

Corporate Distress: Director's decision tree

Contact us for a free confidential consultation to discuss your options:
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To be introduced in 2021, The Small Business Restructuring Plan is designed to be a time & cost effective option that allows businesses to retain more control during a crisis.

START

Directors' assessment of the current circumstances indicates serious signs of under-performance

Directors seek professional advice

Consider safe harbour/turnaround planning

Does the business have insurmountable cashflow constraints?
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Are there concerns over the company's solvency?

NO

YES

Core viable business is salvageable

Situation is terminal

PRE APPOINTMENT

Small business restructuring plan
Incorporated businesses with liabilities of less than \$1 million can access the Federal Government's proposed insolvency changes that follow a 'debtor in possession' model.
To engage in this process directors appoint a small business restructuring practitioner to assist with developing a restructuring plan to present to creditors.

Voluntary administration
Directors resolve that in their opinion, the company is, or is likely to become, insolvent and an administrator should be appointed
Directors obtain written consent to act from an insolvency practitioner

Liquidation
Liquidator appointed via resolution of shareholders, or the Court via a petitioning creditor.

POST APPOINTMENT

Small business restructuring practitioner appointed
Creditors are notified of commencement of plan and directors develop restructuring plan with support from practitioner.
Practitioner certifies plan and details are made available to creditors to vote on.
Two possible outcomes:
• Majority of creditors approve the plan. The practitioner oversees its implementation.
• Majority of creditors do not approve the plan and the process ends. Directors may enter into another insolvency process

Directors appoint a voluntary administrator (VA)
Directors must prepare a report on company activities/property within 5 business days of appointment
Directors' ongoing cooperation with voluntary administration process
Directors can submit a DOCA proposal to the administrator
Three possible outcomes:
• DOCA is executed
• Administration ends and the company control is returned to the directors
• Company is placed into liquidation

Liquidated appointed
Directors must prepare report on company activities/property within 5 (voluntary liquidation) or 10 business days (court-ordered)
Directors' ongoing cooperation with the liquidation process*
Liquidator investigates the company's affairs and determines if there has been any misconduct, and if so reports it to ASIC.

Debtor in possession

Creditors in possession