



SEPTEMBER 2020

WHAT HAPPENS WHEN THE TAPS ARE TURNED OFF?

Will your business be able to stand alone?

2020 has thrown us hurdle after hurdle and many businesses have taken a big hit. While everyone is trying to make the best of a bad situation, many business owners may find themselves thinking, "Will we actually make it through this period and be able to get our business back on track?" The Government has thrown plenty of lifelines to help get businesses through this period, but what happens when the taps are turned off? How long will it take your business to 'get back to normal'?

As a Director you want your business to succeed and bounce back, but what if it doesn't and the business becomes insolvent? Will the corporate veil hold strong and protect you personally from the debts of the business? This is where Safe Harbour can come into play. If the Director of a business enters Safe Harbour, it gives the business an opportunity to turn itself around **without** putting the Director's at risk of personal liability.

One of the lifelines that have been handed to businesses from the Government during this pandemic is a blanket **COVID Safe Harbour**. Safe Harbour provides Directors with the assurance that if their business doesn't make it through, the corporate veil will not be smashed, and they won't be held personally liable for debts incurred – also known as insolvent trading. This protection provides Directors time to work through this unprecedented trading period, however on 24 September 2020 COVID Safe Harbour is due to be turned off. Subject to any further extension by the Government, Directors will have a choice to either lose the blanket protection or engage a safe harbour specialist, make yourself fully compliant and keep it.

Should I consider Full Safe Harbour?

Some of the early warning signs that your business may need a detailed and structured turnaround plan are:

- Cash flow difficulties
- Loss of key customers/suppliers
- Working capital restraints
- Breaches of finance covenants
- Market disruption
- Accessing capital
- Stakeholder negotiation and management
- Legal Disputes
- Solvency Concerns

For some businesses, it is possible that the new COVID Safe Harbour may provide Directors with sufficient temporary protection from insolvent trading liability, particularly if your company is expected to recover quickly following the passing of the COVID-19 crisis and be in a position to pay its outstanding debts.

However, for many businesses, the latest reforms will not be enough on their own – a detailed and documented survival and turnaround plan will still need to be prepared and implemented to assist the company through COVID-19 and to protect its Directors from insolvent trading liability (and breach of general Directors' duties) during the next six months and beyond.

What is required to enter Full Safe Harbour?

Fully Compliant Safe Harbour requires Directors to satisfy a process set out in s588GA of the Corporations Act, including:

1. a turnaround plan - that plan must result in a better outcome than if you were to liquidate;
2. employee entitlements including superannuation must be current;
3. BAS and other lodgements must be up to date;
4. where necessary, Directors should obtain updated advice from an appropriately qualified professional regarding these steps.





COVID Safe Harbour might be fine for most, a temporary reprieve until you bounce back, but if you are contemplating some major restructuring such as:

- debt negotiating,
- downsizing premises,
- employee negotiations,
- sale or transfer of assets,
- corporate entity reorganisation, or
- shareholder changes,

then Fully Compliant Safe Harbour should be something you gain advice on first.

What next?

If you suspect you may need more time after 24 September to turn your business around, you should start to seek professional, qualified advice now to help you understand your financial position, your options and help you set a path forward. The sooner you seek expert advice, the more options you are likely to have.

If you have further questions or would like more information please contact our office:

Hall Chadwick Queensland
07 3212 2500 | general@hallchadwickqld.com.au
Level 4, 240 Queen Street, Brisbane, QLD, 4000