



**INVESTMENT PLUS
ACCOUNTING GROUP**

Small Business Restructuring Guide



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Benefits

The SBR process allows a small business that has found itself in a precarious financial position to propose a single offer to its creditors seeking to settle its debts for a lesser sum than is owed. The offer is formulated and proposed with the assistance of a registered small business restructuring practitioner (like us at Investment Plus Accounting Group). And unlike other types of formal insolvency, the directors remain in control of the business throughout the entire process.

Space to breathe

When a company enters into an SBR process, there's a temporary halt on unsecured creditors enforcing the repayment of what they're owed (including personal guarantees) as well as on some secured creditor claims. This stops legal actions or court proceedings by creditors.

A quick process

The SBR process generally takes 35 business days or less, from appointing a small business restructuring practitioner to creditors voting on the plan proposed.

Certainty of costs

The directors and the small business restructuring practitioner agree on a fixed

fee before the SBR process commences—so there's no surprises. If creditors approve the proposed plan, the small business restructuring practitioner is paid a fee as a percentage of what is paid to creditors.

Keep control

The directors keep control of the business during the SBR process. The small business restructuring practitioner is simply appointed to oversee the process, assist in developing a restructuring plan (i.e. an offer), and to deal with creditors.

Positive outcomes

Many creditors (including government agencies e.g. The Australian Taxation Office (ATO)) are showing a willingness to support small businesses with debt issues through the SBR process. The SBR process has helped save many small businesses that may otherwise have been forced to close their doors.

Options if your plan is rejected

If creditors reject the plan proposed, there's no automatic transition to liquidation. The directors stay in control of the business and can consider other options to resolve the company's financial difficulties.





Who can access the SBR process?

Because the SBR process is more streamlined and less onerous than other formal insolvency appointments, not all businesses are eligible to use it as a debt restructuring tool. To be eligible to commence the SBR process a business must satisfy the following:

- Be operating through a company structure.
- Have liabilities of less than \$1 million.
- Have not recently used the SBR process.

Operating through a company structure

You must either be operating as a company, or via a trust with a corporate trustee. Sole traders are not eligible for the SBR process but may have other options available to them; our teams can help assess.

Liabilities of less than \$1 million

Total liabilities must be less than \$1 million (excluding employee entitlements). A liability means any liability or obligation, including contingent debts and includes related-party debts.

SBR process not previously used

The company and its directors can only use the SBR process once in a seven-year period. This means if a director becomes a director of another company, the exclusion moves with the director. Former directors who resigned in the previous 12 months are also factored into this restriction. Some limited exceptions to the seven-year exclusion period apply for a group of companies.

Director declarations

Before proceeding, directors must make a declaration about whether they believe the company has entered into a voidable transaction; and that there are reasonable grounds for believing the company qualifies to propose a SBR. Directors must also resolve the company is insolvent or is likely to become insolvent and that a restructuring practitioner should be appointed.



Appoint a small business restructuring practitioner

Directors must seek the consent of, and appoint, a registered small business restructuring practitioner (like us at Investment Plus Accounting Group) to oversee the SBR process.

What is required before proposing a restructuring plan to creditors?

Before you can put a restructuring plan (i.e. an offer) to creditors, the company must have complied with the following:

- Employee entitlements paid.
- Tax lodgments up to date.

Employee entitlements paid

All due and payable employee entitlements, including superannuation, must be paid before a restructuring plan can be put to creditors—but not before appointing a small business restructuring practitioner. This is beneficial as it means directors and the business get the protection needed

while the plan is being worked on, and employee entitlements are being paid. Contingent and accrued employee entitlements, such as accrued annual leave, are not required to be paid.

Tax lodgments up to date

The company's tax lodgments must be up to date. That includes all tax returns and activity statements being lodged with the ATO. Tax debts do not need to be paid, however the ATO compliance matters must be attended to.





How The SBR Process Works

The SBR process often takes 35 business days or less and is broken down into two phases. Directors remain in control of the business during the entire SBR process.

Proposal Development Phase

20 business days

Directors commence the SBR process

Directors appoint a small business restructuring practitioner. The small business restructuring practitioner confirms eligibility for the SBR process.

Normal trading continues

The directors keep control of the business and can undertake transactions in the ordinary course of business.

Creditors notified

Creditors are provided a 'notice of process commencement' and information about the company entering into an SBR process.

A restructuring plan is developed

Directors, with the small business restructuring practitioner's support, have 20 business days to develop a viable "restructuring plan" (i.e. an offer) for the business to propose to its creditors. The small business restructuring practitioner can extend this period by up to 10 business days in certain circumstances. A restructuring plan effectively asks all creditors to accept a lesser amount than is owed to them, to be paid over a period of no longer than three years.

Plan is provided to creditors

The small business restructuring practitioner works with the business owners/advisors to formulate a plan/offer. The small business restructuring practitioner provides a report to creditors with the proposed plan, information on the company and certifies the viability of the plan.



Creditor Voting Phase

15 business days

Creditors vote

Creditors vote on the plan and verify their debt value or seek to vary their debt value if they believe it is inaccurately recorded. The small business restructuring practitioner oversees this voting process.

