



My CompanyRescue Programmes™

**CompanyRescue's Complete Expert Guide to
The Company Voluntary Arrangement Process.**

**Learn the trade secrets of the UK's leading company voluntary
arrangement expert; Keith Steven.**

**Get thousands of pounds worth of Expert CVA Advice for your company
– Free**

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Welcome to Keith Steven's Expert Guide to The CVA Mechanism.

Keith has been turning companies around since 1994. He has been involved with hundreds of companies and SME businesses in that time, all were facing insolvency, closure and bad debts. Plus the people involved faced possible loss of homes and marriages as the longer term risks.

All of these companies were rescued bar a handful of rejected deals (see REASONS WHY CVA's ARE REJECTED) and many survive today.

Having been involved in all of these cases there is not much that Keith does not know about the fantastically powerful CVA process. The real worry Keith has is that most distressed company directors still don't know what it is.

So this programme is designed to SPREAD the CVA WORD!

We have set out this guide to be as user-friendly as possible, but please remember whenever you have questions you can email them to us for a quick answer. We will answer all questions during our office hours of 8.30 to 6pm, 5 days a week. This email support service is FREE.

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Introduction to this Guide

Director?

Well, as we all know, there are any thousands of things that can go wrong in a business but always remember this. The business generates economic activity, employment and value added for the local and national economies.

If you started the business or are the sole director, you will know that it is a lonely profession, being an entrepreneur or struggling MD!

If you are a director of a larger or more established concern, then you will know just how critical the business is to its employees, its suppliers and its customers.

Make sure you read this guide and www.companyrescue.co.uk BEFORE making any decisions on the options available.

2011/ 2012

This has been a very tough period for businesses over the last two years and now that recession is officially ending(??) many companies will fail because of low working capital. Using a CVA can resolve many of these issues and allow you to completely restructure costs, personnel and management.

Advisor? Think of these Benefits.

If you are a professional advisor, why not read this guide and learn how to SAVE YOUR CLIENTS. What is the point in passing the client to other firms of insolvency practitioners that will simply bury it? This programme could lead to improved cashflow, new billable time and the retention of long standing clients.

KSA CompanyRescue – Our aim is to Rescue Viable Businesses!

We help many thousands of people every year, they run different and diverse businesses. Most are fantastically hard working, many are innovative and creative, others are great with numbers or processes, and still more are great leaders. BUT all of the people we work with and help share ONE COMMON TRAIT: The Emotional Roller Coaster of insolvency.

It's tough out there: in 2010-11 we have had a UK and worldwide stagnation; banks going bust and the Eurozone crisis will mean that credit will be much tighter for everyone including your business. So it makes a lot of sense to protect your hard work, investment and future by cutting costs, getting rid of surplus people and planning to be in business when the turnaround comes.

So let's start with a well used turnaround phrase, "You are where you are". There is no time for blame or recrimination its all about one thing now.....

FOCUS ON SAVING YOUR BUSINESS

"Running a business that's approaching insolvency, or that's actually insolvent is an emotional roller coaster; there are good days and bad, great successes and depressing failures.

Remember, although you have fought many battles before on your own, now you have the UK's leading CompanyRescue firm on your side and we know what you're going through"!

Keith Steven KSA Group January 2012

The Definitions of Insolvency

You may think that having a cashflow problem is not the same thing as being insolvent, or the business is not at risk so why do I need to focus on saving it?

The UK insolvency law is built around Insolvency Act 1986, Enterprise Act 2002, The Company Directors Disqualification Act 1986, and many examples of case law and practical application, through case law. So there is lots of law about!

It is vitally important to understand that, if the business is insolvent, this results in a shift in the director's duty of care from acting in the best interests of the shareholders to ensuring the **creditors' position is maximised**.

If your company IS INSOLVENT whatever you do from now on you must act to maximise creditors' interest, that's the law. That usually does not mean stopping trading. Clearly, if stopping trading was as a serious option or your preferred route, then you may not have downloaded this programme!

So although maximising creditors' interests is paramount, it can have the added benefit of rescuing the company too.

Just to aid your understanding please now read the following definitions of insolvency:

There are three methods to determine insolvency:

The Cashflow Test

Simply - can the company pay its debts when they fall due for payment?

For example if you are not paying the tax deductions from employees for PAYE and NIC across to the Inland Revenue on the 19th of the month following the month they were deducted, then the company could be insolvent.

If your trade creditors sell to you on say 30 days terms and you regularly pay on 90-120, then the company could be insolvent.

[A director has a legal requirement](#) to understand this issue. If he or she believes that the company has insufficient cash to pay its liabilities on time then they must take advice/action.

The Balance Sheet Test

Simply - do you owe more than you own as a company or are the company's assets exceeded by its liabilities? If yes, then the company could be insolvent.

It is important to point out that this test should include contingent or prospective liabilities. (If you need advice on these issues [email us](#)).

Many directors tell us that on a balance sheet test the company is not insolvent therefore they do not need to act. However, under the cashflow test above the company may still be insolvent. So you must act if it is.

In our experience an apparently solvent balance sheet may include items that are overstated, such as obsolete stock and work in progress, or debtors that are not really collectable. After deducting these items many balance sheets become insolvent. So be prudent - you are legally required to present accounts to show a true and fair picture of the business.

Legal Action Test

If a creditor has obtained a [County Court Judgment](#), this may demonstrate the company's insolvency and the creditor may petition to wind up the company. ([See compulsory liquidation](#)).

If a creditor has obtained a [statutory demand](#) for greater than £750 and it remains unpaid for more than 21 days, then the creditor may petition to wind up the company. ([See compulsory liquidation](#)).

If you believe that any of the above tests are positive for your business, it is vital that you and the board of directors take action to address the insolvent position. However, don't panic, look carefully at all pertinent issues and consider the rest of this website.

Remember, if the company is insolvent you must act to maximise creditors' interests. **If there is no reasonable prospect of the following options happening:**

- ▶ New or additional capital or finance being introduced to the business to return the balance sheet to a solvent position or to remove the cashflow pressures.
- ▶ A sale or acquisition of the company.
- ▶ A [company voluntary arrangement](#) or [administration](#).

Then the directors may be accused of [wrongful trading](#). If you are worried about this or your accountant has said he/she is concerned then look carefully at [directors disqualification](#).

So if the company is insolvent you must act to MAXIMISE CREDITORS INTERESTS. Failure to do so could lead to personal liability!

What is a Company Voluntary Arrangement?

This is the most popular question we get online or from callers to KSA.

A CVA is a deal between the company and its creditors; unsecured, trade and tax, to repay them from future profits or a deal may be written to sell assets and pay back creditors from the proceeds.

The deal is based on preserving the company, rebuilding sales and profits and paying something back over a period of time to be agreed. Directors remain in control, personal guarantees don't get called in (usually) and it gives your business a fighting chance to survive.

Here at KSA CompanyRescue, we are the biggest single producers of CVA proposals in the UK. In 2008 we have been responsible for writing 12-15% of the CVA's in England and Wales and 80% of the Scottish CVA's!

We start every CVA deal with a blank sheet of paper and a clear mind. Every case is different, but there are some crucial points to consider before embarking down this path.

Based on our experience vital components of a successful CVA are

- A viable business that can return to profitability. It will have traded and been profitable in the past.
- A commercially structured deal - do not pay too much too soon.
- Introduction of appropriate levels of working capital in addition to the restructuring of debt.
- The management accepts that there has to be change in the management and company.
- Directors and management need to be determined and hard work is essential, plus a bit of luck helps.
- Directors need to use expert CVA advisors to build the deal. Always ask advisors claiming to do turnaround how many CVA's they've done!!
- Cautious forecasts - don't expect life in CVA to be easy!

So if your company can be viable in future but pressure is mounting this could be a superb solution. Remember the directors should aim to maximise creditors' interests - by continuing to trade, you will do that in a CVA.

VIABILITY

After the directors have considered the long-term viability of the company it is essential to take appropriate advice from experienced turnaround advisors. We believe that it is vital to have commercially pragmatic and creative specialists involved from as early a stage as possible.

If a company has a viable future, the directors and management accept the need for change, are prepared to fight for its survival and the appropriate funding can be found, then a CVA is a very powerful tool. BUT be prepared - it is a tough fight and it is harder than liquidating the business. By proposing a CVA you are demonstrating that you are trying to maximise creditors' interests so it can often be viewed positively.

If after that the CVA does work then the company will be profitable and valuable for the shareholders.

Who can propose a CVA?

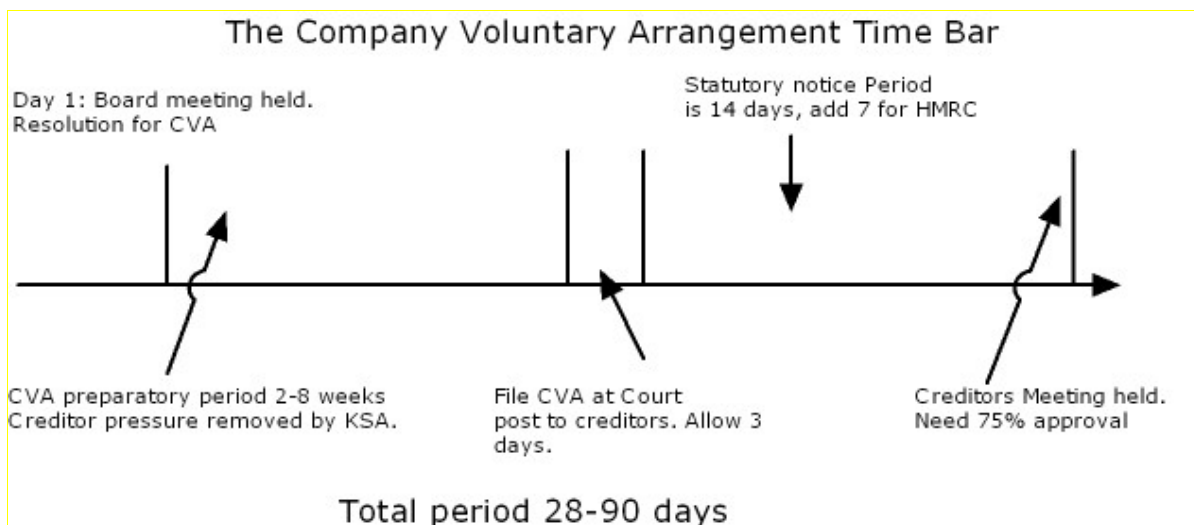
A CVA may be proposed by the directors of the company. When the company is either in liquidation or administration, the liquidator or administrator can propose a CVA.

Yes get this, the legislators have provided tools for liquidators and administrators to rescue a company from liquidation through CVA.

A CVA can only be proposed if a company is insolvent or contingently insolvent.

How long does it take?

Here is a time-bar summary of the CVA process:



Our STEP by STEP CVA Enquiry Assessment Process.

When we receive an enquiry for a CVA we always act in the same way. Our trained advisors listen to the problems, ask educated questions, obtain financial information from the caller and then consider the legal issues.

We normally have a chat through the issues facing people when they contact us. That way we can quickly ask questions that can help us form a view. If we feel we can help directly with a rescue approach, we often visit to have a face to face chat through the issues, followed by the issue of a detailed report. We do not charge for this process.

If we found a way forward then fees would be discussed in advance of any work being undertaken. Generally our work is paid over a number of weeks from the savings we make in cashflow.

If we feel that the company needs to be closed or liquidated we will introduce you to one of our insolvency practitioners. If you believe the business is viable, we can help rescue and restructure the business with our in-house expertise.

It helps us if you or your client can supply the following basic information to start the process.

1. Where is your business based?
2. What does it do and what is the turnover?
3. What legal status – limited company, partnership or sole trader?
4. Assets - approximate value:
 - 4.1. Plant and equipment, motors, fixtures and fittings etc.
 - 4.2. Stock and work in progress, debtors, cash.
5. Liabilities:
 - 5.1. Bank – overdrafts, loans and etc.
 - 5.2. Inland Revenue and VAT Arrears and current.
 - 5.3. Trade creditors.
 - 5.4. Other such as hire /lease purchase, directors, SFLGS etc.
6. Viability:
 - 6.1. Marketplace - brief description
 - 6.2. Orders, enquiries future prospects – brief description.
7. Management:
 - 7.1. Type of management.

7.2. Any gaps in the team.

7.3. Ability.

Summary:

Please note we don't need lots and lots of paper to make a decision to help. Just provide the basic information above or as much as you can to start with!

We can provide free telephone, fax or email support even if only some of the above information is received. After receipt, if we believe that we can assist the company we will attend a meeting free to the client at a mutually convenient time and place (usually at their business address). This is then followed up by a detailed solutions report that guides the directors as to the rescue options.

