

New insolvency reforms to help save businesses or simply the liquidation process for small businesses with debts under \$1m

Insolvency | Snapshot

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RESTRUCTURING INSOLVENCY ADVISORY DISPUTE RESOLUTION

On 24 September 2020, the Government has announced major changes to the insolvency framework for small businesses in Australia which will come into effect on 1 January 2021. These radical changes will help reduce the complexity, time and costs of small business insolvency matters.

From January 2021, Australian small businesses that have a profitable underlying business post COVID but are burdened with debts, accumulated prior to and/or during COVID, would have access to a simplified restructuring process to save their business. If the business cannot be saved/restructured, there will be a streamlined liquidation process to wind up the business faster, enabling greater returns for creditors and employees.



The three (3) key changes are:

A new formal debt restructuring process for small business

- Available to incorporated businesses with liabilities of less than \$1 million
- A registered and independent small business restructuring practitioner manages the restructuring process
- Business owner/s will continue to trade while a debt restructuring plan is developed and certified within 20 business days and creditors have 15 business days to vote on
- The proposal is accepted when more than 50 per cent of creditors by value endorse the plan, it is approved and binds all unsecured creditors. Creditors vote as one class. Secured creditors are bound by the plan only to the extent their debt exceeds the realisable value of their security interest.
- The business must pay all due and payable employee entitlements before a plan can be put to creditors
- Safeguards will be included to prevent illegal phoenix activities and related creditors are not allowed to vote
- If the plan is approved, the business continues, if not, the business may consider other insolvency options.

A simplified liquidation process for small businesses

- Available to incorporated businesses with liabilities of less than \$1 million
- Reduced circumstances of unfair preference recoveries against unrelated creditors in a liquidation
- Liquidators only report to ASIC if misconduct has occurred
- No need to call creditor meetings and cannot form committees of inspection
- Simplifying the dividend process
- Maximising the use of technology in voting and other administrative tasks
- Safeguards will be included to prevent illegal phoenix activities



Complementary measures for the insolvency sector

- Temporarily waiving Liquidators' registration fees
- Ease the registration requirements of liquidators
- Maximising the use of technology in external administrations
- Providing temporary insolvency relief for eligible companies
- A new classification of insolvency practitioners named small business restructuring practitioners

For more information, please read the [enclosed link for the Government's release](#).

We have lots of questions regarding certain elements of these proposed changes, how it is going to work in practice and what are the real impacts.

Some questions that come to mind are:

- How do you quantify the extent of contingent liabilities such as future lease obligations and make good costs which may extend the company's liability beyond the \$1m threshold?
- How do we ensure that all creditors are notified and entitled to vote?
- How can independence of the restructuring practitioner be assessed by creditors voting on the restructuring proposal?

We will carefully examine the new laws when the proposed legislation has been published. Watch this space!

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