



# SMALL BUSINESS RESTRUCTURING



# WHAT IS THE SMALL BUSINESS RESTRUCTURING PROCESS?

If your business is experiencing financial challenges, one option that can help get you back on track is the Small Business Restructuring (SBR) process. Jirsch Sutherland has successfully helped many companies use this process as an alternative to other insolvency options. Put simply, it enables eligible businesses to regroup, get back on track and move forward.

Small Business Restructuring (SBR) is a simplified debt restructuring process. It came into effect on January 1, 2021, and provides businesses with a pathway back to viability through tough times. It involves proposing a plan to your creditors on how you can restructure your debts. And while your creditors are considering the plan, your business can carry on trading. One of Australia's largest creditors, the Australian Taxation Office, is very supportive of the SBR process.

## ELIGIBILITY

Are you eligible for SBR?

**Not everyone is eligible for the SBR process.**

**Your company may qualify if:**

- It is an incorporated company that is insolvent, or likely to become insolvent soon.
- Its liabilities do not exceed \$1 million, exclusive of employee entitlements.
- It is up to date with its tax lodgements and all employee entitlements, including super, exclusive of leave and other entitlements that aren't due to be paid.
- No director of your business has been a director of another company that has gone through another SBR or simplified liquidation process within the past seven years.





# HOW DOES SBR WORK?

## • PRE APPOINTMENT

There are **four key steps** to the process.

### 1. Establish eligibility and appoint a SBR practitioner

You and your directors must first determine that your company is insolvent or likely to become so. Then you need to appoint a Small Business Restructuring Practitioner (SBRP). An SBRP is a licensed liquidator responsible for administering the restructuring plan, which is simply an agreement between your company and its creditors. The practitioner also assesses your eligibility for the process.

## • PROPOSAL

### 2. Restructuring plan is produced

Your SBR practitioner, in consultation with you, has 20 business days to draft a restructuring plan that your creditors will vote on (This can be extended by up to 10 business days). Once presented, your creditors then have 15 business days to accept or reject it. While they are deciding, your business can continue to trade.

## • IMPLEMENTATION

### 3. Plan implementation

If the majority of creditors – more than 50% in value – vote yes to the plan, then your restructuring plan is implemented, and your business is free of the remaining debt balance.

If the plan is rejected, the restructuring process ends and you need to then consider other options for your company, such as voluntary administration or liquidation. Also be aware that your creditors are now able to take legal action and you, and any other director are no longer protected from personal liability for insolvent trading.

## • TERMINATION

### 4. SBR termination process

Usually, acceptance of the plan involves a one-off payment by your company into a fund which your SBRP then distributes to the creditors. Your admissible debts are then released. The period of the plan cannot exceed three years.

# KEY BENEFITS OF SBR

When used correctly, Small Business Restructuring Plans should act like a pressure release valve for businesses that have been largely impacted by factors outside of the directors' control. It can also help correct a business's footing after being blindsided by some financial shock, such as significant bad debt, trading restrictions or supply chain disruption.

**Here are some of the key benefits:**



*The SBR process was better than I expected. The Company retained full control of the operations throughout the process and the outcome was exceptional, resulting in a significant reduction of our legacy debts. With Andrew's help, we were able to provide a clear message to our creditors regarding our business's difficulties and how they have been overcome. The SBR saved my business.*

## Cost certainty

If the plan is agreed to by your creditors, you will know exactly how much of your debt needs to be repaid. You will also have agreed upon a fixed fee with your SBRP, again providing certainty around your costs. Usually, the costs are less than a formal insolvency appointment.

## Breathing space

Once you enter into the SBR process, all legal creditor and court proceedings are halted temporarily. Unsecured and some secured creditors cannot enforce what they're owed. This gives you time to focus on your business.

## Timely process

The process of confirming a practitioner and having creditors vote on your proposal is quick compared to other options. You have 20 business days to present a plan and creditors have 15 business days to vote on it, so you usually know the outcome within 35 business days.

## Control retained

Throughout this process, you retain control of your company while your SBRP oversees the restructuring plan. Any changes to your company's normal business operations such as the payment of a dividend to shareholders will need the approval of your practitioner.

## Greater returns

If a plan is approved by creditors, they are more likely to receive a better return than if your company goes into liquidation. It can also save jobs and re-establish existing relationships with suppliers, which will help your business grow again.

## Director protection

If a company takes early action to restructure, it may protect directors from being liable for insolvent trading and from personally repaying the company tax debt.

## Maintain relationships

With an SBR there's no disruption to key relationships e.g. staff, landlord.



# CASE STUDIES



## ENTERTAINMENT

### JAZZ CLUB

#### BENEFIT OF THE SBR

- **Return to creditors:**  
17.6 cents in the dollar (SBR) v nil (LIQ)
- **Company saving: \$326,421**

#### CHALLENGES

Trading restrictions imposed by the Covid-19 pandemic:

- Lockdowns.
- Licensing restrictions (4x2sqm rule).
- Shallow talent pool due to border closures.

