

Can the directors of the company rely on Safe Harbour provisions?

Apply the facts and consider whether:

Mandatory thresholds	Course of action	Debts incurred	Better outcome assessment
<ul style="list-style-type: none"> Whether the company substantially met its: <ul style="list-style-type: none"> obligations to maintain books and records; payment obligations in relation to employee entitlements; and tax reporting obligations. 	<ul style="list-style-type: none"> Whether a course of action was developed that was reasonably likely to lead to a better outcome than an immediate liquidation or voluntary administration. This will link back to the chronology set out earlier in the advice. 	<ul style="list-style-type: none"> Whether the debts were incurred so as to enable the company to continue to trade and to pursue the course of action. Alternatively, no significant debts were incurred / ordinary trading debts paid as and when they fell due. 	<ul style="list-style-type: none"> Consideration of the factors set out below. Our view is that the requirement for an "appropriately qualified advisor" can be assessed on the advisor's professional accounting qualifications and experience as an insolvency practitioner.



Practical tips

- Convene regular Board meetings to monitor the development and implementation of the better outcome plan, and to assess the company's solvency on an ongoing basis, having regard to future debt obligations.
- Consider in detail the proposed phases of the better outcome plan to form a view as to whether it continues to be reasonably likely to result in a better outcome than an immediate liquidation or administration.
- Determine a materiality threshold for new debts, having regard to the size and nature of the Company's business, above which you should require that it be taken into account whether the relevant debt is being incurred directly or indirectly in connection with the better outcome plan.
- Ensure the following is thoroughly documented:

- the information that the Board is regularly obtaining to stay informed of the Company's financial position;
- the decision by the Board to enter into Safe Harbour;
- the engagement of an insolvency firm to advise as an appropriately qualified entity;
- the steps taken to date to prevent any misconduct by officers or employees that could adversely affect the Company's ability to pay all its debts;
- the maintenance of appropriate financial records
- the periodic assessment of whether the plan for restructuring the Company remains reasonably likely and whether the Board remains of the view that, if implemented, it will improve the Company's financial position; and
- if any further debts are incurred, whether at that point the Company:
 - has paid the entitlements of its employees as and when they fall due; and
 - is up to date with its tax reporting obligations.

Key contacts



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