Creditors have 15 business days to submit their vote. Related-party creditors cannot vote.

Plan accepted

A restructuring plan is approved when >50% of voting creditors by value (excludes related creditors), vote to accept the plan. Importantly, all creditors are bound by the plan if this threshold is reached even if they do not vote.

The directors remain in control of the business and the restructuring plan commences, overseen by the small business restructuring practitioner.

Creditors are paid on an equal basis (pro-rata) in accordance with the timeframe set out in the plan.

Once all payments under the plan are complete, the company is released from all creditor debts that were subject to the plan.

Plan rejected

If the plan does not get >50% of creditors by value that vote, the SBR process ends.

The directors keep control of the business and can consider other options to resolve the company's financial difficulties.

Other formal insolvency options include:

- Voluntary administration
- Voluntary liquidation

It is not automatic for a company to enter into voluntary administration or liquidation if its plan is rejected.

Is the SBR process right for my business?

Whether the SBR process is right for your business depends on several factors and your individual circumstances. We encourage you to speak to your local Investment Plus Accounting Group office to discuss your personal circumstances. We do this every day, as complimentary, and without expectation.





Case Study: Hospitality Business

Summary

- Established café
- COVID-19 impacted
- Creditors accepted a 75% reduction on debts
- Main debt owed to the ATO

Background

Prior to the COVID-19 pandemic, the business owners ran a thriving café in Victoria. Government-imposed restrictions throughout 2020 and 2021 materially impacted the businesses turnover and profitability. The business owners pivoted the business as best they could—they catered for take-away-only service, increased their reliance on food delivery platforms, and leveraged government support. However, sales reduced, cost of goods increased, and staff wage pressures strained the cash flow and meant the business was facing insolvency.

The business owners were referred to our team, eager to find a way to save their business.

Debt profile

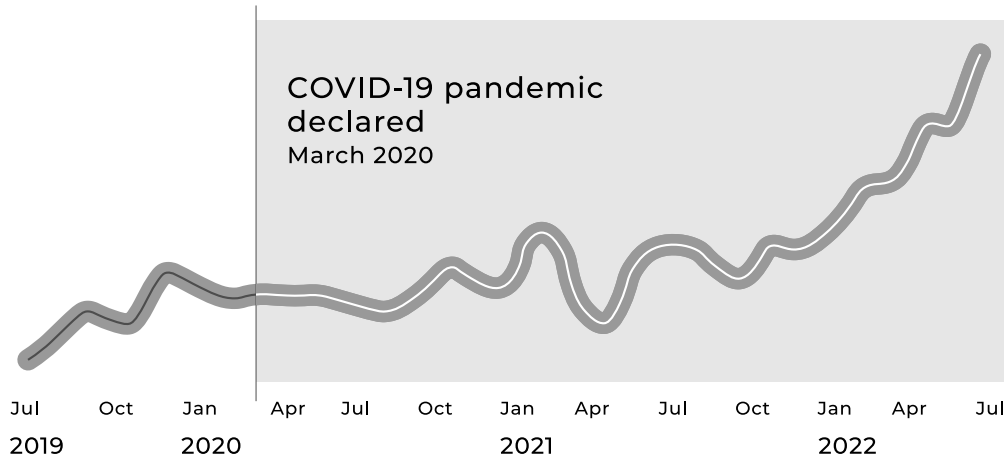
The majority of business expenses were paid cash on delivery, which kept most business suppliers up to date. The difficult trading period created a situation where the debt to the Australian Taxation Office (ATO) began to increase as shown on the graph on the next page.

The outlook

The owners had taken several steps to ensure business profitability into the future. They rightsized their workforce, revised menu pricing, and met regularly with their accountant to discuss budgets and cash flow. The future looked bright, but built-up debt posed a real challenge. Cash-flow projections showed a commercial repayment arrangement with the ATO would be difficult to negotiate, let alone be entertained.



ATO Running Balance



The ATO was the main creditor and tax debt was approximately \$160,000 when we were engaged. Historically, prior to COVID-19, the business maintained a good standing with the ATO. And while the ATO was supportive during the pandemic, it started applying some pressure for repayment of the debt.

The SBR process and the offer

It was decided to enter into a SBR process with a hope that the debt could be restructured into a more manageable amount. The business continued to trade as normal while the offer was being formulated and report completed.

Ultimately an offer to creditors was proposed at approximately 25 cents in the dollar, which the company would pay in instalments over a 24-month period.

That is, creditors were being asked to write off 75% of the debt owed to them.

The offer proposed was affordable for the company and provided a higher return rate to creditors than what was likely in a company wind up scenario.

Outcome

Creditors unanimously accepted the offer. Within approximately one month, the business owners were carrying on the business with certainty about the future and without the significant overhead of debt and associated personal stress.

Other factors

This company owned a motor vehicle subject to finance and held a long-term lease with the landlord. There were no arrears owing to either of these parties and neither





Case Study: Electrical Contracting Business

Summary

- Electrical contractor
- COVID-19 impacted
- Creditors accepted a return of 20 cents for every dollar owed
- Major creditors were the ATO and Queensland Rural & Industry Development Authority

Background

The company operated an electrical contracting business on the Gold Coast.