#### REASONS FOR HOPE

Restrictions easing:

- Increasing access to talent and customers.
- Grant received from NSW Government's Music Venue Support Scheme.
- Increased demand post lockdown as less competition.

#### COMPROMISE PLAN PROPOSED

\$75,000 lump sum payment upon acceptance.

### CONCERT & FESTIVAL PROMOTER

#### BENEFIT OF THE SBR

- Process was completed within 2 months
- **Return to creditors:**  
17.48 cents in the dollar
- All staff kept their jobs
- **Company saving: over \$200,000**

#### CHALLENGES

COVID restrictions led to the events it was promoting being cancelled.

#### REASONS FOR HOPE

Once restrictions were lifted, live acts would begin to return to Australia, enabling the business to grow.

#### COMPROMISE PLAN PROPOSED

\$45,000 payable within 7 days of acceptance.

## CASE STUDIES continued



### GROUP OF CAFÉS

#### BENEFIT OF THE SBR

- **Return to creditors:**  
21 cents in the dollar (SBR) v nil (LIQ)
- **Company saving: \$281,926**

#### CHALLENGES

- Director's wife passed away, which led to the director suffering from poor mental health.
- Intercompany loans that depleted working capital and were not immediately recoverable when the companies encountered financial difficulties.

#### REASONS FOR HOPE

Director's health has improved and the companies are trading profitably. The trading performance is insufficient to meet legacy debts, but if that was compromised the group is viable.

#### COMPROMISE PLAN PROPOSED

\$90,000, comprised of:

- \$55,000 lump sum payment upon acceptance; and
- \$35,000 payable by way of 12 x monthly instalments.

### FOUR HAMBURGER OUTLETS

#### BENEFIT OF THE SBR

- **Return to creditors:**  
10.39 cents in the dollar (SBR) vs nil (LIQ)
- **Company saving: \$480,924**

#### CHALLENGES

- Effects of COVID.
- Closure of road preventing customers easily accessing store.
- Sudden passing of director's mother.
- Council asphalt resurfacing of car park, therefore customers could not park close to store.
- Level crossing removal which diverted traffic and customers away from the store.

#### REASONS FOR HOPE

- Reduced stores from 4 to 2.
- Able to better manage less staff and store locations.
- Reduction of rent and salaries.

#### COMPROMISE PLAN PROPOSED

\$55,800 over 24 month period.



## CASE STUDIES continued



### PUBLISHING/ ADVERTISING

## INDUSTRY MAGAZINE BUSINESS

### BENEFIT OF THE SBR

- **Return to creditors:**  
29.15 cents in the dollar (SBR) vs nil (LIQ)
- **Company saving: \$338,855**

### CHALLENGES

- A combination of factors including bushfires, floods and the pandemic significantly impacted local businesses' desire to spend on periodical publication advertising.
- The commission-based workforce was eroded, with JobSeeker being increased to \$750/wk.
- Accountant and financial adviser to the business for 40 years fell ill and the company was slow in responding to this compliance gap.

### REASONS FOR HOPE

- Appointed new advisers.
- Succession within the business from father to son.
- Public health orders lifted and more funds available for local businesses to return to their prior advertising spend.

### COMPROMISE PLAN PROPOSED

\$150,000 payable within 7 days of acceptance.

## CASE STUDIES continued



### BUILDING/ CONSTRUCTION

#### SHOPFITTER

##### BENEFIT OF THE SBR

- **Return to creditors:**  
39 cents in the dollar (SBR) v nil (LIQ)
- **Company saving: \$568,219**

##### CHALLENGES

- COVID downturn and its impact on the retail sector, and the company's position as a preferred supplier of Westfield Shopping Centres.
- Maintained employees on unprofitable projects to keep status as a preferred supplier.

##### REASONS FOR HOPE

Retail investment has normalised, and the company has maintained its 'Tier 1' status with Westfield Shopping Centres.

##### COMPROMISE PLAN PROPOSED

\$380,000 payable within 6 weeks of acceptance.

#### PLUMBING CONTRACTOR

##### BENEFIT OF THE SBR

- **Return to creditors:**  
14.37 cents in the dollar (SBR) v nil (LIQ)
- **Company saving: \$263,224**

##### CHALLENGES

- Largest customer went into Liquidation owing the company \$280,000.
- Poor weather conditions also impacted the business's performance post bad debt.

##### REASONS FOR HOPE

- Had recently secured two new significant contracts.
- Improved weather conditions had returned the company to profitability.

##### COMPROMISE PLAN PROPOSED

\$50,000 payable upon acceptance.



