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New small business restructuring (SBR) reform

The recent small business law reform aims to provide a simpler, faster and more cost-effective insolvency process for companies to restructure their existing debts, maximising the chance of companies surviving, preserving jobs and contributing to economic growth.

The Small Business Restructure (SBR) process is an alternative to Voluntary Administration (VA) and enables company directors to remain in control of a company's affairs while a debt restructuring plan is developed, in conjunction with a restructuring practitioner, and ratified by creditors.

COVID-19 and temporary insolvent trading relief

In response to COVID-19, since March 2020 directors were provided a 'blanket' temporary relief in relation to personal liability for insolvent trading for debts incurred in the ordinary course of business. This relief expired on 31 December 2020.

Directors who continue to trade distressed entities post 31 December 2020, whose companies are subsequently wound up, may be personally liable for insolvent trading. One option now available to directors of small businesses is putting their entity through the SBR process to restructure its existing debts.

Eligibility for SBR?

- **Liabilities test:** Total debts must not exceed the proposed amount of $1M (includes secured debt, excludes employee entitlements owing).
- **Exclusion period:** The same director or company must not have used the debt restructuring or simplified liquidation process within the proposed period of seven years.
- **Tax lodgements:** All the company's tax lodgments must be up to date during the SRB.
- **Employee entitlements:** All employee entitlements that are due and payable must be paid during the SRB.

Overview of the SBR process

Directors remain in control of the company

Appointment	Directors appoint a Small Business Restructuring Practitioner (SBRP), who confirms the company is eligible.
Notice	Notice of process commencement is provided to creditors by a "technology neutral means" (ie email).
Restructuring plan	The SBRP assists the directors to develop a restructuring plan. The SBRP certifies the plan based on an assessment of the company's affairs.
Report to creditors	The plan, accompanying information and the SBRP's certification are provided to creditors.
Creditors vote	Creditors vote and verify proof of debt through an online portal or process.
Vote passes	If majority of creditors excluding related parties vote for the plan, the SBRP is appointed to oversee the implementation of the plan.
Vote does not pass	If a majority of creditors vote against the plan, the process ends and the directors consider the various options available. This may include a VA or the immediate Liquidation.

Up to 20 business days (Can be extended by 10 days) — Appointment, Notice, Restructuring plan

Up to 15 business days — Report to creditors, Creditors vote

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SBR advantages

- Reduces the high cost that can prevent distressed small businesses from engaging with the insolvency system early, reducing a company's opportunity to restructure and survive.
- Creditors restricted from bringing or continuing legal action and enforcing Personal Guarantees (PGs).
- **Directors retain control, which will encourage small businesses to access the process.**
- A more streamlined process than a VA.

What is the estimated cost of a simple SBR?

We acknowledge every company will have a different financial position and forecast, accordingly, we provide an estimated cost for a simple SBR as follows:

- Stage 1 (Appointment of SBRP): Flat fee from $8,000, plus GST and disbursement; and
- Stage 2 (Implementing the plan): Percentage of payments made to creditors, plus GST and disbursement.

Example case study 1 – Restaurant owner

Background	■ Operates a restaurant business in Sydney and closes due to COVID-19. ■ Company accrued significant debts which may have been temporarily deferred. ■ Following the easing of restrictions, trade return to near normal "pre-COVID" levels.
Concerns	■ Director realises the company cannot pay its debts as and when they fall due. ■ After consultation with the company's accountant, the director seeks the advice of a registered liquidator (RL) to discuss the options available. ■ The RL advises that SBR process is the most appropriate option in the circumstances.
Appointment	■ The company appoints a SBRP. ■ With the assistance of the SBRP, the director develops a plan to restructure the company's existing debt (paying creditors 40 cents in the dollar over six months in equal instalments).
Outcome	■ The SBRP sends a Report to Creditors detailing the plan with a counterfactual estimated return in a liquidation scenario. ■ The plan is expected to be recommended and in the interest of the majority of creditors where the estimated return under the plan provides a better return than the liquidation scenario. ■ Creditors vote to accept the plan, the business continues and the SBRP administers the plan by making distributions to creditors according to the terms of the plan.

Example case study 2 – Fashion retailer

Background	■ Fashion retailer negatively impacted from reduced foot traffic due to COVID-19. ■ Despite losses in 2020, continues to trade however result is a build-up of creditors.
Concerns	■ Director reaches a point where starts to have solvency concerns, due to legacy creditor. ■ Secured creditor payments being missed as paying legacy creditors instead for continued supply. ■ Suppliers put company on COD terms and demands for payments being received. ■ Outstanding employee entitlements of circa $15,000.
Appointment	■ Appoints SBRP to develop restructuring plan. ■ Plan involves secured creditor interest payments continue to be made and 30 cents in the dollar to unsecured creditors over 12 months.
Outcome	■ Outstanding employee entitlements paid in full, prior to vote before by creditors. ■ Plan approved by creditors.

Even if you or your clients do not qualify for a SBR, we recommend you contact us to discuss all options available.

Further information on our credentials and experience please visit our website www.wexted.com or contact one of the following staff members as detailed below:

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