CVA process a Detailed Guide

1. The directors appoint advisors, such as turnaround practitioners or an insolvency practitioner (IP) to assist in the construction of the proposal. (Warning ask the IP how many CVA's he has written and got approved! KSA has proposed hundreds).
2. During this "hiatus" period the company should not materially increase or decrease debts to any creditor, suppliers should be paid for supplies made (not always easy!) and activity of the company continues.
3. A review of the company, its people, markets and systems should be undertaken. This is an important part of the process. Typically the CVA will include detailed 3-5 year financial forecasts to assist the creditors to make their decision to support the deal or not.
 - 3.1. We ensure that highly detailed specialist forecasting package is used. After our expert forecasters have produced this based upon the directors' guidance, the directors can then be shown various versions and what if planning can be used to build scenarios.
 - 3.2. What if we cut costs, what if we closed that outlet or factory, what if we got rid of some people. These and other questions should be carefully considered as part of the CVA process.
4. It is vital to remember that the company has the opportunity to sharply reduce costs of employment and overheads that would not be available to it ordinarily.
5. So, make sure that the lowest level of costs is targeted. Use the CVA to terminate employment contracts, leases of property and assets and any other onerous costs. If the company is struggling to drive sales up then try and "fit" the costs to lower levels of sales. Making sales in a recession or downturn phase is tough, so assume that in a CVA it will be even tougher!
6. KSA has a team of 90 financial forecasting experts across the country. Their role is to help the director build realistic and achievable forecasts by questioning all of the financial information being produced. This process is never easy as sales have to be guessed at, but I would always advise people to aim much lower in

their expectations! Being pessimist is actually being more realistic fir the company's future prospects

7. Once the draft proposal is ready the directors will typically review and refine it with the forecasting expert or accountant and agree that the proposal is appropriate, achievable and maximises creditors' interests. If the directors do not believe that it is sensibly structured, or that the process has highlighted weakness in the business then it is advisable to close the business. For example see our guide to [creditors voluntary liquidation](#).
8. When the CVA drafting has been completed the directors should then discuss the position with the company's' secured creditors. Experience tells us that the ability to deliver a quality draft proposal at this stage is preferable to verbal assurances that a CVA will be written and the bank told what the contents are when it's ready!
9. We find that the banks are very keen to get involved and assist where they see a viable company. Often they will want to see how the company will repay the bank's debts. This should be included in outline in the document - of course the bank may not agree with the suggested secured debt structure but will usually negotiate with the directors and their advisors.
10. During the CVA production or hiatus period, current assets such as WIP and debtors are collected, turned into cash and liquidity should improve. This should be used to fund the difficult period between appointment of CVA advisors and filing the document at court.
11. In addition the company does not need to pay PAYE, NIC or VAT in the hiatus period. This too can be used to improve cashflow.
12. The CVA proposal is then filed at court only to ensure that the proposal is ratified and carries a legal originating number. Then it is printed and the proposal is distributed to all creditors. The court does not have an active part to play in this process but the CVA proposal, that is sent to creditors, must be a true signed copy of the document filed at court.

After the Proposal is completed:

1. The proposal must then be sent to all creditors who then consider it for the minimum notice period as above before the creditors meeting can be held. This is usually held at an independent venue (theoretically at the convenience of creditors).
2. We find that the HMRC team, called the Combined Voluntary Arrangement Service prefers to have up to 3 weeks to consider the

proposals so we always allow more than the statutory 14 day minimum period for consideration.

3. The meeting will be chaired by the advisor or an Insolvency practitioner (IP). Creditors are often represented by technical professionals from other insolvency firms. The aim of the meeting is to allow the creditors to question the director's proposals; however it is not a place for settling disputes.
4. At the meeting the creditors vote on the proposal and the proposal will be approved if a majority vote of 75% by value of the total value of creditors at the meeting (whether in person or by proxy) vote in favour. A second vote excluding connected creditors is taken and provided that not more than 50% of creditors vote against the proposal it is approved.

For an example of votes at a creditors meeting [click here](#)

5. **In our experience the voting at meetings is an area that concerns many directors.** Well, provided the work has been done thoroughly before the CVA is filed at court then the worry should be reduced. In our CVA's the Combined Voluntary Arrangement Service, (CVAS) which represents the HM Revenue and Customs, will always support viable proposals that are well built and show proper care and attention to detail.
6. Given that the CVAS often represents the largest votes, then we ensure that they are comfortable with the CVA process very early in the cycle of events.
7. Proper communication with creditors is a vital part of KSA's strategy for helping you build a CVA deal.
8. The Chairman controls the ability to vote and provided creditors have been asked to consider a sensibly structured deal, almost all proposals are accepted by creditors. Also the creditors may wish to modify the proposal - once again the modifications need to be approved by the majority votes above.
9. This modification process is usually led by the HM Revenue and Customs agencies to ensure future debts are paid on time and future filing of tax returns is done correctly. Occasionally other creditors may ask for a modification to the proposal.
10. At the same time as the creditors meeting, the members (shareholders) meeting is held. Members decide whether to accept

the proposal as made or modified and a vote of 50% in favour is required.

11. If both meetings approve the proposal the meetings close. The chairman must then issue a chairman's report, within 4 days, to all creditors and the court, stating what happened, who voted and how they voted.
12. Once approved all notified and included creditors are legally bound for the debt "frozen" in the proposal. No further legal action (except by leave of court) can be taken against the debtor company and the creditors will receive dividends from the supervisor as described in the proposal.
13. After the approval the company must make the agreed contributions to the trust account administered by the supervisor. Failure to keep up with contributions is deemed a default and the company voluntary arrangement can be "aborted". This usually leads to liquidation or receivership.
14. In our opinion the best way to avoid this is to structure the deal on the following basis. Prudent forecasts of directors should be further scaled back and modest forecast profits should be used as the basis for contributions BUT:
 - 14.1. No more than 50% of profits after tax and debt repayments over the deal period should generally be contributed.
 - 14.2. Contributions should be stepped to match profits achieved.
 - 14.3. Any lump sum contributions during the currency of the CVA should be avoided where possible unless assets are being disposed of as part of the CVA programme.
 - 14.4. The use of a profits ratchet allows higher repayments if modestly forecasts profits are exceeded. (This is a standard requirement of the HMRC).
15. **Even if the approach outlined here leads to small repayment levels to unsecured creditors, the creditors usually prefer sensible contributions to hopelessly optimistic forecasts.**

Provided the company conforms to the CVA proposal and makes its contributions, then the CVA continues for the agreed period. The supervisor is generally not involved in the business (in our CVA's). **THE DIRECTORS REMAIN IN CONTROL.**

What if things don't go well?

If the company is not performing well and yet it would still appear to be viable, then it is theoretically possible to reconvene the creditors meeting at any time to ask the creditors to consider amendments. If the Supervisor has concerns, he

can also ask the court for directions. In most cases the directors should inform the supervisor if there are any material changes to the company or its business.

What happens at the end of the CVA period?

Once the agreed period is completed and the supervisor has issued a completion certificate, then the company leaves the CVA state. Any remaining unsecured debts (where partial repayment was approved) are written off and the directors continue to run the business for the shareholders.

It is also worth pointing out that the CVA is not a panacea for your company; but it is a very powerful framework for change and protection of a distressed but viable company. In reality although difficult to propose and get approved, getting the CVA approved is the easiest part of a rescue/turnaround– making a turnaround work is much more difficult and needs professional help.

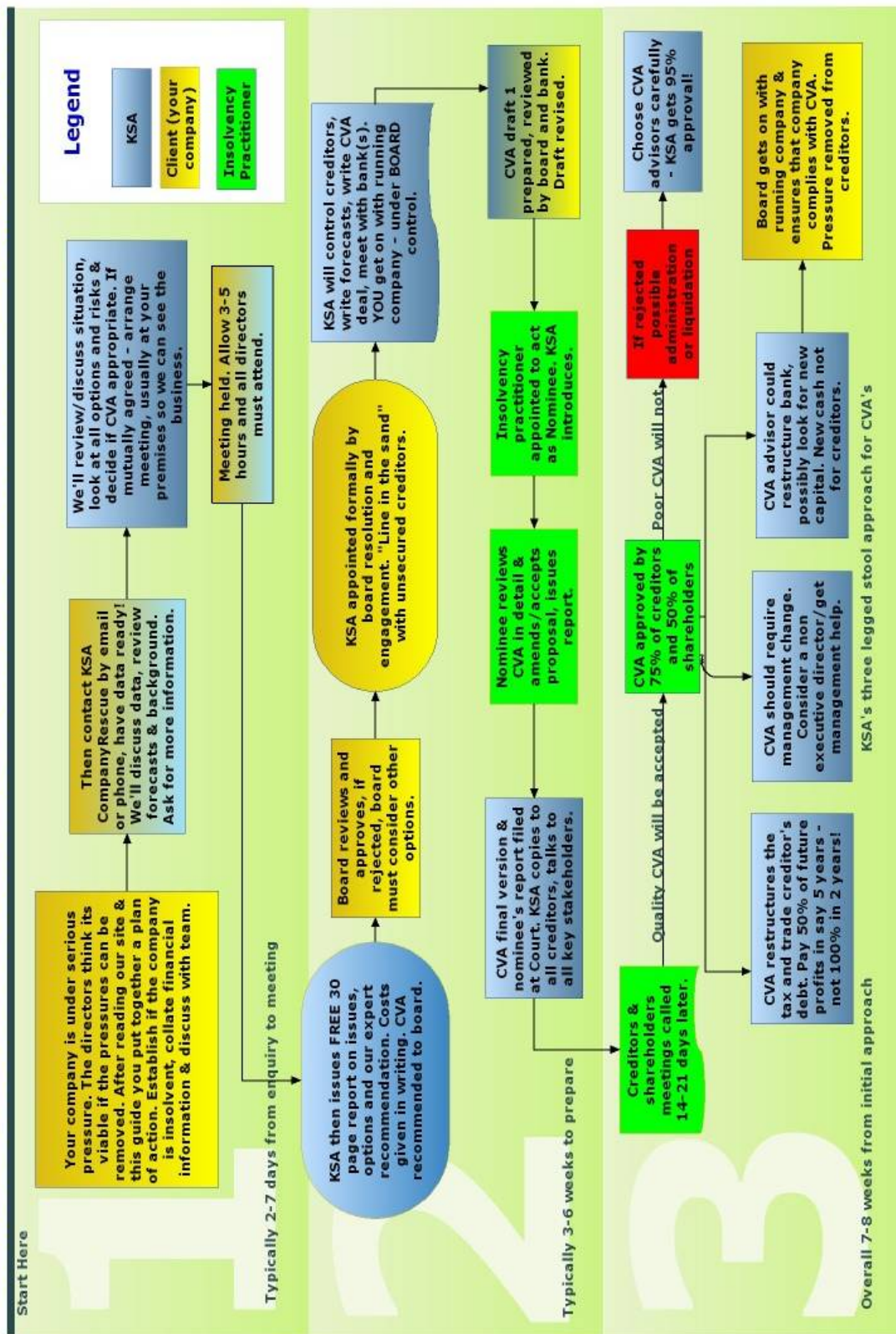
Remember:

The CVA should aim to:

- Maximise creditors' interests.
- Preserve viable but distressed businesses.
- Preserve economic activity and save jobs.
- In time return value to the creditors.
- Provide a real prospect of a return for shareholders

Here is our Unique CVA flowchart:

Unique CVA Process Flowchart From KSA - The UK's leading CVA experts



Call KSA now for a free discussion on 0800 9700 539



Company Voluntary Arrangements - Worries and Mistruths!

We cannot use the CVA mechanism because: Or the classic worries we have heard for the last 15 years doing CVA's!

So you are considering a CVA, or your advisors have carefully recommended using the CVA to rescue and restructure the company. But the directors have a lot of fears and worries about taking this path.

Clearly this is a huge decision for the directors to make. Make it wisely by reading all of the relevant pages in this guide.

We will lose our customers!

No you will not. In over 400 cases people have said this to us and we understand why. But, in practice, we have rarely seen a customer walk away from a business that is delivering its products and services; well and on time. Shouldn't that be your focus?

Stop firefighting and get back to doing your main roles. This way customers will stick with your company.

But keep firefighting and sooner or later your performance will falter and their business may suffer. THEN you may lose them.

Should we tell our customers then?

Many people say "we cannot tell our customers that we are doing a CVA or they will walk away". That is your decision and one that should be based upon knowledge of the business relationship, their requirements and any contracts. Sometimes the best answer is to tell them with professional CVA advisors in attendance. Often this is better than a competitor telling them that you have "gone bust"?

Think what you would feel if a major supplier did not tell you of their problems and their plans to deal with it, but instead they hear from a local rival that you have "gone into liquidation"?!

Our creditors will not supply us!

Yes they will. They need to maintain their sales to your company, as much they don't like losing the money owed. We spend a lot of time on "creditor liaison".

By carefully explaining what the company is doing, how it will be in their best interests and asking them to work with the company and ourselves we ensure that creditors are kept informed and on side.

Don't expect any credit terms or any favours, but being honest and open with them pays dividends in the long run. After all, it would actually be simpler to simply liquidate and walk away wouldn't it?

You are trying to maximise creditors' interests by doing the CVA thus it's in their interests to work along with the plan.

Our staff will walk out!

Generally they will stay. If they walk out they will lose any employment rights and will not receive any redundancy, lieu of notice payments from the company or the DBERR. Further, they will not be eligible (generally) for unemployment/job seekers benefit.

So I recommend being open and honest and working out a plan for and with the employees. Proper communication is vital.

Some employees may lose their jobs as part of the restructure; this is painful and at times inevitable. We can work with you to achieve this.

The bank will appoint a receiver/administrator!

Again this is simply not true IF a cogently structured plan and a well, presented approach to the bank is used. In 14 years I have only see a bank do this once or twice and that was because they did not believe the directors were acting properly.

Most banks are much more supportive now of "out of court" restructurings like CVA as it avoids the usual huge asset meltdown and costs of say administration. Although the CVA cannot affect the rights of the bank or lender they are stakeholders and should be closely involved in the process.

HM Revenue & Customs will not support a CVA!

Yes, they will if it is a properly structured, well thought-through plan and the company has been compliant with tax rules in the past.

The HMRC agency that decides on these proposals is called the Combined Voluntary Arrangement Service. Currently it votes in favour of c73% of all proposals. However, we have a >90% approval record.

More CVA FAQ's

These questions and answers will give more detailed background to the technique. If you have any further general or specific questions email us.

Q: If we propose a CVA what will the bank's reaction be?

A: In our experience if the bank is presented with a vague "we might do a CVA" approach they will become very worried very quickly. As you will recall from the CVA guide page preparing the CVA is the job of the directors and their advisors.

A properly structured and pragmatic deal that is based on reasonable assumptions will be much more acceptable to the bank. In other words prepare the draft CVA with your turnaround or insolvency practitioner and build an outline for dealing with the secured creditors.

Then approach the bank. The local branch manager must pass the proposal to his debt recovery unit and cannot (usually) affect the outcome of the deal - if he understands the business well and is friendly he will probably support the deal if he /she can.

