INVESTMENT PLUS
ACCOUNTING GROUP

Small Business Restructuring

What It Is And How It Works

Navigating uncertainty in your small business can be intimidating. To chart a course towards recovery, it's essential to identify the obstacles you're confronting and gain insight into available solutions. One potential strategy to secure your business's future is to consider restructuring.

The process of restructuring your small business can be an emotional journey, evoking feelings of apprehension and uncertainty. We provide support to business owners by assisting them in taking a more objective look at their business and helping them explore the various options available, which are tailored to their individual circumstances.

1. What is Small Business Restructuring (SBR)?

Small Business Restructuring (SBR) was introduced by the Federal Government on 1 January 2021 to provide better outcomes for small businesses who may Voluntary Administration process.

It is a simplified, cost-effective debt restructuring process that allows small businesses with less than $1 million in liabilities to continue trading. The directors and management of a company under the SBR process remain in control of the company under the supervision of a Restructuring Practitioner.

Under the Corporations Act 2001 (Cth), a company has the option to reorganise its financial obligations by proposing and reaching an agreement on a debt restructuring plan with its creditors. In the context of small businesses, this could involve examining the roles and duties of your employees and pinpointing areas where operational efficiencies can be enhanced.

2. Who is eligible for Small Business Restructuring?

To be eligible for small business restructuring, the company must:

- Be incorporated under the Corporations Act 2001
- Have liabilities totaling no more than $1 million on the day the company enters the process, excluding employee entitlements
- Have paid all employee entitlements that are due and payable
- Have given returns, notices, statements, applications or other documents as required by tax laws (but not necessarily have paid outstanding tax debts)
- Resolve that it is insolvent or likely to be insolvent at some future time and that a Restructuring Practitioner should be appointed
- Not already be subject to an insolvency administration or a restructuring plan
- Not have been subject to, or its directors must not have utilised the SBR or Simplified Liquidation processes in the prior seven (7) years

3. The Small Business Restructuring Process

The SBR process is divided into two (2) distinct stages:

Stage 1: Appointing a Restructuring Practitioner

In Stage 1, the directors of the company appoint a Restructuring Practitioner. An assessment of the company's financial circumstances is conducted by the Restructuring Practitioner, who then develops a restructuring plan which must be approved by the creditors of the company.

Stage 2: Developing and Implementing a Restructuring Plan

In Stage 2, the restructuring plan formulated by the Restructuring Practitioner is implemented. The plan may involve a selection of changes to the company, such as the selling of assets, the restructuring of debts, or making changes to the company's day-to-day operations.

4. Who is the Restructuring Practitioner?

The Restructuring Practitioner is a Registered Liquidator who is appointed to manage the SBR process. Their responsibilities include evaluating the financial position of the company, developing a restructuring plan, and implementing the plan.

5. Developing the Restructuring Plan

The restructuring plan is a document that details the proposed changes to the company's debts, operations, and management. Approval from the company's creditors must be obtained for the restructuring plan to be implemented.

The restructuring plan must be in the approved form provided by ASIC and must include a Schedule of Debts and Claims. The maximum plan implementation period is three (3) years.

6. Implementing the Restructuring Plan

Creditors of the company vote on the restructuring plan, with the plan being accepted if more than 50% of the value of voting creditors vote to accept it.

Once the restructuring plan has been approved by the creditors, it is implemented by the Restructuring Practitioner. The implementation of the restructuring plan may involve a variety of changes, such as debt restructuring, asset sales, or changes to the company's operations.

