



R3 STANDARD FORM COVID 19 CVA PROPOSAL

EXPLANATORY NOTE FOR INSOLVENCY PRACTITIONERS

1. Introduction

- 1.1. The R3 Standard Form Covid 19 CVA Proposal (“**Standard Form**”) and accompanying Covid 19 Standard Conditions for Company Voluntary Arrangements (“**Standard Conditions**”) are intended for use by SME companies whose businesses have been affected by Covid 19. They are intended to save time and costs, and therefore make CVAs more accessible to the SME market.
- 1.2. Different versions of the Standard Form and the Standard Conditions have been prepared for English & Welsh, Scottish and Northern Irish CVAs to reflect the jurisdiction-specific rules and legislation. References in this note to the Standard Form and the Standard Conditions are to the various versions of these documents but companies should take care to ensure they consult the relevant versions for their jurisdiction.
- 1.3. The Standard Form is **NOT** a panacea. The introduction of the Standard Form is not intended to replace the professional advice and judgement of insolvency practitioners and lawyers who may be advising companies, but simply form part of their arsenal of available tools to assist their clients. At best, this should be considered a foundation upon which the appropriate CVA can be based.
- 1.4. Company advisors will need to consider whether a CVA is an appropriate way to deal with the company’s financial distress, or whether, for instance, simple bi-lateral agreements with creditors might be better. The proposed use of a CVA may also enable debtors to engage more effectively with creditors to find consensual solutions.

2. The Standard Form

- 2.1. It is impossible to create a template CVA to tackle all variations that may be necessary in a CVA. This form has therefore been drafted to fit the following criteria:
 - 2.1.1. *A directors' proposal* - The vast majority of CVAs are proposed by a company’s directors and so the Standard Form is drafted for this situation, rather than for proposals made by an administrator or liquidator.
 - 2.1.2. *A delayed payment in full* - The Standard Form provides for a breathing space period followed by a delayed payment of 100% of the company’s debts. It is designed for use by companies whose businesses have been hit by the Covid 19 pandemic and which need some time to get their businesses fully operational. Creditors with pre-CVA debts are consequently prevented from enforcing their debts against the company whilst the CVA is in operation. Trading costs incurred during the CVA are to be paid out of new trading income. Continuation of the business will permit regular contributions to be made to the supervisor out of operational cash flow.
- 2.2. Depending upon individual circumstances, a company may find it necessary to amend the Standard Form to allow debt composition from the outset. If no debt composition is originally proposed, but during the CVA full payment becomes unrealistic, the Standard Conditions also allow for the creditors to agree to a variation of the CVA which may include a composition of debts.
- 2.3. There are of course clauses in the Standard Form which may require adaptation to the individual circumstances of a particular case. For example, under the Standard Form, directors are not able to take dividends during the CVA. This may not be an appropriate restriction in all cases. Similarly, as employees are not treated differently from other unsecured creditors under the Standard Form (save for any debt owed which is a preferential debt), if there is outstanding salary that the directors wish to treat differently, this will need to be expressly included in the proposal. Any variation to the Standard Form is listed in Appendix 2, meaning creditors that receive a number of these documents will be able to readily see what changes to the Standard Form have been deemed necessary.

- 2.4. If the company is not an SME or if the company is in administration, a bespoke CVA is likely to be more appropriate.
- 2.5. **It is vitally important that the directors and their advisors properly consider the Standard Form and Standard Conditions, take legal advice as appropriate, and make amendments to its terms to ensure it achieves the desired goals.**

3. The Standard Conditions

- 3.1. The Standard Conditions are based to a large extent upon R3's Standard Conditions for Individual Voluntary Arrangements with amendments mutatis mutandis appropriate for companies. They are incorporated into the Standard Form by inclusion in Appendix 1. Any agreed amendments to the Standard Conditions (or Standard Form) should appear in Appendix 2.
- 3.2. For ease, a comparison document between the IVA Standard Conditions and these Standard Conditions can be found [here](#).

4. Position of HMRC

- 4.1. HMRC will often be a major creditor. Companies proposing a CVA need to be aware that their tax compliance record will be an important factor in gaining the approval of HMRC. It will be advisable to explain a company's compliance record, and where there have been problems, what the company is doing to rectify those issues under the CVA. It may also be advisable to include a credible estimate of corporation tax in the Standard Form's financial information section. Companies need to be aware that HMRC may wish to add modifications to the Standard Form in particular cases.
- 4.2. In addition, it is important to be aware of the Insolvency Guidance issued by HMRC on 26 June 2020 in relation to voluntary arrangements. All notifications of a CVA are to be directed to – Debt Management – EISC, HM Revenue and Customs, BX9 1SH, Tel: 0300 322 9251, Email: eisc.cva@hmrc.gov.uk
- 4.3. It should be noted that from 1 December 2020, HMRC will become a secondary preferential creditor in insolvencies for certain debts, e.g. VAT, PAYE and employee National Insurance Contributions (NICs).

5. R3 Disclaimer

- 5.1. Led by Stewart Perry¹ and Professor Peter Walton², the Standard Form and Standard Conditions have been produced by R3's [General Technical Committee](#) ('GTC'). R3, the Association of Business Recovery Professionals, is the leading professional association representing insolvency practitioners and professionals within the insolvency, restructuring and turnaround profession in the UK.
- 5.2. GTC deals with issues of general importance and significance to the profession, keeping under review all UK and EU legislation, prospective legislation and other matters relating to insolvency law and practice.
- 5.3. The Standard Form and Standard Conditions are not intended to be statements of law, will not be appropriate for any case until suitably modified, and are not a substitute for professional or legal advice. R3 and its contributing editors believe that both documents are accurate but accept no liability for any fault, error, negligence or omission howsoever caused, or for any loss or damage of any kind resulting from reliance on their contents.

¹ Stewart Perry, Partner, Fieldfisher, Restructuring and Insolvency, Chair of R3's GTC

² Professor Peter Walton, University of Wolverhampton, Director of the Law Research Centre, Member of R3's GTC