



Practical effects of CVA
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**Tenant insolvency & leases:
drafting and commercial
considerations**
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Act of Insolvency

- **The taking of any step in connection with** any voluntary arrangement or any other compromise or arrangement for the benefit of any creditors of the Tenant or any guarantor;
- **The making** of an application for an administration order or the making of an administration order in relation to the Tenant or any guarantor;
- **The giving** of any notice of intention to appoint an administrator, or the filing at court of the prescribed documents in connection with the appointment of an administrator, or the appointment of an administrator, in any case in relation to the Tenant or any guarantor;
- The appointment of a receiver or manager or an administrative receiver in relation to any property or income of the Tenant or any guarantor;
- The commencement of a voluntary winding-up in respect of the Tenant or any guarantor, except a winding-up for the purpose of amalgamation or reconstruction of a solvent company in respect of which a statutory declaration of solvency has been filed with the Register of Companies;
- **The making** of a petition for a winding-up order or a winding-up order in respect of the Tenant or any guarantor;
- The striking-off of the Tenant from the Register of Companies or **the making** of an application for the Tenant to be struck-off;
- The Tenant otherwise ceasing to exist (but excluding where the Tenant or any guarantor dies); or
- The making of an application for a bankruptcy order, the presentation of a petition for a bankruptcy order or the making of a bankruptcy order against the Tenant or any guarantor.

Act of Insolvency

- ▶ Early warning signs
 - ▶ Avoid/beware "watering down"
- ▶ Guarantor replacement clause



Commercial Considerations

- ▶ "CVA clause"
- ▶ Additional Security
- ▶ Alienation
- ▶ Forfeiture provisions




Additional Security

- ▶ Rent Deposit
- ▶ Parent Company Guarantee
- ▶ Other guarantors




Alienation

- ▶ Circumstances and conditions attached to assignments
 - ▶ "if reasonable" vs "absolute" requirements
 - ▶ Additional security



Forfeiture provisions

- ▶ Is insolvency even a forfeiture event?
- ▶ Link to definition
- ▶ CVA
 - ▶ Pre-approval
 - ▶ Post-approval





Defaulting Tenant rather than Insolvent Tenant

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Defaulting Tenant rather than Insolvent Tenant


The Options

- ▶ Forfeiture
- ▶ CRAR
- ▶ Alternative Options




Forfeiture

- ▶ Points to Consider Before Exercising Right to Forfeit
 - ▶ Advantages and Disadvantages
 - ▶ Check the terms of the Lease
- ▶ Procedural Steps
 - ▶ Notice?
 - ▶ Unequivocal Act
 - ▶ Practical Steps
- ▶ Waiver
 - ▶ *Central Estates (Belgravia) Ltd v Woolgar*
 - ▶ Landlord will be bound by its election
 - ▶ Knowledge of the breach (including knowledge of the agent)
 - ▶ Accepting rent and an agent accepting rent



CRAR (Commercial Rent Arrears Recovery)

- ▶ Requirements
 - ▶ CRAR must be carried out by an enforcement agent
- ▶ Is it the Right Option?
 - ▶ Recover?
 - ▶ Effect on tenant?
 - ▶ Waiver of right to Forfeit



Alternative Options

- ▶ Rent Deposit
- ▶ Guarantors
- ▶ Statutory Demand
- ▶ Court Proceedings/CCJ



Thank you, any questions?