

## ***New insolvency reforms to help save businesses or simply the liquidation process for small businesses with debts under \$1m***

## **Insolvency | Snapshot**

25 September 2020  
**Henry Kwok and Patrick Loi**

RESTRUCTURING    INSOLVENCY    ADVISORY    DISPUTE RESOLUTION

On 24 September 2020, the Government has announced major changes to the insolvency framework for small businesses in Australia which will come into effect on 1 January 2021. These radical changes will help reduce the complexity, time and costs of small business insolvency matters.

*From January 2021, Australian small businesses that have a profitable underlying business post COVID but are burdened with debts, accumulated prior to and/or during COVID, would have access to a simplified restructuring process to save their business. If the business cannot be saved/restructured, there will be a streamlined liquidation process to wind up the business faster, enabling greater returns for creditors and employees.*



The three (3) key changes are:

### **A new formal debt restructuring process for small business**

- Available to incorporated businesses with liabilities of less than \$1 million
- A registered and independent small business restructuring practitioner manages the restructuring process
- Business owner/s will continue to trade while a debt restructuring plan is developed and certified within 20 business days and creditors have 15 business days to vote on
- The proposal is accepted when more than 50 per cent of creditors by value endorse the plan, it is approved and binds all unsecured creditors. Creditors vote as one class. Secured creditors are bound by the plan only to the extent their debt exceeds the realisable value of their security interest.
- The business must pay all due and payable employee entitlements before a plan can be put to creditors
- Safeguards will be included to prevent illegal phoenix activities and related creditors are not allowed to vote
- If the plan is approved, the business continues, if not, the business may consider other insolvency options.

### **A simplified liquidation process for small businesses**

- Available to incorporated businesses with liabilities of less than \$1 million
- Reduced circumstances of unfair preference recoveries against unrelated creditors in a liquidation
- Liquidators only report to ASIC if misconduct has occurred
- No need to call creditor meetings and cannot form committees of inspection
- Simplifying the dividend process
- Maximising the use of technology in voting and other administrative tasks
- Safeguards will be included to prevent illegal phoenix activities



## Complementary measures for the insolvency sector

- Temporarily waiving Liquidators' registration fees
- Ease the registration requirements of liquidators
- Maximising the use of technology in external administrations
- Providing temporary insolvency relief for eligible companies
- A new classification of insolvency practitioners named small business restructuring practitioners

For more information, please read the [enclosed link for the Government's release](#).

We have lots of questions regarding certain elements of these proposed changes, how it is going to work in practice and what are the real impacts.

Some questions that come to mind are:

- How do you quantify the extent of contingent liabilities such as future lease obligations and make good costs which may extend the company's liability beyond the \$1m threshold?
- How do we ensure that all creditors are notified and entitled to vote?
- How can independence of the restructuring practitioner be assessed by creditors voting on the restructuring proposal?

We will carefully examine the new laws when the proposed legislation has been published. Watch this space!

**Greengate Advisory**

**Restructuring | Insolvency | Advisory | Dispute Resolution**

**Experts**

**Patrick Loi | Henry Kwok | Andrew Jo | John Chand**

**Level 4, 130 Pitt Street, Sydney NSW 2000**

**1300 521 161 | [info@ggadvisory.com.au](mailto:info@ggadvisory.com.au)**

This publication has been carefully prepared, but it has been written in general terms and should be seen as broad guidance only. The publication cannot be relied upon to cover specific situations and you should not act, or refrain from acting, upon the information contained therein without obtaining specific professional advice. Please contact Greengate Advisory to discuss these matters in the context of your particular circumstances. Greengate Advisory NSW Pty Ltd, their partners and/or directors, employees and agents do not accept or assume any liability or duty of care for any loss arising from any action taken or not taken by anyone in reliance on the information in this publication or for any decision based on it.

Copyright © 2020 - Greengate Advisory (NSW) Pty Ltd. All rights reserved.

Liability limited by a Scheme approved under Professional Standards Legislation.

