AVIOR

Your Complete Guide

Restructuring your business with a
Deed of Company Agreement

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In a sea of negative, we find the positive.

Avior Consulting is a boutique financial advisory firm, which specialises in helping growing companies achieve their financial goals in difficult circumstances.

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What is a Deed of Company Arrangement (**DOCA**)?

A DOCA is an agreement between a company and its creditors to restructure or extinguish the company's liabilities and allow the company to continue without the burden of excessive debts.

A DOCA is a powerful legal mechanism that only requires a simple majority of a company's creditors (greater than 50% of both number and value) to become binding on all of the company's unsecured creditors.

It is typically used when a company's debts have become excessive for the company's business to repay and it avoids:

1. The need for the company to be liquidated; and
2. The company's directors to be sued for insolvent trading.

How is a **DOCA** achieved?

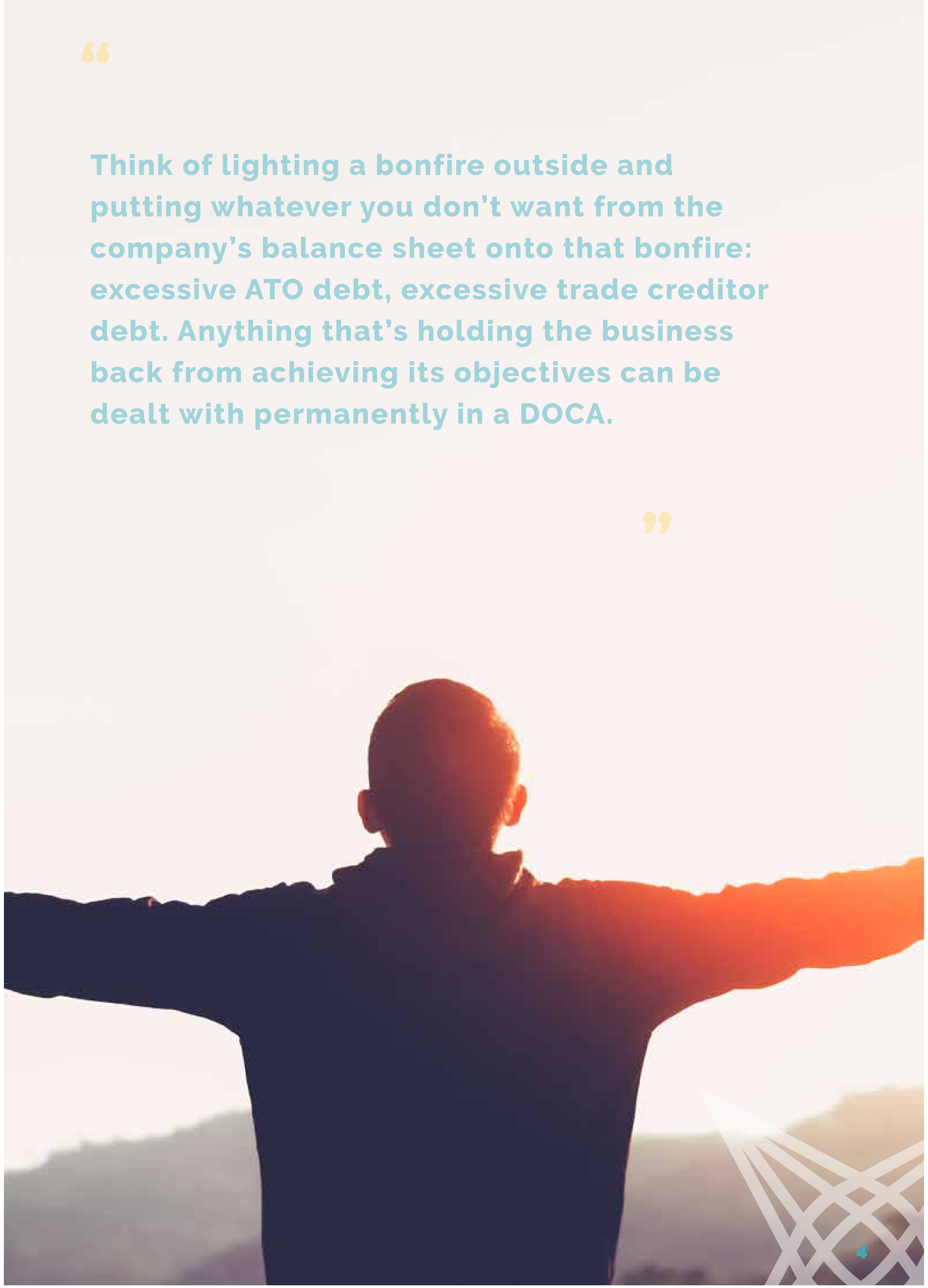
A DOCA is designed and negotiated between a proponent (typically the company's director although anyone can propose a DOCA) and the company's Voluntary Administrator.

