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COVID-19: Business debt hibernation and creditors

Business debt hibernation helps companies and other entities affected by COVID-19 manage their existing debts until they can start trading normally again. Find out what it means for creditors if a business owing money enters business debt hibernation.

A business that owes you money could enter business debt hibernation

If you haven't been struggling with debt in your own business, the first time you hear about business debt hibernation may be when a business that owes you money tells you they are planning to enter it. You may even receive an Entry Notice from someone who hasn't managed to talk to you about it beforehand. Or maybe you've heard about the initiative and you're worried how it could affect you. If you've already read the overview page about business debt hibernation, here's a bit more about what it means for you as a creditor.

[Business debt hibernation \(/covid-19/business-debt-hibernation/\)](/covid-19/business-debt-hibernation/)

How it helps you and the business

Business debt hibernation aims to help businesses keep operating. If a business is struggling with debt and has exhausted options such as loans, business debt hibernation could be your best chance to receive in full what you are owed. The alternatives for a struggling business include seeking a creditor compromise, or closing their business down and selling off assets (liquidation) to pay creditors. Both cases are likely to see you receive only part of what they owe you. And liquidation can be lengthy and you lose any chance of further sales to that business.

What businesses can and can't do to a creditor

Businesses going into debt hibernation get some relief from the burden of their debts. But they also have a set of legal obligations, some designed to protect you as a creditor. Here's what they can and can't do.

Businesses can:	Businesses can't:
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<ul style="list-style-type: none"> • enter business debt hibernation without your agreement (a business only needs the agreement of more than half of its creditors by number and value) • delay paying some or all existing debts • gain up to seven months of protection from enforcement of debts. 	<ul style="list-style-type: none"> • enter business debt hibernation without the agreement of more than half of creditors by number and value • delay or avoid paying new debts taken on after entering business debt hibernation • write off any part of existing debts • avoid debts for more than seven months • intentionally delay closing down if inevitable • get protection from enforcement of certain debts, eg employment-related debts or debts owed to a secured creditor with a general security agreement.
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What you can and can't do if you are a creditor

As a creditor, you have to respect the process and the outcome if a client goes into business debt hibernation. Here's what you can and can't do.

Creditors can:	Creditors can't:
<ul style="list-style-type: none"> • have your say on the proposed arrangement from the struggling business, in a vote alongside other creditors • impose different terms for future dealings with the struggling business • take five working days to consider your vote, or more if the voting date allows. 	<ul style="list-style-type: none"> • have your say after the voting deadline • fail to comply with an arrangement approved in a vote • force the return of goods paid for with debts covered by the arrangement.

How to know if a business is in debt hibernation

If you're a creditor, a struggling business must tell you as soon as they start the business debt hibernation process, by sending you a copy of their Entry Notice.

If you're thinking of dealing with a new business, you can find out whether they're in business debt hibernation. Check their online record in the relevant register, eg the Companies register or the Incorporated societies register.

[All registers\(external link\) \(https://www.companiesoffice.govt.nz/all-registers/\)](https://www.companiesoffice.govt.nz/all-registers/) — Companies Office

If a business is in business debt hibernation, their protection excludes any new debts they take on after entering business debt hibernation.

What to expect out of the process

A struggling business may have already been in touch with you about their debt problems. Talking to you early is a great way for them to be transparent about their situation. You may be able to offer them special terms that make a difference.

When a business that owes you money enters business debt hibernation, they must send you a copy of their Entry Notice. This gives them one month of protection while they set up an arrangement. They also have to send you other info, including at least a high-level description of their proposed arrangement.

[What needs to be sent to creditors?\(external link\) \(https://www.companiesoffice.govt.nz/covid-19/business-debt-hibernation/#entry-notice-to-creditors\)](https://www.companiesoffice.govt.nz/covid-19/business-debt-hibernation/#entry-notice-to-creditors) — Companies Office

This is a good time to chat with the business and find out a bit more about the situation they're facing. It's up to them to make the case that business debt hibernation is the best option for you and their other creditors.

The business must then follow up with a more concrete proposal, including a resolution for its creditors to vote on. For example, they might offer to pay a percentage of each existing debt during business debt hibernation, with the remainder due by a later date they set.

You get to vote on the proposal. Businesses must give you the information you need to make a good decision, and at least five working days' notice of the vote. They may organise a creditor meeting, but they don't have to. They must tell you the outcome of the vote. If more than half of the creditors by number and value approve their proposal, the business gets another six months of protection, against all creditors, not just those who voted yes.

Business debt hibernation ends automatically at the end of the protection period. You won't receive any notices at the end of the six months of protection. Business debt hibernation also ends automatically if the business enters a creditor compromise, voluntary administration, receivership, or liquidation. Businesses can end their business debt hibernation early. If this happens, you'll receive a copy of the Cancellation Notice.

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