FACT SHEET

Small Business Restructuring

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Since January 2021, there has been a new option for directors concerned about their company's viability and solvency called a **Small Business Restructure** (SBR), which offers a cheaper, and faster way of recovery for small business.

What is a Small Business Restructure?

A SBR is a process where a company can appoint a Restructuring Practitioner (who must be a Registered Liquidator) (RP) to assist with putting forward a restructuring plan to creditors, where creditors are offered a compromise of their debts – often at less than 100 cents in the dollar. If successful, creditor claims are compromised (reduced), and your business can continue to trade.

During the SBR process directors retain control of the business, property and affairs of their company while the restructuring plan is formulated. Traditionally in other forms of insolvency, control is handed over to a liquidator or administrator, which added to the cost of the process.

There are no creditors meetings or lengthy creditor reports in an SBR, which means it can be a more cost-effective option for small businesses, and creditors are generally prevented from taking any action against you, which could be the breathing space you need to get back on track.

Who is Eligible?

To be eligible for the SBR process:

- The company's total liabilities must be under $1 million. This includes secured debts and related party debts but excludes employee entitlements.
- The company must not have been under a SBR or simplified liquidation process within the preceding 7 years.
- The company's director (or a former director in the last 12 months) must not have been a director of another company that has been under a SBR or simplified liquidation process within the preceding 7 years.

SBR Statistics

ASIC has recently released a report outlining the findings from its review of the 82 Small Business Restructuring appointments commencing from 1 January 2021 to 30 June 2022. A summary of key findings from ASIC's report is presented below.

Outcome of SBR appointments: A vast majority of restructuring plans proposed were accepted by creditors (92%)

ATO creditor claims: The ATO was an affected creditor in 89% of the 72 restructuring plans that commenced during the review period. In 79% of plans, the ATO represented 50–100% of total creditors.

Plan contributions: The sources of plan contributions were 44% from the director personally, and 34% from the future trading profits of the Company.

Dividend rates: The average proposed dividend rate was 18.7 cents in the dollar whereas the actual dividend was 15.2 cents in the dollar.

Key Risks Consideration

- Eligibility requirements (see above)
- Proposing a restructuring plan is an insolvency event – exposure to winding up action if plan fails.
- Signal to market/public of poor trading position.
- Suppliers/creditors may choose not to supply during restructuring restricting ability to trade.
- Secured creditors are generally not bound by plan. Personal guarantees may not be bound by plan.
- Only available once every seven years.

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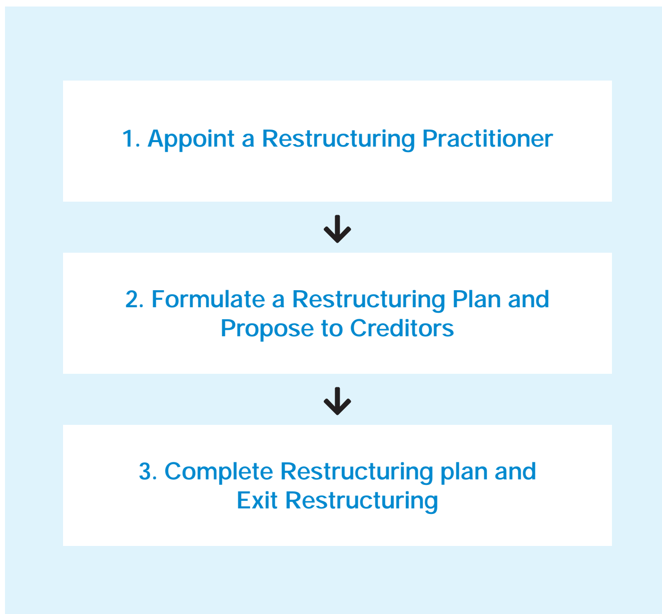
SBR Process



1. Appoint a Restructuring Practitioner

If the eligibility criteria are met, the company's directors pass a resolution that the company is insolvent or is likely to become insolvent at some future time and that a RP (must be a Registered Liquidator) should be appointed.

During the SBR, directors are able to trade in the ordinary course of business. If directors choose to enter into transactions or deal with company assets outside of the ordinary course of business, the RP needs to authorise these transactions.

The company has a period of 20 business days from the RP's appointment to put forward its restructuring plan and send it to creditors (Proposal Period). The RP can extend this period by no more than 10 business days at the request of the company or by application to the Court.

2. Formulating a Restructuring Plan

With the assistance of the RP, the director prepares a restructuring plan that suits the current situation of the business. Such as:

- Contribute funds upon creditors accepting the restructuring plan from cash reserves or from the sale of an asset (company or personal) to enable a reduced return to creditors
- Contribute funds from the company's future profits to enable a reduced return to creditors over a longer period of time, and/or
- Other available sources.

Once decided, the restructuring plan is drafted, and following a review by the restructuring practitioner, the restructuring plan is proposed (sent) to creditors.

When assessing the restructuring plan, creditors will often compare it to other possible outcomes, such as liquidation. Accordingly, your restructuring plan should provide the best outcome amongst these options, to ensure the best chance of the restructuring plan being accepted.

Creditors have 15 business days from the end of the Proposal Period to accept the plan (Acceptance Period).

3. Complete the Approved Restructuring Plan

A restructuring plan is accepted if at the end of the Acceptance Period, the majority in value of affected creditors who return the statements to the RP accept the plan.

A restructuring plan can last up to 3 years, however can be completed within 30 days if the restructuring plan allows.

A restructuring plan ends when the company's obligations under the plan have been fulfilled and all admissible debts have been dealt with according to the plan.

The Next Steps...

Take action sooner rather than later – the longer you wait the less options will be available for recovery.
If you require further information or guidance regarding the Small Business Restructuring process, please contact our office.

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