

# SMALL BUSINESS RESTRUCTURING PLAN

## INTRODUCTION

We specialise in helping small businesses. That is, has been, and always will be, our focus.

A new option for small businesses operating through a company structure has come into effect from 1 January 2021. This new small business restructuring process gives small businesses an opportunity to develop a restructuring plan to restructure the company's unsecured creditor debts. Importantly, while the plan is being developed, the control of the company remains with you, the director.

We have a highly talented team of in-house professionals offering a diverse think-tank of background, gender, culture and experiences to help you develop a restructuring plan to help your company continue to survive.

If you are in financial difficulty, we can help you.

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### 1. WHAT WILL IT COST?

There are two stages to the role of a small business restructuring practitioner: -

- Assisting you with the development of a restructuring plan and notifying your creditors of your decision to prepare a small business restructuring proposal; and
- Adjudication of the creditor claims and distribution of the dividend in accordance with the proposal and the statutory framework.

The costs will vary; however, we estimate the average cost for acting as the company's small business restructuring practitioner will be:

- An upfront fee of \$5,500 to \$7,700 to help you develop the restructuring plan and liaise with your creditors; and
- An additional fee based on a percentage of the distribution to be paid to your creditors to oversee the restructuring plan, adjudicate on the company's creditor claims, and distribute the dividend.

### 2. WHO IS ELIGIBLE?

To be eligible for a restructuring plan, the company must:

- Have total liabilities of less than \$1m;
- Have paid all outstanding employee entitlements that are due and payable, including superannuation (i.e., does not include entitlements not yet due such as long service leave);
- Ensure all tax lodgements are up to date;
- Not have any directors who have been a director of another company that has been under restructuring or subject to a simplified liquidation process within the preceding 7 years, unless the other company is a related company; and the other company is, or has been, under a restructuring/simplified liquidation process and the appointment was no more than 20 business days before the day the restructuring of the company began; and
- Not have been under a restructuring or simplified liquidation process within the preceding 7 years.

### 3. WHO CAN ACT AS THE SMALL BUSINESS RESTRUCTURING PRACTITIONER?

Only a person registered with ASIC as a “registered liquidator” can act as a restructuring practitioner for a company or for a restructuring plan.

At Couch Amirbeaggi, we have 3 ASIC registered liquidators on staff, as well as an in-house lawyer, CPAs and Chartered Accountants to help our clients.

### 4. WHAT IS THE ROLE OF THE SMALL BUSINESS RESTRUCTURING PRACTITIONER?

During the restructuring period, you as the director(s) remain in control of the company. You can continue to enter into a transaction or deal with company assets if it is in the ordinary course of the company's business.

The restructuring practitioner does not take control of the day-to-day affairs of the company.

The role of the restructuring practitioner is to:

- provide advice to the company about the restructuring;
- assist the company to prepare a restructuring plan;
- make a declaration to creditors about the restructuring plan proposed as to whether the eligibility criteria are met, and information required has been included in the plan;
- to receive money from, and hold money on trust for, the company;
- to pay the money to creditors in accordance with the plan;
- if requested to do so by the company's directors:
  - realise property of the company that is available to pay creditors in accordance with the plan, and
  - distribute the proceeds of the realisation of the property among the creditors in accordance with the plan;
- perform other functions, duties and powers given to the restructuring practitioner under the Act; including whether to terminate the restructuring, give consent to transactions or dealings outside the ordinary course of business and resolving a dispute over the amount of a creditor's debt or claim disclosed in the restructuring proposal statement.

### DO YOU NEED HELP?

We invite you to give us a call, all initial discussions are free of cost or obligation. Talk to our in-house liquidators, bankruptcy trustees, lawyers or accountants about your circumstances and options.

We have offices in Sydney, Melbourne and Byron Bay together with affiliated offices in each capital city. Our nationwide network lets us service our clients' needs throughout Australia.