AFFIRMATIVE
BUSINESS ADVISORY

HOW THE SMALL BUSINESS RESTRUCTURING PROCESS WORKS

Directors can continue to trade in their company's normal course of business (subject to certain control and restrictions) while undergoing the restructuring process.

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

1. The Proposal Phase

Directors and external practitioner work on plan for up to 20 business days.

2. The acceptance phase:

Creditors have up to 15 business days to vote thereby approving or rejecting the plan.

A plan is approved when a majority in value of voting creditors vote in favour, however related creditors are excluded from voting. A range of conditions apply to how the restructuring plan is "effectuated" and terminated following any contraventions.

Are there restrictions on the plan directors can put forward?

All restructuring plans must include several prescribed terms and conditions. For example, admissible debts and claims must rank equally and receive a pro-rata share of the funds available for distribution (including related creditors). Additionally, a creditor cannot receive a transfer of property other than money.
The restructuring plan can be conditional on a future event occurring e.g. a sale of property/asset within a maximum of 10 days after creditors accept the plan. The restructuring plan is limited to a three-year term.

Can an approved restructuring plan be terminated?

Yes. A plan can be terminated if:
- A creditor obtains a court order.
- If the plan is conditional on a particular event occurring within 10 business days after the plan is made, and the event does not occur within that period (i.e. a condition precedent).
- If there is a breach that goes un-remedied for 30 business days.
- If an administrator, liquidator or provisional liquidator is appointed to the company.

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Can an approved restructuring plan be varied later?

Yes. However, varying an approved restructuring plan might not be commercially viable in many cases as a court order is required

How are creditors impacted by small business restructuring?

Secured creditors
Secured creditors are subject to similar moratorium provisions as applies in a voluntary administration and will only be bound by a restructuring plan to the extent they agree to be bound, under regulation 5.3B.29. However, any shortfall a secured creditor sustains will be covered by the restructuring plan and again they are bound by it.

Related creditors
Related creditors do not get to vote on the plan. However, they receive a distribution under the restructuring plan.

How does an approved restructuring plan become complete?

When an approved restructuring plan is fully effectuated in accordance with its terms, it terminates (is completed), and the company is freed from the debts covered by the plan.

How should a company under a restructuring plan be referred to?

A company subject to the restructuring process must advertise this status. For example, ABC Pty Ltd should be described on all public documents as “ABC Pty Ltd (restructuring practitioner appointed)”.

Disclaimer

This document provides general information only and does not constitute legal or financial advice. For advice tailored to your circumstances, please consult a qualified professional