Remember the bank is (usually) secured, therefore the CVA cannot bind the bank in legally, but conversion of the overdraft into a longer term loan may give the bank more comfort that the company is keen to repay the debts. Talk to a turnaround practitioner used to dealing with banks.

Remember banks are in the business of financing and helping customers not "knocking them over" unnecessarily!

THE NEXT QUESTION IS ONE WE HEAR VIRTUALLY EVERY DAY AND IT IS A VERY FRUSTRATING ONE – SO PLEASE READ OUR GUIDE CAREFULLY AND THEN YOU DECIDE WHAT THE RIGHT APPROACH IS. MANY INSOLVENCY PEOPLE SIMPLY GIVE OUT WRONG INFORMATION ON THIS SUBJECT BECAUSE THEY DO NOT WANT YOUR COMPANY TO PROPOSE A CVA! WHY? BECAUSE THEY PREFER THE LARGE FEES OF ADMINISTRATION OR CLOSURE MECHANISMS LIKE LIQUIDATION!

Q: Someone told me that if we do a CVA the company has to pay back 100p in the £1 or the tax people will reject the proposal is that correct?

A: CATEGORICALLY **NO!** The amount the company pays back should always be based upon affordability not some arbitrary number. We always work out a 5 year programme with supporting and highly detailed forecasts. Then the result is a better structured longer lasting CVA.

The Revenue and VAT people will be happier to support that plan than a half baked scheme that takes the total unsecured and tax debt and divides it by 24 months – to get a simple 100% repayment. This method is doomed to failure!

Under the law there is NO minimum payment or dividend as it is known, the law simply lays out a method for offering a deal to the company's creditors.

Q: If we propose a CVA what will the HMRC do?

A: HMRC has a duty to consider the deal and the normal process is for the turnaround practitioner contact HMRC and say a CVA is being prepared. The collector or debt recovery unit will then pass the file to the central Voluntary Arrangement Service in Worthing.

The experts there will consider the document very carefully and vote accordingly.

Q: Should I tell my best customers?

A: There is a view (which we share) that the key trading "partners" of our business should be aware of what is going on. I think a controlled approach (once the deal is proposed) to key customers will be much more beneficial than allowing them to hear "through the grapevine".

Q: We are about to sign a new contract with a very important customer - if we propose a CVA what should we do about them?

A: Often clients think that the new contract is dependent upon the quality of your product and or service, but the customer will be checking the company's ability to fund itself and to be in business some months or even years down the line. Again a concerted and controlled approach (typically led by the turnaround practitioner) will often generate positive results. Talk to your advisors about this and decide on appropriate action.

Q: What will my creditors think?

A: Of course they will be disappointed - think what your reaction is when a customer fails, but with the correct approach they will understand. Perhaps they realise that you have been under pressure for a while and that by

proposing a CVA you are trying very hard to protect the business. By proposing a CVA you are demonstrating that you are trying to maximise creditors' interests so it can often be viewed positively

Q: Should I involve my employees?

A: It is our opinion that you must involve them when the time is right, they're the people who are going to help deliver management's plans.

Q: Won't they just walk out?

A: Not unless they want to suffer financial hardship. Voluntarily leaving will negate their chances of benefits. If they have a new job to go to there is little however to be done to stop disgruntled employees leaving. But if the employees can be involved as part of the recovery - perhaps by offering a share package as part of the long term strategy the key employees can often be retained.

Q: A Bailiff or Sheriff has walking possession; if we propose a CVA what should I do about that?

A: It is all about communication. We would advise talking to them when the time is right, gently pointing out that the assets actually are charged to the bank (or other secured creditor) and that the company is seeking to maximise all creditors' interests by proposing a CVA. They will listen if talked to in a mature way. Payment of their outstanding costs can often remove the pressure whilst not actually paying the petitioning creditors debts.

In extreme cases the debt may have to be repaid. If the amount owed is too high then the company may have to enter administration to prevent the legal actions escalating. That's an expensive step so exhaust all other options first.

Q: The business is viable but why do a CVA - why not just "dump it"

A: If you are determined to liquidate and start again perhaps even the strong economic and business arguments against liquidation are above your head. Remember the preservation of goodwill, preservation of tax losses; costs of liquidation, increase in creditor's claims and severe reduction in value of assets are powerful arguments to preserve a viable company. You also have a legal and moral responsibility to maximise your creditors' interests.

The risks of dumping it to avoid paying your creditors include - disqualification as a company director, being made personally liable under

the Companies, Insolvency and Criminal Justice Acts, and being pursued for any misfeasance or wrongful trading. Of course the risks are small but you should carefully consider and weigh them up.

Q: What happens to my Personal Guarantees (PG's) if we propose a CVA?

A: They are guarantees that cannot be removed unless and until the debt is paid off. The longer term repayment to secured creditors should be considered as part of the overall restructuring. Once the debt is cleared there is no reason why PG's cannot be removed.

A CVA will not lead to these being "called in" as long as a careful plan to deal with secured debt is set out to the lender. Again banks don't want to chase people for PG's they want to lend to responsible and viable businesses.

Q: We have big tax losses - won't we lose them in a CVA?

A: No. they can be used in future providing they are recognised losses.

Q: Can The company be protected from an aggressive creditor while we propose the CVA?

A: Yes there are two methods; one relies on case law and the other is a formal moratorium. See guide to moratorium below. For a full explanation of how the new Acts moratorium process works talk to a turnaround practitioner or an insolvency practitioner. This method is not popular because it places potentially onerous risks on the nominee.

Under case law, providing a creditor has less than 25% of the overall debts of the company then they can be required to consider the proposal even when a winding up petition is issued. (Dollar Land Feltham & Ors). A petition may be stayed and adjourned if a carefully structured plan is put together. If required a CVA can be rapidly prepared to show there is a "reasonable prospect" of the CVA being approved, then the Court will usually adjourn a hearing.

This is a complex issue beyond the scope of this guide, but feel free to email us if you have any questions.

Q: Can we continue to trade while we propose the CVA?

A: Provided it maximises creditors' interests it is essential to keep trading

Q: Is it expensive? How do we pay the cost of a CVA?

A: In comparison to other forms of insolvency, no it is not expensive. Individual circumstances determine the costs; but do speak to a turnaround practitioner or an insolvency practitioner about this area. Because payments to the Crown and other non essential creditors are suspended whilst putting the deal together, cashflow often improves allowing payment. However, many IP's and practitioners will consider spreading the cost of their work to match cashflow ability.

Dealing with Secured lenders – Banks, Leases, Factoring and CID.

Many of our clients are very worried that the secured lenders will not support the restructure of the company using a CVA.

All major clearing banks have a pretty healthy approach to restructure where the directors are acting responsibly and quickly. Banks fear control is taken away from directors by petitioning creditors like HMRC or suppliers.

So when a company is at risk (and generally the bank will know there are difficulties even if the board has kept quiet) the bank will monitor events, filing of management information, County Court Judgments and other legal actions.

In our view, it is always best to get the bank involved as soon as appropriate. Usually we advise clients to go to the bank with the solution generally mapped out. This may require a plan in writing or PowerPoint Presentation and at least a semblance of a CVA proposal with a statement of affairs even if the finished article is some way off.

In general terms the bank will see the CVA as positive because it helps cashflow, reduces the risk of creditors' legal actions and it shows the board is acting professionally and properly in a timely fashion.

The bank manager or factoring manager will often pass the client to the bank's special risk teams for assessment and review.

Bank debentures and lending facility letters generally provide for the bank to appoint a receiver or administrator in the event of default. This is known as the bank's remedy. But this is very rare in a CVA scenario. The bank will prefer to keep its powder dry and keep their remedy in abeyance.

The bank will generally not want to appoint an administrator or receiver, because this could lead to a reduction in the value of assets and in the business itself. In many cases the bank would see a lower recovery and therefore seek to reply upon personal guarantees.

A CVA does not normally impact upon the banks security and may not crystallise losses unless agreement is reached with the bank as part of the CVA scheme.

A well structured CVA can greatly improve the bank's recovery, maintain its security and remedy and so the banks are, in our experience, very supportive of a well structured CVA recovery plan.

It is possible that a CVA alone cannot provide the working capital improvements needed. We have frequently asked for capital payments holidays for lease and HP agreements and bank loans. If a good case is made using quality financial forecasts and cashflow projections then often the secured lender(s) will agree to help the company through the dark periods ahead.

Banks want to support their customers, they don't want to knock the business down and see a possible loss. Even with personal guarantees in place, they will seek to find solutions with the company's board.

HOWEVER, don't "act", don't provide the bank with information and don't seem to "get" how bad things are and the bank can appoint investigating accountants or even worse administrators very rapidly.

What are investigating accountants (or reporting accountants)?

When a business has financial or operating difficulties it can often breach its borrowing facilities from the bank or from factoring companies. This can lead to bounced cheques, problems with the payments of direct debits, missed loan repayments and generally builds pressure on the cashflow.

Banks have quite sophisticated systems for monitoring this risk, but often they are "in the dark" with regard to the up to date financial performance of the company that owes it the money. One way of addressing this is to demand (as their borrowing conditions usually allow) detailed and up to date information from your company.

If such information is difficult or impossible to produce because of failings in the financial reporting systems within the business then they will worry that old and out of date information is being used to run the company and their lending could be at more risk.

You may have noticed by now that bank's do not like risk! So the next remedy is to insist upon the introduction of investigating accountants. This will normally be paid for by the company, thus the act of appointing investigating accountants could lead to further breach of the facilities!

Investigating accountants (IA) usually have a brief to investigate the following

- Cashflow, current daily and for say the next 12 months month by month
- The current profit and loss activity, previous results and forecasts for say the next 12 months month by month
- Performance against your past forecasts (in other words can your forecasting be relied upon).

- They will investigate the current creditors and forecast that for say the next 12 months month by month. They will look for red letters from creditors leading to CCJ's Warrants, Statutory Demands and winding up threats.
- They will check to see if the company is up to date with the Crown creditors (PAYE and VAT) or if in arrears.
- They will check the quality of debtors and current assets like stock and WIP in the business.
- The strength of financial reporting will be assessed, as will the people involved.
- They will look at the business and marketing plans and check whether they are fit and feasible for the business.

Taking all of the above into consideration they will then write a report for the lender to state the options the lender should consider and what their recommendations are.

The options they can outline for the bank are not covered in this guide (see www.companyrescue.co.uk for more in-depth guides to receivership, administration, liquidation), advancing more money to help a short term requirement (yes that does happen!), withdrawing banking facilities, asking the shareholders to put more money in etc.

What will this cost?

Well the answer is how long will it take and who is doing it. Usually it is an insolvency practitioner and some of his/her managers/admin staff as a team.

I have seen IA's charge anything from £7-10,000 to £200,000 depending upon the complexities and size of the company or group. BUT the bank almost always insists that the company pays for this. Even if you refuse to pay and refuse to issue a cheque, the bank has the ability to "dock" the money from the company's account!

But we cannot afford that?

Yes that's part of the problem. You can always refuse to pay and state that the board/finance managers will do much of the information provision, but generally there is a significant cost and it is seldom that the bank gets the work done for nothing or agrees to pay for it.

All the more reason to go to the bank and show your funder you are acting with a CVA and as a board, not sticking heads in the sand.

Will we see the report?

Often no, however if you have a cooperative approach then the bank will share some or all of the report with you. Often the recommendation in the report remains confidential. So you may pay for it but you often cannot get access to it.

Will we have any input into the report?

It's much better to take part and put your views across forcibly with good information to back it up. So if you have not got that level of information (particularly as described above allied to information on orders, sales, enquiries, marketing, restructuring plans, downsizing and cost cutting) then you must get it to get your views across.

Who can we get to help?

You can often get assistance from your accountants/auditors. But if they're not up to speed with the problems then that can be counter-productive as they will generally look on negative information as a weakness that the bank may exploit.

We can help your business prepare restructuring plans; we have worked with dozens of companies and advised them how to plan their actions when the bank starts putting pressure on the facilities and asking for investigating accountants. Then we will normally help present those plans to the bank, this may avoid investigating accountants or indeed reduce their negative reports to the bank.

Our adage is "go to the bank with the solution not the problem"!

Landlords and CVA's

Most people, including many landlords, are completely unaware that a CVA (or any voluntary arrangement) can indeed terminate a lease, contract or supply contract, employment contract and HP agreement.

We are often asked to kill off these costs for our clients as a fundamental part of the CVA restructuring. So how does it work? Well this is a bit technical I am afraid but the CVA legislation was silent on many issues like contracts for CVA.

In the mid 90's some excellent case law was created that allows creative CVA practitioners to advise their clients on how to determine contracts.

The case law is in place to support well worded and structured CVA's setting out to terminate a lease. I very briefly summarise the case law for you below.

- o Re: *Doorbar v Alltime Securities Ltd (1995) BCC 1149* stated that landlords can be bound by voluntary arrangements for future obligations under a lease. This is hugely powerful for the CVA (or IVA/PVA) process
- o Re: *Cancol Ltd (1995) BCC 1133* Court decided that the word 'creditor' in r1.17(1) IR 86 was wide enough to include a landlord with a right to future rent – i.e. the ability to include future rent extends to CVA's as well as Individual Voluntary Arrangements.
- o Furthermore, where the unliquidated or unascertained claim in a CVA involves future rents accruing to a landlord, the case of *Re Park Air Services [1996] BCC 556*) gives the CVA meeting chairman some considerable guidance as to quantifying the claim at the meeting.
- o This approach appears to have been confirmed by *Re Sweatfield Ltd [1998] BPIR 276*.

KSA has very extensive practical experience of advising our client on using CVA's to terminate leases for our clients and in various matters surrounding the landlord and tenant issues that arise.

Recently one our clients won a Court of Appeal decision based upon appropriation of rent before and after the acceptance of a CVA after taking our advice - *Thomas v Ken Thomas Ltd (2006) B2/2006/0279*.

