Insolvency Reforms to Support Small Business

Jones Partners
Insolvency & Business Recovery
Chartered Accountants

Bruce Gleeson FCA, RITF
Registered Liquidator
Registered Bankruptcy Trustee
www.brucegleeson.com.au
www.jonespartners.net.au

Why Small Business?

- There are > 2 million small businesses in Australia;
- They account for approximately 35% GDP;
- They employ over 40% of Australia’s workforce;
- They pay approximately 12% of total company tax revenue; and
- They are at highest risk of insolvency
    - 80% of insolvencies have < 20 employees
    - 85% of insolvencies have < $100,000 assets
    - 75% of insolvencies have <$1 million in liabilities

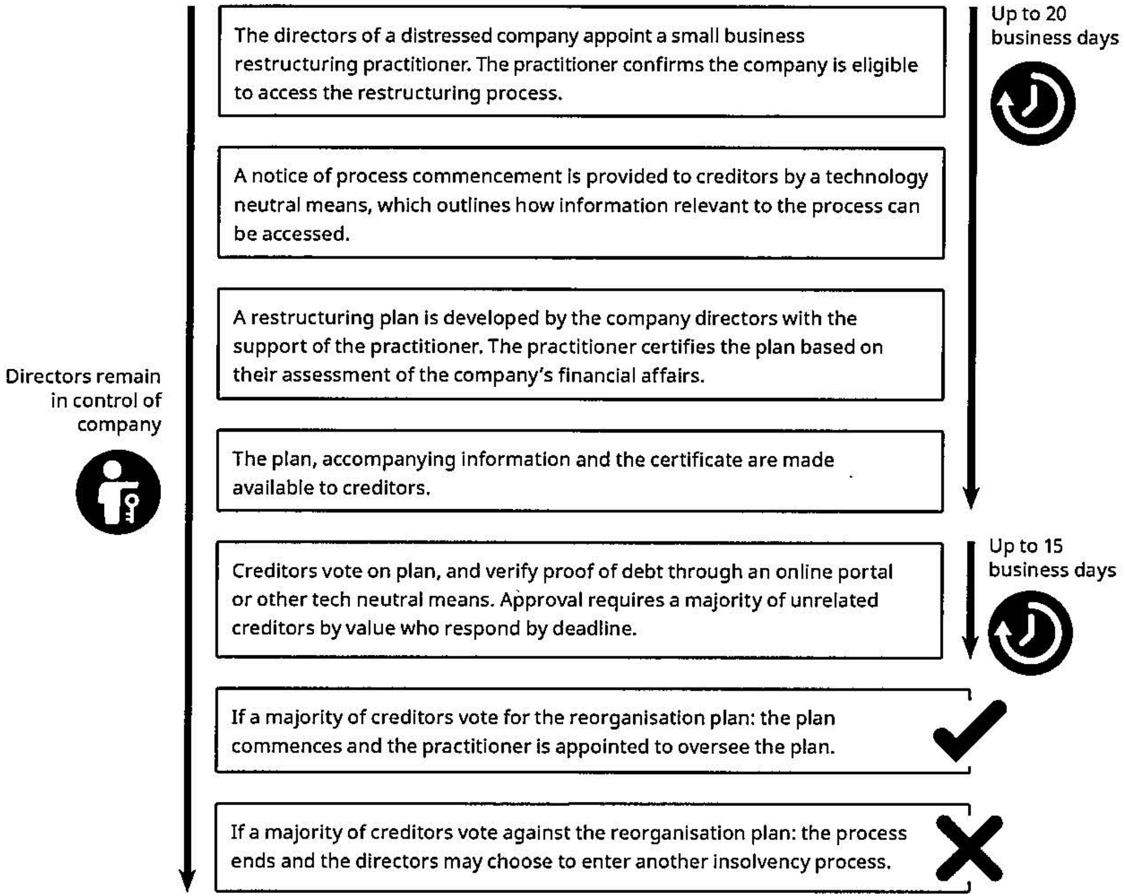
Why Now?

- There will be an increase in the number of businesses in financial distress due to the pandemic.
- During Covid-19 the number of insolvencies has decreased by approximately 50% when compared to the same period in 2019;
- 2019 was one of the lowest volume years for insolvencies since the GFC;
- The reform is part of the Government's Jobmaker plan;
- Whilst temporary relief measures to assist keeping businesses afloat has helped, concerns around viability of small businesses remain post these expiring. i.e. Jobkeeper; and
- The reform will hopefully enable more Australian small businesses to quickly restructure and survive the economic impact of Covid-19;

What are the key elements of the Reform?

- New debt restructuring process for incorporated businesses with liabilities < $1 million;
- Draws upon some features of overseas models, i.e. Chapter 11 by moving to a "debtor in possession" versus "creditor in possession" model which will enable small businesses to restructure their existing debts while remaining in control of their business;
- A rapid 20-day period for the development of a restructuring plan by a Small Business Restructuring Practitioner ("SBRP"), followed by 15 business days for creditors to vote on the plan;
- 50% of the creditors by value, excluding related parties must approve the plan;
- If the plan is approved, the business continues and the SBRP administers the plan by making distributions to unsecured creditors according to the term of the plan. If the plan is voted down, the process ends, and the company director may opt to go into voluntary administration or to use the proposed simplified liquidation process; and
- Scheduled to commence on 1 January 2021.

Figure 1: Overview of the new restructuring process



www.brucegleeson.com.au
www.jonespartners.net.au

Other Issues for Consideration

- Temporary relief – where company announces its intention to access the restructuring process – 3 months;
- Funding of current temporary relief measures on 31 December 2020 – impact on
  - Companies;
  - Individuals;
- Temporary insolvent trading moratorium enforcement ending on 31 December 2020; **BE CAREFUL**
- Devil may well be in the detail – once draft legislation is available – but short turnaround for consultation;
- **Stance of the ATO likely to be vital**;
- Jones Partners are supportive of reform that permits effective restructuring for small business, but the proposed legislation needs to be drafted so that directors accessing that regime are held accountable and that the process doesn't unnecessarily enable creditors to be exploited; and
- **Get advice from a qualified professional early if unsure.**

Jones Partners

Insolvency & Business Recovery

Chartered Accountants

Western Sydney
Suite 301, Level 3 – 4 Columbia Court
Nexus Building, Norwest Business Park
BAULKHAM HILLS NSW 2153
P: 61 2 9894 9966

South West Sydney
Studio 2, Shops 10-11
38 Exchange Parade
NARELLAN NSW 2567
P: 61 2 4647 7468

Bruce Gleeson FCA, RITF
Registered Liquidator
Registered Bankruptcy Trustee
www.brucegleeson.com.au
www.jonespartners.net.au