7. Benefits of Small Business Restructuring

Successful implementation of the SBR process and Restructuring Plan can result in a number of benefits for small businesses facing financial uncertainty, including:

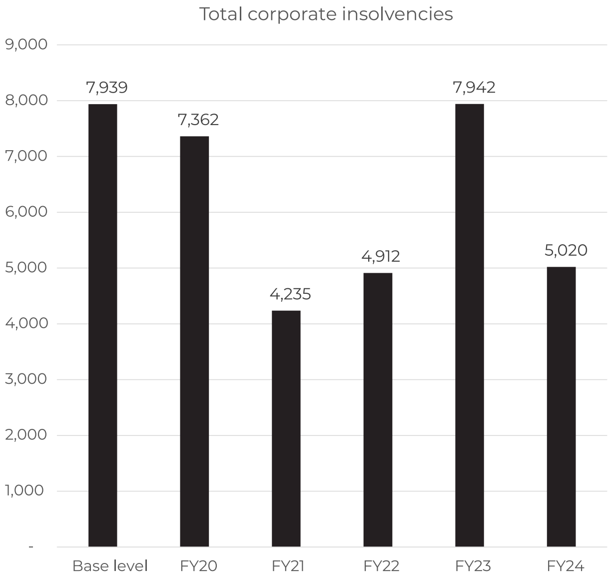
- Improving the company's financial and overall performance
- The directors remain in control of the business of the company
- There is a moratorium on unsecured creditors enforcing their debt
- Protection of the interests of the company's employees and creditors
- Restructuring debts and reducing financial distress
- If issued with a "non-lockdown DPN" from the ATO, a director can avoid personal liability if they appoint a Restructuring Practitioner
- There is an agreed cost for the entire SBR process

8. Comparison to Voluntary Administration

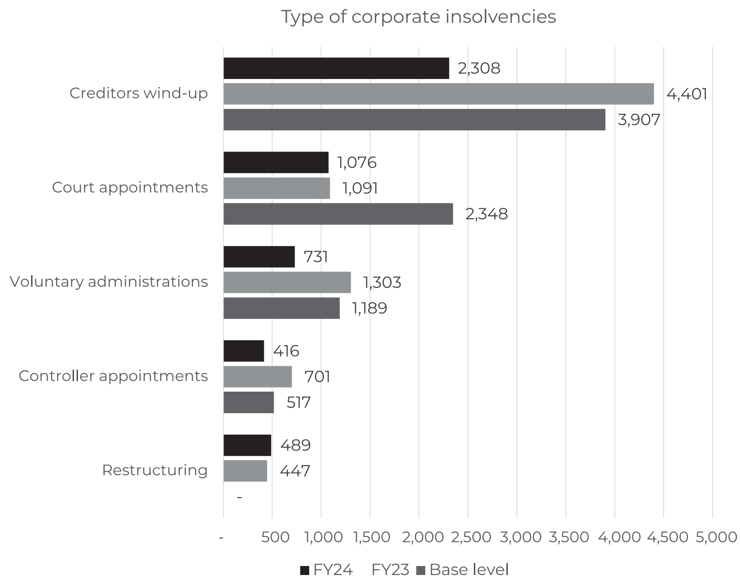
Category	Small Business Restructuring	Voluntary Administration
Eligibility	Eligibility requirements	Accessible to all companies
Who Can Appoint	Director	Director, secured creditor, liquidator
Control	Director	Voluntary Administrator
Timeline	Generally 35 business days	Generally 25 business days
Meeting Requirements	Not required; creditors vote by providing 'a written statement	At least two meetings
Investigations & Reporting	Required to make a declaration that the Restructuring Practitioner believes the Company will be able to satisfy the terms of the Plan	Required to issue a report on findings of Company's business, property, affairs and financial circumstances
Outcome	Plan is rejected or accepted; control of the Company returns to the Director	Three Options: • The Voluntary Administration ends • Creditors approve a Deed of Company Arrangement • The Company enters liquidation
Costs	Generally lower; fixed fee remuneration	Generally Higher; time cost and subject to creditor approval

