



## Effect on landlords of BHS entering into a CVA

March 2016

1. The purpose of a Company Voluntary Arrangement (“CVA”) is to reduce the ongoing liabilities of an insolvent Company so it can continue to trade.
2. BHS is proposing to enter into a CVA on 23 March 2016 to reduce, in particular, its leasehold liabilities. It has 164 stores in total and wants to reduce the rents, or get rid of, about half its stores. It is looking at rent reductions of 25-50% on a number of stores to make them viable. Absent a CVA, it seems certain to collapse. It has, of course, been in trouble for some time- having been sold off last year by Arcadia for £1.
3. In modern times, many Companies have pursued the Pre-Pack Administration route instead so that they can simply sell off the profitable part of the business. They can do so without needing any consent from unsecured creditors. However, with a Company like BHS (which has a substantial pension scheme and cannot be readily sold off in bits), a CVA is the only route open if insolvency is to be avoided.
4. A CVA does not affect secured creditors. Accordingly, it is reliant on obtaining the support of 75% of the unsecured creditors.
5. The procedure involves an Insolvency Practitioner being appointed as Supervisor to put forward the Proposal and provide the financial information in support. At least 14 days notice has to be given of the creditors’ meeting called to vote on the CVA. There is a moratorium in pursuing claims pending the outcome of the vote. KPMG are retained by BHS for its CVA.



# FORSTERS

6. Clearly, in order to obtain approval, the Proposal made for the CVA has to be attractive enough to gain the requisite support. It has to offer terms that are considered to be better than would be obtained on an Administration or Liquidation. If approved, all unsecured creditors are bound by the CVA.
7. But, for landlords of over-rented or difficult to re-let properties, the terms may be very unattractive. They will involve a substantial reduction in the rent. Accordingly, such landlords may be considerably prejudiced by a CVA. They will want to try to ensure more than 25% in value of the creditors vote against it.
8. To compound the problem for landlords, the 75% level of support is based on the value of the indebtedness. If rent is actually paid up to date, it is relatively commonplace for only a nominal figure to be placed on future leasehold liabilities- thereby giving landlords very limited voting power as little, if anything, is owed to them.
9. But a CVA can be challenged if unfairly prejudicial. In the Powerhouse and Sixty UK cases in 2007 and 2010, attempts to remove the parent Company's guarantees were successfully challenged by landlords. A CVA will not normally affect the liability of any guarantor- they will remain fully liable.
10. Landlords likely to be affected need to consider what their best options are? Do they want to vote against the CVA to seek to obtain better terms or because they think they can recover more if the Company is put into insolvency and they recover the property? Much may depend on whether there are any AGAs or any other form of guarantee (although this is unlikely with BHS).



**Jonathan Ross, Partner**  
Property Litigation  
T: +44 207 863 8388  
M: +44 7881 826 158  
E: [jonathan.ross@forsters.co.uk](mailto:jonathan.ross@forsters.co.uk)