Once the proposed DOCA has been submitted to the Company's Administrator, it is then summarised in the Administrator's report to creditors and voted upon at a meeting of the company's creditors.

If the company's creditors approve the DOCA proposal, then the administrators must execute the DOCA within 3 weeks.

The completion of the DOCA then depends upon satisfaction of the conditions in the DOCA.

> **"Think of lighting a bonfire outside and putting whatever you don't want from the company's balance sheet onto that bonfire: excessive ATO debt, excessive trade creditor debt. Anything that's holding the business back from achieving its objectives can be dealt with permanently in a DOCA."**



How much does a **DOCA** cost?

The final cost of a DOCA depends entirely upon the complexity of the issues that must be addressed by an administrator. The fees are calculated by applying the administrator's hourly rates for various staff levels to the time spent on the assignment.

Typically, administrators are paid out of the company's assets although in some cases administrators can be paid out of the DOCA assets (funds that are made available for the company's creditors).

It is critical that DOCA structures are designed with the size of the company in mind as more complexity increases the cost. The potential cost of any DOCA should be discussed in detail with a prospective administrator before the administrator is appointed.

How can it be funded?

1. Preserving employee entitlements for continuing employees;
2. Preserving certain liabilities (or a portion of them) on restructured payment terms;
3. Contribution of funds from future profits;
4. Contribution of new debt or equity.

