



Simplified debt restructuring: a factsheet for small business

The Government has made changes to Australia's insolvency framework to better serve small businesses, their creditors and their employees. As part of these changes, the Government has introduced a new, **simplified debt restructuring** process for eligible small businesses from 1 January 2021.

The process allows financially distressed small businesses to access a single, streamlined process to restructure their debts, while allowing the owners to remain in control of their business. This will support more small businesses to survive, meaning better outcomes for businesses, creditors, employees and the economy.

Accessing the simplified debt restructuring process

To be eligible to access this new process your company must:

- be incorporated under the Corporations Act;
- have total liabilities which do not exceed \$1 million on the day the company enters the process. This excludes employee entitlements;
- resolve that it is insolvent or likely to become insolvent at some future time and that a small business restructuring practitioner should be appointed; and
- appoint a small business restructuring practitioner to oversee the restructuring process, including working with you to develop your debt restructuring plan and restructuring proposal statement.

A list of restructuring practitioners that can undertake this work is available on [ASIC's website](#).

The debt restructuring plan

The debt restructuring plan sets out how a company's creditors would be repaid if the plan were made. For example, the plan could specify how creditors will be repaid as a proportion of the debt owing to them, or what 'cents in the dollar' they will receive.

The plan is accompanied by a restructuring proposal statement, which includes a schedule setting out the company's creditors, and the amount they are owed by the company.

Giving you the time you need

The Government recognises you may need some time to find a small business restructuring practitioner. That is why the Government has extended the temporary insolvency relief (including relief from liability for trading while insolvent) for up to three months. That gives you up to an extra three months to access a practitioner from the day you declare your intention to access the restructuring process.

To access this relief, you can declare your intention to access the restructuring process by publishing the declaration on the [published notices website](#) from 1 January 2021. Your company's period of temporary restructuring relief begins on the day the declaration is published.

You also need to notify ASIC within 5 business days that you've made this declaration. The form for doing this is available on the [ASIC website](#) from 1 January 2021.

The ability to declare your intention to access the restructuring process is available until 31 March 2021.

Staying in control of the business during the restructure

Once you enter the process:

- the company stays in control of the process, and may undertake transactions that are in the ordinary course of business;
- the company develops a debt restructuring plan and a restructuring proposal statement which is put to creditors for a vote; and
- the company is assisted in this process by its small business restructuring practitioner.

Frequently asked questions

How do I know if my company is insolvent?

A company is insolvent when it is not able to pay all the company's debts when they become payable.

Warning signs that a company is insolvent include accruing losses, cashflow difficulties, overdue taxes and lodgments, legal issues, and difficulty gaining access to new credit.

If you are unsure of whether your company is insolvent, you may wish to seek advice from an accountant.

What does it mean to trade 'in the ordinary course of business'?

A company may continue to trade in line with its normal, day-to-day operations.

Certain transactions are deemed to be outside the ordinary course of business. These are:

- satisfying a debt or claim that arises before restructuring begins (that is, that would otherwise be dealt with under the restructuring plan);
- the transfer or sale of the whole or a part of the business; and
- the payment of a dividend.

If a transaction is outside the ordinary course of business, the restructuring practitioner must approve the transaction.

What do I need to do before putting a restructuring plan to my creditors?

Before you can put a plan to your creditors, your company must be in substantial compliance with the following requirements:

- Employee entitlements which are due and payable (that is, those which are outstanding and must be paid) have been paid.
 - This excludes leave and other entitlements that are not currently due to be paid.
- Tax lodgments are up to date. That means that all relevant tax returns and activity statements are lodged with the ATO.
 - Tax debts do not need to be paid for a plan to be put to creditors.

What debts are included in the plan?

All unsecured debts which were incurred prior to the company entering restructuring are included in the restructuring plan.

- The exception is employee entitlements (including those not yet payable, like leave or redundancy entitlements), which are not included in the plan.

Debts incurred after the company enters restructuring are not part of the plan and must be paid off outside of the plan.

How long does the restructuring process take?

The company must put a restructuring plan to its creditors within 20 business days of entering the process. The company's small business restructuring practitioner can extend this period by up to 10 business days where an extension is reasonable in the circumstances.

