

News with Clout

Providing Restructuring, Turnaround & Insolvency Solutions

RESTRUCTURING PROCESS PASSES PARLIAMENT

That was quick.

It all begins on 1st January 2021.

Key features include:

The creation of a new specialist category of liquidator who have the power to facilitate the Small Business Restructuring Plans (Practitioner). Fully Registered Liquidators still have that ability too, along with the simplified liquidation process. We intend to provide the basics of the simplified liquidation process in the new year.

Directors stay in control of the business. But the Company can only deal with assets in the ordinary course business and not dispose of or encumber assets.

There is a transition phase where three months grace may be obtained by lodging with ASIC a Notice of an Intention to enter into a small business restructuring plan (SBR Plan). This is understood to be available at the start of the legislation only.

It's available for corporations with creditors of less than \$1 million.

ATO lodgements must all be up to date (not necessarily paid).

All employee entitlements must have been paid (here read Superannuation).

This is not available to companies where a director has been a director of a company that has been in liquidation in the past seven years or has been a director of a company that has been through this process before.

It will not be available in the future to a company that has gone down this road before.

The review of the SBR Plan and formulation of an opinion as to the benefit to stakeholders, likelihood of success and circulation to creditors to vote on is attended to by the Practitioner and at a set fee negotiated up front with the Corporation.

Voting on the process is all done electronically.

Related parties do not have a vote.

Throughout this process creditors with either guarantees or contractual rights to terminate agreements will not be able to enforce their rights either against third parties or the company themselves. This stays for the term of the SBR Plan.

Once the SBR Plan has been agreed the costs to administer the process is a percentage of the payments to creditors only. This is in line with the Bankruptcy Act Debt Agreement legislation and regulations.

This will be a useful tool to protect and resurrect businesses that have a sound model, or can adjust their business to become sound. It will need to be able to generate funds, be it from the sale of surplus assets or trading profits to make some payment to creditors. With one or two other commercial considerations, for a SBR Plan to be approved it would likely need to be a better result for creditors than a liquidation.

It should also be noted that whilst it sounds good that directors stay in control of the trading, their ability to obtain or retain credit from suppliers may be an impediment to the hoped for wide applicability of the process.

As ever we welcome all enquiries.



NEWS WITH CLOUT

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Monitoring Businesses in Workout Situations

Conducting Negotiations with Secured & Unsecured Creditors

Business Risk Minimisation Reviews

Forensic Accounting Assignments

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Small Business Courses

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