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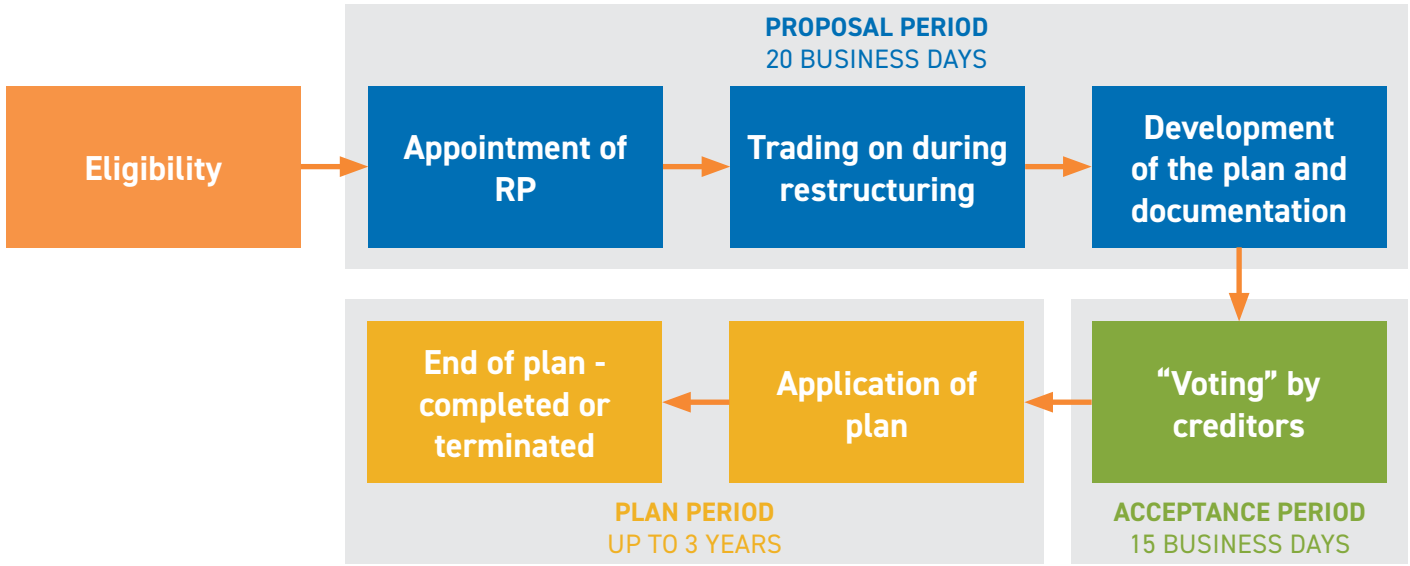
A FACT SHEET FOR DIRECTORS

Small Business Restructuring

January 2021 – version 1.0

A small business restructure allows eligible businesses to compromise their debts with their creditors' agreement and maximise their chances of trading profitably in the future. It also allows for business owners to remain in control of their business during the restructuring period.

Directors are assisted through the restructuring process by a restructuring practitioner (RP). A person must be a registered liquidator to act as RP for your company.



Eligibility

To be eligible a business must:

- Be operated by a company
- Owe less than $1 million to its creditors (excluding employees)
- Not have previously done a small business restructuring or used simplified liquidation in the past 7 years
- Before a plan is offered to creditors, be able to:
  - » pay all outstanding employee entitlements and
  - » lodge all outstanding documentation and returns with the ATO.

Current and former directors (acting in the past 12 months) also cannot have been a director of a company that has done a small business restructuring or used simplified liquidation in the past 7 years.

Directors will have to sign a declaration that the company is eligible. It is recommended that you consult with a RP regarding your company's eligibility.

Appointment of the RP

To appoint a RP, the directors must hold a meeting and at that meeting resolve:

- that the company is insolvent or likely to become insolvent, and
- a RP should be appointed.

The RP must then provide a consent. A RP cannot be appointed unless they provide consent. The directors then appoint the RP in writing.

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The RP is paid a set fee for the restructuring (not the plan) and that is agreed with you prior to the RP being appointed. The RP may also ask you to approve a basis of additional remuneration if they need to undertake court proceedings on the company's behalf. Directors need to agree to that work in writing before the RP can proceed.

The company must disclose that there is a restructuring practitioner appointed once the RP is appointed.

If a restructuring is entered into, the directors and the company will be subject to restrictions on the future use of a restructuring process or simplified liquidation for seven years. This restriction applies to this company or any other company that the directors are, or have been in the prior 12 months, directors of.

Trading on during restructuring

As directors, you remain in control of the business during the restructuring. It is your responsibility to make decisions regarding the business, pay employees and pay any creditors for debts incurred after the appointment of the RP. These debts must be paid in the ordinary course of business as they are not covered by the restructuring.

Approval must be sought from the RP for any transactions that are outside the ordinary course of business. The RP will advise you on this.

Development of the plan and documentation

The RP is there to assist you to develop the plan and put together the required information to be sent to the company's creditors.

The documents required are:

- Restructuring plan and
- Restructuring proposal statement, which includes a list of creditors and the amount they are owed.

The restructuring plan also provides for the cost of the RP administering the plan. This will be expressed as a percentage of monies paid to creditors under the plan and will be approved by creditors if they accept the plan. The plan can also provide for extra remuneration if the RP needs to attend to court proceedings on the company's behalf.

The RP then makes a declaration in relation to the information provided in the plan.

The timeframe is very tight (20 business days), and it is important that you cooperate fully with the RP.

"Voting" by creditors

Creditors have 15 business days from when they are given the information about the plan to decide whether to accept the plan.

The plan is accepted if the majority in value of affected creditors who have provided a statement to the RP agree to the plan. Creditors that are related to the company do not get to participate in this process.

Creditors can also dispute the amount of their debt that is disclosed in the Restructuring proposal statement. The RP will deal with those disputes.

Application of plan

If creditors choose to accept the plan, it is then important that you and the company comply with the terms of the plan.

If you, the company or any other person that is part of the plan, cannot comply with the plan, you need to let the RP know quickly so the RP can advise you on next steps.

End of plan – completed or terminated

The plan comes to an end when either:

- The terms of the plan are completed, or
- The plan is terminated as the terms of the plan cannot be complied with.

If the plan is completed, the company is released from all debts and is able to continue in operation.

If the plan is terminated, all debts under the plan become due and payable immediately. Directors will then need to make a decision about the future of the company. You will be able to appoint a liquidator or voluntary administrator.

The RP can advise you on your next steps, but they are not able to act as liquidator or voluntary administrator. This is because the law requires that a liquidator or voluntary administrator must be independent and cannot have previously assisted the company.

If you don't take action to appoint a liquidator or voluntary administrator, creditors are able to take action to have a liquidator appointed.

Advice you can trust

In times of financial uncertainty and distress, it's important to know where to go for help you can trust.

ARITA Professional Members are qualified, professional and regulated, which means you will get accurate, timely and lawful advice to help you deal with a financial crisis. They can provide the right advice and guidance around insolvency (including bankruptcy) and business restructuring and turnaround.

Most ARITA Professional Members provide an initial meeting to discuss your circumstances, free of charge.

Disclaimer: ARITA does not accept responsibility for the accuracy or completeness of the information in this document. The information contained in this document is not intended to constitute legal, business or other professional advice but is for information only. It is not intended as a substitute for advice from a qualified professional.

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