



# Safe Harbour Guide

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2024

**One of the key hurdles hindering a director's willingness to take on financial risk has been their potential personal exposure for damages as a result of insolvent trading.**

No one deliberately plans for corporate failure, but it does happen, and how we are reacting to it can determine whether the result is financial disaster or recovery.

Safe Harbour is an informal restructuring process that encourages directors of distressed companies to proactively address issues, whilst affording them a level of personal protection.

Safe Harbour should be viewed as a risk mitigation strategy, offering an additional level of support for directors during periods of rapid and significant change and for additional levels of protection for issues which may fall outside the scope of D&O policies.

## In our experience, Safe Harbour is suited for businesses that have one or more of the following concerns:

- ✓ Cash flow shortages;
- ✓ Breach of debt covenants;
- ✓ Significant asset divestment programs;
- ✓ Demergers/ or distressed M&A activity;
- ✓ Raising further capital or accessing finance; and
- ✓ Considerable short-term debt maturities.

Safe Harbour is focused on achieving a better outcome for creditors, shareholders and other stakeholders than otherwise would be achieved if the company was forced to immediately wind up.

### Eligibility

Directors can rely on the Safe Harbour process to absolve any personal liability if:

- ✓ Employee entitlements (including superannuation) are paid up to date;
- ✓ The company has maintained and lodged all notices and reporting obligations under tax law.

### Legal Privilege

Our safe harbour programmes are operated through either the Board or Company legal advisers to ensure to the extent possible that legal professionalism is maintained.

# Benefits of Safe Harbour

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1. **Risk mitigation** – engagement of Safe Harbour advisors affords a level of comfort to directors for personal liability during a restructure.
2. **Confidential** – Safe harbour programmes are not required to be disclosed outside the Board. There is no disclosure requirement to the ASX and public markets. The programme works to protect company reputation and enterprise value.
3. **Supports turnaround & viability** – Supports long-term organisational viability and value retention; and
4. **Control** – The Board remains in control of the process with the support of experienced professionals.

## How we can help

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Olvera's safe harbour programme has been used by a number of companies since its commenced to successfully manage their restructuring programme. Olvera prides itself on its client confidentiality.

### Our services include:

- ✓ Preparation of review of client eligibility review;
- ✓ Development and delivery of the restructuring plan see Olvera Restructuring Services;
- ✓ Identification and agreement of key milestones in restructuring plan;
- ✓ Board advisor and monitoring of milestones under the restructuring plan

[Discover how Olvera can help your business](#)

# Options for consideration

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## What is Safe Harbour (SH)?

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- Safe Harbour should be viewed as a risk mitigation strategy, offering an additional level of support for directors during periods of rapid and significant change and for additional levels of protection for issues which may fall outside the scope of D&O policies.
- In our experience, Safe Harbour is suited for businesses that have one or more of the following concerns:
  - Cash flow shortages;
  - Breach of debt covenants;
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  - Raising further capital or accessing finance; and
  - Considerable short term debt maturities.
- Safe Harbour is focused on achieving a better outcome for creditors, shareholders and other stakeholders than otherwise would be achieved if the company was forced to immediately wind up.
- Directors can rely on the Safe Harbour process to absolve any personal liability if:
  - Employee entitlements (including superannuation) are paid up to date;
  - The company has maintained and lodged all notices and reporting obligations under tax law.

# Staged Approach and Timetable

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The table below sets out the programme time frames and stages for the completion of an orderly safe harbour programme.

Stage 1	<h2>Solvency Concern</h2> <p>Directors have a suspicion that the company is insolvent or may become insolvent in the future i.e. as a result of the failure of a sale or refinance.</p>
Stage 2	<h2>Eligibility</h2> <p>Directors can rely on the Safe Harbour process to absolve any personal liability if:</p> <ul style="list-style-type: none"><li>• employee entitlements (including superannuation) are paid up to date;</li><li>• the company has maintained and lodged all notices and reporting obligations under tax law.</li></ul>
Stage 3	<h2>Restructuring Plan</h2> <p>The appointment is usually made in conjunction with legal counsel.</p> <p>The directors or legal advisors appoint a qualified professional to prepare a restructuring plan which demonstrates that the course of action proposed by the directors provides a better outcome for the company.</p> <p>The debts incurred after the plan commences were incurred either directly or indirectly as a result of the course of action adopted.</p>
Stage 4	<h2>Monitoring</h2> <p>The directors and their advisors continue to monitor the plan on a regular basis. The plan is a live document updated and amended as circumstances changed. The Board minutes should reflect the on-going discussion of the restructuring plan.</p>
Stage 5	<h2>Completion</h2> <p>Once the directors have determined that the plan is completed and the goals have been achieved then the safe harbour programme is terminated.</p> <p>If the directors and their advisors consider that the plan is no-longer achievable then the directors resolve to place the company into voluntary administration, or in the event of a dissenting director may resign.</p>

# Benefits of the Safe Harbour Regime

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## Risk Mitigation

Engagement of Safe Harbour advisors affords a level of comfort to directors for personal liability during a restructure.



## Compliance with directors' duties



## Professional & qualified support



## Confidential

No ASX disclosure required.  
Protects reputation and enterprise value.  
Demonstrates a proactive responsible board.



## Supports turnaround & viability

Supports long term organisational viability and value retention.



## Control

The board remains in control of the process with the support of experienced professionals.



# Engagement Experience Where it Matters

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Olvera's lead advisers have relevant knowledge and experience across both industry and region. We have selected a sample of our engagements which demonstrates our understanding of Safe Harbour.



Advisor to Tom Hedley on the financial viability of its national portfolio of hotel, property and construction businesses including its controlling interest in National Leisure and Gaming Limited (later Redcape Limited)

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Advisors to the Board and Senior Management on the restructure of the business including financial viability and working capital management of its operating centres prior to insolvency and advising in the acquisition by Goodstart Early Learning

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Liquidator of the Octaviar Group of Companies which operated the Stella Travel and Tourism Group, Peppers Resorts, Mirage and Bale brands and various other property and hospitality assets.

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Advisors to the Board and Management on the financial impacts of the insolvency of one of its key financial partners Greensill Capital and the contamination effects across its portfolio of Australian steel manufacturing and mining assets.

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Advisor on financial viability of counter party risk in Landcom's land disposal and divestment programme under the NSW Government Panel Scheme.

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