9. Restructuring Appointments – the Stats

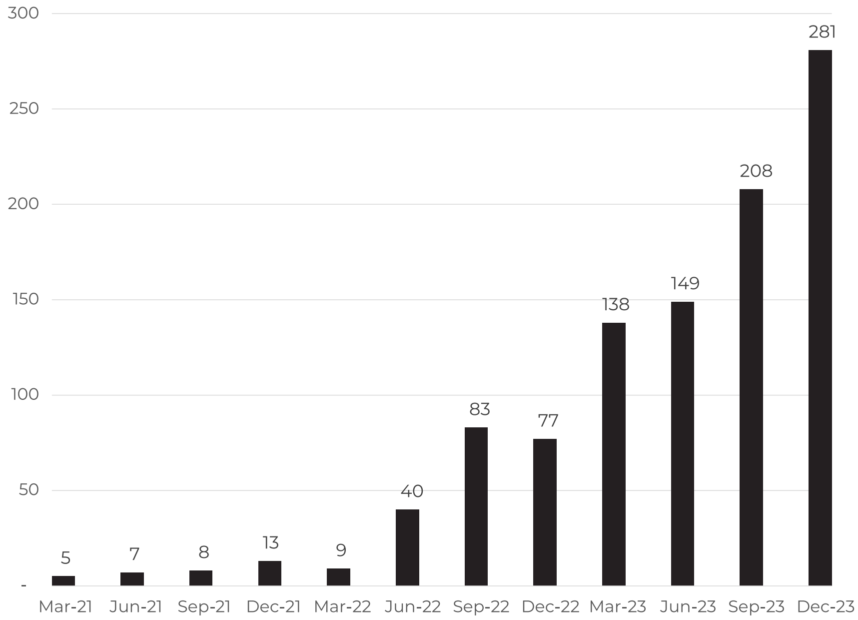
Corporate Insolvency Appointments



Source: ASIC data



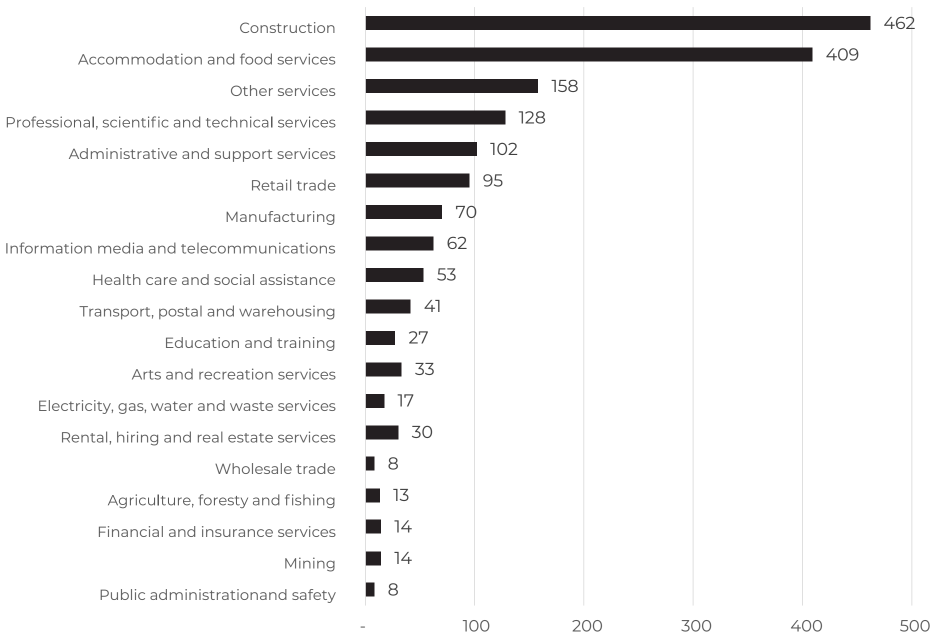
Restructuring Appointments to 31 December 2023



