



COVID-19: Business rescue

There are existing tools available in the Companies Act 1993 that can help your business recover from the effects that COVID-19 has had on the business environment. The Government has also recently announced a new tool; the Business Debt Hibernation Scheme. Each tool, in the form of a scheme, is available if the company is, or may become, insolvent. These schemes enable you to make a proposal to creditors that includes the payment of debts, creditors voting on whether to accept the proposal and, if the required number vote to accept the proposal, the proposal binding creditors also voting against it. Between them, they cater for a range of businesses, from simple to complex, and allow businesses to make proposals that range from the straightforward to the more sophisticated. These schemes are summarised and compared below.

	Business Debt Hibernation Scheme (BDH)	Creditor Compromise Scheme	Voluntary Administration Scheme (VA)
What types of proposals can be made?	The proposal is limited to a six month moratorium on the payment of debts.	A wide range of compromises can be proposed, including creditors agreeing to accept one or more of the following: <ul style="list-style-type: none"> • Time payment of debts; • Payment of a lesser sum in full and final settlement; • A moratorium on payment of debts for a specified period of time; • Debts being transferred to a third party; • Swapping debt for equity; and • Sale of the business to a new entity for fair value. 	A wide range of compromises can also be proposed in a Deed of Company Arrangement (DOCA).
Are amounts owed to secured creditors included?	Government has not yet advised.	Yes, if secured creditors receive notice of the compromise and the compromise is approved.	Yes, if the terms of the DOCA provide for this and the secured creditors vote in favour of the DOCA.

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Are amounts owed to employees included?	No.	Yes, if employees receive notice of the compromise and it is approved.	Yes, if the terms of the DOCA provide for this.
What is the ratio of creditors that must vote in favour of a proposal?	50% of creditors in number and 50% in value.	50% of creditors in number and 75% in value. Creditors may need to be divided into different classes for voting. Generally any one class could have the power to defeat the compromise. If the class allocation is disputed, a creditor who has voted against the compromise, can apply to the Court for relief.	50% of creditors in number and 75% in value. There is the ability to recognise different classes of creditors.
What if the proposal is rejected?	Creditors will be able to take legal action, such as liquidation proceedings, against the company in order to collect their debts.	Creditors will be able to take legal action, such as liquidation proceedings, against the company in order to collect their debts. In the case of liquidation proceedings, the failed compromise can be used as evidence that the company is insolvent and no statutory demand is required before commencing proceedings to place the company into liquidation.	The company is usually placed into liquidation at the “watershed” meeting if a DOCA is not accepted by creditors. Creditors can vote to give control back to the Directors, however this is uncommon.
Who is in control of the company?	Control remains with the Directors.	Control remains with the Directors. An experienced insolvency practitioner is normally engaged to assist with the preparation, presentation and administration of the proposed compromise.	Control of the company passes to an Administrator and remains with the Administrator. Creditors can vote to return control back to the Directors (but this is uncommon) or control can pass back to the Directors as part of the DOCA.
How public is it?	Government has not yet advised whether public notice needs to be given of the BDH or whether the BDH needs to be filed online with the Registrar of Companies.	Public notice is not given. The terms of the proposed compromise and the reasons for it are filed online with the Registrar of Companies.	Public notice is given of the appointment of the Administrator. The Companies Register is changed to reflect that the company is “In Voluntary Administration”. Reports are also filed online.
Is there a moratorium on debt enforcement?	There is an automatic one month moratorium on enforcement of debts after creditors are notified of a proposed BDH and while the BDH is being considered by creditors. If the BDH is agreed then a further six month moratorium is in effect.	There is no automatic moratorium when creditors are notified that compromise will be proposed, however an application can be made to the Court to grant a moratorium or relief against enforcement action.	Yes, a moratorium of 25 working days (or in some cases, longer) applies. A secured creditor can only take enforcement action within ten working days of appointment of the Administrator.
Is there a moratorium on debt enforcement against guarantors of company debts?	Government has not yet advised.	No.	Yes, a moratorium applies on the enforcement of a guarantee given by a Director, the Director’s spouse or relative.

	Business Debt Hibernation Scheme (BDH)	Creditor Compromise Scheme	Voluntary Administration Scheme (VA)
What are the relative costs?	The least expensive option. The Government is designing the BDH to be as streamlined as possible and allow business owners the ability to implement themselves, with limited external accounting and legal advice.	The cost will depend on the complexity of the compromise, the number of creditors and whether professional advice is required to design the proposed compromise. Legal advice is recommended. Usually less expensive than a VA.	The cost will depend on the complexity. It is usually a more expensive option as an insolvency practitioner must be appointed to act as Administrator and must undertake significant work in order to prepare the DOCA. That said, it provides certainty and is a tool available to help Directors restructure their business. Legal advice is recommended.

Deloitte is experienced in areas of business rescue.

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