominee and directors file these documents at Court.

Box 6: How long does small business moratorium last?

- For the small company, a moratorium lasts until both the creditors and shareholders meetings have been held. Both meetings must be summoned for a date not more than 28 days from the date the moratorium takes effect. However, a meeting commenced but adjourned within the 28-day period may resolve to extend the moratorium for a further period of up to two months from the meeting date.

  Whilst the moratorium is in force, the company is shielded from action by its creditors, for example, no petition may be presented for the winding up of the company and an administrator cannot be appointed.

It is important to note that a statutory moratorium for medium and large sized companies (i.e. those companies that do not meet the Companies Act 2006 criteria) can only be achieved if a CVA is combined with administration. In which case, the company will be covered by the moratorium arising from the administration order; this moratorium lasts for the duration of the administration.[11]

[11] The administration process includes a statutory moratorium, preventing creditors from taking enforcement actions. This is intended to provide the administrators with a 'breathing space', freeing them from creditor pressure, giving them time to formulate proposals, lay them before creditors and implement those which are approved.

2.6 Can a CVA be challenged?

Any person entitled to vote at the creditors' or the shareholders' meeting can challenge the implementation of the CVA within **28 days** of the approval being reported to the Court.[12] The grounds for challenging a CVA are:

- it's unfairly prejudicial, or
- there's been some material irregularity at or in relation to the meeting of members or creditors

It is open to the court to make an order to revoke the CVA, or convene a meeting to consider a revised CVA; or dismiss the application.

Box 7: How to successfully challenge an approved CVA

To successfully challenge an approved CVA, it must either be shown that:

- There was some '*material irregularity*' at, or in relation to, either of the meetings called to consider the CVA proposal. For example, the venue or date of the meeting was changed without proper notice to all creditors or there was a failure to supply the required information. Case-law suggests that to constitute a 'material irregularity', the irregularity must be such as to possibly have affected the outcome of the meeting.

  Or
- That the CVA '*unfairly prejudices*' the interests of a creditor, member or contributory of the company. There is no single universal test for judging unfairness; the Court is required to consider all relevant factors.[13]

[12] Under section 6 of the *Insolvency Act 1986*. It should be noted that the Court can only consider the events leading up to the implementation of a CVA and not the conduct of the nominee/supervisor

[13] For example, in *Prudential Assurance Co Ltd v PRG Powerhouse Ltd* [2007] Bus LR 1771 the Court found that there had been unfair prejudice where, by the terms of the CVA, guarantees enjoyed by certain creditors against the parent company of the company in a CVA were made ineffective without anything in return such that these creditors were in no better position than similar creditors who enjoyed no guarantee. The case of *Mourant & Co Trustees Ltd v Sixty UK Ltd (in Administration)* [2010] EWHC 1890 (Ch) involved similar facts except that some compensation was offered to creditors under the terms of the CVA. The Court found that there had been unfair prejudice on the basis that it was difficult (if not impossible) to determine what sum would compensate the creditor (a landlord) for the loss of the guarantee, the creditor should not be forced to accept the sum offered in the CVA

2.7 On completion or termination of the CVA

Box 8: What provision is made for the early termination of a CVA?

In practice, the terms of a CVA will usually stipulate what will happen if the debtor does not implement in full the terms of the CVA. For instance, it is common for a CVA to provide that, on the debtor company's default:

- the CVA supervisor may petition for the company's liquidation[14];
- the creditors of the debtor company cease to be bound by the CVA, allowing them to pursue the debtor company for the balance of the debt due;

  and/or
- the CVA supervisor must distribute any assets that he holds in partial satisfaction of the company's debts

Whether the CVA is successfully implemented or is unsuccessful and is terminated, the supervisor must send a report on the implementation of the proposal to all members and creditors who are bound by the CVA within 28 days of its completion or termination.

In broad terms, a successful CVA usually results in the company being able to trade uninterrupted throughout the CVA process and ultimately being relieved of its entire pre-CVA debts.

However, a CVA may come to an end prematurely if it's not fully implemented. The supervisor must file a notice that the CVA has been terminated (within 28 days of termination at court and with the registrar of companies) setting out the reasons for failure and summarising receipts and payments. Case law suggests that assets within a failed CVA are held on trust for the creditors bound by the CVA. An unsuccessful CVA typically ends in the company's liquidation.

[14] Depending on the terms of the CVA, it is possible for a trust over the company's assets created by the CVA to survive the CVA's termination and the company's entry into liquidation

3. The advantages of a CVA

Box 9: Potential benefits of a CVA

For a company in financial difficulties, a CVA can be an effective alternative to either administration or liquidation proceedings. Potential advantages of a CVA include:

- There is no need to prove insolvency, so action can be taken at the first signs of distress.
- A CVA is a flexible tool; the legally binding terms of a CVA are freely negotiated between the company and its creditors.
- A CVA may give a small viable company, that has a good business model and a full order book, but is in 'temporary' financial difficulties and under pressure from its creditors, a 28-day moratorium (i.e. breathing space) in which to rescue the business. This optional moratorium is not available to large businesses.
- For all companies, a CVA may allow time to reorganise and restructure a company (with no disruption to customers). A CVA may provide a company that has experienced trading difficulties since start up, with time to prove their business model. (It also enables a company to retain its trading record).
- A CVA allows the core business to trade on and generate income (i.e. potentially huge cash flow benefits).
- A CVA does not involve the Court (unless it is challenged). It can, therefore, generally be cheaper than other formal procedures. CVA generally costs less than other insolvency procedures such as receivership or administration (although much will depend on the complexity of the case).
- A CVA enables a company to avoid the stigma of liquidation. (A CVA is not advertised but it is noted at Companies House.)
- In respect of a CVA proposal, dissenting unsecured creditors can be 'crammed down' if the CVA is approved by 75% in value of creditors present in person or by proxy and voting on the proposal (and not opposed by more than 50% of independent creditors – i.e. those who are not associates). The CVA proposal will even bind creditors who are unaware of the CVA proposal/ creditors' meeting.
- Secured creditors generally remain outside of the CVA and are therefore likely to be supportive.
- A CVA allows structured payment of crown tax arrears (with retention of 'tax losses'). Shortfalls to landlords and finance creditors will also rank in the CVA.
- A CVA may be used by a company that wishes to wind down trading in an orderly fashion. A CVA is a cost-effective method for avoiding formal liquidation of a company.
- CVAs are recognised in EU Member States under the EU Regulation on Insolvency Proceedings. This means that a CVA is afforded automatic recognition across the EU jurisdictions.

4. The disadvantages of a CVA

Box 1: Potential disadvantages associated with a CVA include:

- For creditors, a CVA provides no opportunity for full investigation into the affairs of the company.
- The supervisor of a CVA (who must be a licensed insolvency practitioner) is unable to pursue directors for actions in relation to fraudulent or wrongful trading, transactions at undervalue, preferences or misfeasance.
- Any creditor owed 25% or more of the overall indebtedness is in a strong position in influencing the terms of the CVA.

  Whilst subject to a CVA, a business can continue to trade. However, suppliers may be unwilling to offer credit terms at least in the short term – resulting in cash flow problems. Trading terms may need to be renegotiated to ensure support of the company’s proposal (i.e. discounts may be lost).
- Finance company creditors may be unwilling to participate and terminate their agreements.
- The failure of some CVAs is due to the high level of expectations and strict conditions imposed by creditors.
- However, the main limitation is the lack of any automatic moratorium (few companies qualify as small companies for the moratorium) and although the Insolvency Service did consider extending the moratorium to larger companies, the moratorium has not been extended to date. As a result, CVAs are sometimes combined with administrations to benefit from the moratorium arising under administration.

5. Consultations and initiatives

5.1 Consultation: Encouraging Company Rescue

As outlined above, the IA 2000 introduced a provision that gave small companies preparing a proposal for a CVA, the option of applying to the Court for a 28-day moratorium.[15] This option is not available to medium and large sized companies. Consequently, they will often enter administration to secure the moratorium they need while they negotiate a CVA.

According to statistics provided by the Insolvency Service, there were 587 CVAs compared to 4,822 administrations in 2008.[16] The problem with this is that administrations are more costly than stand-alone CVAs.

In the Budget Statement of April 2009, the Government announced that the Insolvency Service would consult on proposals to improve the effectiveness of CVAs. A consultation paper, 'Encouraging Company Rescue', was duly published in June 2009. This Paper sought views on three proposals:

- Extending the option of a moratorium against creditor action to viable medium and large sized companies.
- The introduction of a new court sanctioned moratorium of up to three months, available to all companies.
- Providing greater security to repayment of monies loaned post CVA, to allow firms in difficulties to access the funding they need to get back on track.

In making these proposals, the Insolvency Service said that its overriding aim was to encourage company rescues.

The consultation ended on 7 September 2009. According to the Insolvency Service, the responses received from stakeholders suggested that an extension of a moratorium to all companies would have limited benefits for two reasons:

- CVAs cannot be used to restructure secured debt (such as mortgages); and
- an extended CVA moratorium would not cover the period prior to the launch of the CVA (when terms for the company's financial restructuring would be negotiated)

5.2 Consultation: Proposals for a Restructuring Moratorium

A second consultation paper, 'Proposals for a Restructuring Moratorium', published in July 2010, set-out a far wider, 3 month court sanctioned moratorium for all companies seeking to restructure their

[15] Which introduced a new Schedule A1 into the Insolvency Act 1986
[16] Insolvency Service, *Encouraging Company Rescue", June 2009 [online] (accessed 13 February 2013)*

debt by way of a CVA or a Scheme of Arrangement. It was proposed that the company's existing management would retain control whilst the moratorium was in place, subject to a limited supervisory role by an independent insolvency practitioner known as the "Monitor". Debts incurred during the moratorium period would have super-priority status in any subsequent insolvency process.