During the 2020–2022 financial years, the company was exposed to a series of external factors outside of its control which impacted its financial position and performance. Specifically:

- Debtors became more difficult to collect, impacting the company's cash flow.
- Staff were at various points in time either sick or subject to COVID-19 quarantine requirements, impacting project timelines and expected viability of jobs.

- The company experienced a reduction in sales.
- There was an inability to obtain necessary stock due to supply shortages.

Debt profile

- The company's creditors were:
- ATO for approximately \$310,000.
- Queensland Rural & Industry Development Authority (QRIDA) for \$100,000.
- Suppliers and banking institutions totalling \$230,000.

In September 2022, after the company failed to maintain its latest payment arrangement, the ATO issued director penalty notices to the company directors. As the directors were confident of the company's long-term profitability, we were appointed as the company's small business restructuring practitioner to seek creditor support to agree to a restructuring plan.



Other steps taken to ensure future viability of company

Prior to our appointment the directors took the following steps to address the company's trading position and to ensure its future viability:

- Engaged an external CFO to assist the directors to regularly review the company's trading position and ensure they were hitting their ongoing financial targets.
- Engaged an external bookkeeper to assist with keeping the company's accounting records up to date.
- Continued with their traditional approach of being engaged as a subcontractor for other parties, and expanded their services to also work directly for customers.
- Employed an office manager to assist in liaising with customers and debt collection.

The SBR process & offer under restructuring plan

Our office worked together with the directors and the company's external accountant to ensure the company's tax lodgments were up to date and to formulate the terms of the offer to be put forward under the restructuring plan. The business continued to trade as normal while the offer was being formulated and our report to creditors was being completed.

The company directors decided—that as an offer—that they would personally contribute a one-off lump sum payment which would result in all creditors receiving approximately 20 cents for every dollar owed by the company. This offer was payable to creditors within seven business days of accepting the restructuring plan.

This offer was a commercially favourable return when compared to a scenario where the company was to be put into liquidation.

Outcome

Creditors accepted the offer and the company directors immediately paid out the funds due to creditors under the restructuring plan.

As a result the SBR process allowed the company to deal with its legacy debts, which together with the other steps being undertaken by the directors will help to ensure its future viability, and the directors avoided personal liability from the ATO's prior director penalty notice. negotiate, let alone be entertained.





FAQs

How do I know if my company is insolvent?

A company is insolvent when it is not able to pay its debts as and when they become due and payable. Investment Plus Accounting Group can assist you in assessing whether your company is, or is likely to become, insolvent.

What does trading 'in the ordinary course of business' mean?

While undertaking the SBR process a business can continue to trade as per its normal day-to-day operations.

What debts are included in a restructuring plan?

All unsecured debts incurred and owing prior to entering into the SBR process, excluding employee entitlements (e.g. including those not yet payable such as leave and redundancy entitlements) are included in a restructuring plan. Debts incurred after entering the SBR process cannot be included.

Can ATO debt be included in a restructuring plan?

Yes. Many companies have successfully used the SBR process to assist in managing ATO debt.

What restrictions apply on a proposed restructuring plan?

All restructuring plans must include several prescribed terms and conditions and are limited to a maximum three-year term. Admissible debts and claims must also rank equally and receive a pro-rata share of the funds available for distribution (including related creditors).

How are secured creditors impacted?

Secured creditors are subject to moratorium provisions; however, will only be bound by a restructuring plan to the extent they agree to be bound. However, any shortfall a secured creditor sustains will be covered by the restructuring plan.



How are related creditors impacted?

Related creditors do not get to vote on the plan. But they will receive a distribution under the restructuring plan. Related creditors are those linked to the company, its directors, or its shareholders.

How are the votes counted?

A plan is accepted where more than 50% (in value) of the unrelated creditors vote to accept the plan. The voting is done 'on the papers' without a creditors meeting. All creditors are bound by the outcome regardless of how they voted.

How is an approved restructuring plan completed?

When the terms of a restructuring plan are met, it is complete ("terminated") and the company is released from the debts covered by the plan.

What happens if the company fails to complete an approved plan?

If a company fails to complete an approved restructuring plan (such as failing to make payments under the plan), it is liable for the original debts owed prior to the plan commencing, less any payments made under the plan.

Who will know about the SBR?

The SBR process is only communicated to known creditors, however it's publicly listed on ASIC's published notices website.

What happens if the restructuring plan is not approved?

If the restructuring plan is rejected, the SBR process ends. The directors remain in control of the business and can consider other options to resolve the company's financial difficulties.

Other formal insolvency options include:

- Voluntary administration.
- Voluntary liquidation.

What does the small business restructuring practitioner do?

The small business restructuring practitioner's role includes:

- helping determine eligibility for the SBR process
- supporting the company to develop its plan and review its financial affairs
- certifying the plan for creditors to vote on
- managing disbursements if the plan is approved.

As the director will be in control of the company's day-to-day activities, the small business restructuring practitioner will not be personally liable for the company debts/actions. Registered liquidators can be appointed as a small business restructuring practitioner.





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