Once a plan is put to creditors, they have 15 business days to vote to accept or reject the plan.

What action can creditors take during this period?

When a company enters into restructuring, a moratorium is applied on unsecured creditor claims and some secured creditor claims. This means:

- unsecured creditors cannot begin, continue or enforce their claims;
- owners of property (other than perishable property) used or occupied by the company, or people who lease such property to the company, cannot recover their property;
- secured creditors cannot enforce their security interest in the company's assets in some circumstances;
- a creditor holding a personal guarantee from the company's director/s or their relatives cannot act under the personal guarantee without the court's consent; and

Ipsa facto clauses (which are triggered during insolvency-related events) are stayed for some contracts.

How do creditors vote on a debt restructuring plan?

The restructuring practitioner provides creditors with the restructuring proposal statement and the restructuring plan.

Once a plan is put to creditors, they may vote to accept or reject the plan. They have 15 business days to vote to accept or reject the plan. The restructuring practitioner oversees the voting process.

During this 'proposal period', creditors can seek to vary the debt the restructuring statement says they are owed if they believe it is not accurately reflected in the restructuring proposal statement.

A plan is accepted if more than 50 percent of the creditors by value that vote, vote to accept the plan. To ensure integrity, related party creditors (that is those linked to the company, its directors or its shareholders) are not entitled to vote on a restructuring plan.

What happens once a plan is made?

Once a plan is made, payments must be disbursed to a company's creditors in accordance with the terms set out in the plan.

All admissible debts and claims rank equally upon repayment of the plan. That means that all creditors are paid the same 'cents in the dollar' and all are paid at the same time.

When a company pays off its obligations under the restructuring plan, it is released from all debts or claims that were admissible under the plan.

A company 'exits' a plan if, for example, it fails to make payments under the plan. If this happens before its obligations are paid off, it remains liable for the original debt owed prior to the plan commencing, minus any repayments that occurred under the plan.

What happens if the restructuring plan is not accepted by creditors?

The plan must be supported by more than 50 percent of the creditors by value that vote.

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If the restructuring plan is not accepted, the restructuring process ends.

You remain in control of the company but creditors are no longer prevented from enforcing their rights (see 'what action can creditors take?' above) and you are no longer protected from liability for insolvent trading.

You may wish to consider placing the company into liquidation. The Government's reforms include a new simplified liquidation process which makes the liquidation process faster and cheaper. Further information on liquidation is available on the [ASIC website](#) and your small business restructuring practitioner may also be able to provide information.

What is the role of the small business restructuring practitioner?

The small business restructuring practitioner oversees the debt restructuring but the company's directors remain in control of the business.

The small business restructuring practitioner assists the company to:

- prepare its restructuring plan and restructuring proposal statement; and
- circulate the restructuring plan and restructuring proposal statement to creditors.

The practitioner must also certify to creditors that they believe the company is eligible for restructuring, and that the company is likely to be able to meet its obligations under the plan. They must take reasonable steps to verify this.

Once a plan is made, the small business restructuring practitioner manages the disbursement of payments to the company's creditors based on the terms set out in the plan.

What qualifications do small business restructuring practitioners have?

Small business restructuring practitioners must be Registered Liquidators. They must possess suitable experience, knowledge and abilities, and have their registration granted by an independent committee convened by ASIC.

A new classification of Registered Liquidator can take on the role of restructuring practitioner only. They are required to be recognised accountants who have demonstrated the capacity to perform the functions and duties of the role.

Businesses should only deal with a practitioner who is registered.

How will I know if a small business restructuring practitioner is registered?

The [ASIC website](#) maintains a list of Registered Liquidators, including those who can only take the work of a small business restructuring practitioner.

What is the cost of a small business restructuring?

The cost of the restructuring will vary depending on the company and the complexity of the restructure.

However, the small business restructuring practitioner must offer a flat fee to assist you to prepare the restructuring plan and to put the plan to creditors. You and the small business restructuring practitioner must agree on this cost before the restructuring commences.

Once a plan is agreed by the creditors, the small business practitioner is paid as a percentage of the disbursements to creditors under the plan. Creditors will be made aware of, and must consent to, this proposed remuneration when voting on a plan.