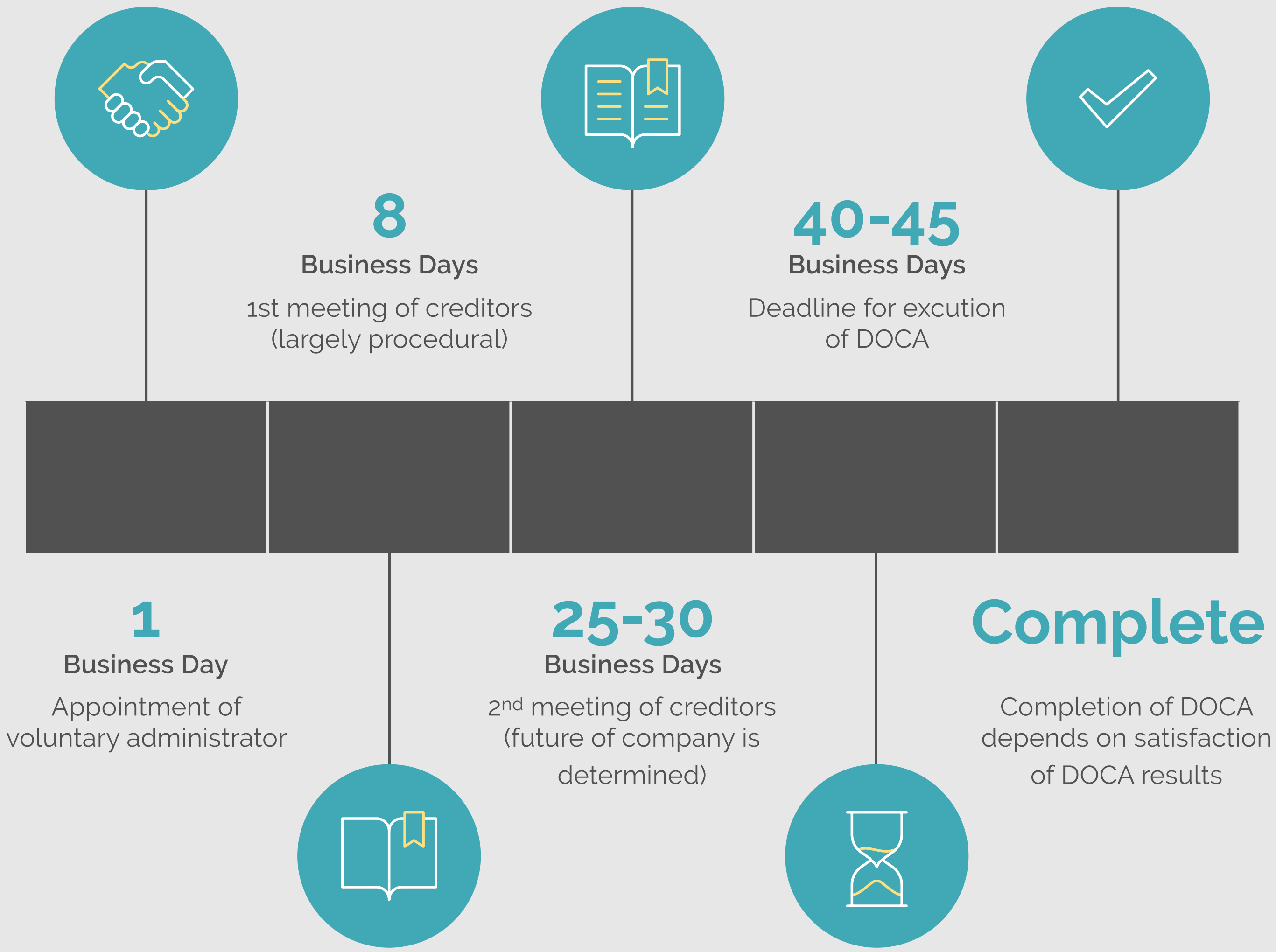
How long does a **DOCA** take?

If a DOCA has been designed properly, then it should be completed with control returned to the company's directors within 12 weeks from the date of the administrator's appointment.

The completion of a DOCA can be accelerated by using a creditors trust to house the assets that are to be used to provide a return to the company's creditors and the liabilities to be extinguished.

The **DOCA** Timeline

A look into how many business days a DOCA can take to complete.



Are there any restrictions on what a **DOCA** can achieve?

The widest restriction on how a DOCA can work is that it must not give any creditor an inferior return compared to what that creditor may receive if the company is immediately liquidated. For small and medium sized businesses, immediate liquidation typically would result in a catastrophic loss for creditors and is therefore a relatively low threshold.

Even the requirement to obtain a majority of creditors in both number and value can be circumvented by using the administrator's casting vote.

A DOCA also cannot interfere with any security interests held by creditors so secured creditors must be specifically considered in the DOCA structure.

A DOCA cannot extinguish most employee entitlements (excluding superannuation), however preserving outstanding entitlements for continuing employees is a common funding mechanism as it represents valuable consideration in a DOCA.

A DOCA cannot interfere with the rights of creditors against third parties, although if such a step is necessary then a scheme of arrangement can be completed in parallel to the DOCA. This is typically reserved for large restructures as it increases the costs considerably.

Meet our Leadership Team

We are experts in restructuring and turning around businesses. Tools we apply to achieve your objective range from voluntary administration and liquidation, to informal restructures, to assembling funding packages for the restructure.

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