Information on Small Business Restructures

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.

There are 2 distinct phases in a restructure – the restructure and the plan, which are divided into proposal, acceptance and plan periods. During each phase, a restructuring practitioner (RP) is appointed.



Roles of stakeholders during a small business restructure

RP for the restructure

- Notifies key parties regarding the proposed restructure.
- Consents to transactions not in the ordinary course of business, but is not personally liable for these debts or any trading debts incurred by the company.
- Assists the Company in developing and preparing a restructure plan and restructuring proposal statement.
- Makes reasonable enquiries into and take reasonable steps to verify the company's business, property, affairs and financial circumstances.
- Holds a meeting in exceptional circumstances only.
- Considers if the Company can comply with the plan.
- Provides a declaration in respect of the plan.
- Verifies debts and claims and deals with any debt disputes
- Determines the acceptance of the plan.

Company

- Continues to trade and is responsible for any debts incurred.
- Obtains consent of the RP for any transactions outside the ordinary course of business.
- Provides information and assistance to the RP.
- Works with the assistance of the RP to develop a plan.

Creditors

- Receive notification of the appointment of a RP
- Continue to trade with the company during this period. The company is responsible for any debts incurred.
- Receives the plan, proposal statement and declaration from the RP. This includes a schedule of debts and claims disclosed by the company.
- Creditors can dispute the amount disclosed as their debt by giving notice to the RP, within 5 business days. If outside this period, RP can refuse to deal with the dispute.
- Within the acceptance period tell the RP if the plan should be accepted or not.
- Request reasonable information from the RP.

RP for the plan

- Notifies key parties regarding the plan.
- Holds a meeting in exceptional circumstances only.
- Receives amounts under the plan.
- Makes payments to creditors under the plan.
- Monitors and reports contraventions under the plan.
- Finalises the plan.

Company

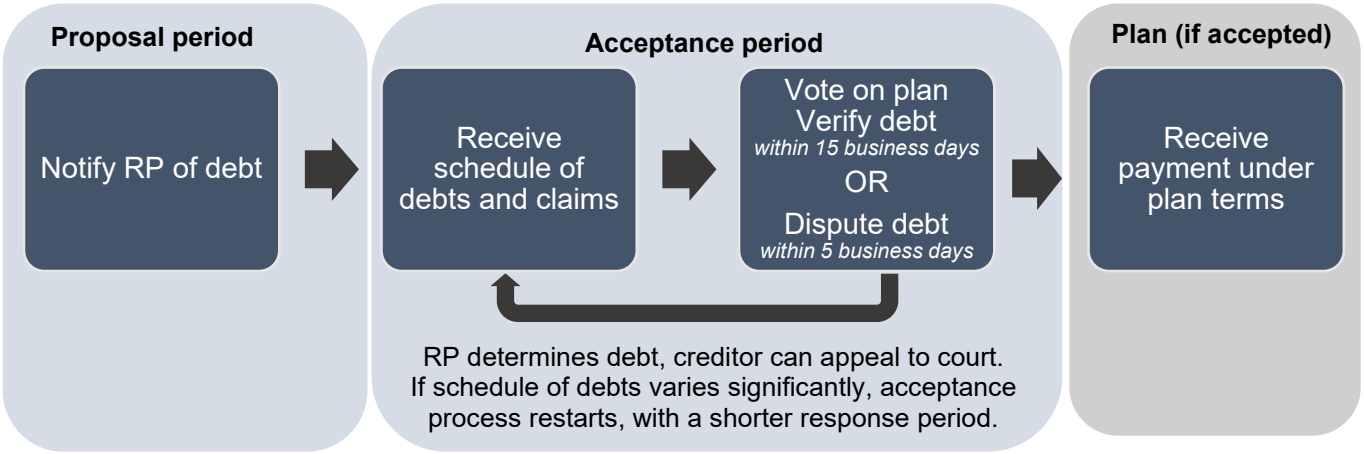
- Continues to trade and is responsible for any debts incurred.
- Makes payments required under the plan.
- Advises the RP if cannot comply with the plan.

Creditors

- Receive payments under the plan.
- Can request reasonable information from the RP.
- Continue to trade with the company during this period. The company is responsible for any debts incurred.
- Receives notice of failure to comply with the plan, termination of the plan or effectuation of the plan.

Creditor debts in a small business restructure

During a restructure, creditors must communicate with the RP regarding their debt.



Requests for information by creditors during a small business restructure

RPs will otherwise communicate with creditors as required.

Creditors can request information. A RP must provide a creditor with the requested information if their request is 'reasonable', the information is relevant to the liquidation, and the provision of the information would not cause the RP to breach their duties.

A RP must provide this information to a creditor within 5 business days of receiving the request, unless a longer period is agreed. If, due to the nature of the information requested, the RP requires more time to comply with the request, they can extend the period by notifying the creditor in writing.

Requests must be reasonable.
Information requests are not reasonable if:

(a) complying with the request would prejudice the interests of one or more creditors or a third party
(b) there is not sufficient available property to comply with the request
(c) the request is vexatious
(d) the information requested would be privileged from production in legal proceedings
(e) disclosure would found an action for breach of confidence
(f) the information has already been provided
(g) the information is required to be provided under law within 20 business days of the request

If a request is not reasonable due to (b), (d), (g) or (h) above, the RP must comply with the request if the creditor meets the cost of complying with the request.

Otherwise, a RP must inform a creditor if their information request is not reasonable and the reason why.

When small business restructures end

Once started, the small business restructure process may end through any of the proposal, acceptance or plan periods, depending on the particular circumstances.

Proposal period

1) A liquidation or voluntary administration starts.
2) Court orders to end.
3) By directors terminating.
4) By RP who may terminate if:
   - Eligibility criteria not met
   - Not in creditors interests to continue
5) Company fails to make a proposal.

Acceptance period

1) A liquidation or voluntary administration starts.
2) Court orders to end.
3) By directors terminating.
4) By RP who may terminate if they identify inaccuracies, deficiencies, material changes or non-disclosure of affected creditors.

Plan period

1) A liquidation or voluntary administration starts.
2) Court orders to end.
3) Contravention not rectified in 30 business days.
4) Conditions not met.
5) Conditions met (effectuated)

For information, go to www.arita.com.au/creditors
For specific information contact the restructuring practitioner