SNAPSHOT OF

SMALL BUSINESS RESTRUCTURING PROCESS

A business facing financial difficulties can approach an insolvency practitioner to assist in restructuring the business' debts.

The business engages the insolvency practitioner as its Small Business Restructuring Professional (SBRP) to devise a plan to restructure the business' debts. This plan must be made in 20 business days of the SBRP being appointed and the business can continue trading as normal during this period. Further, secured creditors cannot enforce personal guarantees against directors and their relatives and there's a moratorium on ipso facto clauses applying during this period.

Before a plan can be put to creditors, the business must lodge any outstanding tax returns and pay any employee entitlements that are due and payable. Assuming assets remain after that, the SBRP puts the plan to creditors.

THE SBRP provides the debt restructuring plan, supporting documentation, and certifies whether the business can meet the proposed repayments under the plan to the creditors.

Creditors have 15 days to vote on the plan (which includes proposed remuneration of the SBRP). Related-party creditors are not entitled to vote.

During this period, the SBRP can assess the proof of debt, and the creditor is permitted to contest the amount of their debt (if they consider it is too low or if has been rejected entirely).

More than 50% of the creditors by value need to approve the plan for it to be put into action.

If the creditors vote down the plan

The business owners can elect between either the voluntary administration process OR the simplified liquidation process

If the creditors approve the plan

All unsecured creditors are bound by the plan, and secured creditors are bound to the extent that the value of their debt exceeds the realisable value of their security interest.

The SBRP administers the plan and makes distributions to creditors.

The plan can be set aside or modified if an application is made to a court for that to occur.