Source: ASIC data

- Restructuring regime begins in January 2021
- JobKeeper payments ceases on 28 March 2021
- Restructuring appointments average 8 per qtr until March 2022
- Appointments increase during June 2022 quarter following ATO awareness campaign
- This was followed by increasing firmer or stronger recovery action
- Appointments average 66 per qtr for the 3 qtrs to December 2022
- Appointments during the first two qtrs of FY24 average 245 qtr
- Total Restructuring appointments to 31 Dec 2023 are 1,018

Restructuring by Industry to 31 December 2023



Source: ASIC data

- The top 6 industry sectors comprised 80% of all restructuring appointments
- 28% of restructuring appointments were in the construction industry
- 23% were in the accommodation and food services sector, the majority being cafes, restaurants and takeaway food services
- 10% were in other services, largely personal services and repairs and maintenance
- 7% were professional, scientific and technical services
- Administrative and support services and retail each had approximately 6%

10. Why is it important to act early?

Achieving a successful restructuring largely hinges on taking prompt action. This early action empowers you to swiftly tackle challenges, thereby optimising your prospects for success. Additionally, it facilitates the timely implementation of cost-saving measures and minimises disruptions for the company's team, suppliers, and customers.

By proactively addressing issues as soon as they arise, you set your business up for a smoother and more successful transformation.

11. Case Study - SBR Success: Revitalising a Small Business

A Small Business Restructure of the Company provided the opportunity for the Company to continue trading after compromising a material statutory taxation debt and seventeen (17) staff remained employed.

The Company operates a technology data recovery business at multiple locations across Australia. The Company has one director.

The Director approached the our Restructuring and Recovery division and advised that the Company's financial difficulty is attributable to the following:

1. In November 2020, the director incurred personal liabilities owed to the Australian Taxation Office (ATO) as a result of a related entity being placed into liquidation. The director's only source of funding was drawings paid by the Company in the form of a director loan account. The director intended to utilise the drawings to pay down the debt.

2. The director invested most of his drawings into Crypto Currency during 2020 intending to use any return on investment to pay his debts and reinvest into the Company's business. The endeavor was not successful and resulted in a loss.

3. The Company's revenue was used to grow the business further. Most of the revenue was invested back into the business by way of marketing through new forms of social media and video marketing, as well as acquiring new plant and equipment.

4. The Company incurred rising manufacturing costs and outlays. The director was reluctant to pass these costs on to customers at the time and decided to absorb them in the hope the business and customer base would continue to grow, at which point, he could increase pricing. The change to pricing structure was not implemented until February 2023.

The director has acknowledged the Company debts (specifically statutory debts owed to the ATO $600k and another minor unsecured creditor $2k) would not have accumulated if it were not for the circumstances above.

It was the director's position that a Small Business Restructure of the Company will ensure the Company's long-term survival.

The director provided a cashflow forecast for the twelve (12) months following the appointment of a Restructuring Practitioner and was confident that the conditions of the plan, if accepted, would be met. It was my position that the continued trade of the Company and the acceptance of the plan would enable a greater return to creditors than if the Company were placed into liquidation.

The plan was accepted by creditors with the director to make monthly instalments from the trading income of the business. The benefit of the Small Business Restructuring was a significant compromise on the overall debt position which the Company had to pay. This meant the Company could continue to trade and employ, whilst also giving unsecured creditors a greater return than they would have received if the Company had been placed into liquidation and ceased trading.

12. Final Tips

Consider the following steps if you are thinking about restructuring your small business:

