

Relief for financially distressed individuals and businesses

Company solvency safety net

Date	25 March – 24 September 2020
Applies to	Companies

Eligibility

A temporary six month safety net has been put in place to protect companies from being pushed into insolvency as a result of the pandemic by debts incurred in the **ordinary course of running the business** (i.e., debts that you normally pay such as employee wages, rent, etc).

To utilise these measures, company directors will need to develop, document and implement a plan that will lead to a better outcome than administration or winding up, and maintain copies of the financial and management information that underpinned their decision making.

How is the support provided?

The measures protect companies in temporary financial distress as a result of the pandemic by lessening the threat of actions that could push them into insolvency and force the winding up of the business during a period of illiquidity.

The amendments to the *Corporations Act* regulations provide:

- A temporary 6 month increase to the threshold at which creditors can issue a statutory demand on a company from \$2,000 to \$20,000.
- An increase to the time a company has to respond to statutory demands from 21 days to 6 months.

Debs incurred will need to be paid. These measures delay proceedings by creditors to allow the business time to return to normal trading conditions. They do not extinguish debt.

The measures also don't prevent a creditor from suing a company to recover debt, just the ease with which they can pursue statutory demands.

Temporary relief for directors for trading while insolvent

Date	25 March – 24 September 2020
Applies to	Company directors

Eligibility

A temporary six month safe harbour from the directors' duty to prevent insolvent trading has been put in place. The safe harbour only applies to a debt that is incurred in the ordinary course of business.

The expectation is that many companies will be temporarily insolvent as a result of the pandemic. The safe harbour enables directors to trade through the pandemic if there is an expectation of the company being viable within six months.

A holding companies can also rely on the safe harbour for its subsidiaries if it takes reasonable steps to ensure the temporary safe harbour applies to each of the directors of the subsidiary, and to the debt.

How is the support provided?

Directors have a duty under the *Corporations Act* to ensure that the company is not trading while insolvent. A company is insolvent if it cannot pay its debts as and when they fall due.

Directors can rely on the new safe harbour if the debt is incurred:

- in the ordinary course of the company's business,
- between 25 March and 24 September 2020, and
- before the appointment of an administrator or liquidator during the temporary safe harbour.

Outside of the safe harbour, a director is personally liable for debts incurred by a company that trades while insolvent, in addition to being exposed to civil and criminally liable for losses.

This measure does not remove a director's responsibility to the company. ASIC's guide outlining directors duties to prevent insolvent trading states that directors must:

- Keep themselves informed about the company's financial position and affairs,
- Regularly assess the company's solvency and investigate financial difficulties immediately,
- Obtain appropriate professional advice to help address the company's financial difficulties where necessary, and
- Consider and act in a timely manner on the advice.

More:

ASIC: [Insolvency guide for directors](#)

Australian Institute of Company Directors: [Insolvent trading](#)

Bankruptcy safety net

Date	25 March – 24 September 2020
Applies to	Individuals

Eligibility

A temporary six month safety net has been put in place to protect individuals against bankruptcy proceedings between 25 March and 24 September 2020.

This measure does not impact on bankruptcy proceedings instigated prior to or after the temporary measures.

How is the support provided?

A series of temporary measures have been enacted to protect individuals against bankruptcy for six months. This impacts on the amount of debt that can be incurred before bankruptcy proceedings are initiated and the amount of time allowed to respond to bankruptcy proceedings:

- Threshold for the minimum amount of debt required for a creditor to initiate bankruptcy proceedings against a debtor increased from \$5,000 to \$20,000.
- The time a debtor has to respond to a bankruptcy notice increased from 21 days to six months.
- Where someone declares their intention to enter voluntary bankruptcy, the period of protection from unsecured creditors extended from 21 days to 6 months.