

# LANDLORD'S ESSENTIAL GUIDE TO CORPORATE TENANT INSOLVENCY

Administration		Liquidation		Company Voluntary Arrangement ('CVA')	Restructuring Plan ("Plan")	CIGA / Part 1A Moratorium	
Description	<ul style="list-style-type: none"><li>• <b>Overview:</b> Restructuring procedure under which company is given moratorium protection from creditor action enabling continued trading during restructuring process</li><li>• <b>Purpose (in order of priority):</b><ul style="list-style-type: none"><li>(a) to rescue company as a going concern;</li><li>(b) achieve a better result for all creditors than in liquidation; or</li><li>(c) realise property for benefit of secured and preferential creditors</li></ul></li><li>• Only licensed insolvency practitioner can act as Administrator</li><li>• Administrators can be appointed on application to court or more often out of court by the company or holders of security containing floating charges created after 15 September 2003</li></ul>	<ul style="list-style-type: none"><li>• <b>Overview:</b> Liquidation of the company's assets leading to dissolution</li><li>• <b>Purpose:</b> To realise the company's property for the benefit of its creditors</li><li>• Only licensed insolvency practitioner and/or Official Receiver as Liquidator</li></ul> <ul style="list-style-type: none"><li>• Two types of liquidation:</li></ul> <table><tr><td><ul style="list-style-type: none"><li>• <b>Voluntary</b> Members (solvent) Creditors (insolvent)</li></ul></td><td><ul style="list-style-type: none"><li>• <b>Compulsory</b> (insolvent)</li></ul></td></tr></table>	<ul style="list-style-type: none"><li>• <b>Voluntary</b> Members (solvent) Creditors (insolvent)</li></ul>	<ul style="list-style-type: none"><li>• <b>Compulsory</b> (insolvent)</li></ul>	<ul style="list-style-type: none"><li>• <b>Overview:</b> Compromise or arrangement between creditors and company</li><li>• <b>Purpose:</b> To compromise debt/liabilities and/or agree to an arrangement with creditors to vary existing contractual terms in the future</li><li>• Only licensed insolvency practitioner as Nominee/Supervisor</li><li>• CVA may bind landlord creditor who did not receive notice of and/or vote at meeting where 75% by value voting supported the CVA</li></ul>	<ul style="list-style-type: none"><li>• <b>Overview:</b> Court-led compromise and/or arrangement between creditors and company which requires Court sanction</li><li>• <b>Purpose:</b> to agree a compromise or arrangement with creditors to eliminate, reduce or prevent, or mitigate the effect of any financial difficulties</li><li>• Company must have encountered or be likely to encounter financial difficulties that are affecting, or will or may affect, the company's ability to carry on its business as a going concern</li><li>• Classes of creditors who dissent can be bound under a "cross-class-cram-down" provided that: a) dissenting creditors would be no worse off than under the "<i>relevant alternative</i>" (the most likely outcome for the company if the Plan is not approved); and b) at least <b>one class</b> who would receive a payment or have a <b>genuine economic interest</b> in the company in the event of the relevant alternative has <b>voted in favour</b></li></ul>	<ul style="list-style-type: none"><li>• <b>Overview:</b> Short moratorium on creditor enforcement</li><li>• <b>Purpose:</b> to give financially distressed companies breathing space from enforcement action by creditors during the restructuring process</li><li>• Only licensed Insolvency Practitioner appointed as "<b>Monitor</b>" – must believe that company can be rescued as a going concern. The company's management retains control of the company</li><li>• Available to most companies, save for: a) Financial institutions; b) companies already in a formal insolvency process; or c) companies which have been subject to a moratorium of any kind in the past 12 months</li><li>• <b>Duration:</b> Initial Period of 20 business days; Directors may extend for a further 20 business days; Subsequent extensions (up to 364 days) with creditor consent or Court permission</li><li>• Company must continue to pay the on-going costs of running business ("<b>moratorium debts</b>") and pre-moratorium debts not benefitting from payment holiday (including rent in respect of a period during the moratorium)</li></ul>
<ul style="list-style-type: none"><li>• <b>Voluntary</b> Members (solvent) Creditors (insolvent)</li></ul>	<ul style="list-style-type: none"><li>• <b>Compulsory</b> (insolvent)</li></ul>						
EFFECT ON LANDLORD REMEDIES							
