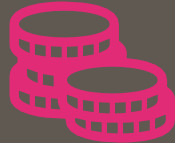


# The Reconstruction Act

A brief overview of certain  
main elements of the temporary  
Act on Reconstruction of 7 May 2020 no.  
38

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# The Reconstruction Act



Today the rules on debt negotiations are set out in the Bankruptcy Act.

To make such rules more effective the Government has passed a new temporary Reconstruction Act.

## Lower threshold for opening judicial debt negotiations

- Today: The debtor must be illiquid (unable to pay debts when due) for opening of debt negotiations
- The Reconstruction Act: Reconstruction proceedings may be petitioned by a debtor that is or will in foreseeable future have significant financial difficulties
- Purpose: Reconstruction can be initiated at an earlier stage to increase the likelihood of achieving sensible solutions

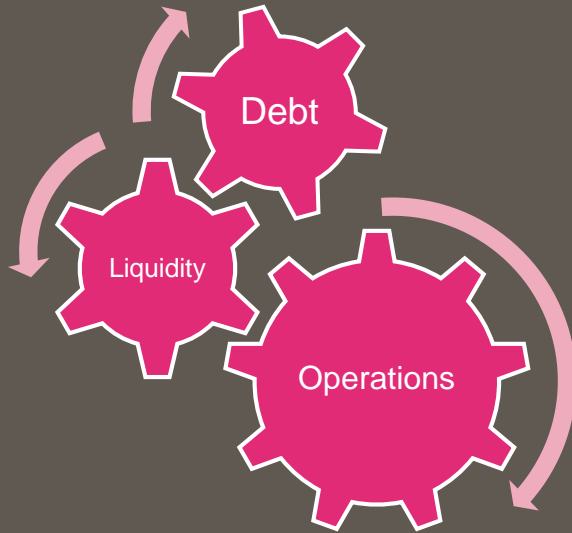
## Super senior financing

- Today: No legal basis for providing priority to financing of debt negotiations or continued business during such process
- The Reconstruction Act: Statutory first priority priming lien (senior to existing first priorities) may be established for costs of and continued business during reconstruction
- Purpose: Enable financing of the process and continued business with reduced risk for a super senior lender

## Exemptions to public debt priority

- Today: Public debts including tax are first ranking claims to be covered prior to other claims
- The Reconstruction Act: Exemptions may, by separate regulation, be made to such priority in reconstructions
- Purpose: Incentivize reconstruction rather than bankruptcy and increase chances of dividend to other creditor classes

# The Reconstruction Act



The Act will – as long as it is in force – replace the Bankruptcy Act rules on debt negotiations.

## Debt to equity conversion – shareholder resolutions

- Today: Conversion mechanisms would require qualified majority, normally 2/3
- The Reconstruction Act: For reconstruction such resolutions shall only require at least 50%
- Purpose: Avoid a blocking shareholder minority

## Debt to equity conversion – creditor consent

- Today: Debt to equity conversion requires creditor consent
- The Reconstruction Act: Conversion is as a main rule consensual but the court is given a limited discretion to make such scheme binding on all creditors if weighty considerations speak for it, and the non-consenting creditors clearly have no reason to object to it
- Purpose: Prevent that any single creditor frivolously abuse its position to block a reconstruction

## Simplified procedure for small businesses

- Today: The debt negotiation rules apply to all types of businesses
- The Reconstruction Act: Simplified rules for reconstruction of small businesses may be given by separate regulation
- Purpose: Avoid that reconstruction becomes too time- and cost consuming for the small businesses



# The Reconstruction Act



The Act includes that the current requirements of minimum distributions to creditors are completely removed.

## The debtor proposes a reconstruction plan

- To be presented the creditors within 4 weeks of opening of proceedings
- Negotiations continues unless the plan is rejected by a majority of creditors (calculated by amount)
- Voluntary reconstruction is achieved by acceptance the plan by all creditors
- Reconstruction with compulsory composition can be concluded if 50% of creditors vote in favor, and the court approves the plan

## A reconstruction plan may consist of:

- Payment deferrals
- Debt write-off
- Debt to equity conversion (in whole or in part)
- Sale of business / assets without liquidation of the company in reconstruction
- Sale of business / assets with write-off of excess debt (voluntary liquidation composition)
- A combination of the above, or other relevant steps or transactions

## Process and publicity

- Petition for reconstruction is submitted to the local court
- The negotiation and process is administered by a court appointed lawyer
- Opening of proceedings are publicized and registered
- Reconstruction rules will provide for increased bankruptcy and enforcement protection

Would you like more specific advise and assistance?

Contact us

This presentation only sets out general statements and can not be relied upon as legal advice.

SANDS has established a [24/7 Corona Response Team](#) that may assist with specific legal advice for all matters relating to the Covid-19 outbreak, including financing, labour law, contracts, insurances, taxes, disputes and a range of other matters.



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