

# PROTECT & SERVE

Independent advice is key to corporate restructuring success, says Wexted Advisors partner Andrew McCabe.

**E**nterprise and innovation law reform in September 2017 introduced an insolvent trading defence to allow directors to maximise recoveries for stakeholders while protecting directors' personal liability.

With directors continuing to enhance their understanding of the merits of safe harbour for employees, creditors, shareholders, auditors, insurers and themselves, safe harbour will become more common in the short term as companies restructure their balance sheets.

As a market leader in advising boards of ASX-listed and large corporates, registered liquidators Wexted Advisors provides independent advice to directors, which affords them the protection of the insolvent trading defence under the safe harbour provisions.

## Benefits of restructure

Andrew McCabe, a partner of Wexted Advisors and a registered liquidator, notes that in times of financial uncertainty, during initial meetings, boards can be divided in their preferred course of action to either obtain safe harbour protection or appoint a voluntary administrator.

The benefits of a successful restructure with safe harbour protection are well documented. A restructure can save jobs, preserve equity (although diluted), avoid the need to call on insurance policies, ensure auditors are not subject to any claims and avoid public examination of directors and preserve their reputations.

However, the key benefit for directors is time. In periods of regulatory change or financial uncertainty, directors are

required to make challenging decisions in the interests of all stakeholders in finite periods of time — while also managing their personal liability.

## Trusted adviser

Over the past three years, across various industries, directors who engage with a restructuring adviser under the safe harbour provisions are able to take the time to consider the options available and implement the preferred option most likely to lead to a better outcome for the majority of stakeholders. This time is critical in maximising the chances of a successful restructure to enable the business to continue to trade.

As a trusted adviser, Wexted works with boards and management to determine the best course of action. Whereas the independent insolvency practitioner and registered liquidator assist with the documentation, counterfactual analysis to an external administration and implementation of the restructuring plan with management, we firmly believe boards are the most qualified in their respective industries to provide an outline of the restructuring plan.

## Independence

The selection of an independent, appropriately qualified entity to provide restructuring advice to boards is important to ensure directors maximise the possibility of being afforded insolvent trading protection if the restructuring plan is unsuccessful and the company is wound up.

"Directors should look to their restructuring adviser, under safe



**"Directors have an option to protect personal assets and maximise stakeholder returns."**

Andrew McCabe, partner Wexted Advisors

harbour provisions, as their primary layer of insurance against insolvent trading claims," advises McCabe.

Similar to D&O insurance, directors should maximise the chances of being afforded this protection if required. Should an adviser seek to overplay their role or have independence issues with other accounting relationships, you may risk the possibility of being afforded this protection.

"Directors have an option to protect personal assets and maximise stakeholder returns," says McCabe.

To learn more about Wexted Advisors and safe harbour visit [wexted.com](http://wexted.com)

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