



([//www.companiesoffice.govt.nz](http://www.companiesoffice.govt.nz))

Companies Office, 2020a



(<https://companies-register.companiesoffice.govt.nz/>)

'Safe harbour' for company directors

New legislation introduces a temporary 'safe harbour' from personal liability for directors of companies facing significant liquidity problems owing to COVID-19.

You may need to seek independent advice

Please be aware that the information on these pages is a summary only. If you are unsure about any aspect of the Government's COVID-19 relief measures, and how they apply to your business, please refer to the legislation and, if necessary, seek legal advice.

COVID-19 Response (Further Management Measures) Legislation Act 2020

(<http://www.legislation.govt.nz/>)

The introduction of a 'safe harbour' from sections 135 and 136 of the Companies Act 1993 will provide relief to company directors facing insolvency as a result of COVID-19.

The 'safe harbour' provisions – which have been backdated to April 3, when the proposals were first announced – aim to ease the pressure on directors who may otherwise feel the need to wind up their business, perhaps prematurely, owing to the current climate.

 The safe harbour does not apply to companies incorporated on or after 3 April 2020.

The terms of the 'safe harbour' provisions are as follows.

Directors' decisions to keep on trading, as well as decisions to take on new obligations, over the coming 6 months will not result in a breach of duties if:

1. in the good faith opinion of the directors, the company is facing or is likely to face significant liquidity problems in the next 6 months as a result of the impact of the COVID-19 pandemic on them or their creditors
2. the company was able to pay its debts as they fell due on 31 December 2019 (or the company was incorporated between 1 Jan and 3 April).
3. the directors consider in good faith that it is more likely than not that the company will be able to pay its debts as they fall due within 18 months (for example, because trading conditions are likely to improve or they are likely to be able to reach an accommodation with their creditors).

The safe harbour provisions are not designed to support an entity that has no realistic prospect of continuing to trade by deferring a decision about liquidation to the detriment of its creditors.

Directors must be aware that these temporary safeguards do not release them from their other obligations and duties under the Companies Act 1993. These include acting in the best interests of the company, and their duty of good faith.

Directors can still be held accountable for a serious breach of these duties, and for dishonestly incurring debts.

Questions and answers

When will the safe harbour provisions be available?

The safe harbour provisions will apply retrospectively from 3 April 2020, the date the proposed legislation was announced.

They will expire on 30 September 2020. However, this time can be extended until 31 March 2021 by Order in Council.

The Bill also provides for that an Order in Council can provide a new safe harbour period that is no more than 6 months and expires no later than 30 September 2021, to manage the risk that New Zealand might exit and re-enter different COVID-19 related restrictions.

What happens at the end of the safe harbour period, and what if a company is still having liquidity problems?

If the safe harbour provisions apply, this will be for an initial period of 6 months, with the potential to extend this by regulation. It's important that before taking the safe harbour option, company directors consider whether it's more likely than not that the company will be able to

pay its due debts on and after 30 September 2021, either as a result of trading conditions improving or being able to reach an agreement with their creditors.

What safeguards are there to ensure directors won't take advantage of the situation?

Directors will only be able to take advantage of the safe harbour if they are facing significant liquidity problems because of COVID-19.

The existing range of offences under the Companies Act, as well as directors' broader duties, will continue to apply.

Related information

- [COVID-19 Response \(Further Management Measures\) Legislation Bill](http://www.legislation.govt.nz/bill/government/2020/0244/latest/LMS339370.html) [↗](#)
(<http://www.legislation.govt.nz/bill/government/2020/0244/latest/LMS339370.html>)
- [News item — Bill introduced to Parliament, published 7 May 2020](https://www.companiesoffice.govt.nz/news-and-notice/law-changes-to-help-businesses-through-covid19) [↗](#)
(<https://www.companiesoffice.govt.nz/news-and-notice/law-changes-to-help-businesses-through-covid19>)
- [News item — Initial announcement on 3 April 2020](https://www.companiesoffice.govt.nz/news-and-notice/insolvency-relief-for-businesses-impacted-by-covid-19/) [↗](#)
(<https://www.companiesoffice.govt.nz/news-and-notice/insolvency-relief-for-businesses-impacted-by-covid-19/>)

Published 7 May 2020, last updated 16 May 2020

© 2020 NEW ZEALAND COMPANIES OFFICE

<https://companies-register.companiesoffice.govt.nz/help-centre/company-directors/safe-harbour-for-company-directors/>

