



# Insolvency laws have changed, for the better

COVID-19 has created a tough economic environment for many small businesses and the government made changes to allow your company to restructure debt more easily and with less expense to weather the storm (and stay in control of your company).

If things are too tough and you need to close, the new legislation changes make it more straight forward for businesses to wind up, with less costs, and with increased returns.

## New Option: 1

Pages (2-5)

### DEBT RESTRUCTURE

- ✓ Helping you look at your company debts and negotiating an easier pay back plan.
- ✓ On your behalf, dealing with creditors to agree on delayed payments, reduced payments or debt.
- ✓ Working with the ATO to negotiate a payment plan that buys you breathing space to rebuild.

## New Option: 2

Pages (5-8)

### SIMPLIFIED LIQUIDATION

- ✓ A lower cost option than the standard liquidation.
- ✓ A faster way to wind up your company with less burden on you the owner/director.
- ✓ More certainty in the liquidation process, giving you assurance before you go ahead with simplified liquidation.

Both the small business debt restructure and simplified liquidation solutions are effective from 1 January 2021.



# Small business debt restructure

Business owners/directors still have the existing voluntary administration and creditors' voluntary liquidations appointments available under corporate insolvency law.

Which appointment type and solution is best for you depends on each company's circumstances. This section deals with the basics of the small business debt restructure solution.

## What are the benefits of the new reform?

The federal government introduced the reform for small businesses, its creditors, and its employees to get the benefits of:

- reduced costs
- shortened turnaround times
- increased and easier access
- retained control by business owners/directors (through the debtor-in-possession model).

## What are the criteria for a small business debt restructure?

Companies must satisfy a requirement of having "total liabilities" of less than \$1 million. Liability is taken to mean any liability or obligation, including contingent debts.

Another important test to meet includes ensuring all employee entitlements are paid up to date (excluding contingent one such as accrued employee entitlements) and that the company's statutory reporting obligations are up to date, such as business activity statements and income tax returns.

The small business debt restructuring process can only be used once in a seven-year period. This applies to both the company and the directors attached (including former directors who resigned in the previous 12 months). And is also excluded if both the company and directors entered into a simplified liquidation (which was introduced with this reform) in the same seven-year period. Some limited exceptions to the seven-year exclusion period apply for directors of multiple entities.



## Why consider a small business debt restructure?

Procedurally speaking, the process for appointing a small business restructuring practitioner is similar to the voluntary administration, it's upon the resolution of the directors. However, this is where the similarities stop. Unlike voluntary administration, while the restructuring plan directors devise is reported to creditors to vote upon, the directors retain control of the company and its affairs while continuing to trade. If the plan is accepted, then the terms of the plan become effective, such as creditors agreeing to compromise their claims against the company and receiving instalments over a specified period to pay the compromised amount.

Directors who want to try to save their business through restructuring company debt while retaining control of business operations and creditor relationships will likely be the most interested in choosing to use debt restructuring.

In the event that creditors do not accept the plan, the small business restructuring period comes to an end without a resolution being reached. In other words, the company continues to exist and is it not automatically wound up.

Finally, because of the simplified process, the cost of conducting a small business restructure is significantly less than those associated with voluntary administration. This means that when compared to voluntary administration, significantly more small businesses may view the restructure process as a commercially viable option to resolve insolvency concerns and provide a greater return to unsecured creditors, while also continuing to trade.

## How does the small business debt restructure work?

The process can take up to 35 business days and is broken down into two phases:

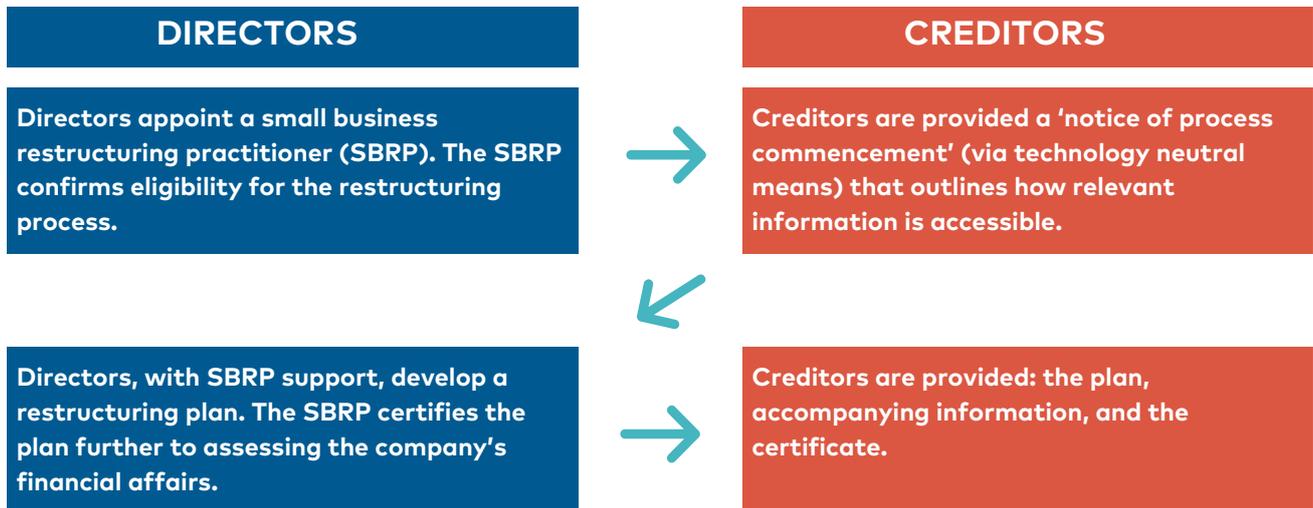
1. Directors and external practitioner work on plan for up to 20 business days.
2. Creditors have up to 15 business days to vote thereby approving or rejecting the plan.

If creditors reject the plan, you do not need to worry about a liquidation process being automatic. You still have time to assess your options to deal with unmanageable debt with the support of a trusted insolvency practitioner.

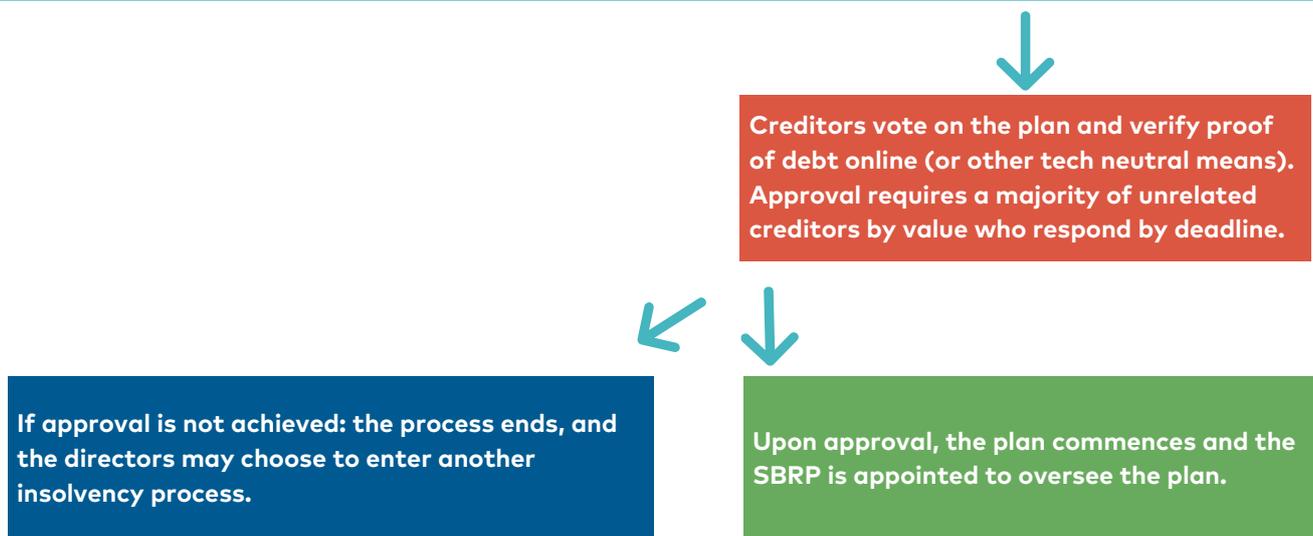


## How will the small business debt restructure work?

The flowchart below outlines the steps involved. Directors remain in control of the company throughout this process.



PROCESS ABOVE: UP TO 20 BUSINESS DAYS



PROCESS ABOVE: UP TO 15 BUSINESS DAYS

## What kind of benefits will the debt restructure do for your business?

- ✓ Helping you look at your company debts and negotiating an easier pay back plan.
- ✓ On your behalf, dealing with creditors to agree on delayed payments, reduced payments or debt.
- ✓ Working with the ATO to negotiate a payment plan that buys you breathing space to rebuild.



