
STATUTORY INSTRUMENTS

2018 No. 1082

The Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018

PART 2

COMPANY VOLUNTARY ARRANGEMENTS

CHAPTER 2

The proposal for a CVA (section 1)

[Notes: — (1) Section 1 sets out who may propose a CVA.

(2) A document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

Proposal for a CVA: general principles and amendment

2.2.—(1) A proposal must—

- (a) contain identification details for the company;
- (b) explain why the proposer thinks a CVA is desirable;
- (c) explain why the creditors are expected to agree to a CVA; and
- (d) be authenticated and dated by the proposer.

(2) The proposal may be amended with the nominee's agreement in writing in the following cases.

(3) The first case is where—

- (a) no steps have been taken to obtain a moratorium;
- (b) the nominee is not the liquidator or administrator of the company; and
- (c) the nominee's report has not been lodged with the court under section 2(2).

(4) The second case is where—

- (a) the proposal is made with a view to obtaining a moratorium; and
- (b) the nominee's statement under paragraph 6(2) of Schedule A1(1) (nominee's opinion on prospects of CVA being approved etc.) has not yet been submitted to the directors.

Proposal: contents

2.3.—(1) The proposal must set out the following so far as known to the proposer—

Assets	(a) the company's assets, with an estimate of their respective values;
	(b) which assets are subject to any security in favour of creditors and the extent of any such security;

(1) Paragraph 6(2) was added by the Insolvency Act 2000 (c.39) and is amended by paragraph 9(2) of Schedule 9 to the 2015 Act.

	<ul style="list-style-type: none"> (c) which assets are to be excluded from the CVA; (d) particulars of any property to be included in the CVA which is not owned by the company, including details of who owns such property, and the terms on which it will be available for inclusion;
Liabilities	<ul style="list-style-type: none"> (a) the nature and amount of the company's liabilities; (b) how the company's liabilities will be met, modified, postponed or otherwise dealt with by means of the CVA and, in particular- <ul style="list-style-type: none"> (i) how preferential creditors and creditors who are, or claim to be, secured will be dealt with, (ii) how creditors who are connected with the company⁽²⁾ will be dealt with, (iii) if the company is not in administration or liquidation whether, if the company did go into administration or liquidation, there are circumstances which might give rise to claims under section 242 (gratuitous alienations) section 243 (unfair preferences), section 244 (extortionate credit transactions) or section 245⁽³⁾ (floating charges invalid) and (iv) where there are circumstances that might give rise to such claims, whether, and if so what, provision will be made to indemnify the company in respect of them;
Nominee's fees and expenses	the amount proposed to be paid to the nominee by way of fees and expenses;
Supervisor	<ul style="list-style-type: none"> (a) identification and contact details for the supervisor; (b) confirmation that the supervisor is qualified to act as an insolvency practitioner in relation to the company and the name of the relevant recognised professional body which is the source of the supervisor's authorisation; (c) how the fees and expenses of the supervisor will be determined and paid; (d) the functions to be performed by the supervisor; (e) where it is proposed that two or more supervisors be appointed a statement whether acts done in connection with the CVA may be done by any one or more of them or must be done by all of them;
Cautionary obligations and proposed cautionary obligations	<ul style="list-style-type: none"> (a) whether any, and if so what, cautionary obligations (including guarantees) have been given in respect of the company's debts, specifying which of the guarantors are persons connected with the company; (b) whether any, and if so what, cautionary obligations (including guarantees) are proposed to be offered for the purposes of the CVA and, if so, by whom and whether security is to be given or sought;
Timing	<ul style="list-style-type: none"> (a) the proposed duration of the CVA; (b) the proposed dates of distributions to creditors, with estimates of their amounts;
Type of insolvency proceedings	whether the insolvency proceedings will be main, secondary, territorial or non-EU insolvency proceedings with reasons;

(2) "Connected with a company" is defined in section 249.

(3) There are amendments to sections 242, 244 and 245 but they are not relevant for the purposes of this rule.

Conduct of the business	how the business of the company will be conducted during the CVA;
Further credit facilities	details of any further proposed credit facilities for the company, and how the debts so arising are to be paid;
Handling of funds arising	(a) the manner in which funds held for the purposes of the CVA are to be banked, invested or otherwise dealt with pending distribution to creditors; (b) how funds held for the purpose of payment to creditors, and not so paid on the termination of the CVA, will be dealt with; (c) how the claim of any person bound by the CVA by virtue of section 5(2)(b)(ii)(4) or paragraph 37(2)(b)(ii) of Schedule A1 will be dealt with;
Address (where moratorium proposed)	where the proposal is made in relation to a company that is eligible for a moratorium (in accordance with paragraphs 2 and 3 of Schedule A1) with a view to obtaining a moratorium under Schedule A1, the address to which the documents referred to in paragraph 6(1) of that Schedule must be delivered; and
Other matters	any other matters which the proposer considers appropriate to enable members and creditors to reach an informed decision on the proposal.

(2) Where the proposal is made by the directors, it must contain an estimate so far as known to them of—

- (a) the value of the prescribed part if the proposal for the CVA is not accepted and the company goes into liquidation (whether or not the liquidator might be required under section 176A to make the prescribed part available for the satisfaction of unsecured debts); and
- (b) the value of the company's net property (as defined in section 176A(6)) on the date that the estimate is made.

(3) Where the proposal is made by the administrator or liquidator, it must contain the following so far as known to the office-holder—

- (a) an estimate of—
 - (i) the value of the prescribed part (whether or not the administrator or liquidator might be required under section 176A to make the prescribed part available for the satisfaction of unsecured debts) and
 - (ii) the value of the company's net property (as defined in section 176A(6));
- (b) a statement as to whether the administrator or liquidator proposes to make an application to the court under section 176A(5) and if so the reasons for the application; and
- (c) details of the nature and amount of the company's preferential creditors.

(4) Information may be excluded from an estimate under paragraph (2) or (3)(a) if the inclusion of the information could seriously prejudice the commercial interests of the company.

(5) If the exclusion of such information affects the calculation of the estimate, the proposal must include a statement to that effect.

(4) Section 5(2) was amended by paragraph 6 of Schedule 2 and paragraph 1 of Schedule 5 to the Insolvency Act 2000 (c.39) and by paragraph 6 of Schedule 9 to the 2015 Act.