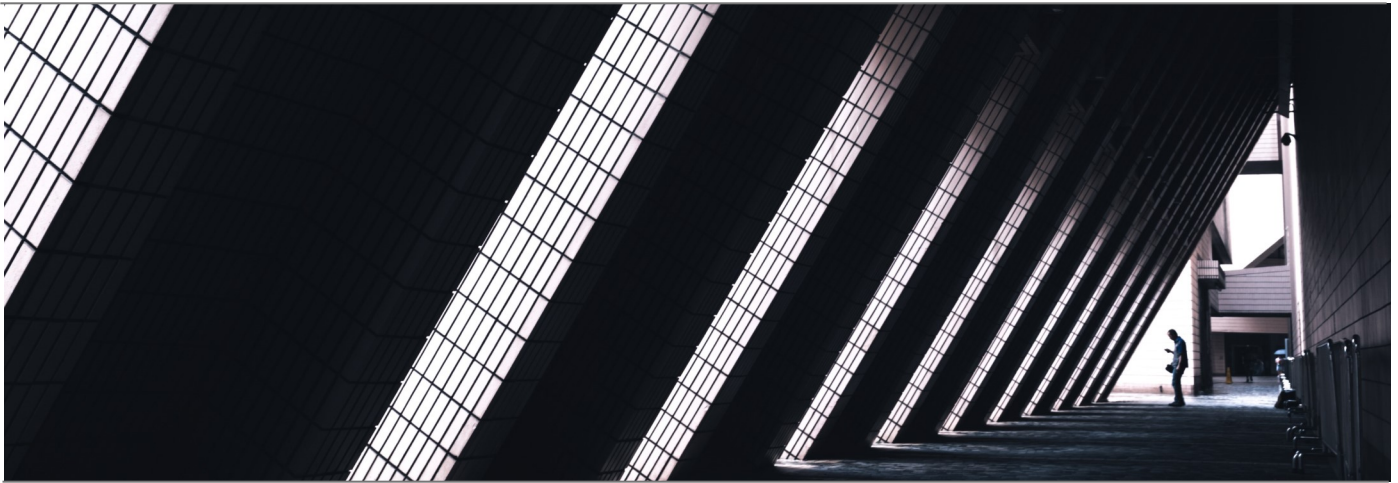




JANUARY 2020

A NEW WAY TO RESTRUCTURE CORPORATE DEBTS

Written by **John Hodgkinson** and **Angela Ipara**

On 1 January 2021, the Corporations Amendment (Corporate Insolvency Reforms) Act 2020 took effect. The Reforms introduced a new, simpler and cheaper process for debt restructuring of small businesses.

WHAT DOES IT MEAN FOR SMALL BUSINESSES?

The new process allows eligible companies to continue trading in its ordinary way while a proposal for payment of its debts is formulated.

The Reform imposes a moratorium on collection actions to allow the development and presentation of that proposal without the distraction of Court proceedings.

In addition, the Reform leaves control of the company's business affairs in the hands of directors while providing a safe harbour against personal liability for insolvent trading.

WHAT ARE THE ELIGIBILITY REQUIREMENTS?

A business is eligible to access this restructuring process if the business:

- is incorporated under the Corporations Act 2001;
- has paid substantially all employee entitlements;
- has lodged all its tax returns and activity statements;
- has other liabilities not exceeding \$1 million.

There is a limit on how often a company can restructure its debts. A company will be ineligible if the company has resorted to the process within the preceding seven years.

WHAT IS THE PROCESS?

The debt restructuring process involves:

- a resolution by the board that the company is or is likely to become insolvent;
- agreement of a fee and engagement of a small business restructuring practitioner (a 'SBRP' for short);
- notification to ASIC and creditors of that appointment;
- development of a plan to restructure the company's debts and
- submission of the detailed plan to creditors for their approval.