- **Evaluate your present financial condition:** Seek assistance from an accountant or financial advisor to analyse your financial status, your organisational setup, and your ongoing obstacles and concerns. Create a list of your organisation's creditors and debtors.
- **Define your restructuring objectives:** Clarify your intentions and what you want to achieve throughout the restructuring process. These objectives may involve cost reduction, gaining a fresh competitive advantage, optimising your operations, or addressing emerging market demands. Assess your current position, your desired destination, and the actionable steps required to attain your objectives.
- **Investigate ways to reduce your financial pressure:** Conduct an in-depth financial assessment to pinpoint areas that can be enhanced. Options available to you might be to reduce overheads, refinance or renegotiate debts, setting up new payment arrangements with suppliers or looking for new avenues to generate revenue.
- **Optimize your business processes:** Identify opportunities to enhance your operational efficiency. This could entail reassessing your existing procedures, incorporating new technologies, automating tasks, or delegating non-essential functions like administrative or IT support, advertising, or accounting.
- **Exploring the potential for business adaptation:** Are there opportunities for pivoting your business model? Can you broaden your range of services or products? Is there an untapped market or specialized community you could target? Are there potential partnerships with complementary businesses that could create mutually beneficial relationships?

PRE-APPOINTMENT

Assess eligibility:

- Up to $1 million in liabilities (excludes employee entitlements).
- Small Business Restructuring or Simplified Liquidation processes must not have been used by any dIrector (or former director in the previous 12 months) in the last 7 years (unless concurrent group appointments).
- Future eligibility criteria likely to be met.

Consider if restructuring is appropriate

Together with restructuring practitioner, Vincents. Provide information about company.

Directors pass resolution to appoint restructuring practitioner

RESTRUCTURE

PROPOSAL PERIOD

Generally 20 business days. Can be 30 business days or longer in some cases.

Director declaration company is eligible and if any voidable transactions.

Directors trade company. Certain payments etc need restructuring practitioners approval.

Restructuring plan developed and documented (including cash flow forecast) Restructuring practitioner declaration.

- All tax lodgements up to date
- All employee entitlements (which are payable) paid.

Restructuring plan given to creditors.

Alternatively, proposal period ends if directors terminate earlier, or if voluntary administrator/ liquidator appointed (or other reasons).

ACCEPTANCE PERIOD

Generally 15 business days. Can be a little longer in some cases.

Verify creditors' debts and claims

Handle objections (if any)

Affected unrelated creditors vote on restructuring plan

Majority in value of affected creditors voting in favour to be accepted.

If plan not accepted, plan lapses

No automatic voluntary administration or liquidation.

PLAN

PLAN PERIOD

Maximum 3 years. Plan binds company and admissible creditors. Employee entitlements excluded.

Plan lodged with ASIC and creditors notified

Restructuring practitioner receives funds and pays creditors

End of plan

Completed or terminated.

INVESTMENT PLUS
ACCOUNTING GROUP

National Head Office
13 Marion Street
Bankstown, NSW 2200

Sydney CBD
Level 7, 70 King Street
Sydney, NSW 2000

Bowral Office
2B, 24 Bowral Road
Mittagong, NSW 2575

Cronulla Office
54 Cronulla Street
Cronulla, NSW 2230

Liverpool Office
Level 1, 244 Macquarie Street
Liverpool, NSW 2170

Dubai | UAE Office

New Zealand

Adelaide Office
Level 21 , 25 Grenfell Street
Adelaide, SA 5000

P: 02 9299 7000
E: info@investplusaccounting.com.au
W: www.investplusaccounting.com.au

Disclaimer

The material in this publication is of a general nature, and neither purports nor intends to be advice. Readers should not act on the basis of any matter in this publication without taking professional advice from a licensed Financial Planner, your accountant and legal adviser with due regard to their own particular circumstances. The authors and publisher expressly disclaim all and any liability to any person, whether a purchaser of this publication or not, in respect of anything and of the consequences of anything done or omitted to be done by any such person in reliance, whether whole or partial, upon the whole or any part of the contents of this publication.

While every care has been taken to provide readers with the most up to date information at time of publication please be advised that neither the authors nor the Investment Plus Accounting Group its, directors, office holders, staff, franchisees, joint venture partners or representatives are able to guarantee that the information contain in this publication is true and correct. Due to the fact that the law is constantly changing readers are advised to consult a licensed tax agent or solicitor before embarking on any of the information contained in this publication.