This is a powerful affirmation of our advice we give to clients where there are rent arrears. Pay the ongoing rent and make sure we write to the landlord stating the arrears will be frozen in the CVA but ongoing rent will be paid. Then if the landlord does not appropriate the new payments against new rent demands he cannot claim the company is in breach for ongoing rent, in fact the landlord is in breach of the principle in *Thomas v Ken Thomas Ltd (2006) B2/2006/0279*.

The CVA CAN compromise the arrears and it is a little known fact that CVA can **determine (terminate) a lease**, it can control how new payments are appropriated, all very powerful tools to have at your disposal and illustrates why CVA's are deeply unpopular with landlords!

Clearly, without writing a full book on case law this expert CVA guide cannot cover all of these cases in full detail; you will need to speak to insolvency lawyers, CVA, turnaround or insolvency practitioners for more details if you need them.

CVA Case Studies

CVA Case Study North of England – CVA for a haulage company, Bank and Asset Based Lenders restructured and supporting

Around 4 years ago we were asked to help a specialist haulage company that had had a lean period. This was down to the MD being ill and out of the business for a while. In that time the business was not well driven and financial reporting virtually collapsed. Thankfully the MD returned to day to day involvement in time and saw the accounting was in a mess (the BIGGEST COMMON DENOMINATOR IN ALL OF OUR CASES)!

With around 40 different vehicles on HP, lease and contract hire the company had too many vehicles, too much debt to service every month and a loss making business. The MD brought in someone to help with the accounting who after a few weeks confirmed there was a big hole and the company would fail in 4-8 weeks time. Thus the normal approach of talking to their chartered accountants was followed. They in turn introduce a friendly insolvency practitioner!

We were introduced by the insolvency practitioner who realised that this was a good business but needed a rescue. Fortunately for the company most IP's would have simply "buried it", but this guy saw a viable company under the mess.

By carefully assessing the weaknesses in the business we were able to set out a rescue plan.

A 4 stage plan was put together as follows

- Introduce a CVA to remove VAT, PAYE and tax creditor pressure.
- Work with the bank (Barclays in this case) to restructure the secured lending.
- Restructure the 40 leases and HP agreements to get a breathing space for the cashflow, lose some of the vehicles.
- Aggressively manage cash, improve accounting and introduce a non executive director to oversee the recovery.

We can report that 4.5 years later the asset based lenders have all been happy to receive full payment, indeed they are now financing new trucks and trailers.

We have to report that Barclays Business Support (bank turnaround team) was a superb ally to the company and KSA in the rescue and turnaround process, they allowed the factoring facility and the overdraft to go "out" for a period of 3 months. They worked closely with the company and KSA to ensure the business was working as planned.

They have seen their faith in the plan rewarded by the owners paying off the bulk of their overdraft lending.

Tax and trade creditors will receive around 40p in £1 over 5 years and the company is again obtaining and paying for credit.

Oh and the company still uses KSA's model to produce meaningful management accounts within 4 days of the month end – every month!

2010 Update: this company successfully exited the CVA in 2009 having paid 41p in the £1 to its creditors, despite losing 50% of activity with its largest customer. A great case study in dogged management overcoming adversity.

Detailed Case Study

Key Deal Points – Exited two warehouses, consolidated business into one remaining unit with rental ratchet, removed staff, terminated onerous contract with customer.

Approached by our client via the internet. Cashflow crisis caused by rapid over expansion and failure to fill all of the 3 warehouses with profitable work. Three properties needed rationalising and one of the largest customers (a Japanese multinational) had promised more space/sales would be forthcoming. It did not and the loss making contract was a running sore.

Losses approached £900,000 in y/e 2007 and the investors and directors could not provide any more funds.

Big 4 bank had increased loans on the back of PG's and it was nervous that it would lose £800k in administration. Too many people, not enough work/revenue and four problem contracts.

We reviewed the position and the boards' options/plans and suggested the following KSA action plan at our first meet with board.....

- Close two sites and terminate leases

- Consolidate all activity into the largest site which was half empty
- Reduce headcount by 20%
- Remove fixed costs of £600,000
- Terminate contract with loss making customer
- Broker deal with remaining (quoted on FTSE) landlord who had £900,000 of rent arrears on a lease paying £1.1m pa rent.
- Freeze bank loans with interest only payments for 12 months
- Write off directors loans
- Compound the rent, tax and trade creditors
- Guide the board through the above process

We suggested that a company voluntary arrangement would pull the plan together.

It was vital to present a cogent plan that would allow the business to survive and create the conditions where the bank, factor, HP and lease companies and remaining landlord could support a workable deal. Administration would have caused problems that were seen to be insurmountable. So we used CVA as the catalyst and deal enabler.

We approached the large FTSE landlord and asked for a deal that would see the arrears compounded in CVA and asked whether they would they also accept weekly rent payments for now. As they say you don't ask you don't get!

Whilst they thought about it we ensured that every week a cheque was taken to the landlord. They rejected the initial proposals but a deal was struck with the CVA that ensured the large landlord agreed to the consolidation.

In effect a new lease was negotiated whereby the company would pay rent at increasing levels each year over the 5 years of the CVA deal.

This allied to dividends that would be paid to the landlord in the CVA would pay off the arrears. Why is this not a preference under section 239 insolvency Act 1986 we were asked?

The plan required the company to consolidate into one large property. Without this it was a stillborn deal and liquidation was the likely outcome. If that landlord would not support then the deal was not going to happen. Their lawyers and advisors made sure that a good deal was extracted. It was not a preference because there was no desire to create a preference only a desire to

continue occupying the property on a commercially structured deal that allowed the company to trade.

This rent deal was agreed against a backdrop of the landlord being acquired by a foreign company! So time slipped by rapidly while we waited for the landlord's internal and external lawyers to agree which eventually they did.

That then allowed us to approach the large Japanese customer and tell them their contract was being terminated. Given that technically the customer was a debtor NOT a creditor, their lawyers argued that the CVA could not terminate the supply contract and our client MUST continue to provide the loss making service!

We argued that if our client entered insolvency the contract would be terminated anyway AND there would probably be a claim in liquidation by this customer. Secondly the fact that the customer's lawyers had complained about some non-deliveries and said that the customer was reserving a claim to damages made it a creditor of our client and covered by the CVA! The lawyers then argued that the contract for warehousing was in fact a lease under the Landlord and Tenants Act! We again used our lawyers to argue that this was not the case – the relationship was that of a supplier and customer. However by "agreeing" that a lease had existed and it was being terminated by the CVA they would agree to leave.

After 5 weeks a form of words was agreed, the customer agreed that the lease/supply contract would be terminated by the CVA and they agreed to exit the property on the day the CVA was approved. This meant that we could re-sell the space to more profitable customers.

That just left the easy bit of getting by now a very complex CVA approved!

Oh, and the deal had now taken 3 months longer than planned. The bank asked an external top 6 firm of accountants to give its opinion of the deal structure and the request for 12 months of loan capital payment deferment. This request was backed up by very detailed 5 year forecasts. The insolvency team put in by the bank said we agree it's a good workable plan BUT only if the CVA was approved.

So once again this review process caused a delay but we thought we could now pull the deal off.

The proposals were taking shape but creditors were becoming restless!

Then notice was served on the client that one of its other major customers needed more space and could they take on one of the unwanted properties. This was a bit of luck and speeded up the process, given that this new client was a Scandinavian "blue chip" the landlord was quite happy that our client was

leaving and being replaced by a better covenant. By way of bringing us back down to earth a winding up petition was issued by a creditor!

We managed to prevent this being advertised and the creditor agreed to read the CVA and subsequently voted in favour of the deal.

Then we discovered a "hole in the company's forecasts" this required reworking the numbers many times to ensure that the plan would work. At times the demands of the quoted landlord, the loss of some smaller sales pitches and the problems of getting the deal pulled together were very challenging for client and KSA alike.

In this dark time another new customer was landed that was delivering rates 35% higher than the Japanese (exiting) customer. So we pressed on.

Finally, a deal was agreed with the major landlord after their own acquisition had gone final. They wanted the problem solved pronto and we finally pulled the numbers together.

Meanwhile, HMRC had seen their debt rise sharply and they were concerned about the CVA. A small tax investigation had been ongoing for some months. So they rejected the CVA until their questions were answered. At the first CVA creditors meeting the nominee decided to adjourn to allow these answers to be provided the client. They were and HMRC Voluntary Arrangement Service then voted in favour of the CVA 14 days later. Allied to the £900,000 landlord vote the deal was approved.

The CVA deal says unsecured creditors will receive 28p in £1 over 5 years if the company is modestly profitable. If it is more profitable it will pay a higher dividend.

The message here is a CVA can be a hugely powerful tool to enable major structural changes in a distressed business. We would argue it's the ONLY tool that can do ALL of this and allow the company to trade on.

- Terminate leases of properties, landlords are generally not aware of this power.
- Kill of onerous customer contracts, using our techniques we argued that such a contract MUST be killed off if the company is to survive.
- Remove fixed and overhead costs rapidly, with NIL cash cost and no consultation.
- Encourage creditors to accept a compounding or face the prospect of seeing a zero return.
- Build a flexible deal with a willing landlord that sees them get paid 100% over time with all other creditors ratifying the deal.

This case took some 5 months to conclude and whilst no new case law was created the advisors including Keith Steven of KSA CompanyRescue (turnaround advisors), Eric Walls of Marlor Walls (the nominee and now supervisor of the CVA) and Sean Upson of Masseys LLP all believe some interesting new ground was broken.

The CVA was used effectively to save a viable business which would otherwise have gone into liquidation with large losses for the bank, tax and VAT and landlords in particular. There would have been a deficiency of £5.3m in terminal insolvency.

We will be happy to answer any questions on this case study – either email Keith Steven or call 0800 9700 539. keiths@ksagroup.co.uk

Sean Upson is available on 020 7634 9573 or at seanupson@masseyslaw.co.uk
Masseys Law web site can be found here: <http://www.masseyslaw.co.uk/>

Eric Walls is now a director of KSA Group and is available on 0191 482 3343 or at eriiw@ksagroup.co.uk

An Example of a “Failed” CVA.

Online (Dotcom) business, way back in the Dotcom boom period of 2000. Innovative HOLDING CVA. Sales £700k.

This company was from the dotcom boom period. Over £5.2m was invested by US and UK investors in an online auction system for Persian rugs/carpets and Asian art.

The MD was a great guy who knew that critical mass was still some time away and when the dotcom boom turned to dust, he saw no more capital coming in to fund the losses.

Although the losses were falling rapidly as the site began to gain following and traction. It was some 24 months from breakeven, with too many employed doing nothing

Alan was one of the first people to use www.companyrescue.co.uk and our CVA services in 2000!

I liked the fact that it had real growing sales and decent people. Dare I say they didn't have their heads in the clouds!

We devised a unique HOLDING CVA – neither the board nor KSA knew if sales would rise to break even, but we asked the creditors to give the company time actually 10 months, to find out.

So at a creditors meeting (no one turned up as all votes cast by post) the company was put into a CVA to find out if the company WOULD reach breakeven. This was supported by £100,000 of new money from shareholders (by begging), and approved by the Inland Revenue, VAT and landlords.

Sales needed to rise 65% over 12 months, after cost cutting, to see the company enter profit for the first time. Mind you this was not fancy "EBITDA, stuff" it was actual post tax profit.

Despite our best efforts the sales rose by only 35% which was still a great performance. But we could not get it into profit. So after 10 months the CVA ended and the company went into liquidation.

Some would say this is an example of a CVA failure, I would say its actually a calculated gamble to see if a company can recover, that very nearly did work. Creditors supported it knowing that risks were small. And it was a great deal for our clients! Want to know more?

Birmingham IT company £1.71m Blue Chip (FTSE 100) clients

This company provided support, computers, PDA's and software to a national roadside recovery firm with over 300 systems on the roads. It had over expanded into new property/lots of new people. So after winning that contract the directors thought the company could be all things to all similar clients! The world is a much harder place of course.

We took it back to core sales and products and borrowed around £400,000 of unsecured creditors' money and restructured it over 5 years paying back £220,000. That is what a CVA is of course! A good deal for creditors and the company.

For all you doubters out there, the blue chip client is aware of the CVA and continues to work with our clients.

Completed CVA

"Great news said my client! We have just completed the CVA".

This small Audio Visual supply/ hire company is based in the West Midlands.

Our local man on the ground is Gordon Boden, he has had 35 years of turning around struggling companies and knew the father of the two directors.

Cashflow had been poor, financial reporting was rubbish and the business was out of control when they asked dad for (more) cash!

Being astute he called in Gordon, this was a smart move. 90 days later the company had a CVA in place and we parked over £200,000 of debts to tax, VAT

and trade creditors. We also removed 3 non-performing employees with nil cash cost.

The big issue here was lack of financial reporting and controls. Gordon and KSA fixed that by providing a monthly management accounting service. In addition we lined up asset finance for the new equipment that, being a technology company, was needed each year.

This was a straight forward (I seem to remember) CVA case but it demonstrated our rounded approach. Yes we can fix the debt problems, but what about the cause of that debt? Often people write CVA's and nothing is changed, then the CVA fails!

In this case I am pleased to hear in this month that the CVA was completed in full and the company has cash at bank and positive net worth of £60,000. Not bad for a company that could not pay wages back in July 2003?

CVA Case Study 17

Edinburgh Print and Design company £1m sales. CVA and restructure, Non executive director. A long one this but technically exciting!

Is it equitable that one creditor can “knock a company over” when 30 other creditors want it to succeed”? No, we did not think so either.

This family owned design and print company was performing badly after two bad debts and after losing a big customer. The MD's forecasts showed a situation where it would run out of cash and approached us via this site.

He needed advice on director's fiduciary duties as he felt the company was insolvent but strongly viable. We assessed the company and agreed. As part of our due diligence we always ask about impending legal actions or pre-existing legal actions (see guide here) like winding up, statutory demands, summonses etc.