CRAR	<ul style="list-style-type: none"><li>• Not without permission of the court or consent of the Administrator</li></ul>	<ul style="list-style-type: none"><li>• Unaffected, but Liquidator may apply to stay/ restrain</li></ul>	<ul style="list-style-type: none"><li>• No, unless commenced before presentation of petition</li></ul>	<ul style="list-style-type: none"><li>• Yes, unless Administration Order or CIGA Moratorium</li><li>• After CVA approved depends on terms of CVA</li></ul>	<ul style="list-style-type: none"><li>• Yes, unless Administration Order or CIGA Moratorium</li><li>• After CVA approved depends on terms of CVA</li></ul>	<ul style="list-style-type: none"><li>• Not permitted without the permission of the court</li></ul>	
Forfeiture – by proceedings	<ul style="list-style-type: none"><li>• Not without permission of the court or consent of the Administrator</li></ul>	<ul style="list-style-type: none"><li>• Yes, but Liquidator may apply to stay/restrain</li></ul>	<ul style="list-style-type: none"><li>• No, permission of court or consent of Liquidator necessary to commence/continue.</li></ul>	<ul style="list-style-type: none"><li>• Yes, unless Administration Order or CIGA Moratorium</li><li>• If terms of CVA are not complied with, landlord can forfeit</li></ul>	<ul style="list-style-type: none"><li>• Yes, unless Administration Order or CIGA Moratorium</li><li>• If terms of Plan are not complied with, landlord can forfeit</li></ul>	<ul style="list-style-type: none"><li>• Not permitted without the permission of the court</li></ul>	
Forfeiture – by peaceable-re-entry	<ul style="list-style-type: none"><li>• Not without permission of the Court or consent of the Administrator</li></ul>	<ul style="list-style-type: none"><li>• Yes</li></ul>	<ul style="list-style-type: none"><li>• Yes, but may be subject to challenge</li></ul>	<ul style="list-style-type: none"><li>• Yes, unless Administration Order or CIGA Moratorium</li><li>• If terms of CVA are not complied with, landlord can forfeit</li></ul>	<ul style="list-style-type: none"><li>• Yes, unless Administration Order or CIGA Moratorium</li><li>• If terms of CVA are not complied with, landlord can forfeit</li></ul>	<ul style="list-style-type: none"><li>• Not permitted without the permission of the court</li></ul>	
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Disclaimer	<ul style="list-style-type: none"><li>• Not applicable</li></ul>	<ul style="list-style-type: none"><li>• Landlord can serve notice to elect giving Liquidator 28 days to disclaim, otherwise power lost</li><li>• Landlord and former tenants/guarantors can apply for Vesting Order (within 3 months)</li><li>• Landlord can claim for loss arising from disclaimer in liquidation</li><li>• Rights and liabilities of tenant determine</li><li>• Existing guarantors remain liable</li><li>• Former tenants/guarantors remain liable</li><li>• Former tenants/guarantors can prove in liquidation for loss suffered</li></ul>	<ul style="list-style-type: none"><li>• Not applicable</li></ul>	<ul style="list-style-type: none"><li>• Not applicable</li></ul>	<ul style="list-style-type: none"><li>• Not applicable</li></ul>	<ul style="list-style-type: none"><li>• Not applicable</li></ul>	
Diversion of subtenant's rent to landlord	<ul style="list-style-type: none"><li>• Yes – but may be challenged</li></ul>	<ul style="list-style-type: none"><li>• Yes</li></ul>	<ul style="list-style-type: none"><li>• Yes, before CVA approved</li><li>• After CVA is approved, depends on the terms of the CVA</li></ul>	<ul style="list-style-type: none"><li>• Yes, before Plan approved</li><li>• After Plan approved, depends on terms of the Plan</li></ul>	<ul style="list-style-type: none"><li>• Yes – but may be challenged</li></ul>		
Drawdown from rent deposit	<ul style="list-style-type: none"><li>• Yes, subject to the terms of the rent deposit and may be challenged</li></ul>	<ul style="list-style-type: none"><li>• Yes</li></ul>	<ul style="list-style-type: none"><li>• Depends on the terms of the rent deposit and CVA</li></ul>	<ul style="list-style-type: none"><li>• Depends on the terms of the rent deposit and Plan</li></ul>	<ul style="list-style-type: none"><li>• Yes, subject to the terms of the rent deposit</li></ul>		
Pursue guarantor/ former tenant/guarantor	<ul style="list-style-type: none"><li>• Yes</li></ul>	<ul style="list-style-type: none"><li>• Yes</li></ul>	<ul style="list-style-type: none"><li>• Yes, subject to terms of the CVA</li></ul>	<ul style="list-style-type: none"><li>• Yes, subject to terms of the Plan</li></ul>	<ul style="list-style-type: none"><li>• Yes</li></ul>		

