

# UNDERSTANDING YOUR OPTIONS

## IF YOUR BUSINESS IS IN FINANCIAL DISTRESS

In an ever changing economic environment, it's important to understand your options should your company be experiencing financial difficulty.

### IS YOUR COMPANY FACING FINANCIAL DIFFICULTY?

If your business is facing the following challenges, it may be an indicator that your business is potentially insolvent:



**Continued trading losses**



**Paying creditors outside trading terms**



**Inability to obtain additional sources of funding, including, but not limited to financier, or director / shareholder funding**



**Inability to meet your taxation obligations**



**Non-payment of your employee entitlements, such as superannuation**

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**Your company may be facing financial difficulty through no fault of your own. A significant debtor may have to be written off due to an insolvency event, or you may have faced a significant disruption to trade through environmental factors.**

### YOUR OPTIONS

There are options available if your company cannot pay its debts as and when they fall due.

The following options are a range of informal and formal agreements you can take as a director of a company with your creditors if your business is in financial difficulty.

#### 1. Negotiate with creditors

This is an informal arrangement whereby you enter into an arrangement with a creditor/s to pay an amount of the debt owing which is affordable and time specific. In exchange, the creditor may provide an undertaking not to commence recovery action of a debt.

#### 2. Enter Safe Harbour arrangement

Under this option, you'll need to appoint a specialist to ensure your company has a reasonable financial plan in place to ensure its long term prospects.

As a director, you must:

- stay informed of the financial position of your company,
- meet financial record keeping obligations and obligations in relation to employee entitlements and tax, and
- lodge all company tax returns, including BAS, within the necessary timeframes.

Safe Harbour provides you the comfort that your company can continue trading without the concern of personal liability for insolvent trading.

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### 3. Temporary restructuring relief – ends 31 March 2021

Under this option, you can elect to take a three month temporary relief period anytime up to 31 March 2021 to appoint a Small Business Restructuring Practitioner.

This option means the statutory demand limit is increased to \$20,000, your business has six months to respond to a statutory demand and you also benefit from a temporary safe harbour from insolvent trading.

If you're having difficulty finding a Small Business Restructuring Practitioner to undertake the appointment, the temporary relief can be extended by a further month if your business is insolvent and notice of your election is published with the Australian Securities and Investments Commission (ASIC).

### 4. Small business restructuring

As a director, you can lead this process where you look to settle the debts owing to creditors of your business. To undertake this process, your company must be insolvent.

For your business to be eligible for this option:

- it must have debts owing of less than \$1million, and
- the company or its associated director/s must not have undertaken this type of arrangement before or undertaken a Simplified Liquidation (please see below) in the seven years prior, and
- all taxation lodgments, including BAS, are up to date and all employee entitlements that are due and payable have been paid.

As a director of your company, you develop a Restructuring Plan to put to your creditors and also appoint a Small Business Restructuring Practitioner to work through the process.

You can continue to trade during the Plan period, while your creditors consider the terms of the Restructuring Plan. However, debts you incur for the company during this period must continue to be paid.

Unless there are exceptional circumstances, assets cannot be dispersed outside the ordinary course of business or without the consent of the Small Business Restructuring Practitioner.

Creditors have 15 days to vote on the Restructuring Plan and if the majority of your creditors vote to accept the Restructuring Plan, it will then be administered in accordance with its terms. The period of the Restructuring Plan cannot be longer than three years. It is then terminated upon completion or if the terms of the Plan cannot be complied with.

Related party creditors aren't eligible to participate in the voting for acceptance of the Plan.

### 5. Voluntary Administration

If your business is insolvent, as a director you can voluntarily appoint an Administrator to take control of your business. During the voluntary administration period, the Administrator can continue to trade the business. They will also examine your financials to provide creditors with the necessary information to decide the long-term future of your business.

These options will include:

- handing the business back to you as the director (although this option is rare)
- the company entering liquidation, or
- creditors accepting a Deed of Company Arrangement (DOCA).

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A DOCA is an agreement with the creditors which may settle debts your business owes and your creditors will be repaid on a cents in the dollar amount. A DOCA can also 'buy time' on the repayment of debt to your creditors. While this process is similar to Small Business Restructuring, the eligibility criteria does not apply and it is the creditors who drive the process rather than you as a director.

### 6. Liquidation

This option is where your company is insolvent and you wish to wind up your company. The role of the Liquidator is to do everything necessary to recover property of the company for the benefit of creditors.

Outstanding creditor debts will be paid in accordance with the requirements of the *Corporations Act 2001*. The Liquidator must also review the company's financials and report any offences under the *Corporations Act 2001* to ASIC.

Upon finalisation of a liquidation, the company will be deregistered by ASIC.

### 7. Simplified Liquidation

This option is available when your company is insolvent and you wish to wind up your company.

To be eligible to adopt the Simplified Liquidation process:

- creditors' debts cannot be repaid within 12 months of the appointment of the Liquidator,
- debts owing to your creditors must be less than \$1 million,
- your company and its associated director/s must not have adopted a Small Business Restructure or had another entity subject to a Simplified Liquidation in the past seven years, and
- all tax lodgments must have been completed and be up to date.

There is an onus on you as the director to sign a declaration that your company is eligible for the Simplified Liquidation process. If your company meets the criteria, the Liquidator will notify creditors within ten days of their appointment that the company is eligible for the Simplified Liquidation process.

The Simplified Liquidation process is designed to make the costs of liquidating your company more affordable.

**When considering any of these options it's important that you discuss the financial health of your business with your CPA.**

### ADDITIONAL RESOURCES

For more information, consider the following resources:

- [Early warning signs your business might be in trouble](#)
- [Indicators for potential insolvency](#)
- [Directors duties, insolvent trading and you](#)

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