The MD told us he knew one paper supplier was very angry and was threatening all sorts of things. Also the Inland Revenue (as it was then called) was sending strong threatening letters. Regardless we were appointed to build a recovery strategy

- CVA to bind in £200k of debts to suppliers and Crown.
- Restructure staff, cut costs by 23% .
- Build new marketing plan to move away from small number of high volume clients to many more smaller clients (concentration issues).
- Talk to bank and keep them on board.

So we were appointed on a Friday night in July 2005, four days later all hell broke loose. Now, normally creditors are cooperative with our creditor liaison team and continue to supply products etc on pro forma once we have written to them explaining how the CVA works and that their debt is frozen.

This includes PAYE and VAT, however in this case ONE paper supplier decided that they would NOT await the CVA and they took very aggressive action

Despite a caveat being lodged at the court the creditor was able to lodge an immediate winding up petition and make an application for a provisional liquidator under s235 Insolvency Act 1986. This is a little known rule that sends in an insolvency practitioner to take control of the company immediately.

Usually it is used to stop directors stealing assets or dissipating them. In this case the director had taken all proper steps to restructure, got professional help and we had written to the creditors telling them of our plans. The court was effectively hoodwinked into believing the directors were crooks, this was patently not true.

Our client phoned up the following Tuesday saying three people were in his building with a court order saying he had to hand over control to them and the court!

Using our knowledge of case law we knew we could stop this action and we asked two Sheriffs (Scottish Judges) privately what they thought of our defence strategy, they agreed with it.

We brought in a barrister and he went straight to court and sought an order to remove the liquidator and after several days and thousands of pounds of costs we succeeded in removing the liquidator and the winding up petition. This was after producing a 60 page CVA document in 3 days!

We must praise Royal Bank of Scotland here. It continued to support the company despite the liquidator's appointment and the winding up petition during a time of huge risk and noise. The bank still provides a range of banking facilities to our client today. Clearly the bank could have easily appointed a receiver but chose to work with KSA and the client's board.

Then we had time to call a creditors meeting. The petitioning creditor sent a local insolvency practitioner to make all sorts of noise, but equity ruled in the end. The CVA was approved despite him voting against it.

Since then the company has made profits well in excess of forecasts. And so the one creditor did not get their way and now the company buys its paper elsewhere. It's a successful small print/design company and this was despite the liquidator taking over £15,000 out of the company before the CVA.

Keith Steven sits on the board of this company and continues to guide the MD through further restructuring.

See many more Case Studies online at www.companyrescue.co.uk

Trade creditors and why they WILL SUPPORT A GOOD CVA

We hear the statement – “If we do a CVA our suppliers will not supply us so we need to pay them”!

Our response is we will quickly deal with all creditor issues allowing the management to focus on the business, not firefighting. Often people tell us that this is the most immediate evidence that the corner has been turned and progress is being made.

Since KSA deals with the creditors calmly, professionally, dispassionately and fairly, the creditors will continue to supply our clients (on proforma usually). There are no guarantees that a supplier will supply, post our involvement, but we can honestly say that we very rarely have any difficulties with continuity of business.

“Why will a creditor supply when they have lost money”? This is a favourite question from our clients.

The practical answer is most creditors want to see the continuation of steady business; obviously bad debts are not good news. It is worse still to lose a good customer as well!

In the current climate losing both would be a huge blow to your suppliers.

How expensive would it be for your creditors to find another customer to replace your business? What would you rather have, ongoing sales every week or a failed and liquidated customer?

We also, immediately, contact the Crown (PAYE and VAT) and inform them of our involvement. This ensures that they are aware, cease action and they normally then wait for our proposals to restructure the company.

Often, informal deals can be reached (this means without using formal insolvency procedures) that allow a breathing space for the company whilst other restructuring is undertaken.

Our team of experienced advisors take the issues of cashflow and creditor pressure away smoothly and allows the management to get back to their proper roles.

Then after a few weeks of trading the CVA proposal arrives on their desk. It's a formalisation of the process, they know they have had good trade with you and they are not about to let that stop. So they will usually vote in favour whilst not attending the meeting. They're often too busy to travel half way across the UK for a short meeting.

If they do have a gripe, they may turn up or send someone in to the meeting (See CVA meetings). In my experience a quality CVA proposal coupled with good payments for ongoing supplies will mean they WANT to support.

CVA moratorium

Please note that this is a technical guide section but one that covers very important practical issues when implementing CVA's.

As CVA experts we are often asked questions like these.... Do we need to apply for a CVA moratorium? How do we protect the company while the CVA is being prepared?

Why don't insolvency practitioners use the CVA moratorium? Can the company be wound up by creditors before the CVA is approved?

KSA Company Rescue specialises in building successful CVA proposals, we know a fair bit about them having been responsible for hundreds of deals. We have never used the formal CVA moratorium because in practice it's too cumbersome for the company and much too risky for the nominee. We understand that very few moratoria have been applied for and this I think supports our view!

Here we present our views on the actual Formal Moratorium versus "de facto Informal CVA moratorium".

A Very Brief Guide to The (Formal) CVA Moratorium

Under Schedule A1 Insolvency Act 1986 introduced by the Insolvency Act 2000.

IA 2000 introduced the provision for small companies (less than £5.7m turnover for example) in financial difficulty to make voluntary arrangements with their creditors by providing the option of **a moratorium** to give the firm's management time to put a rescue plan to the company's creditors.

Prior to IA 2000, the only means of providing an equivalent of this protection was for the company to enter into [Administration](#) and to set up the [CVA](#) after the Administration order was made. Usually this takes several weeks and is much more costly than a standalone CVA.

The act says that the directors and nominated supervisor (nominee) need to file certain documents in court. To obtain a moratorium the directors of a company must file in the prescribed format:

- The proposal for the voluntary arrangement
- A statement of the company's affairs (SOFA)

- 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 voluntary arrangement 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".

Further the nominee will summon meetings of members and creditors to consider the proposals.

This nominee's statement is the big issue here. After a few days of talking to a possible candidate for a CVA and preparing the CVA proposal, will the nominee know enough information about the company and its prospects to actually make that statement (that the company is likely to have sufficient funds available to it during the proposed moratorium period to enable it to carry on its business)?

We believe that most nominee's are unlikely to want to take that risk of stating categorically that the company will be have sufficient cash available in the moratorium period. Without knowing accurately the statement of affairs, financial forecasts, debtors, stock, work in progress, balance sheet, orders and so forth they will be worried about putting themselves at risk.

This we believe is the reason why tiny numbers of moratoria have been applied for.

The De facto Informal CVA Moratorium (This Does Work)!

KSA specialises in working with debtor companies and their creditors to organise a de facto moratorium. We are appointed by the client and then we talk to every unsecured creditor telling them of the CVA plan. This buys time so that we can put together the proposals in fine detail.

Creditors are told that historic liabilities WILL NOT be paid for as the company has a serious cashflow problem. In the meantime the company is continuing to trade and wants to buy products or services.

Common Sense?

Once appointed to assist the company KSA follows a well worn and successful path.

During the CVA production period we help the client buy goods and services by negotiating pro forma terms. Over a period of weeks the creditors supply on nil

risk terms (cash upfront) and this allows them to keep cashflow going and also demonstrates that the CVA company is viable if the CVA was approved.

This pre-CVA trust building is very important and shows that the directors are seriously trying to maximise creditors' interests, which is a legal requirement.

After 3-5 weeks the CVA is filed at court ([see the detailed CVA guide here](#)) and the trade creditors generally support because they want to recover debts and also keep the customer trading with them on nil risk terms.

What if a Creditor Starts [Legal Actions](#)?

In 1995 case law was reported that provides a very powerful argument. **Re Dollar Land (Feltham) & Ors [1995] BCC 740** reported that the court decided that a winding-up order should be rescinded if there was a real prospect that CVA proposals would be approved by the company's creditors. In other words let the CVA majority decide.

We use this argument to STOP petitions being issued in the first place, saving the creditor money for costs and fees and also removing the risk of the petition against the client.

If a petition is already issued before we're appointed to assist, and a hearing date is due before we can file the CVA meeting notice, we talk to the plaintiff to get them to stop their actions as above, or to prevent the advertisement of the petition. Usually the petitioner is the Crown (HMRC).

Most HMRC petitions are stopped or adjourned in this way so we can get on with the CVA production. This is a powerful approach that is built on common sense and a case that said "look is it equitable for one creditor to knock a company down when all the other creditors may agree a CVA"? Obviously not and we've defeated petitions in courts across the UK this way.

Aggressive Petitioners?

If the petitioner will not withdraw or threatens advertisement the company could use an application to Court to request a hearing adjournment and seek a Validation order from the Court saying that the hearing is adjourned and the company can progress the CVA proposal to filing and creditors meeting.

The bank account is always frozen by the bank if the petition is advertised, so by obtaining the validation order the bank can then reopen the bank facilities.

So we believe that by careful discussions and complete honesty with creditors, using powerful case law and common sense we can effect a **de facto moratorium** that works in virtually every case.

Advantages and disadvantages of CVA and CVL for “ABC Ltd”.

CVA Deal

Control – directors remain in control.

Breathing Space. Allow detailed analysis of the business requirements, production of marketing and business plan.

Defer VAT. Then available for CVA costs and working capital, not for creditors.

Freeze Inland Revenue payments until CVA agreed. IR cannot pursue company for existing debts.

Time defined process – fixed date of creditors meeting means crystallising of position.

Personal guarantees not called in

May cause disruption to supplies while proforma is used. But trade credit will be granted in 6-12 months. More accounting/admin. Work

Flexible plan under the CVA, we would forecast minimal monthly contributions to the CVA as profits will be low in year 1. Profit related ratchet kicks in if the business exceeds profit forecast.

No directors conduct investigation

Utilise current WIP/stock to turn into cash. Collect out the company's debtors

No new capital needed to re-start, simply use existing assets.

CVL

The liquidator is in control. He decides if company assets are sold, its wound up or put into CVA.

A phoenix is possible but the buyer of the assets needs cash and working capital to start again.

Fees would be £5-10,000, may be much higher

Trade stops for a period – often longer than 2-3 weeks, this damages customer relationship.

Where will the business trade from – a new lease will be required.

PG's crystallised, for directors

Can terminate onerous contracts. New company must register for VAT and tax ASAP. Needs new bank account, not a straight forward process now.

Lose trade and tax debt. Clean balance sheet. Lose tax losses

Directors' conduct must be investigated.

Debtors will be tough to collect, WIP/stock sold for nil value.

Will the new business have adequate working capital to survive?

Therefore, our strongly held view is IF THE BUSINESS IS VIABLE that the flexible CVA model is the most effective route forward. The bullet points of the suggested CVA strategy are:

- Propose CVA in 2-4 weeks, use period to build outline plan, work out requirements**
- Buy breathing space, remove freneticism, allows controlled restructure. Get you focused on your jobs.**

CVA versus Administration Comparison table for “ABC Ltd”.

CVA Approach.

Control – directors remain in control. They are helped by KSA. Obviously some directors do not want such close involvement.

Breathing Space. Time to deal with the potential loss of confidence of any suppliers. Allow detailed analysis of the business requirements, production of marketing and business plan.

Creditors receive dividends over time, they will be happy to receive that and KEEP a customer.

The fees are not insubstantial for a CVA. They have to be paid out of cashflow. However, see below, cashflow is much improved by the CVA process. Effectively the tax man pays for the deal.

Any overdrawn director’s current account can be reversed back into PAYE. Increases Tax debt but no action against the director.

Time defined process – fixed date of creditors meeting means crystallising of position. KSA talks to creditors, removes pressure from directors.

Flexible plan under the CVA, we would forecast minimal monthly contributions to the CVA as profits will be low in year 1. Profit related ratchet kicks in if the business exceeds profit forecast.

Protects the company from aggressive action by creditors. Exclude critical creditors but likely that company will have to pay upfront (pro-forma) for new services/ supplies.

Administration Approach: (plus or minus “pre-pack”).

The Administrator is in control. He decides if company is sold, liquidated or put into CVA. Directors have no control or input.

Breathing Space to allow restructure, sale or closure. Company can propose a CVA if management and finance available.

In pre-pack creditors receive NO dividend but may keep customer if they supply newco. If Admin followed by CVA they receive dividend.

Administration fees would be 5-10 times higher than CVA. Administrator controls the cash and takes his fees as he needs them (subject to later ratification from creditors).

Lawyers must be involved and they cost!

Administrator MUST pay tax and VAT during Admin period. If pre-pack used then the “Newco” must also pay tax and VAT from the outset. NO tax leverage.

If not cleared before any Administration directors are required to **personally repay the loan**.

Equity value of the business written off. (Unless CVA proposed after Administration). Loans written off.

You would have to “buy back” the business if pre-pack. Or third party can acquire it.

All invoices, purchase orders, faxes, emails and letters will have to state the company is in Administration. This would severely damage marketing and sales.

Does not apply in pre-pack.

ALL CREDITORS lose their money, no exceptions. Newco would have to pay upfront (pro-forma) for services/supplies.

The company can utilise current work in progress to turn into cash. Collect out WIP & debtors. Both over time and with no reduction in asset value.

If not a pre-pack the business will be advertised for sale as a matter of course under SIP 13. Could be several interested parties who will need to be shown around and sales memorandum prepared. Debtors harder to collect.

KSA "quasi" Finance director involved going forward to help structure the financial reporting of the business, attract investment, adherence to CVA plan and building the final business plan.

If a trading Administration, the directors can be instantly removed without recompense under s13 Insolvency Act 1986. Administrator can appoint directors or managers.

No investigation into directors' conduct.

Investigation into the conduct of the officers in the 3 years up to the terminal insolvency of the company.

Could lift veil of incorporation and commenced actions for recovery against officers.

