

Safe Harbour

Introduced in September 2017 ‘Safe Harbour’ protects directors from insolvent trading liability arising from debts incurred whilst developing a strategy that is reasonably likely to provide a better outcome for the company than appointing an administrator or liquidator.

To be eligible for Safe Harbour protection, the company must satisfy the eligibility criteria including:

- Employee entitlements are paid up to date;
- Taxation reporting obligations are up to date;
- Books and records have been adequately maintained; and
- Directors must have a suspicion of insolvency.

The Directors then must satisfy that they have developed or are developing a turnaround plan that is:

- Comprehensive, milestone based and time bound in its objectives; and
- Likely to lead to a better outcome than the immediate appointment of an external administrator.

Temporary COVID Safe Harbour (expires 31 December 2020)

In response to COVID-19 on 22 March 2020 amendments were made to the Corporations Act (2001) (the Act) providing ‘blanket’ temporary relief for Directors in relation to personal liability for insolvent trading, absent dishonesty or fraud.

The temporary COVID Safe Harbour is available on debts incurred up to 31 December 2020 and Directors who later enter into external administration, are exposed to potential personal liability for insolvent trading unless they:

- Appoint an external administrator on or prior to 31 December 2020; or
- Obtain protection under the original Safe Harbour pursuant to section 588GA of the Act.

Our Safe Harbour advisory services

Hiring an experienced insolvency practitioner is the most suitable starting point for any course of action. Wexted Advisors work with Directors and their advisors to provide Safe Harbour advice as part of a broader restructuring solution designed to address the better outcome test.

We are market leaders in providing safe harbour advice for ASX listed companies and large corporates in Australia. We work alongside directors to:

- **Ensure the eligibility criteria is met.** We work alongside management to ensure employee and taxation obligations are met and that all appropriate books and records are maintained;
- **Develop and refine a turnaround plan.** We help Directors and their management create a course of action if needed. We use our extensive experience to:
 - Continually communicate with key stakeholders to ensure the business can continue to operate in a stable environment;
 - Engage with staff at appropriate levels to learn about the business and foster belief in the turnaround plan; and
 - Create a plan that will satisfy the better outcome requirement.
- **Implement a course of action likely to lead to a better outcome.** Our strengths lie in working with management to implement and update the turnaround plan.

Our service includes:

 - Holding regular meetings to monitor progress;
 - Ensuring continual compliance with all statutory obligations;
 - Updating objectives and deadlines as suitable; and
 - Documenting everything, so that the directors we advise have the peace of mind that they can rely on Safe Harbour protections.

Liability limited by a scheme approved under Professional Standards Legislation

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Recent Safe Harbour experience

Engagement	Size and Sector	Summary
Project Salford	Large private transportation company	<ul style="list-style-type: none">■ Business impacted by drought in Australia.■ We assisted the Board to consider options including an equity capital raise, cost saving reductions and divestment of assets and business units.■ As a result, the business continued to trade, all creditors were paid in full and equity value was preserved.
Project Fitzroy	ASX listed insurance company	<ul style="list-style-type: none">■ Facing liquidity and regulatory issues as a result of the Royal Commission.■ We assisted the Board to consider options including various debt and equity injections, restructuring initiatives and the sale of business units and implement these options.■ This process has facilitated the stable and structured solvent wind down and the protection of policyholders.
Project Kent	ASX listed global biotechnology company	<ul style="list-style-type: none">■ Facing liquidity issues.■ We assisted the company stabilise operations, refinance secured debt, obtain equity capital through a placement and rights issue, embark on an operational restructure, introduce new Directors to the board, divest assets and other stakeholder negotiations.
Project Rose	ASX listed financial technology company	<ul style="list-style-type: none">■ Facing a forecast cash shortfall.■ We assisted the company understand its current position, sell a significant business enterprise, stabilise the remaining business, obtain convertible note capital and announce an underwritten rights issue.
Project George	Large private civil engineering business	<ul style="list-style-type: none">■ We assisted the company negotiate with its lenders and operating partner.■ As a result, facilities were restructured enabling stable project completion that would allow for the repayment of lenders and creditors and preserve equity.
Project Newton	Large private oil company	<ul style="list-style-type: none">■ Impacted by a regulator enforced production shutdown.■ We assisted the Board to develop a corporate structuring plan, maintain Secured Creditor support, implement a capital restructure including an equity raise, implement cost saving initiatives and negotiate creditor payments.■ As a result, the company was able to negotiate the enforced production shutdown and recommence trade.
Project Forbes	ASX listed construction technology company	<ul style="list-style-type: none">■ Facing liquidity issues and COVID-19 related challenges.■ We assisted the company understand its cash requirements, prepare cash flow forecasts, articulate its commercialisation strategy and explore debt or equity financing options.■ As a result, the Board was able to make informed decisions to restructure its workforce, and complete a recapitalisation.
Project Bourke	Large private mining company	<ul style="list-style-type: none">■ Facing short-term liquidity issues.■ We assisted to understand its cash requirements, prepare cash flow forecasts, implement strategies to improve working capital and explore debt or equity financing options.■ As a result, the Board was able to make informed decisions to complete a capital restructure.

Further information on our credentials and experience please visit our website www.wexted.com or contact one of the following staff members as detailed below:



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