



# The year to date in legal retail

Managing change in a troubled sector

Roger Cohen - Accessible Retail: 11 October 2018



# 2018

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- 2018 has seen a large number of CVAs proposed by tenants, particularly in retail and casual dining sectors
- Terms of CVAs have continued to push envelope – opportunities for landlords to challenge CVAs (House of Fraser) and continuing criticism where the companies eventually collapse into insolvency (Toys R Us)
- What is the underlying business plan for the post-CVA business? Does the CVA alone solve the issue?



PREZZO



TOYS R US



Carluccio's



carpet  
right.



NEW  
LOOK



HOMEBASE



BYRON  
PROPER HAMBURGERS



m  
mothercare



## What is a CVA?

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- Involves a **Proposal being put to creditors**, which is voted upon at a Decision Procedure (typically a physical meeting of creditors).
- Enables the **existing management and shareholders to retain control** of the company.
- Provides creditors with a **better estimated outcome than the estimated outcome that could be achieved through administration or liquidation**.
- **Preserves the ongoing trading** of the viable aspects of a company.
- **Cannot impact secured or preferential creditors without their consent**.
- Frequently used by UK retailers and leisure businesses with large leasehold portfolios to compromise lease and other property liabilities.
- Supervised by an insolvency practitioner (“Nominee” or “Supervisor”).
- Act as a hypothetical contract – **not a variation to the lease!**



# The aim of recent retail CVAs

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*"Rationalise the Company's leasehold obligations in order to restore the viability of the Company's business"*

Make store portfolio viable for the resized business by four key changes to existing lease terms:

1. Move all rental payments to monthly rents to assist with cashflow
  2. Reduce amount of rent for stores that are unviable at current rent levels
  3. Exit stores that cannot be made viable even with a rent reduction
  4. Insert termination (lease break) rights for company
- TRU and Homebase also have additional provision which was designed to deal with oversized out of town stores by forcing a good faith renegotiation on sizing – and to reflect desire to reduce sizes of stores that have become too large for current market
  - Homebase also compromised business rates liability for current rating year





## Timing for a CVA from launch period

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<b>Event</b>	<b>Date</b>
Launch date	<i>Day 1</i>
Latest date for creditors to return Proxy Form and notice of claim	<i>Day 14</i>
Date of creditors' meeting and shareholder's meeting – CVA effective from this day if passed	<i>Day 15</i>
Anticipated date for chairman to file report with court	<i>Day 16</i>
End of challenge period and CVA fully implemented	<i>Day 44</i>



## What is alternative if the CVA is not passed?

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- Administration typically referred to as outcome if the proposal is not approved – likely terminal insolvency proceedings

<b>Estimated average return for class of landlord in Carpetright CVA</b>	<b>CVA</b>	<b>Administration</b>
Category A landlord	100 p/£	100 p/£
Category B1 landlord	78.1 p/£	0.4 p/£
Category B2 landlord	36.7 p/£	0.4 p/£
Category C landlord	6.1 p/£	0.4 p/£



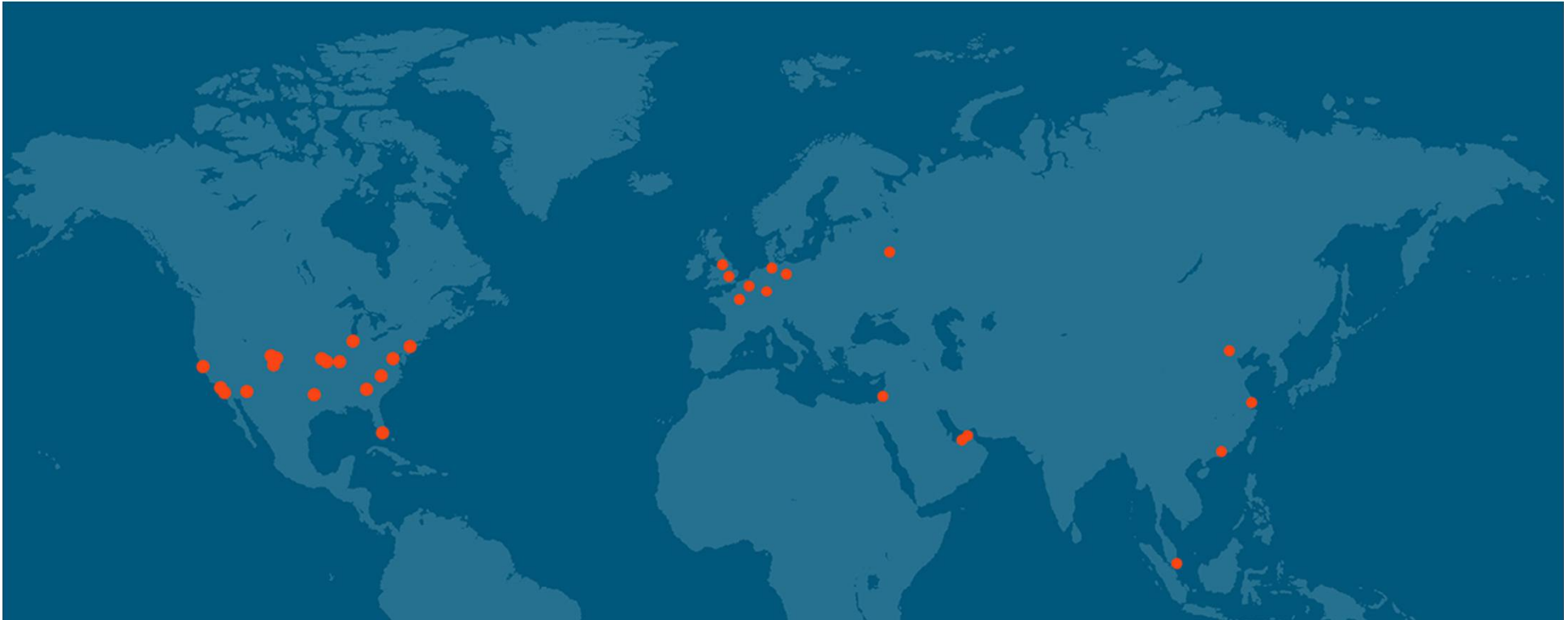
## Why all the CVAs?

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- We asked clients why they thought CVAs had made such a strong return this year and the results were:

<b>Cause</b>	<b>%age of respondents</b>
Challenges of competing with online offerings	61.8%
Failure to adapt offering	48.5%
Business Rates	42.6%
Over-leveraged businesses	36.8%
Poor management	33.8%
Consumer confidence	19.1%
Upwards only rent reviews	19.1%
Private equity backed expansion	17.6%
Long leases	11.8%
Other	4.4%
Low interest rates	1.5%





## Managing change in a troubled sector

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*This document provides a general summary only and is not intended to be comprehensive. Specific legal advice should always be sought in relation to the particular facts of a given situation.*

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