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**IBA Edinburgh
Presentation**

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Why is retail challenged?

Traditional inflexibility of UK commercial property leases:

- Length of leases
 - Absence of tenant breaks
 - Upward only rent review provisions
 - Absence of performance related rent calculation mechanisms
 - High service charges
 - Increasing business rates
- = increasing fixed cost base of physical stores
- Drift to online shopping
 -accelerated by the pandemic
- = decreased revenues from physical stores



Future prospect for retail?

- Post-pandemic challenges,
 - Supply chain issues
 - Imminent lifting of government restrictions on landlord enforcement
 - Tapering of business rates relief
 - Annual increase in minimum wage levels
 - Rising energy costs
- = more potential distress in 2022



Key stakeholder positions

Calm before the storm

- Many traditional / high street lenders largely extricated themselves from the sector some years ago
- Landlords will have had their hands tied for 2 years by March 2022
- Landlords are preparing for further retail failures in 2022
- Landlords are also increasingly diversifying their tenant mix / exploring change of use solutions.



Formal UK restructuring options for retail

- Administration replaced administrative receivership in 2003
- Administrators' powers and moratorium protection
- Rent for the administration period vs arrears
- Landlord consent to lease transfers = time and cost.
- Future liabilities under property leases compromised in the JJB Sports CVA (2009)
- Temporary rent reductions imposed by CVAs from 2012.
- Temporary turnover rents imposed by CVAs from 2018
- CVA = contractual offer made by a debtor company which compromises unsecured debt
- Required voting threshold.



CVA advantages

Retail restructuring hurdles

- Business disruption.
- Transaction.
- Pre-emption rights
- Loss of control
- Tax

Solutions

- Differential treatment of creditors.
- Entity survival = no transaction.
- Not triggered by a CVA
- Entity survival = no loss of control
- No transaction = no tax on asset disposal (CVA-write-offs generally tax neutral)



Caffe Nero

CVA of large chain of UK coffee shops forced to close by government following the onset of the pandemic which made headlines as a result of a legal challenge bought by a landlord funded by a prospective purchaser of the business.



Stakeholder management

- Lenders
- Critical suppliers.
- Landlords
- Tax authorities.



Restructuring plans

- New
- What is it
- Voting by class / 'cross-class cramdown'
- Additionally, a Restructuring Plan can legitimately seek to compromise secured debt (in contrast to a CVA).
- Virgin Active
- NCP



Crystal ball gazing



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