



GREATWORTH ADVISORY

Safe Harbour – Charting a way through the storm

Restructuring – The Responsible Steps to take

There is now a defined legislated Pathway to Restructure Companies informally that leaves Directors in control.

Directors should engage Safe Harbour assistance as soon as danger signs emerge. Safe Harbour is confidential except to whom the Directors decide to “bring inside the tent”.

The Safe Harbour framework is used by both Solvent & Insolvent Companies to guide a Turnaround.

If the Safe Harbour Steps are fully complied with, then Directors do not contravene Insolvent Trading Laws.

Greatworth

Greatworth are experts in Safe Harbour and ready to assist.

Vivid Imagery

Imagine a sailing ship, sailing on the ocean. A storm comes up and the ship is damaged and it must get out of the storm or the ship may be shipwrecked and all will be lost.

The captain takes the ship into a safe harbour shielded from the storm. There the captain can assess the damage and take steps to do what is best for the ship.

The ship cannot remain indefinitely in the safe harbour as the crew need supplies (food and drink) and the ship needs to transport cargo from place to place so that income resumes. Then wages can be paid over the long term.

This imagery paints a picture as to what Safe Harbour is like. Here the Captain is the Director, the ship is the business/company, the crew are the employees etc.

Poor Cash Flow Does Not Invalidate Safe Harbour

A company becomes insolvent when it can no longer pay its debts as and when they fall due.

Historically Directors have had a duty to immediately place an insolvent company into external administration or risk being pursued personally by a Liquidator for Insolvent Trading.

Voluntary administrations and Liquidations can be expensive and Directors lose control of the process to the external administrator.

Safe Harbour legislation has been passed recognizing that where other pre-conditions are met it is in the best interests of a company for it to continue to trade whilst insolvent.

Requirements Relaxed During COVID-19

Contact us to discuss the simpler Safe Harbour rules during COVID-19; and how and for which time periods they apply.

Key Requirements

There are some key requirements for Safe Harbour to commence and continue:

- Employees paid up to date (including superannuation paid on time)
- Tax lodgments are complete
- Directors are keeping and reviewing up to date financial information

If these requirements cannot be met then either:

- An immediate “standstill” followed by an informal debt compromise; or
- A formal insolvency administration will be necessary.

Steps to enter Safe Harbour

A plan to take action that is in the best interests of the company must be prepared. It is necessary that this plan provides a reasonable chance of a “better outcome” for the company. Whilst “better outcome” is not defined in Legislation it would need to be better than placing a company immediately into voluntary administration or liquidation.

The “better outcome” conclusion must be made on an objective basis, which is why an appropriately qualified independent external expert is engaged.

The external expert will regularly review the company’s financial position and review and advise on the company’s turnaround plan including to check whether it is compliant.

Once approved the plan should be promptly put into action. If turnaround and compliance steps cease then Safe Harbour protection is lost. Furthermore, in all of their duties Directors must act reasonably.

If events transpire that may materially impact on whether the plan provides a better outcome for the company than voluntary administration or liquidation, then the external expert should immediately be consulted again to check whether the company remains compliant with Safe Harbour.

Keep Detailed Records

The Directors face an evidential burden to prove that they are complying with Safe Harbour requirements.

Consequently Directors should keep detailed records of compliance which may include:

- Timeline of key events updated regularly
- Records showing employees paid on time and up to date
- Records showing tax lodgments made on time
- Regular accounting software reports and/or backups showing that records were kept up to date
- Regular analysis of accounting records
- Minutes of Directors Meetings held as needed to discuss the evolving situation
- Meetings and Correspondence with external expert
- Details of plan, drafting it, amending it etc.
- Notes detailing implementation of plan, reasons for any unexpected delays in implementation

Return to Solvency (Or Not?)

Preferably companies can remain Solvent throughout the Safe Harbour process. However in circumstances where the company is insolvent, the ideal outcome of Safe Harbour is that the company successfully completes the turnaround and becomes solvent again (able to pay its debts as and when they fall due). In that case the Directors may decide to continue to trade the business or sell it or close it down.

Alternatively, it may transpire that the company remains insolvent and it is no longer in the interests of the company for it to continue to trade. It should then be placed into voluntary administration or liquidation. In that event, Directors need to assist the external administrator with relevant information etc. so that they personally will keep the Safe Harbour protection.

How to Contact Us

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