



RESULTS
LEGAL

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The calm before
the storm

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Three key areas

1. Small business insolvency reforms
2. Practical impact of the reforms and consideration of creditor's rights
3. Mitigating and managing increased disputes and insolvencies

Contents

- The context – how did we get here
- Small business insolvency reforms
- The impact of the insolvency reforms on creditors
- Mitigating and managing increased disputes and insolvencies
- Summary and takeaway items



Context

- *Coronavirus Economic Response Package Omnibus Act 2020*
- *Corporations Amendment (Corporate Insolvency Reforms) Act 2020*
- *(Corporate Insolvency Reforms) Regulations 2020*

Last year in review

- Increased minimum amount for creditor to issue creditor's statutory demand to a company from \$2,000 to \$20,000.
- Increased threshold at which creditor can issue bankruptcy notice from \$5,000 to \$20,000.

Last year in review

- Increased time for both companies and individual debtors to respond to creditor's statutory demand or bankruptcy notice from 21 days to six months.
- Safe harbour for directors regarding insolvent trading and debts incurred during moratorium period.

1 January 2021

Creditor's statutory demand

Bankruptcy notice

Increase in statutory demands and bankruptcy notices issued and winding up applications

Small business insolvency reforms commence

Key elements

Small business restructuring

- Debtor in possession model
- Appointment of a small business restructuring practitioner
- Restructuring of existing debts

Simplified liquidation process

- Reduce red-tape, time and costs of current liquidation process

Key Dates

Existing
temporary
insolvency
protections
expired



31 December
2020

Last day to
declare intention
to utilise
restructuring
process to access
temporary relief



31 March 2021

1 January 2021



Commencement
of reforms

30 June 2021



Transitional
temporary relief ends

Present status of appointments

- 19 = declarations of eligibility for restructuring (1 withdrawn)
- 5 = appointments as a restructuring practitioner for a company
- 1 = appointment as a restructuring practitioner for a restructuring plan

Notice of eligibility to appoint restructuring practitioner

Creditor rights – what are they?

Actions to be undertaken following notice

- Undertake stocktake of goods supplied, and an account for outstanding invoices
- If monies outstanding, exercise your rights under your ROT and recover stock
- If you hold security take steps to enforce security
- Stop supply or cash on delivery only
- Set up a notification system (BICB/ASIC)

Action to be undertaken following notice (continued)

- Take legal action
- Review your contractual documents including but not limited to your credit agreement and personal guarantee
- Resolve any issues in your documentation
- Review your security interests both personal and real
- Register any unregistered security interests



**Stop supply, collect your stock,
take action**

Appointment of restructuring practitioner

Following an appointment

- Stay on all legal proceedings (including guarantors)
- No enforcement allowed against company
- Cannot not enforce guarantees
- Unable to enforce security interests (including PPSA) unless you have possession of property
- Goods unperfected will vest in company
- Goods to be dealt with in the ordinary course of business

Small business restructuring: eligibility



Less than \$1 million in liabilities (actual not contingent)