## What does the restructuring practitioner do?

Their role includes:

- helping determine eligibility
- supporting the company to develop its plan and review its financial affairs
- certifying the plan for creditors to vote on
- managing disbursements if the plan is approved.

And as part of the debtor-in-possession model, as the director will be in control of the company's day-to-day activities, the restructuring practitioner will not be personally liable for the company debts/actions.

All registered liquidators can be appointed as a restructuring practitioner to your company.

## Speak to an expert restructuring advisor

Restructuring a business is a bit like playing Jenga, each player must understand how all the blocks fit together and how they affect other blocks when moved. Business owners/directors need a skilled and experienced insolvency practitioner to take on a business debt restructure.

Eliminate the hurdles of uncertainty with qualified, expert advice from the Worrells team who understand and care about your challenges.



Approved small  
business restructuring  
practitioners



Insolvency experts since  
1973, each partner has 10  
years' experience minimum



Deep understanding of  
existing law & the latest  
reform



# Simplified liquidation

The simplified liquidation pathway simplifies the regulatory obligations so that "they are commensurate to the asset base, complexity and risk profile of eligible businesses". The government introduced the simplified liquidation process to "free up value for creditors and employees, and allow assets to be quickly reallocated elsewhere in the economy supporting productivity and growth".

## Why would directors choose a simplified liquidation?

- ✓ A lower cost option than the standard liquidation.
- ✓ A faster way to wind up your company with less burden on you the owner/director.  
More certainty in the liquidation process, giving you assurance before you go ahead
- ✓ with simplified liquidation.

## What are the benefits of the new reform?

The federal government introduced the reform for small businesses, its creditors, and its employees to get the benefits of:

- reduced costs
- shortened turnaround times
- increased returns/dividend to creditors.

## Who can access the simplified liquidation process?

Companies must satisfy a requirement of having "total liabilities" of less than \$1 million. Liability means any liability or obligation, including contingent debts.

Just like the small business debt restructuring, the company's statutory reporting obligations must be up to date, such as business activity statements and income tax returns. The Fair Entitlements Guarantee (FEG) scheme is available to employees as per the standard criteria.

A company that has its debt restructuring plan terminated has 20 business days from the date of termination to take the simplified liquidation path. Furthermore, if the director is a director of other entities, there are limitation periods on those other entities entering a simplified liquidation or a business restructure.



The simplified liquidation process can only be used once in a seven-year period. This applies to both the company and the directors attached (including former directors who resigned in the previous 12 months). It also is excluded if both the company and directors used the small business debt restructuring process (introduced with the simplified liquidation reform) in the same seven-year period.

### What if the company is solvent?

If the company is solvent, meaning it can pay its debt when they fall due, then the simplified liquidation pathway is not available.

Solvent companies can be wound up by its members via a members' voluntary winding up.

### How does the simplified liquidation process work?

The simplified liquidation process modifies the existing liquidation framework to reduce the time and cost associated with investigations, creditor meetings, and reporting. This means that the following liquidator duties/obligations are modified:

- Reducing circumstances to seek unfair preference payments from unrelated creditors (to the company).
- Reporting to ASIC on potential misconduct only where there are reasonable grounds (under section 533 of the Corporations Act).
- Removing creditor meeting requirements and committees of inspection.
- Simplifying the dividend process and proof of debt process.
- Maximising technology neutral means (i.e. email) to vote and communicate.

Critically, secured creditors' rights and priority creditors' payments (such as employees) under the statutory rules are unchanged.

There is no set limit for how long the simplified liquidation will take.

### Can the company trade while in simplified liquidation?

A liquidator may continue trading a company if it is in the creditors' best interest.

A trade-on is considered if there is a prospect to sell the business as a going concern, or to complete and sell any work-in-progress. A liquidator is obligated to end trading and wind up company affairs as quickly but as commercially responsible as is practical.



## What must directors contemplate?

The Corporations Amendment (Corporate Insolvency Reforms) Bill 2020 passed on 10 December, which introduced these new insolvency regimes specifically designed for small business, commenced on 1 January 2021.

A number of considerations are pertinent to both directors and their advisors including:

- insolvent trading
- related creditors
- preferential transactions
- voidable transactions
- personal guarantees.

For now, it's important to know who to contact to get in your corner—an advisor who provides clarity amongst the murkiness of insolvency, stress, and indecision.

We're here to help.



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