## 新的破產改革旨在幫助小型企業挽救業務及簡化清算流程

破產快報

25 September 2020  
Henry Kwok and Patrick Loi

RESTRUCTURING    INSOLVENCY    ADVISORY    DISPUTE RESOLUTION

2020年9月24日，政府宣布了改革小企業破產流程框架及相關法律基礎，這些改革將於2021年1月1日生效。政府希望這些重大改革將有助於降低小企業破產事務的複雜性和成本，減少所需時間。

*2021年1月1日開始，針對那些在COVID-19後業務仍然有盈利能力的，但是被COVID-19期間累積的債務所影響的小型企業，將可以利用簡化的債務重組程序去挽救業務。如果無法重組業務將會有一個簡化的清算流程以便更快的完成清算過程，從而為債權人及僱員帶來更大的回報。*

三個重要關鍵改革是：

### 新的小型企業債務重組程序

- 只適用於總負債少於一百萬澳元的註冊公司
- 可由註冊且獨立的小型企業重組師來管理債務重組過程
- 企業主有20個工作日來製定及由重組師來認證及公佈債務重組計劃，債權人有15個工作日對計劃進行投票過程中，期間企業將繼續進行經營
- 當超過半數債務金額的債權人同意重視計劃，該計劃將獲得批准並會約束所有無抵押債權人。債權人只分為一個等級。有抵押債權人只會債務超越資產價值時受到該重組計劃的約束。
- 在把計劃提交債權人投票之前，企業必須先付清所有應付的僱員欠薪及福利債務
- 政府將引入防止非法資產剝奪行為（鳳凰重生活動）的保障措​​施，並且不允許有連帶關係的債權人投票
- 如果計劃獲得批准，則企業會繼續經營。但如果未能通過，則企業可以考慮其他破產選擇。

### 簡化了小型企業的清算程序

- 適用於總負債少於一百萬澳元的註冊公司
- 減少在清算中可以對沒有連帶關係的債權人追回帶有不公平優惠性質的款項的情形
- 清算人僅在有發現不當行為時向ASIC報告
- 無需召開債權人會議，也無需組成債權人檢查委員會
- 簡化資產分配的流程
- 在投票和其他事務管理中最大限度地利用新科技
- 政府將引入針對防止非法資產剝奪行為（鳳凰重生活動）的保障措​​施

### 針對破產從業界的補充措施

- 暫時免除清算師的註冊費
- 降低清算師的註冊要求
- 在清算過程中最大限度地利用新科技
- 為符合條件的公司提供臨時破產救濟措施



- 破產從業者的新分類將被稱為小企業重組從業者

請閱讀隨附的[政府發布鏈接](#)了解有關更多信息。

我們對這些擬議改革的某些方面，這些改革的實際運作方式及真正的影響有很多疑問。

我現在想到的一些問題是：

- 您如何處理及衡量或有負債的未知金額？例如一些未來的租賃義務，這些或有負責是否會令公司的負債超過 100 萬澳元的門檻？
- 我們如何確保所有債權人得到通知並有權投票？
- 債權人在投票重組建議時應該如何評估重組師及其報告的獨立性？

我們將等待擬議的法律發布後，再仔細研究新法律。請關注這個話題！

**Greengate Advisory** 「瑞格清算事務所」是首家由華人持牌的破產清算事務所，致力於為中小企業及個人定制重組和破產清算解決方案或進行財務調查。我們的團隊由資深華人持牌清算師們帶領並配以華人註冊會計師的高效執行力，確保提供最合適可行的解決方案。

政府註冊持牌清算師:

郭浩亮 Henry Kwok | Patrick Loi

我們的中文網址:

<https://www.ggadvisory.com.au/?lang=zh-hant>

我們的聯絡資料

Level 4, 130 Pitt Street, Sydney NSW 2000 | 1300 521 161 | [info@ggadvisory.com.au](mailto:info@ggadvisory.com.au)

所有信息僅供參考，不能用於替代專業會計、稅務、法律或其他專業諮詢人士提供的建議與意見。本公眾號信息發布者會試圖也盡力確保本公眾號的信息可靠性，但不擔保信息的完整性、準確性、時效性以及使用該信息而獲得的結果。任何情況下，Greengate Advisory 及與其合作的相关聯機構、合夥人、代理人或員工均不對您及他人基於本網站信息所作出的決定或行動承擔法律責任和義務。

This publication has been carefully prepared, but it has been written in general terms and should be seen as broad guidance only. The publication cannot be relied upon to cover specific situations and you should not act, or refrain from acting, upon the information contained therein without obtaining specific professional advice. Please contact Greengate Advisory to discuss these matters in the context of your particular circumstances. Greengate Advisory NSW Pty Ltd, their partners and/or directors, employees and agents do not accept or assume any liability or duty of care for any loss arising from any action taken or not taken by anyone in reliance on the information in this publication or for any decision based on it.