Summary

Considering the advantages and disadvantages of the two options, our strongly held view is that the CVA model is the most effective route forward. The bullet points of the suggested CVA strategy would be:

- **Propose CVA in 4-8 weeks, use period to build outline plan, work out requirements.**
- **Buy breathing space, remove freneticism, allows controlled restructure. Get directors focused on your jobs not firefighting and fighting the Tax man.**
- **Recover control and refocus directors on the company.**
- **Get CVA approved help restructuring and attract new profitable business.**
- **Save a viable business.**
- **Avoid the possibly huge meltdown of Administration followed by pre-pack/liquidation will lead to.**
- **You can sell the business in CVA under board's control.**

CVA Preparation – Is My Company Viable for A CVA?

GUIDE TO ESTABLISHING BUSINESS VIABILITY

1. Work out cashflow

- 1.1. If you want a daily cashflow model to help you work out your business email us or visit www.companyrescue.co.uk
- 1.2. This will help you lay out the next 90 days of cashflow and see what the real cash position is. We use this for all of our clients. You should use it too!
- 1.3. Using a spreadsheet like the free model available from www.companyrescue.co.uk plus VAT; enter all known receipts from your factor and all known payments out.
- 1.4. Put them in where you think they will be received (cleared funds!!!) and when payments need to be paid
- 1.5. Enter bank position
- 1.6. Work out the cashflow for the next 90 days
- 1.7. So what does this say? You run out of cash? Or can you live within facilities if payments are pushed out a week or two? What if you move the PAYE and VAT out by a few months paying say a 6th each month? Can that work?
 - 1.7.1. If so click here for a [Time to Pay Guide programme](#)
- 1.8. Does the cashflow say it just cannot work?
 - 1.8.1. Don't panic! Now you have established cashflow that's a good start to working out the solutions.
 - 1.8.2. You can stretch out the cashflow to 6 months if that would be useful to you.
 - 1.8.3. Move onto the next step.

2. Work out your Sales

- 2.1. Now let's look at sales, are they falling rising or flat?
- 2.2. If they're falling we know we need to work out if the company's costs are falling too. If not rising costs and falling sales are a real problem.
 - 2.2.1. If you need to cut costs read section on costs below
- 2.3. If sales are falling is this a marketing problem? See marketing guides below.

- 2.4. Can you increase sales, if so how. Is there a new product or service that you can sell/ how long will it take to get it selling. Do you need to spend money to get it to market? How much? Put that in the cashflow.
 - 2.5. What about sales people, are they performing? Do you have a web presence? If so is it working for you?
 - 2.6. Work out the best sales you can expect for each month for 6 months, and then work out the lowest. This is called sensitivity analysis
- 3. Look at your margins:**
- 3.1. Work them out carefully. Remember this is the difference between sales price and purchase cost. If you have no purchase cost (like software) then your margin is nominally 100%. If you buy something for 50p and sell it for 100p plus VAT then the gross margin is 50%. Remember if you buy for 50p and sell for 100p including Vat then the gross margin is NOT 50% it is 41%.
 - 3.2. Can you put prices up and improve margins. Can you buy better and get cheaper supplies?
 - 3.3. If you cut the margin would you sell more? Remember 10% cut in price equals a much bigger cut in margins!
- 4. What are the fixed costs of the business?**
- 4.1. These include rent, rates, utility bills insurances and so forth. Add them up and see how much you spend on each and all fixed costs.
 - 4.2. You need to have a enough gross margin each month to cover those costs
 - 4.3. Can you cut fixed costs like rents?
 - 4.3.1. If not is the property too big and would the business do better in smaller premises.
 - 4.3.2. Think about using a CVA to exit the property and terminating the lease.
 - 4.3.3. If you cannot cut fixed costs then you may be able to save money on variable costs or overheads.
- 5. What are your overhead (or variable costs)?**
- 5.1. These include people, travel, accounting, cars, electricity, consumables, stationery etc.
 - 5.2. Are these too high? Save a pound or two on all of these and you could make a huge difference to the business' net margins.
6. People – good, bad, remove or recruit?
7. Customers, have you got enough are they satisfied with your service/product.

8. Marketing: have you got a plan, how do you get to market, what's about the brand/ product and market.
9. Business Plan – have you got one?
10. Emotion, pride and all that.
11. Decide to ACT!
 - 11.1. I have a Viable Business???
 - 11.2. I have an Unviable Business???
 - 11.3. I have a Viable Business but it needs Restructured???

Cost Cutting Guide for companies needing to survive a CVA.

[Our TOP 20 Cost Saving Rules and Cashflow Tips for SME's](#)

1. You should set up a daily cashflow to control all cash in and out. This may protect you from wrongful trading, as it helps manage cash and stops bounced cheques. If you don't have a daily cashflow forecast [get one from our online shop now](#)
 - 1.1. PS don't bounce cheques its bad form!
2. All purchases are approved by you as MD/FD/Operations director/Owner. You should sign all cheques or approve all BACS/CHAPS payments in writing.
3. No purchases are approved unless signed by you, which will make "them" produce a purchase order. Then you can check if they are doing their job, is the price fair, are they and your supplier ripping you off, or are they just lazy and not getting the business best value?
4. No petty cash is drawn from the bank unless you personally go and get it... makes you question what every pound is spent on when people ask for cash won't it? By the way you get out of the grind and time to think.
 - 4.1. If not possible because your business is too big, why not make a trusted person do it. NOT a big issue if cash is king?
5. Review all expenses claims by the staff; reject all that are not really necessary. If you get complaints or murmurings (they may be too scared to act professionally and debate with you), then meet with them and explain the position. BLUNTLY, tell them survival is now the main aim.
6. Remember survival is KEY, if you lose people or profits that's not vital, CASH IS KING for now. Profits will soon flow from very tight cashflow management. If people sue for unfair dismissal, call us we can help, we may be able to kill off their claims with straight talking. Or perhaps a CVA can kill these claims too.
7. Ask every supplier for a review of their prices, can they cut you a better deal? Ask them to for a few extra weeks payment grace. They may object but they will welcome smart business people staying in business. That's better from a creditor's point of view than people putting heads in the sand!

8. Ask the landlord for a breather on rent. Can you please pay monthly not quarterly for a while? This helps cashflow. It actually puts you in arrears but that's maybe ok at this stage. AGAIN they want a paying tenant not an Ostrich who don't talk!
9. Ask your accountants to accept monthly payments. If your accountancy fee is £10,000pa then ask to pay over say 10 months that's £1,000 per month. The same applies for anyone else that issues a big annual fee note.
10. **MANAGE cash EVERY DAY! Did you do that yet!**
11. Get someone else's view; do you have a trusted friend? If so talk to them about your business, actions and get them to sanity check you. They may suggest cost savings, test your closeted vies and make you think.
12. Do you need that company car; can you use your own and give it back?
13. Can you sell any assets, will it raise cash? Make sure they're not owned by a leasing company first.
14. Ask your factors to cut their costs, only drawdown weekly. Using your [daily Cashflow mode](#)l will of course help in this. This can save hundreds of pounds a week.
15. Cut ALL overtime to the bone, why do you need it? Is your production planning so poor or weak? If you need more people hire them, at lower rates.
16. If you need to make redundancies and cannot afford them, use the DBERR (DTI) Hardship Scheme. Call us for help.
17. Did we say "**Manage cash EVERY DAY**"
18. Use the internet to buy or price everything; you can get fantastic value over the net.
19. Work all hours, to build the recovery plan and set out the [Time To Pay Deals with TAX AND VAT.](#)
20. KEEP MINUTES or notes OF ALL DECISIONS. If you're a partnership or sole trader KEEP NOTES. This will help protect YOU. We can help talk to the experts now.
21. Finally (I know this is 21), be aware that people will be less organised than you, for goodness sake, if a customer is not paying find out why!



CVA forecasts.

This is a book in its own right! However, we use the following processes when producing CVA forecasts.

Separate forecaster to the CVA advisor: This means that a salesman cannot influence the views of the directors. Instead we provide a seasoned chartered Accountant or Certified Accountant who will produce the forecasts with the directors.

What if scenarios, cost cutting, review of sales and marketing plans. Checking future plans against past delivery... are they achievable? What if the sales fall 10%?

We also sometimes use the company's own external accountants to build the forecasts, then we sanity check

This process typically takes a week or so of thought from KSA and the board followed up by 2 days of financial forecasting, using a specially designed CVA spreadsheet.

After that every CVA forecast is sanity checked by a KSA director and the nominee. This can lead to delays while we check their veracity and whether they look reasonable and achievable.

Once approved by board, KSA and the nominee they are "burned" into the CVA proposal and the CVA contributions can be finally worked out.

As part of the forecasts we generally get the board to focus on 3 big issues/ numbers

- ▶ Cutting costs
- ▶ Building sales and margins
- ▶ Combination of the above

We recommend you read the KSA costs cutting guide above.

To build amazing forecasts is actually quite easy, BUT ensuring they're achievable is vital and we would rather see steady, unspectacular sales and margins than "rocket ship forecasts".

CVA and director risk, wrongful trading, preferences and the other rules to be aware of.

A man in the pub said to me if your company is insolvent, then this is Wrongful Trading"!

What is Wrongful Trading?

We are often asked what this means because directors have talked to their accountants, advisors, insolvency practitioners or a man in the pub. They may have said "be careful if your company is insolvent then **you will be guilty of "wrongful trading"**!"

Often this is simply not true!

The simple explanation is this:

Is the [company insolvent](#)? If yes then the directors must act properly and responsibly. If they do not act properly or the way any reasonable person would have acted, then this may possibly be seen as acting wrongfully.

If wrongful trading is proven, then the directors can be made personally liable for the company's debts from the time they knew the company was insolvent.

The tests for wrongful trading actions include:

1. Not filing Annual Returns for the company at Companies House.
2. Not filing annual or audited accounts at Companies House.
3. Not operating the PAYE scheme correctly, failing to pay PAYE and NIC when due.
4. Not operating the VAT scheme correctly.
5. Taking excessive salaries when the company cannot afford them.
6. Taking credit from suppliers where there was no "reasonable prospect" of paying the creditor on time.
7. Willfully piling up debt.
8. When in a hole keeping digging!

Please note you don't have to tick all of the above tests to be at risk of wrongful trading!

Formal insolvency procedures

But this can only apply in terminal insolvency. Wrongful trading actions can only be commenced after a formal insolvency event. What is a formal insolvency event?

For example [Creditors Voluntary Liquidation](#), [Administration](#), [Administrative Receivership](#) or [Compulsory Liquidation](#). It does not apply in [Company Voluntary Arrangements](#), [Trading Out](#), and [Refinancing](#).

What if there is no insolvency event?

The actions may occur and the company may not enter any formal insolvency. If that happens then be very careful! Keep records of why returns were not filed on time. Write careful minutes of board meetings and shareholders meetings. Keep them safe. In future they **may help protect you as a director**.

The common sense answer to wrongful trading is – if your company is insolvent and you know it – DON'T KEEP DIGGING THE HOLE! Take advice from us immediately on 0800 9700539.

What does not operating the PAYE/VAT scheme actually mean?

Not paid the deductions of PAYE and NIC across to HM Revenue & Customs? Well, as you will now know that is something that they do not like! Basically, its tax payer's money and the collectors are there to collect it.

HMRC (what was the Inland Revenue and HM Customs & Excise previously as separate government organisations) now has a central database and can spot slow payments or missed payments much more quickly now.

If your company is not paying PAYE & NIC on time then it is probably insolvent, so see our guide to "[Is our company Insolvent](#)".

Non payment of tax is a failure to comply with the tax legislation and also signifies publicly (loud and clear to HMRC) that the company is potentially insolvent. So, you need to act properly and deal with this serious threat to your company.

If the company is still viable but just needs breathing space why not propose a time to pay deal? See our [guides to time to pay deals](#) or to buy our [Experts Time to Pay Programme](#) (click the link).

PERSONAL LIABILITY

Remember that if the company is insolvent you could be personally liable for the debts, if you continue to trade, whilst doing nothing about the problems that it faces. Wrongful trading can be a real problem where ongoing tax arrears are building up and the company then enters [insolvent liquidation](#).

So, act carefully, keep notes of any decisions and always write names of people you speak to at HMRC down. Take advice from experts, above all act promptly as delay may just lead to more problems for you as directors.

What are the Available Options?

Once you have read more about the problem on our guide pages like [Is our Company Insolvent?](#) [Directors Do's and Don'ts](#) and [Warning Signs?](#) Then the options you have available are:

1. [Time to Pay Deal with Tax and VAT](#). Why not use our expert programme, written by our MD Keith Steven, we guarantee you'll get a time to pay deal with HMRC or your money back.
2. [Trading out](#), visit this guide to how to deal informally with the problem. This can avoid formal approaches like [Voluntary Liquidation](#), [CVA](#), [Compulsory Liquidation](#) and [Administration](#).
3. Some tips...on time to pay deals.
 - 3.1. Don't wait until legal actions have been taken against the company to ask for a ["time to pay" deal with HMRC](#).
 - 3.2. Try to plan the cashflow of the business well in advance - you have a legal obligation to do this! If the directors do not think the company has sufficient cash to trade they should consider the obligations and options and plan a way forward.
 - 3.3. Don't be too ambitious in planning repayment; you will have bad months as well as good, so be careful with the cashflow forecasts.
 - 3.4. Ask for 18 months to pay back PAYE, knowing that you will probably get 6-9 months at most.
 - 3.5. Ask for 6 months for VAT.
 - 3.6. If your cashflow forecast says you cannot afford that fast a repayment programme, then consider a [company voluntary arrangement - CVA](#).

- 3.7. We think that, if the company is viable but insolvent, this is the most powerful way of dealing with a serious cashflow problem and tax arrears (which proves insolvency).
 - 2.1. Important tips, HMRC supports well proposed CVA's!
 - 2.2. Secondly, you do not have to pay back all of the debt.
 - 2.3. Thirdly you remain in control.
 - 2.4. Fourthly, the creditors pay for the CVA!
4. Do Nothing! Are you serious? Actually this will lead to:
 - 4.1. Bailiffs, Sheriffs, walking possession, distraint and more worry - see here for How to deal with [Legal Actions](#)
 - 4.2. Formal insolvency like [Creditors Voluntary Liquidation](#), [Administration](#), [Administrative Receivership](#).

