

Safe Harbour Advisory

Protection for directors while implementing a turnaround strategy

In 2017 new laws were passed to allow directors of companies in financial distress to access Safe Harbour protection from personal liability for insolvent trading while implementing a turnaround strategy for their business.

Introducing protection for directors

The Safe Harbour protection is designed to give directors breathing space to turnaround their business without the fear of being pursued for an insolvent trading claim, and avoid prematurely placing their company into external administration.

The new regime is aimed at encouraging businesses to work through financial difficulties by putting in place a restructuring plan that is likely to lead to a better outcome than a formal insolvency appointment.

Providing turnaround direction & support

The Grant Thornton Restructuring Advisory team can assist by:

- Providing advice on the requirements for Safe Harbour protection
- Bringing expertise and insights to identify turnaround options
- Developing and implementing a restructuring plan
- Providing appropriately qualified advisors specifically focussed on the needs of the business
- Ongoing monitoring and reporting to stakeholders



Safe Harbour Fact Sheet

What you need to know

Background

The Safe Harbour law reform, presented as part of the government's *Science and Innovation agenda*, is in part aimed at creating a more innovative and entrepreneurial business culture in Australia. Historically, the threat of being personally liable for insolvent trading has been significant enough to deter directors from properly planning a turnaround strategy in circumstances where the company had solvency concerns, leading to the premature appointments of external administrators. In some cases, with more time to plan it is possible a better outcome can be achieved by implementing a turnaround strategy outside of insolvency.

About the regime

The aim of the Safe Harbour regime is to allow time to plan a successful restructuring of a business that results in a better outcome than an immediate formal insolvency appointment.

Directors of a company who meet the requirements in developing and pursuing a course of action that is **reasonably likely to lead to a better outcome** can now have the benefit of Safe Harbour protection against personal liability from debts incurred by they company in connection with the course of action.

Director obligations

Safe harbour protection is only available if directors continue to meet certain obligations, namely:



1. Developing a restructuring plan

Directors must take a course of action that is reasonably likely to lead to a better outcome for the company than an immediate insolvency appointment, and support the action/s with properly structured and documented restructuring plan.



2. Employee liabilities & reporting obligations

Directors must ensure the company continues to comply with its **obligations to pay employees**, including remitting superannuation. The company must also **continue to meet its taxation reporting obligations**. The duties of directors of ASX listed companies including continuous disclosure obligations continue unaffected.



3. Records & accounts

Directors must continue to comply with their duties and obligations to maintain appropriate financial records. Following an insolvency appointment, directors must meet their obligations to assist an external administrator in providing access to the company's books and records and a Report as to Affairs ("RATA").

"Reasonably likely to lead to a better outcome"

Assessment of whether or not a plan is reasonably likely to lead to a better outcome is considered at the time the decision is made.

To maintain safe harbour and assess whether the course of action is reasonably likely to lead to a better outcome, directors should...

- Remain informed about the company's financial position
- Take steps to prevent misconduct by officers or employees that could adversely affect the company's ability to pay its debts
- Take appropriate steps to ensure the company has maintained appropriate financial records
- Take steps to develop and implement a plan
- Obtain advice from an appropriately qualified advisor

It is not necessary for all factors to apply, however directors will need to provide evidence that the course of action they took was reasonably likely to lead to a better outcome. This is likely to include keeping detailed records of meetings, deliberations, plans and steps taken.

Navigating through Safe Harbour

Our Restructuring Advisory team brings market leading restructuring capability and expertise combined with a full service advisory firm with regional and global reach.

We can provide advice on the practical considerations and legal requirements for Safe Harbour protection, as well as guide a company through the entire process of developing and implementing a restructuring plan.

Choosing an appropriately qualified advisor

Directors appointing an advisor to assist in developing a restructuring plan are responsible for ensuring that adviser is appropriately qualified. Considerations for an "**appropriately qualified entity**" include:

- ☑ Possessing minimum educational qualifications and being subject to continuing professional development (CPD) whether by law or by membership of a professional association
- ☑ Possessing appropriate professional indemnity insurance
- ☑ Being bound by a code of conduct or similar professional standards
- ☑ Relevance to the nature, size and complexity of the business, as well as specific industry expertise
- ☑ The advisor's independence and good standing

Directors can be confident that our Restructuring Advisory partners meet these minimum requirements.

Our approach to Safe Harbour advisory

At Grant Thornton, our Safe Harbour Advisory offering will be tailored specifically to the needs of your business. This may include:

- Providing an immediate financial viability assessment
- Assisting with preparation of a short term financial forecast
- Advising on the requirements for Safe Harbour protection
- Stakeholder engagement and management
- Assisting with developing and implementing an appropriate turnaround plan, including:
 - Reviewing, developing and monitoring forecasts
 - Identifying, reviewing & assessing milestones and KPIs
 - Working Capital Optimisation to free up cash in the business
 - Performance improvement advisory
 - Planning a formal restructure



Contact us

If any of the following early warning signs are present, contact our team to discuss how we can assist you.



Cash flow difficulties



Breaches of finance covenants



Stakeholder negotiation and management



Loss of key customers/suppliers



Market disruption



Legal disputes



Working capital constraints



Accessing capital



Solvency concerns

Our team

By having access to our multi-disciplinary teams at Grant Thornton nationally and internationally, with true industry experts, our Restructuring Advisory team can deliver quality turnaround advice and assistance suitably tailored to the needs of your business, giving your company the best opportunity for growth.

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