On 11 May 2011, in a Written Ministerial Statement, Edward Davey (then the Parliamentary Under-Secretary of State for Business, Innovation and Skills (BIS)) said that officials would work with stakeholders to refine the moratorium proposals.[17]

5.3 R3 initiative: call to reform CVA procedure

In a press announcement made on 29 May 2018, the insolvency and restructuring trade body R3 (the Association of Business Recovery Professionals) supported by ICAEW, published research in support of reforms to improve the effectiveness of CVAs.

The research report was produced by the University of Wolverhampton and Aston University.[18] To further improve the perception and performance of CVAs, the report recommends:

- **CVAs should be capped at 3 years** – CVAs typically last 5 years, but (according to the research) long CVAs increase pressure on a struggling company, increase the risk of failure, and do not guarantee better creditor returns.
- **A pre-insolvency moratorium should be introduced** – Companies which used an existing, limited pre-CVA moratorium from creditor enforcement action (or which used the moratorium provided by administration) tended to have a higher chance of completing their CVA. The recommendation is that the moratorium should be: expanded to all sizes of companies, simplified and should be made available for use ahead of any insolvency procedure. In effect, the moratorium would give companies more time to plan a CVA free from creditor pressure.
- **Directors' and insolvency practitioners' (IPs) duties should be more clearly defined** – Directors should be required to address financial distress at an earlier stage than now, while the IPs role in a CVA should be clarified and reporting enhanced. Consideration could be given to extending the existing system of insolvency fee estimates to CVAs.
- **Public sector creditors should have to explain why they won't support a CVA** – The research revealed that HMRC was the most likely creditor to oppose a CVA and provided little feedback on its reasons for doing so. According to R3, this prevents an effective negotiation – and sometimes leads to a

17 HC Deb 11 May 2011 c.37WS

18 "Company Voluntary Arrangements: Evaluating Success and Failure", Professor Peter Walton University of Wolverhampton, Chris Umfreville Aston University, Dr Lezelle Jacobs University of Wolverhampton, commissioned by R3 and sponsored by ICAEW, May 2018, [online] (accessed 31 May 2018).

company's administration or liquidation, which can undermine returns to creditors (including taxpayers).

- **The introduction of standard CVA terms and conditions** – Standard terms would improve the consistency of CVAs, reduce costs, and help build knowledge among stakeholders about how the process works.

Professor Peter Walton, who carried out the research, commented as follows:

> Whenever dealing with companies in financial distress, law and practice must strive to get the balance right between the rights of creditors on the one hand and the interests of other stakeholders on the other in order to ensure feasible businesses survive in circumstances that are transparent and fair. Not all companies in distress can or should be saved, but where they can be turned around, it is important to make turnaround processes as efficient and timely as is reasonable. Our report highlights a number of ways in which we believe CVAs can be made to work more effectively for the benefit of all stakeholders.[19]

An R3 spokesperson said the research made a strong case for the Government to back reforms which could improve the effectiveness and reputation of CVAs:

> Government plans for a moratorium, which have been stalled since 2016, should be revived, for example. This would help in all insolvency cases, not just CVAs. There is also scope for the insolvency profession to make it clearer what the IP's role should be in a CVA and to improve the information provided to stakeholders.[20]

The R3 spokesperson said that reforms could see the CVA procedure used more than alternatives, improve more money to creditors, rescue more businesses, and improve confidence in the process and wider insolvency framework. He said:

> CVAs are a very useful insolvency tool. In the best case, when combined with new funding, they can turn around a company and maximise repayments to creditors. Even where they don't meet all their objectives, they can still see more money returned to creditors than an alternative procedure.[21]

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19 "CVAs reforms needed, says insolvency and restructuring profession", R3 press notice, 29 May 2018 [online] (accessed 31 May 2018)
20 Ibid
21 Ibid

6. Small Business, Enterprise and Employment Act 2015

The Small Business, Enterprise and Employment Act 2015, which received Royal Assent on 26 March 2015, introduced many changes that now affect CVAs. The main changes are as follows:

- The abolition of requirements to hold meetings in certain cases.
- The Insolvency Red Tape Challenge identified measures to improve the efficiency of insolvency processes, to reduce the costs of administering insolvency proceedings leading to higher returns for creditors. The Insolvency Service consulted on these measures in July 2013 and published the Government response to the consultation in January 2014. Part 10 of the new Act contains measures that result from these proposals, including removing the requirement to hold physical meetings in every case.
- The new deemed consent procedure
- Under section 122 of the Act, an office holder can circulate details of his proposed decision, which is deemed consented to by the creditors or contributories if a certain proportion of them do not object.[22]
- The ability for creditors to opt not to receive certain notices.
- Under section 125 of the new Act, creditors (of both individual and corporate insolvencies) are able to opt out of certain notices issued by insolvency office holders.[23]
- Creditors no longer being required to prove for small debts[24] (effective from 26 May 2015). What constitutes a small debt is set out in the Insolvency (England and Wales) Rules 2016 (£1,000 limit mooted).[25]

22 Inserts new section 246ZF and section 379ZB into the Insolvency Act 1986
23 Inserts new section 379C and section 383A into the Insolvency Act 1986
24 Sections 131 and 132
25 Amends the enabling provision in Schedules 8 and 9 to the Insolvency Act 1986

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