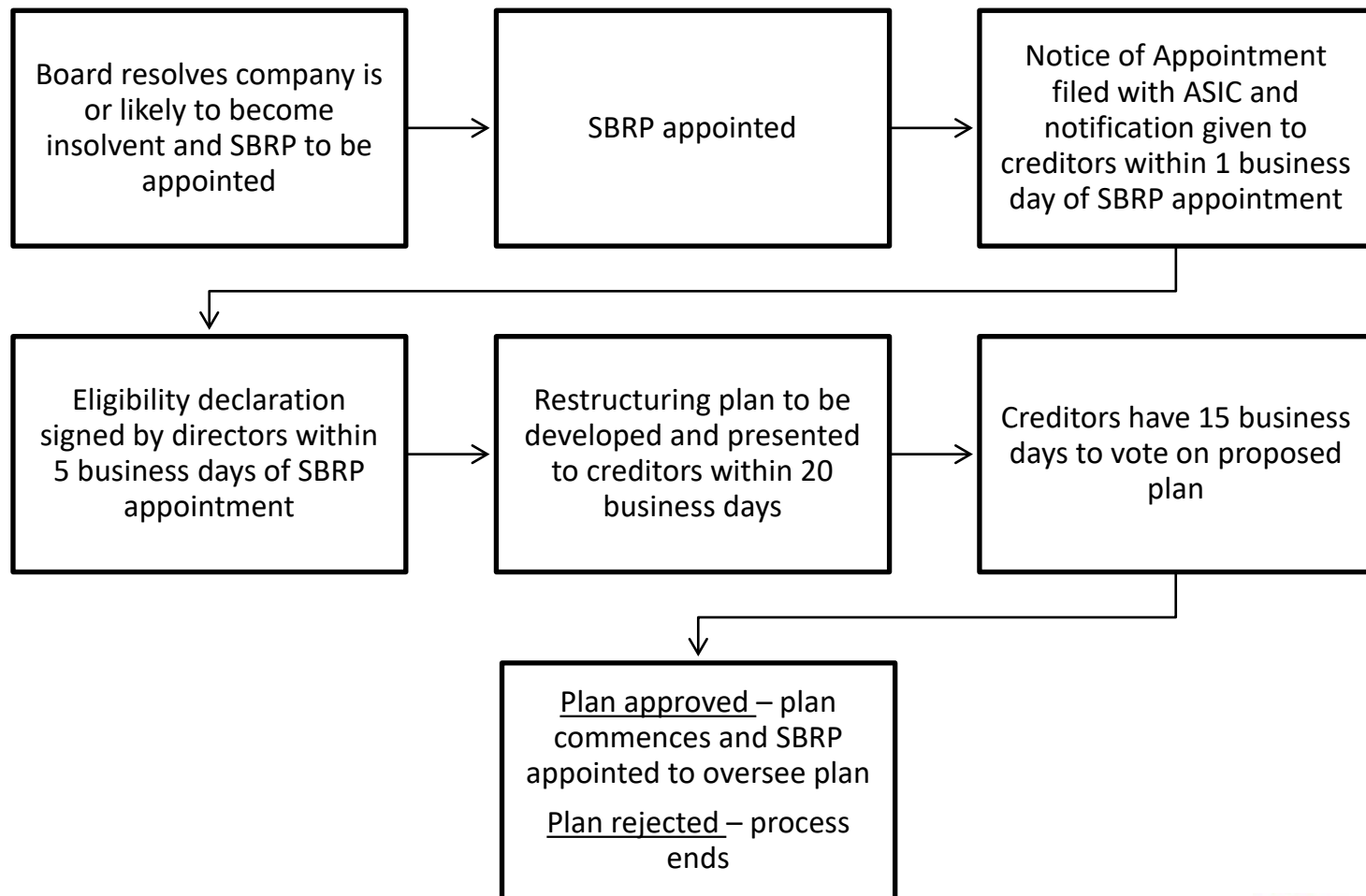


Directors of the company must not have previously utilised small business restructuring process within seven years preceding the appointment of the practitioner



Company must not have been under restructuring or the subject of a simplified liquidation process within seven years preceding the appointment of the practitioner

Small Business Restructuring: timeline



How can the process it end?

- Fail to propose or approve a plan
- SBRP cancels due to material change or process in appropriate
- Administrator or liquidator appointed
- If plan approved:
 - Conditional but conditions not satisfied
 - Court orders termination
 - Plan contravened with no rectification within 30 business days

What happens when the process ends?

Simplified liquidation process

Simplified liquidation process: eligibility



Less than \$1 million in liabilities (actual not contingent)



Company must have resolved to be wound up voluntarily



Company will not be able to pay its debts in full within a period of 12 months



Directors must have given a report to the liquidator as to the company's affairs and a declaration the company is eligible



Tax lodgements must be up to date

Effect on creditors



Removal of liquidator's obligation to hold meetings



Removal of Committees of Inspections



Creditors unable to appoint reviewing liquidators



Simplified dividend process

**What does the future look like
and what can you do to protect
your interests?**

Increase in insolvencies

Increase in matters defended

**Identify any customers who are
paying outside of terms, or have
monies overdue and act now**

Review your current contractual documentation

**Consider taking and/or registering
security now**

Proactive management of a dispute

Summary and takeaways

- Understand and exercise any rights if notice of eligibility is received
- Understand your rights post-appointment
- Get your house in order, maintain good credit policies and proactively manage disputes
- Take action while you have the right



Questions