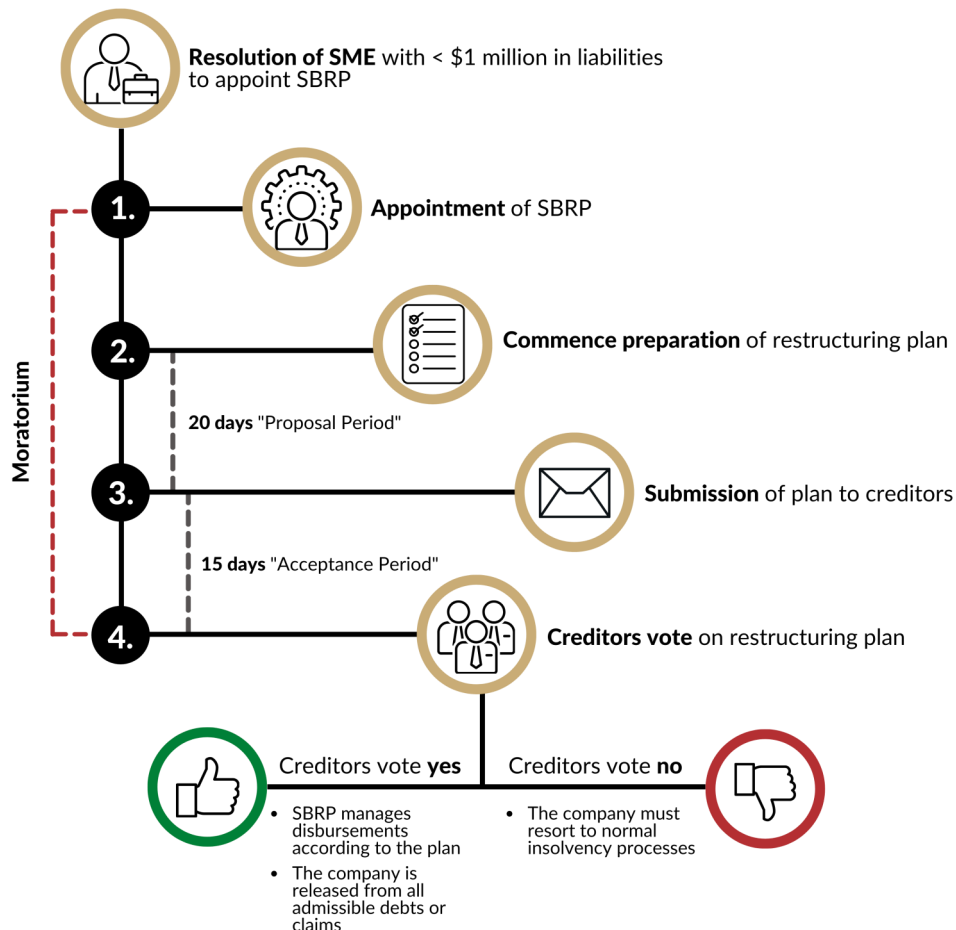
There is no need for the SBRP to take over management of the company, prepare lengthy reports about its business, property, affairs and financial circumstances, to convene physical meetings or to compare the outcome of any proposal with liquidation. The SBRP is only required to confirm that the company is eligible and to certify the plan to creditors

If the plan is adopted in that way, the plan will bind all unsecured creditors. The SBRP will be responsible for supervising disbursements according to the plan.

If the creditors vote 'no' to the plan and the company is insolvent, then the directors must resort to normal insolvency processes such as the appointment of a voluntary administrator or liquidator.

If the plan is not followed, the plan will terminate and any remaining debts that will become due and payable on the following day.

OVERVIEW OF THE PROCESS



WHAT IS THE MORATORIUM ON RECOVERY?

Creditors cannot take legal action to recover a debt or enforce a claim once a SBRP is appointed. The moratorium will restrict or prohibit:

- unsecured and some secured creditors from suing the company;
- owners of property (other than perishable property) used by the company from recovering their collateral;
- creditors from enforcing personal guarantees against directors or their relatives;
- the operation of ipso facto clauses which allow contracts to be terminated in the event of insolvency.

TEMPORARY RESTRUCTURING RELIEF

The reform also gives other relief during a transitional period (to 31 March 2021) so that distressed companies can undertake a debt restructure. The temporary relief will apply if a notice is published (on the ASIC notices website) that the company intends to engage an SBRP before 31 March 2021.

In that event,

- creditors cannot issue a statutory demand in respect of debt less than \$20,000;
- the company will have up to 6 months to pay or respond to a statutory demand;
- directors will have a temporary safe harbour from personal liability for insolvent trading.

KEY TAKEAWAYS

- The new process will allow company to continue trading under its usual management but without the threat of debt collection proceedings.
- The cost of the process will be much cheaper than voluntary administration or liquidation.
- The process for creditors to endorse the debt re-structure aims to be simpler and cheaper than normal insolvency processes.

CONTACT US

For more information, please contact us on (02) 82396500 or at excellence@kreisson.com.au.

ADDITIONAL READING

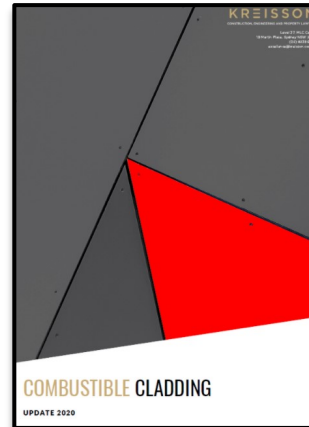
For additional reading, please see our ebooks at:

kreisson.com.au/education/ebooks/



Major Changes to the NSW Building Industry

Major events over the last 3-4 years have prompted legislative change in favour of increased compliance regulation and enforcement measures to protect consumers where there is a finding of building defects.



Combustible Cladding

Across Australia various state governments have introduced a series of measures to address community concerns about public safety and to identify the extent of the issues posed by combustible cladding.



SOPA Amendments

The amendments to the Building and Construction Industry Security of Payment Act 1999 (NSW) commenced on 21 October, 2019; posing significant changes upon the building and construction industry



Developer Building Bonds

Developers are now required to lodge a building bond with NSW Fair Trading to the value of 2 percent of the contract value for works to secure funding for the rectification of defective building work.