

UNDERSTANDING YOUR OPTIONS IF YOUR BUSINESS IS IN FINANCIAL DISTRESS – SMALL BUSINESS RESTRUCTURE

A CPA Australia Guide for SMEs facing financial difficulty

IS YOUR BUSINESS FACING FINANCIAL DIFFICULTY?

If you are trading a business in a corporate structure and experiencing financial difficulty, from 1 January 2021 your business may be able to access the new Small Business Restructuring regime.

Under this option you continue to trade the business as the director while also proposing a Restructuring Plan to your creditors.

Benefits of a small business restructure may include:

- For your company – you retain control over the operations of the business throughout the restructure.
- For your creditors – likelihood of recovery on a portion of monies owed on debts.
- For your employees – all entitlements that are due and payable must be paid.

The reconstructing plan:

The Restructuring Plan (Plan) is a means of paying a portion of the existing debt owed to creditors. Payments towards the Plan can be over a period of time, but no longer than 3 years.

Example

ABC Pty Ltd owes creditors a total of \$400,000. ABC Pty Ltd cannot pay its creditors. However, it does have a sustainable business. ABC Pty Ltd appoints a Small Business Restructuring Practitioner and continues to trade.

ABC Pty Ltd proposes a Restructuring Plan to its creditors. The Plan's details are:

- creditors will receive a total of 20% (being \$80,000) of their total debts, and
- the amount will be payable every month over the following 3 years.

In this example ABC Pty Ltd will pay \$2,222.22 each month towards the Plan over a three year period when the agreed \$80,000 of debts will be fully repaid.

ABC Pty Ltd will also continue to trade.

When the final payment is made, the terms of the Plan will be complete and the Plan will end.

Is your business eligible?

To be eligible, your company:

- must be insolvent*
- have debts owing of less than \$1 million
- and/or its associated director/s have not utilised a Small Business Restructure or undertaken a Simplified Liquidation in the prior 7 years
- all taxation lodgements need to be up to date, and
- all employee entitlements that are due and payable have been paid.

** To understand if your business may be insolvent, please refer to the Additional Resources at the end of this fact sheet.*

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If I'm eligible, what do I do next?

You must sign a declaration that you met the above eligibility requirements and then appoint a Small Business Restructuring Practitioner in writing. A Small Business Restructuring Practitioner or your trusted adviser, such as a professional accountant, can help you with the declaration.

The Small Business Restructuring Practitioner must be a licensed practitioner with the Australian Securities and Investments Commission. There will be a fee payable for this service.

You continue to trade whilst you develop the Plan. However, you must disclose on all your written correspondence that your company is subject to a Small Business Restructure upon the appointment of the Small Business Restructuring Practitioner.

Any creditor debt incurred after the appointment of the Small Business Restructuring Practitioner are paid in accordance with existing credit terms for that engagement, as they do not form part of the Plan.

Importantly, assets of the business can only be sold with the approval of the Small Business Restructuring Practitioner.

Who approves the plan?

Your creditors will approve the Plan. The creditors will receive notice of the terms of the Plan from the Small Business Restructuring Practitioner. They will then have 15 days to consider whether to accept the Plan.

The Plan is accepted if a majority of your creditors entitled to vote on the Plan, accept the Plan.

Related party creditors are excluded from voting on the Plan.

If the Plan discloses a creditor amount that is incorrect, the creditor can dispute the amount of debt disclosed to the Small Business Restructuring Practitioner. The Small Business Restructuring Practitioner will take action to resolve the dispute.

What if the Plan is not completed?

If you fail to complete the Plan, it will be terminated. The termination of the Plan has risks, in that:

- proposing a Plan is an admission that the company is insolvent
- all the creditor debts caught under the Plan become immediately due and payable, and
- a creditor can exercise its right to wind up the company through the courts.

If you fail to meet the terms of the Plan, you may lose control of the process as a creditor can exercise their rights to wind up the company through the Courts.

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Seek professional advice

Throughout this process you should seek professional advice to:

- ensure your taxation lodgements are up to date, and if required, assist in completion and lodgement
- check there are no outstanding employee entitlements, including Superannuation Guarantee Charge
- confirm creditor balances are reconciled and up to date
- help you find a licensed Small Business Restructuring Practitioner
- assist your business to determine whether the proposed Plan can be met before it is released to creditors, and
- assist in the monitoring of the ongoing viability of the business.

If you don't have a professional advisor, visit [Find a CPA](#) to find a CPA professional accountant near you.

ADDITIONAL RESOURCES

For more information please consider the following resources:

- [Early warning signs your business might be in trouble](#)
- [Indicators for potential insolvency](#)
- [Directors duties, insolvent trading and you](#)
- [A guide for SMEs: Understanding your options – business in distress](#)

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