So don't risk wrongful trading, it could lead to personal action against you, the loss of your home, your marriage and bankruptcy

Directors Overdrawn Current Accounts? Why do they matter and what can we do with them?

Directors' overdrawn current accounts.

In more than 75% of our enquiries from directors of struggling companies, we find that this is a major problem, so what is an overdrawn director's current account?

Well, usually the company is making some profits and your accountants advise you to save tax by paying your directors a small salary and then you take dividends from the reserves of profits made in the past and current years. SO off you go taking money out of the business as instructed.

THEN something goes wrong!

Although the advice is generally sound from a tax reduction perspective, when a company is performing well; it's when things go wrong that directors can end up with serious personal liability problems.

Technical Issues

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Having an overdrawn director's current account is actually a breach of the Companies Act 1985. All accounts filed at Companies House should refer to any overdrawn Current accounts as loans to the director concerned. You must try to get these paid back or reversed in subsequent periods as the Revenue will tax you on a fairly penal rate if you do not.

If the company has no distributable reserves, it cannot pay dividends. So if your company's balance sheet starts a year with nil or negative reserves , then if you make no profit you MUST STOP taking dividends as soon as you are aware of this.

It is much better to pay yourselves through PAYE and pay the tax/NIC. If the company cannot afford to pay you GROSS then it is pretty much insolvent.

What can we do? Well options include:

- Repay the debt you personally owe to the company.
- Offset any loans the directors have made to the company (this is called set off).

- Take your full salary but reduce the cash you take out of the business to gradually offset the account. So pay yourself £4,000 per month but take £1,000. Remember to pay tax on the £4,000!
- Make a lot of profits in future periods to offset it!
- Use a Company Voluntary Arrangement to reverse the account through the PAYE Scheme.

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What happens in liquidation if we have overdrawn current accounts?

In liquidation the liquidator can demand that directors repay their overdrawn directors current account to the company for the benefit of the creditors. They can take legal action to make directors pay this or even make you bankrupt. **So you could lose your house if your director's current account is overdrawn and not recovered.**

Example Case Study

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So here is an example case study / guide. If you need more detail call us now.

See if this rings any bells and then call us for help.

Mr Jones and Mr Smith set up a limited liability company based in London. It is a design and marketing company and they formed it in 2001.

Sales built quite quickly based upon the contacts in the marketing sector and the company grew to £1.2m sales. Their accountants told them that the company had made £80,000 net profit in year 1 and that this would be taxed for corporation tax purposes at roughly 20%.

So he advised them to leave their PAYE salaries at a lower level each month in year 2 and take dividends from the reserves and future profits.

This they did for a number of years and paid themselves quite well as the company was profitable each year.

Then that "something happened".

Their biggest debtor went bust owing the company c£158,000. Silly to let that debtor take as much credit in my view, but their view was "after all the company was a well known big name customer and we never thought it would fail". And it was good regular business for them so we understand why it got to be such a big debtor.

This led to a situation that was clearly not planned for. In 2006 the company had a bad trading year on top of the failed customer and so had to write the bad debt off. This made a huge loss for the year of £250,000. As a result the balance sheet then became negative (see insolvency test LINK and they saw the first flashes of a cashflow crisis looming.

So no further dividends could be taken AND the directors now had overdrawn directors' current accounts to the tune of £70,000. With cashflow pressure mounting they came to KSA and said they needed restructure the company or close it.

This was our advice: consider the options, set out your objectives, look at the viability of the company and then make a decision to ACT. **Call KSA in and we will set out the options in writing and in expert detail - that will help you decide.**

Stop Options

If the company entered a formal terminal insolvency like administration, receivership, voluntary liquidation or compulsory liquidation, then the insolvency practitioner/liquidator could have demanded that the directors repay the £70,000 back to the company for the benefit of creditors.

This could have caused them personal financial hardship and with personal guarantees to the bank of over £200,000 the last thing they wanted to do was liquidation or administration. Indeed it was likely that personal Bankruptcy would follow.

Go Options

So we looked at the Go Options with them. (By the way we never charge for this detailed advice) and these included Trading Out, Trade Sale, CVA and or refinancing.

The key test is viability. We felt that one bad year and a huge bad debt did not equate to a bad business. Far from it this was a good business with dedicated directors and staff. So we said look at Go options and try and select the best option with our help.

We recommended that CVA would be the best solution and this was why.

The overdrawn directors current account liability would be "reversed", in other words the payments would be treated as being net pay through the PAYE scheme. This of course generates a larger PAYE and NIC liability. But using the CVA the debt would be bound by the process. Along with reduction in people and managers (the lost contract meant that they had too many people) the

company was forecasting a modest profit at best or just below break-even at worst.

- The benefits for creditors were that they got a deal paying 55% of their old debt back over 5 years and kept their customer.
- The benefits for the company were a downsized business, lower costs; long term survival, no lost contracts and we removed cashflow pressures whilst keeping the bank happy.
- The benefits for the directors were that they avoided personal liability, avoided the failure, avoided bank personal guarantees being called up and also avoided the £70,000 debt to the company.
- Plus as owners of the company they have long term employment and a valuable future business.
- A great deal all round and guess what? The reversed tax was included in the CVA vote and HMRC supported the deal.

So if you or your directors have an overdrawn current account and a company that is under real pressure then call us on 0800 9700539. As the above case shows we can save your business and help you as directors.

Buying a company in CVA.

It's a good time to buy! The unsecured debt has been tidied up, usually at a discount, and there is a breathing space for investment or acquisition if the seller is willing. Often directors need help from business angels and experienced business people after the CVA is approved.

We often act for shareholders when they wish to restructure the company before selling it. The CVA can drive this process cost effectively.

This guide is not designed to cover this topic but feel free to contact the author if you have a target in mind.

Selling in CVA

Having fought a valiant battle many directors want to get out of the CVA mode and look for pasture's a new. Or the board recognises that new capital and management is required to drive the recovery plan. As above it's a good time for investment as the balance sheet is clean and tidy and a well structured CVA can facilitate sale, acquisition or investment.

This guide is not designed to cover this topic but feel free to contact the author if you have a target in mind.

Keith Steven has been involved with many of the above issues. Here is his

General Guide to Investment in insolvent companies

Buying a business out of insolvency

A guide from KSA on how to buy a business from an Administrative Receiver, Administrator or Liquidator.

This brief article shows you how to go about buying a business from an Insolvency Practitioner (IP) acting as the "office holder". We will not describe in any detail what the differences are between the various methods of insolvency here (but if you wish to know more please visit www.companyrescue.co.uk for full details). Rather we will assume that a business is in insolvency and you are interested in buying it. First some common sense advice.

What to Buy

We are regularly approached by people looking to buy a business out of insolvency. Our initial question is always - "what type of business are you looking for?" When the response is "any" I get very worried!

There are literally hundreds of different types of businesses out there. Do you know enough about them all to be able to save/rescue/turnaround and drive ANY type of business? So choose a sector that you know something about.

Remember this is a failed company - its future depends on an immense amount of hard work, some luck and generally your money. So set up a target "term sheet", i.e. what type of company do you want to acquire, where in the country, what size and what markets is it involved in? Set up a target price structure, and make sure that you have the money or know a good source of the funding needed.

Then prepare an asset/means report. Most IP's will look to see if you have the means available to buy their client's assets. Organise a letter from funders, banks, and proof of means should then be available quickly.

Make a list of advisors who can help advise you on the deal. Who will run the company - YOU? If yes, how many days a week do you want to work in, or more pertinently ON, the business? If you are not going to be available to run it - do you have people available who can run it for you? Warning! Be prepared to lose all of your investment. Secondly, do not rely upon buying an insolvent business as your only source of future income or investment!

Follow this guide and then you will have a better picture of the type of business you are aiming to buy.

Accessing the Market for your Targets

There are many sources of such opportunities, but it will require some leg work. Try all of the following:

- Use <http://www.business-sale.com> to sift through opportunities
- Subscribe to the London Gazette, as it lists all insolvencies daily online
- Do web searches for failed companies, use RSS or subscribe to BBC news services and so forth.
- Perhaps the most fruitful source will be to actually build a relationship with a number of IP's or indeed a large IP firm like Begbies Traynor, Grant Thornton or one or more of the big 4 accountancy firms.

Tell them your target business types and send them a synopsis of what you are looking for. Every receiver, administrator or liquidator should market the assets or businesses they're working with. So if you get on their distribution list you

will get early notice once they're appointed. Soon you will have a flow of opportunities coming in. Make sure to have some early discussion about what the issues are and the time frame the office holder is working to.

Evaluation

Once you have some opportunities I would suggest using a careful evaluation method. You may wish to design your own mini "due diligence" approach to sift opportunities initially. NB this cannot replace proper due diligence if you decide to make an offer! This should include obvious questions like:

- What, or more likely WHO was the cause of the business failure? And has the cause been addressed?
- What is the market for its products?
- Is there a profitable niche within the market place for the company?
- Can it be viable if sales are lower and costs are reduced?
- Is it within easy travelling time for you?
- Is the existing management capable of running the company if you are not there 5 days a week? If not who will?
- What are the business's objectives, do they match yours (for example can it be rebuilt and make good returns)?
- What is the EXIT strategy? Yes I know you are thinking of buying it! But how would you plan to exit?
- Too many people get too attached to the deal and not the exit!
- What are you buying? The assets? The name? The goodwill? The customer base?
- Develop your own list and then stick to assessing each opportunity this way. Don't deviate from the planned target type, size and market, unless you have wide experience. So if you identify a good opportunity that fits your criteria then move quickly.
- Work out what is the deal?

What is the deal?

Is it a deal to buy the assets and goodwill? It's very unlikely that you will buy the company or the debtor book, but you should consider work in progress, stock, assets (financed or unencumbered). Then ask if the deal is one payment, deferred consideration or a mixture of upfront and deferred. It's often possible to get a time to acquire deal. But the office holder will generally want a lump up front to cover his costs. Get access quickly to do due diligence. This is a must:

walk around the business, feel it, touch it and ask lots of questions of anyone who will talk to you within the business. Find out what went wrong: has the business lost its best customers, can it supply cost effectively in future, what HUMAN assets walked out the door when the IP came in?

Will the hoped for new product/service ever get off the ground? Is the management motivated or simply serving their time while looking for a better job? How much working capital is required? Do your forecasting for the new company based on sensible numbers not pie in the sky. How much money will the new company need for working capital after you have paid for the assets? No point in buying it and running out of cash!

How much to pay?

The main question! Generally an IP will use a professional valuer to assess what the assets are worth in a forced sale. You will not get access to that figure, so consider using your own knowledge or that of a friendly valuer to help assess what the assets might be worth. Then set a price that you think is fair and that you are prepared to open at. Set a maximum price and do not go over that if the IP comes back saying he has higher offers and are you prepared to bid higher. By the way, they always do!

"Don't over pay" is easy to write but hard to make work in practice. If your offer is accepted, ALWAYS use a lawyer to advise you and check the deal and ask about technical issues below.

Technical warnings

Trade name Issues

S216 Insolvency Act 1986 precludes the re-use of trade names unless the use is permitted by the court or office holder, and the acquirer was not involved with the failed company previously. be careful of this - if you take on the directors/managers they could face criminal charges if this is not addressed properly.

Transfer of Undertakings (Protection of Employment) Regulations 1981 - (TUPE)

By acquiring a business you will probably have to honour the employment contracts of ALL of the employees. This can be another legal minefield - so get advice on it, early.

Other Legal Issues

Financial Assistance Rules (s151 - 153 Companies Act 1986) Make sure the deal complies. Talk to your lawyer about this if you are unsure

Landlords

Make sure that the landlord is involved in discussions - will they offer a new lease? Will you have to put down a rent deposit? How will this affect your working capital needs?

Other "Stakeholders"

Same goes for secured asset lenders: will they novate the deal to the new company? Will major suppliers supply? Are customers prepared to work with you?

Summary

These are just some of the key issues in buying a business out of insolvency and it's a must to do your homework very carefully. Remember don't get emotionally attached to the deal. It's just worth repeating again that this is a failed company, its future depends on an immense amount of your hard work, some luck and generally your money.

Finally if it smells it's usually off! So walk away and save your money for another opportunity.

We hope that helps in your quest to buy a company, if things are not working out we will happily talk to you about the company you are looking at. Call Keith Steven on 07050 104949.

Employees and CVA's the process of redundancy in CVA

Using CVA case law (Doorbar) the company can terminate the employment contract of ANY member of staff or members. This is often critical in deciding how to restructure direct costs and overheads.

1. Step 1: choose the roles /people to be made redundant.
2. Step 2: pay them to the date they are made redundant, and any holiday pay due.
3. Step 3: issue a P45 and ask them to leave immediately
4. Step 4: hand them a letter explaining how they can claim redundancy and lieu of notice payments from the Government. They will need to file a RP1 form so they claim. NB they cannot claim until the company CVA's is approved (Qualifying Insolvency Event).
5. Step 5: get on with the rescue!

So the CVA can ride roughshod over employment legislation and normal contractual obligations. This is powerful stuff and KSA has internal experts who can guide CVA clients through this process. We are often asked to remove staff with employees because most people do not know how powerful CVA is.

Now think how you can cut costs knowing that there is o 90 day or 30 consultations, no skills matrix process and no risk of a tribunal knocking cashflow.

Yes that is right - even if a disgruntled employee is made an award by a tribunal the claim is bound by the CVA process and the Government will pay (to capped limits) their claims.

Summary of the CVA tool benefits for your company.

