

Small Business Restructuring

A Small Business Restructure (SBR) is a recently developed insolvency appointment that allows eligible businesses to:

- Compromise their debts with a Restructuring Plan (Plan) that maximises their chances of future profitable trading.
- Control of the property and affairs of the Company remains in the hands of the Director(s).

Throughout the SBR process Company Directors will be assisted by one of our expert Restructuring Practitioners (RPs), who will help to formulate a Plan that ensures the future viability of the Company.

Eligibility

The SBR process has strict criteria for appointment to occur, to be eligible a business must:

- Be operated by a Company.
- Have less than \$1 million owing to creditors.
- Be able to pay all outstanding employee entitlements.
- Have submitted all notices, returns, applications, and other documents by law under the Income Tax Assessment Act 1997.
- Not have had its Director(s) or operating Company be subject to a SBR or simplified liquidation in the last seven (7) years.

Directors must sign a declaration of eligibility for the appointment to occur, please consult with one of our expert RPs if you have concerns about eligibility.

Only a person registered as a Liquidator with ASIC is qualified to act as an RP and assist with a Plan.

Appointment Process

To appoint a RP, Directors must hold a meeting and resolve:

- That the Company is Insolvent or likely to become insolvent at some point in the future.
- That an RP should be appointed.

A RP must also consent in writing to the appointment, and Directors must confirm the appointment of a RP in writing. A set fee is payable to the RP for the SBR, which is agreed prior to appointment.

A RP may also ask for further remuneration if additional work needs to be undertaken, such as court proceedings with Director consent.

The 'Proposal Period' following the appointment of a RP typically last 20 business days, during which the Company and RP must work to formulate a Plan. During this time, the Company must publicly disclose the appointment of the RP.

Trading During a SBR

Directors remain in control of the Business during a restructure. All trading activities must be managed in the ordinary course of business. Any transactions outside the ordinary course of business must be approved by the RP.

Developing a Plan

During the proposal period, our RPs will help to develop a Plan and restructuring proposal statement. These documents deal with:

- RP Remuneration.
- Listing Creditors and the amounts they are owed.
- Monies to be paid to creditors under the Plan.

A RP must also declare their position on the viability of the proposed Plan to Creditors. Creditors have fifteen (15) business days to vote and either accept or reject the Plan.

If creditors accept the Plan it is important that the Company complies with the stated terms to avoid termination.

End of Plan – Completion or Termination

An accepted Plan comes to an end when:

- The terms of the plan are met by the Company; or
- Termination occurs in the event the terms of the plan are not complied with.

If a Plan is completed successfully then the Company can continue operations and is released from Creditor claims.

If the Plan needs to be terminated then all Creditor claims become immediately due and payable.

If termination occurs the future of the Company rests on the Directors. A RP can advise you if this occurs, but cannot act as an Administrator or Liquidator as this represents a conflict of interest.