










Comparison between the Voluntary Administration & the Small Business Restructuring Processes

| Key Consideration | Voluntary Administration (VA) | Small Business Restructuring (SBR) |
|--|---|--|
|  Eligibility | Accessible to all companies | Liability test: <\$1 million No prior SBRs or Simplified Liquidation Process by company or any directors (7yr threshold) Employee entitlements paid up to date and tax returns lodged |
|  Who can appoint? | <ol style="list-style-type: none"> Directors pass a resolution that the company is insolvent or likely to become insolvent Enforcement by secured creditor Resolution by liquidator or provisional liquidator | Directors pass a resolution that the company is insolvent or likely to become insolvent and that a Restructuring Practitioner (RP) should be appointed |
|  Control of Company | Voluntary administrator takes full control (trade-on typical but not guaranteed) Directors lose their powers and are prevented from dealing with the company's assets and affairs without the administrators consent | Directors retain control of the company's business, property and affairs Directors free to transact in the "ordinary course of business" Non-ordinary course dealings require approval by the RP |
|  Timeline | 25 business days – additional 5 business days if the day after appointment is in December or is 25 business days before Good Friday - s439A(6) of the Corporations Act Creditors may extend timeframe by a further 45 business days Court may extend timeframe at its discretion if satisfied it is in the interests of creditors | 35 business days (made up of a 20 business day proposal period and 15 business day decision period) Options for minor time extension available |
|  Meetings of creditors | At least 2 meetings: <ul style="list-style-type: none"> the 1st (initial) meeting to be held within 8 business days (with 5 business days notice provided) 2nd (the decision) meeting at the conclusion | Not required Creditors vote by "giving a written statement setting out whether or not the restructuring plan should be accepted" |
|  Scope of debts covered | All unsecured debts incurred prior to entering the restructuring process Secured creditors may be bound by consent or to the extent they have a shortfall in security | Arms-length unsecured debts incurred prior to entering the restructuring process Employee entitlements and related party creditors excluded/unaffected Secured creditors bound only to the extent of any shortfall in security |
|  Extent of costs involved | Dependent on the company and complexity, but generally higher due to the administrators assuming control of the company Typically calculated on a time cost basis but subject to approval by creditors | Dependent on the company and complexity, but generally lower due to streamlined process, no meetings and RP not liable to manage the continued operations of the business Fixed fee is the only remuneration - agreed prior to or on the appointment of RP by the directors |
|  Investigating & Reporting | The administrator investigates and reports to creditors in relation to the company's business, property, affairs and financial circumstances Administrator must make a recommendation on the three options available to creditors ASIC lodgements of documents and forms required, including a copy of the full report | RP investigates and verifies the company's business, property, affairs and financial circumstances. No reporting of findings RP must make a declaration whether the company will likely be able to discharge obligations under the proposal plan ASIC lodgements of documents and forms required, including a copy of the proposal plan |
|  Outcome | Creditors decide, by majority resolution, outcome for the company. Three choices only: <ul style="list-style-type: none"> End VA and return company to the directors Deed of Company Arrangement (DOCA) – if one is proposed Liquidation | Creditors' votes determine whether the proposal plan is "made", if >50% by dollar value voted in favour If so, the plan is binding on all "affected" creditors, including those who voted against If the simple majority is not achieved, the restructure ends and all creditor claims still due and payable. No automatic roll-over into liquidation, but the shareholders may resolve to wind up if they wish |

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