Simply – it's the most powerful rescue tool available in the UK. It's flexible, far reaching and relatively discreet

- ▶ Terminate unwanted contracts
- ▶ Reduce manpower quickly and with NIL CASH COST of redundancy
- ▶ Protects the bank borrowing
- ▶ No personal risk, Personal Guarantees usually remain un-called
- ▶ Exit unwanted property
- ▶ Cheaper than Administration
- ▶ TUPE does not apply
- ▶ New money / investment is ringfenced from creditors
- ▶ Stops legal actions by creditors when approved. (moratorium)
- ▶ Time defined process.
- ▶ Creative advisors can rescue your company with YOU in control.
- ▶ Avoid terminal insolvency, loss of jobs and home!

What to do next, call KSA for help or details/specific advice.

If this report has helped you understand this superb tool and you think your clients or your company could benefit from the CVA process, call KSA now on 0800 9700539

Visit www.companyrescue.co.uk or email keiths@ksagroup.co.uk for more information and or to arrange a meeting.

CVA Law: The Insolvency Act 1986 Sections 1-7 and Rules.

To show you just how loose and flexible (and therefore powerful) the CVA legislation is please see below a reprint of Part 1 The Insolvency Act 1986 We thank the Insolvency Service for granting permission to reproduce this.

Note how there are only 7 sections; it is labelled Part 1 Section 1-7. SO the GOVERNMENT LEGISLATION EFFECTIVELY SAYS CVA IS THE FIRST PLACE TO GO FOR COMPANYRESCUE!

PART I - COMPANY VOLUNTARY ARRANGEMENTS

The Proposal

1. Those who may propose an arrangement

(1) The directors of the company (other than one of which administration order is force, or which is being wound up) may take a proposal under this Part to the company and to its creditors for a composition in satisfaction of its debts or a scheme or arrangement of its affairs (from here on referred to, in either case, as a "voluntary arrangement).

(2) A proposal under this part is one which provides for some person ("the nominee") to act in relation to the voluntary arrangement either as a trustee or otherwise for the purpose of supervising its implementation ; and the nominee must be a person who is qualified to act as an insolvency practitioner in relation to the company.

(3) Such a proposal may also be made;

(a) Where an administration order is in force in relation to the company, by the administrator, and

(b) Where the company is being wound up, by the liquidator.

2. Procedure where nominee is not the liquidator or administrator

(1) This section applies where the nominee under section 1 is not the liquidator or administrator of the company.

(2) The nominee shall, within 28 days (or such longer period as the court may allow) after he is given notice of the proposal for a voluntary arrangement, submit a report to the court stating;

(a) whether, in his opinion, meetings of the company and of its creditors should be summoned to consider the proposal, and

(b) if in his opinion such meetings should be summoned, the date on which, and time and place at which, he proposes the meetings should be held.

(3) For the purposes of enabling the nominee to prepare his report, the person intending to make the proposal shall submit to the nominee;

(a) a document setting out the terms of the proposed voluntary arrangement, and

(b) a statement of the company's affairs containing;

(i) such particulars of its creditors and of its debts and other liabilities and of its assets as may be prescribed, and

(ii) such other information as may be prescribed.

(4) The court may, on an application made by the person intending to make the proposal, in a case where the nominee has failed to submit the report required by this section, direct that the nominee be replaced as such by another person qualified to act as an insolvency practitioner in relation to the company.

3. Summoning of Meetings

(1) Where the nominee under section 1 is not the liquidator or administrator, and it has been reported to the court that such meetings as are mentioned in section 2(2) should be summoned, the person making the report shall (unless the court otherwise directs) summon those meetings for the time, date and place proposed in the report.

(2) Where the nominee is the liquidator or administrator, he shall summon meetings of the company and of its creditors to consider the proposal for such a time, date and place as he thinks fit.

(3) The persons to be summoned to a creditors' meeting under this section are every creditor of the company whose claim and address the person summoning the meeting is aware.

Consideration and implementation of proposal

4. Decisions of Meetings

(1) The meetings summoned under section 3 shall decide whether to approve the proposed voluntary arrangement (with or without modifications).

(2) The modifications may include one conferring the functions proposed to be conferred on the nominee on another person qualified to act as insolvency practitioner in relation to the company. But they shall not include any modification by virtue of which the proposal ceases to be a proposal such as is mentioned in section 1.

(3) A meeting so summoned shall not approve any proposal or modification which affects the right of a secured creditor of the company to enforce his security, except with the concurrence of the creditor concerned.

(4) Subject as follows, a meeting so summoned shall not approve any proposal or modification under which;

(a) any preferential debt of the company is to be paid otherwise than in priority to such of its debts as are not preferential debts, or
(b) a preferential creditor of the company is to be paid an amount in respect of a preferential debt that bears to that debt a smaller proportion than is borne to another preferential debt by the amount that is to be paid in respect of that other debt.

However, the meeting may approve such a proposal or modification with the concurrence of the preferential creditor concerned.

(5) Subject as above, each of the meetings shall be conducted in accordance with the rules.

(6) After the conclusion of either meeting in accordance with the rules, the chairman of the meeting shall report the result of the meeting to the court, and, immediately after reporting to the court, shall give notice of the result of the meeting to such persons as may be prescribed.

(7) References in this section to preferential debts and preferential creditors are to be read in accordance with section 386 in Part XII of this Act.

5. Effect of Approval

(1) This section has effect where each of the meetings summoned under section 3 approves the proposed voluntary arrangement either with the same modifications or without modifications.

(2) The approved voluntary arrangement;

(a) takes effect as if made by the company at the creditors' meeting and;

(b) binds every person who in accordance with the rules had notice of, and was entitled to vote at, that meeting (whether or not he was present or represented at the meeting) as if he were a party of the voluntary arrangement.

(3) Subject as follows, if the company is being wound up or an administration order is in force, the court may do one or both of the following, namely;

(a) by order stay or sist all proceedings in the winding up or discharge the administration order;

(b) give such directors with respect to the conduct of the winding up or the administration as it thinks appropriate for facilitating the implementation of the approved voluntary arrangement.

(4) The court shall not make an order under section (3)(a);

(a) at any time before the end of the period of 28 days beginning with the first day on which each of the reports required by section 4(6) has been made to the court, or

(b) at any time when an application under the next section or an appeal in respect of such an application is pending, or at any time in the period within which such an appeal may be brought.

6. Challenge of decisions

(1) Subject to this section, an application to the court may be made, by any of the persons specified below, on one or both of the following grounds, namely:

(a) that a voluntary arrangement approved at the meetings summoned under section 3 unfairly prejudices the interests of a creditor, member or contributory of the company:

(b) that there has been some material irregularity at or in relation to either of the meetings.

(2) The persons who may apply under this section are:

(a) a person entitled, in accordance with the rules, to vote at either of the meetings:

(b) the nominee or any person who has replaced him under section 2(4) or (4)2: and

(c) if the company is being wound up or an administration order is in force, the liquidator or administrator.

(3) An application under this section shall not be made after the end of the period of 28 days beginning with the first day on which each of the reports required by section 4(6) has been made to the court.

(4) Where on such an application the court is satisfied as to either of the grounds mentioned in subsection (1), it may do one or both of the following, namely:

(a) revoke or suspend the approvals given by the meetings or, in a case falling within subsection (1)(b), any approval given by the meeting in question:

(b) give a direction to any person for the summoning of further meetings to consider any revised proposal the person who made the original proposal may make or, in a case falling within subsection (1)(b), a further company or (as the case may be) creditors' meeting to reconsider the original proposal.

(5) Where at any time after giving a direction under subsection (4)(b) for the summoning of meetings to consider a revised proposal the court is satisfied that the person who made the original proposal does not intend to submit a revised proposal, the court shall revoke the direction and revoke or suspend any approval given at the previous meetings.

(6) In a case where the court, on an application under this section with respect to any meeting:

(a) gives a direction under subsection (4)(b), or

(b) revokes or suspends an approval under subsection (4)(a) or (5), the court may give such supplemental directions as it thinks fit and, in particular, directions with respect to things done since the meeting under any voluntary arrangement approved by the meeting.

(7) Except in pursuance of the preceding provisions of this section, an approval given at a meeting summoned under section 3 is not invalidated by any irregularity at or in relation to the meeting.

7. Implementation of proposal

(1) This section applies where a voluntary arrangement approved by the meetings summoned under section 3 has taken effect.

(2) The person who is for the time being carrying out in relation to the voluntary arrangement the functions conferred:

(a) by virtue of the approval on the nominee, or

(b) by virtue of section 2(4) or 4(2) on a person other than the nominee, shall be known as the supervisor of the voluntary arrangement.

(3) If any of the company's creditors or any other person is dissatisfied by any act, omission or decision of the supervisor, he may apply to the court: and on application the court may:

(a) confirm, reverse or modify any act or decision of the supervisor,

(b) give him directions, or

(c) make such other order as it thinks fit.

(4) The supervisor:

(a) may apply to the court for directions in relation to any particular matter arising under the voluntary arrangement, and

(b) is included among the persons who may apply to the court for the winding up of a company or for an administration order to be made in relation to it.

(5) The court may, whenever:

(a) it is expedient to appoint a person to carry out the functions of the supervisor, and:

(b) it is inexpedient, difficult or impracticable for an appointment to be made without the assistance of the court, make an order appointing a person who is qualified to act as insolvency practitioner in relation to the company, either in substitution for the existing supervisor or to fill a vacancy.

(6) The power conferred by subsection (5) is exercisable so as to increase the number of persons exercising the functions of supervisor or, where there is more than one person exercising those functions, so as to replace one or more of those persons.

About The Author

Keith Steven CVA Expert!

Keith Steven is a company doctor and Turnaround Expert.

His motto "We save viable businesses; we help you close those that are not"!

Keith is the author of the content of this programme and all of KSA's web sites. He is managing director of Company Rescue Ltd and KSA - a specialist firm of turnaround practitioners.

Keith started his career as a retailer and experienced the savage recession of the 1990's first hand. This was before the banks had any idea about dealing with SME's failure. Close struggling businesses first; ask questions later was the response then. Of course this was driven by insolvency practitioners who wanted big fees.



So he learned a lot in a short time and thought **"how can we help struggling businesses"?**

He joined a specialist insolvency and turnaround firm in London in 1994 and has helped set up two venture capital companies since, specialising in the distressed / turnaround sector. What a great learning curve that was.

Keith is a former director of the UK Turnaround Management Association and an associate of the Turnaround Finance Group.

His website (or baby!) was launched in 2000 and was re-launched in 2007. Since then we have added over 130 pages of content and are adding guides and information every week. So, now we have improved it but welcome any suggestions from you, the reader. So we hope our expert CVA guide and our website helps your business.

Over 5,000 people have contacted KSA since Keith launched www.companyrescue.co.uk in 2000 and over 500 companies have now been directly assisted by the author over the last 13 years with assignments ranging from large multi national projects with £500m sales to small manufacturing companies with 3 people.

Contact Keith on **0800 9700 539** or **07974 086779** or by email at keiths@ksagroup.co.uk

Keith will do everything in his power to help your business. As a team at KSA most of us have been there and know what you are going through.

After thought from Keith: “If half of the people that use this guide chose the CVA path we would see a huge jump in Company Rescues in the UK: indeed that would lead to over 1,000 CVA’s per year. Right now most people don’t use CVA because of fear of the process and we only see 650 CVA’s, I think this is a waste of good businesses and huge emotional distress is the result.

Obviously, this guide is generalist, we have many years of hands on CVA experience, and most of the tricks of our specialist trade ARE NOT included in this guide. If your business needs a rescue, call me.

Once again here is a great testimony from a happy client – think about CVA, call our experts and this could be you.

KSA CompanyRescue - SIMPLY THE BEST?

Hi Keith

This is a short note to say thank you to you and your excellent team for helping us achieve a CVA. The service that you provide is, frankly, unbelievable! Having realised that our company was in trouble, it took me some time to work out that we needed help ... fast. A Google search for “Company in Trouble” brought up www.companyrescue.co.uk and, having clicked on the link, I ended up on your website. The information on your website is informative, helpful and comprehensive. It was with some trepidation that I decided to call – having reached one of the lowest points.

My first call was with Philippa (Samaritan!). Philippa made me feel that there was hope, that it wasn’t all my fault (even though I knew that some of it was!) and that, by careful management there might be a way out. Next Hugh (Counsellor!) came to visit and, having spent several hours listening to my problems and assessing whether there was a real prospect of recovery, he recommended that a CVA would be appropriate. Ian (Master!) prepared a

proposal to support our company through and into the process of a CVA. At first I felt that we had 'no option' if we were to survive (and we didn't!), but very quickly I realised that a CVA is a good thing. The CVA enables us to re-structure, to re-think and to put together a plan for long term survival that should, if followed well, make us a much stronger and more profitable company than ever before. I didn't come to this conclusion alone though – firstly there was Annette (Saint!!) who tirelessly and patiently guided me through the process. Annette gave advice, support and sometimes humour throughout the entire process and never once got bored of me asking the same question over and over, or worrying her with my woes. Annette helped me through every step of the way and was at all times ... brilliant! Finally, of course, there is yourself, Keith (King!). Your advice and support and your expert knowledge cannot, I am sure, be paralleled. It is only through your support and knowledge that we would ever have got this far.

We would never, ever have got through the last few months without the knowledge, support and guidance that KSA Company Rescue provides. Your fees are incredibly reasonable for the service that you provide and the knowledge and expertise second to none. Thank you to all of your team for being so brilliant!

If every you have anyone who wants to talk to a reference client, maybe someone who wants to know what to expect from you, or just a plain old reference, come to me – I will have no hesitation what-so-ever in recommending **KSA Company Rescue as the best service for companies needing help ... anywhere!**

Kind regards

Alex

Alex Rabbetts

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Thank you for using our programme. We hope it has assisted you.

**Please email any comments or specific questions to
keiths@ksagroup.co.uk**

**CompanyRescue's Expert Guide to
The Company Voluntary Arrangement Process.**