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To Complete or not to Complete – "Early" Completion of Company Voluntary Arrangements (UK)

Article By:

Rachael Markham

Emily Davis

John Alderton

Can a Company Voluntary Arrangement ("CVA") complete, but still remain in place and bind creditors?

The simple answer is yes; but it does require (a) the terms of the CVA to be carefully drafted to allow notice of completion to be filed before the end of the CVA term; (b) compliance with the terms of the CVA, and (c) careful consideration of the position of the supervisors, creditors and company.

The position of the supervisors, creditors and company is different and getting comfortable that all interests align or are protected, and that the supervisors have complied with their statutory obligations as office holders, is certainty not a tick box exercise. Just because a CVA allows the supervisors to file notice of completion before the end of the CVA term, doesn't necessarily mean they should.

For a company, the reasons for completing a CVA early are often commercial. It may enable the company to obtain credit insurance or finance on more favourable terms; thereby supporting growth and a quicker turnaround.

Another advantage is that early completion will save costs; meaning there is likely to be more cash in the business.

These advantages also benefit creditors; because a stronger business means that a company is less likely to default under its CVA. However, by completing early, creditors lose the ability to rely on the supervisors powers, including their ability to terminate if there is a default.

For supervisors, their primary duty is to implement the terms of a CVA in accordance with the Insolvency Act and Rules.

All of these interests need to be carefully balanced, and determining whether notice of completion should be filed before the end of the CVA term will ultimately turn on the particular circumstances and the terms of the CVA itself. However if the CVA is being complied with, creditor interests are protected and they are informed – e.g. they are notified of the intention to file notice of completion, and understand the consequences of that – there is no reason why supervisors cannot file notice of completion early.

Exiting early does not necessarily mean that a company’s financial position has returned to full health, it still needs the support of the CVA and the compromised rights in the CVA to remain in place to achieve that, but filing notice of completion does not bring the CVA to an end. The CVA continues e.g. rent concessions; until the end of the CVA term.

There have been a number of high profile CVAs, which have completed early, including Homebase, Prezzo and Ann Summers and given the obvious benefits to companies and creditors alike, we expect this trend to continue.

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