

BRUCE MULVANEY & CO

COMPANY RESTRUCTURING & INSOLVENCY



With the “Fiscal Cliff” getting closer, I am introducing you to two new ways to help companies in distress:

New Restructuring Process (“NRP”)

The government has announced a new restructuring process commencing 1st January 2021 with a simple pathway to enable small businesses impacted by COVID-19 to be rescued wherever possible. Solutions can be achieved despite the fact that many companies are facing a desperate shortage of cash. Will your clients grab this opportunity?

Directors remain in control

Directors remain in the Drivers Seat throughout the Approval Process. This is a similar structure to the “Debtor in Possession” approach already used in the USA, but which has not previously been allowed in Australia.

A Small Business Restructuring Practitioner (“SBRP”) will assist, but will not be involved in the day to day operations of the business.

Tax Agents involved

The company’s continued relationship with its Tax Accountant is important during the recovery process and afterwards.

Cash Flow Forecasts and Viability assessments will often be needed for the Restructuring Plan and the Tax Accountant can prepare these for the Small Business Restructuring Practitioner (“SBRP”) to review.

The Process

1. Directors Call in a Small Business Restructuring Practitioner (“SBRP”)
2. The process formally starts when a Small Business Restructuring Practitioner is appointed to prepare a Restructuring plan. The plan is developed over a 20 business-day period by the Directors with the support of the SBRP, and may involve a one-off payment to creditors or any other viable way to release cash to creditors.
3. Creditors are frozen until the plan is voted on. The Business continues to trade under the control of the Directors.
4. The SBRP helps the Directors with difficult issues e.g. PPSA over stock on hand.
5. Voting papers are emailed to creditors together with the SBRP’s “assessment”. Creditors have 15 business days to vote.
6. To approve the plan, half the creditors in dollar value (excluding Directors and their relatives) must vote in favour, including the ATO.
7. If approved the Plan is put in place with a payment to creditors of the agreed Dividend. The SBRP oversees the Plan as it progresses.
8. The Plan may finish very quickly depending on its terms

If the Plan is not approved

If the Plan is not approved or fails, the Directors will then need to place the company into Voluntary Administration or Liquidation.

To Qualify to Start the NRP

- Employee entitlements due and payable must be paid before a Plan is put to Creditors.
- Creditors must total less than \$1 million

Which Companies will NRP Suit?

Companies with a viable Business, or which can become viable by e.g. Moving to Smaller Premises can compromise their Creditors this way.

Also, where a Business needs to be closed or sold quickly, an agreement with Creditors can be obtained to free parties to “move on” quickly.

There must always be a reasonable amount of cash available and/or assets which can be converted into cash.

Directors will need to “weigh” up carefully the pros & cons of NRP versus a Voluntary Administration (“VA”). For example, Related Parties can vote in a VA, but not in a NRP. Also, if employee entitlements are unpaid a VA can still commence.

Streamlined Liquidation Process

There will also be a new streamlined liquidation for businesses, where:

- Directors have not engaged in illegal Phoenixing
- There are under \$1 million in creditors

Timely action is important

The sooner companies seek help the better the outcomes.

JobKeeper payments are being progressively phased out and will be gone completely by the end of March.

If Directors fall behind on paying their employees, they will not qualify for the New Restructuring Process.

Get in Touch

I will be happy to discuss how these two new service lines may help your clients. A quick phone call, or a Zoom Conversation will be a good way to catch up.

How to Contact Us

**Call us on (03) 9896 9000
or send me an email to bmulvaney@mulvaney.com.au**