## CASE STUDIES continued



### E-COMMERCE Electronic Components

#### BENEFIT OF THE SBR

- **Return to creditors:**  
18.57 cents in the dollar (SBR)  
v 9.75 cents in the dollar (LIQ)
- **Company saving: \$490,379**

#### CHALLENGES

Trading restrictions imposed by the Covid-19 pandemic:

- Lockdowns and poor economic conditions impacted the business's performance.
- Relocation to new premises due to high rent in the previous location (incurred relocation cost and disruption to the business operation).

#### REASONS FOR HOPE

The company introduced initiatives to boost project efficiency, incorporating regular cash flow projection and monitoring, encompassing efforts to reduce costs and exploring the possibility of relocating to a smaller warehouse, among other strategies. Additionally, staff costs were reduced to improve operational efficiency.

#### COMPROMISE PLAN PROPOSED

\$130,000 over 22 monthly contributions.

### MANCHESTER

#### BENEFIT OF THE SBR

- **Return to creditors:**  
21.74 cents in the dollar (SBR) v nil (LIQ)
- **Company saving: \$162,000**

#### CHALLENGES

- Manchester retailer that largely operated from shopping centre concession stalls had its business decimated as a result of the pandemic. While it expanded its e-commerce offerings, due to its deep product diversity this was an expensive and time-consuming investment.
- Legacy debt of \$350,000 was dragging the business down.

#### REASONS FOR HOPE

Once trading restrictions were lifted, the business was well positioned to take advantage of its traditional and new revenue streams.

#### COMPROMISE PLAN PROPOSED

\$45,000 payable within 7 days of acceptance.

## CASE STUDIES continued



WHOLESALE

### COFFEE MACHINE Wholesaler and Repairer

#### BENEFIT OF THE SBR

- **Return to creditors:**  
18.82 cents in the dollar (SBR)  
v 6.58 cents in the dollar (LIQ)
- **Company saving: \$550,027**



*The SBR process was very useful with getting my financial world back on track. The process was well explained and was an efficient and moral way of trying to control the debts I had accumulated. I would recommend it to anyone who has been in business over the last few years and gained debts due to the external factors that have affected us all. The Team at Jirsch Sutherland were very professional and great to deal with throughout the process.*

#### CHALLENGES

Trading Trading restrictions imposed by the Covid-19 pandemic:

- Lockdowns.
- Poor economic conditions impacted the business performance.

Faulty products from Spain which increased the repair cost massively (under warranty).

#### REASONS FOR HOPE

The Company implemented measures to enhance project efficiency through regular cash flow projection and monitoring, which includes cost reduction efforts, among other strategies.

#### COMPROMISE PLAN PROPOSED

\$138,000 over 18 monthly contributions.

\*SBR = Small Business Restructuring; LIQ = liquidation



# FREQUENTLY ASKED QUESTIONS

## What is a restructuring plan?

It is an agreement between your company and your creditors. There is no set plan, which means they are able to be very flexible. Usually, these plans involve a one-off contribution from someone such as a director, which is paid to creditors by the restructuring practitioner.

## What do I need to do before creditors receive a restructuring plan?

First you appoint a small business restructuring practitioner who needs to be a registered liquidator. They will act on your behalf during this process and ensure you are compliant with the following:

- Employee entitlements that are due have been paid, excluding leave and other entitlements not currently due to be paid.
- Tax lodgements are up to date.

## What does a restructuring plan cost?

This cost will vary according to the complexity of the situation, but you and your practitioner must initially agree on a flat fee for preparing and presenting the plan to your creditors. Once agreed, the practitioner is paid a percentage of the return paid to creditors – something the creditors must consent to when voting on the plan.

## What debts do I include in the plan?

All unsecured debts that were incurred prior to your company entering restructuring are included, with the exception of employee entitlements that are not yet payable, such as leave and redundancy payments. If your company incurs debts after it enters restructuring, these debts do not form part of the plan and need to be paid off outside the plan.

## How long does the SBR process take?

You must present a restructuring plan to your creditors within 20 business days of entering the process. This can be extended by your practitioner by up to 10 business days where reasonable. Once creditors receive the plan, they have 15 business days to vote to accept or reject it.

## Do creditors get paid in full with an SBR?

The amount creditors receive will vary but it is rarely the full amount owed. However, the outcome for creditors will be higher than the expected return if the company was placed into liquidation.

## What happens once creditors accept a plan?

Once a plan is approved, payments are made to an account controlled by the restructuring practitioner. The practitioner will call for details of creditor claims and when agreed upon, payments are made in accordance with the terms set out in the plan. All creditors are paid at the same time. After you satisfy the obligations under the plan, your company is released from all claims that were included in the plan.

## What happens if the plan is rejected by creditors?

If your plan is rejected, then the restructuring process is over. While you remain in control of your company, your creditors are able to enforce their rights. Your protection from liability for insolvent trading also ends. Your options now include voluntary administration or liquidation.



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