Copyright © 2020 - Greengate Advisory (NSW) Pty Ltd. All rights reserved. | Liability limited by a Scheme approved under Professional Standards Legislation

## 新的破产改革旨在帮助小型企业挽救业务及简化清算流程

破产 | 快报

25 September 2020  
Henry Kwok and Patrick Loi

RESTRUCTURING    INSOLVENCY    ADVISORY    DISPUTE RESOLUTION

2020年9月24日，政府宣布了改革小企业破产流程框架及相关法律基础，这些改革将于2021年1月1日生效。政府希望这些重大改革将有助于降低小企业破产事务的复杂性和成本，减少所需时间。

2021年1月1日开始，针对那些在COVID-19后业务仍然有盈利能力的，但是被COVID-19期间累积的债务所影响的小型企业，将可以利用简化的债务重组程序去挽救业务。如果无法重组业务将会有有一个简化的清算流程以便更快的完成清算过程，从而为债权人及雇员带来更大的回报。

三个重要关键改革是：

### 新的小型企业债务重组程序

- 只适用于总负债少于一百万澳元的注册公司
- 可由注册且独立的小型企业重组师来管理债务重组过程
- 企业主有20个工作日内制定及由重组师来认证及公布债务重组计划，债权人15个工作日内对计划进行投票过程中，期间企业将继续进行经营
- 当超过半数债务金额的债权人同意重视计划，该计划将获得批准并会约束所有无抵押债权人。债权人只分为一个等级。有抵押债权人只会债务超越资产价值时受到该重组计划的约束。
- 在把计划提交债权人投票之前，企业必须先付清所有应付的雇员欠薪及福利债务
- 政府将引入防止非法资产剥夺行为（凤凰重生活动）的保障措施，并且不允许有连带关系的债权人投票
- 如果计划获得批准，则企业会继续经营。但如果未能通过，则企业可以考虑其他破产选择。

### 简化了小型企业的清算程序

- 适用于总负债少于一百万澳元的注册公司
- 减少在清算中可以对没有连带关系的债权人追回带有不公平优惠性质的款项的情形
- 清算人仅在发现不当行为时向ASIC报告
- 无需召开债权人会议，也无需组成债权人检查委员会
- 简化资产分配的流程
- 在投票和其他事务管理中最大限度地利用新科技
- 政府将引入针对防止非法资产剥夺行为（凤凰重生活动）的保障措施

### 针对破产从业界的补充措施

- 暂时免除清算师的注册费
- 降低清算师的注册要求
- 在清算过程中最大限度地利用新科技
- 为符合条件的公司提供临时破产救济措施



- 破产从业者的新分类将被称为小企业重组从业者

请阅读随附的[政府发布链接](#)了解有关更多信息。

我们对这些拟议改革的某些方面，这些改革的实际运作方式及真正的影响有很多疑问。

我现在想到的一些问题是：

- 您如何处理及衡量或有负债的未知金额？例如一些未来的租赁义务，这些或有负责是否会令公司的负债超过100万澳元的门槛？
- 我们如何确保所有债权人得到通知并有权投票？
- 债权在投票重组建议时应该如何评估重组师及其报告的独立性？

我们将等待拟议的法律发布后，再仔细研究新法律。请关注这个话题！

下载 PDF 繁体中文版

下载 PDF 简体中文版

Greengate Advisory 「瑞格清算事务所」是首家由华人持牌的破产清算事务所，致力于为中小企业及个人定制重组和破产清算解决方案或进行财务调查。我们的团队由资深华人持牌清算师们带领并配以华人注册会计师的高效执行力，确保提供最合适可行的解决方案。

政府注册持牌清算师: 郭浩亮 Henry Kwok | Patrick Loi  
我们的中文网址: <https://www.ggadvisory.com.au/?lang=zh-hant>  
我們的聯絡資料: Level 4, 130 Pitt Street, Sydney NSW 2000 | 1300 521 161 | [info@ggadvisory.com.au](mailto:info@ggadvisory.com.au)

所有信息仅供参考，不能用于替代专业会计、税务、法律或其他专业咨询人士提供的建议与意见。本公众号信息发布者会试图也尽力确保本公众号的信息可靠性，但不担保信息的完整性、准确性、时效性以及使用该信息而获得的结果。任何情况下，Greengate Advisory 及其合作的相关机构、合伙人、代理人或员工均不对您及他人基于本网站信息所作出的决定或行动承担法律责任和义务。

This publication has been carefully prepared, but it has been written in general terms and should be seen as broad guidance only. The publication cannot be relied upon to cover specific situations and you should not act, or refrain from acting, upon the information contained therein without obtaining specific professional advice. Please contact Greengate Advisory to discuss these matters in the context of your particular circumstances. Greengate Advisory NSW Pty Ltd, their partners and/or directors, employees and agents do not accept or assume any liability or duty of care for any loss arising from any action taken or not taken by anyone in reliance on the information in this publication or for any decision based on it.

Copyright © 2020 - Greengate Advisory (NSW) Pty Ltd. All rights reserved. | Liability limited by a Scheme approved under Professional Standards Legislation