



COVID19 Companies Act Changes

On Friday, 3 April 2020, the Government announced changes to the Companies Act 1993 in response to the likely economic impact of COVID-19 and the current lockdown. The main amendments to the Act are the provision of **Safe Harbour** comfort to directors of companies during the next six months and a **Business Debt Hibernation Scheme** as an option to help businesses survive the deterioration in the business environment. Full details may be obtained from the Companies Office [here](#)

Business Debt Hibernation

Business Debt hibernation will be an additional insolvency mechanism and not a variation of procedures currently available under the law, namely Voluntary Administration (VA), creditor compromises and voluntary liquidation.

The scheme will allow businesses affected by COVID-19 to place existing debts into hibernation until they are able to resume normal trading activities. It is aimed at companies and a variety of other business forms but excludes sole-traders. It does not apply to registered banks, licensed insurers and non-banking deposit takers.

The intention behind the amendment is to encourage directors to communicate with creditors with a view to putting together a simple proposal for putting the business into hibernation until it is able to pay its creditors.

It aims to allow for the directors to retain control of the company, rather than passing control to an insolvency practitioner as the VA and compromise measures require.

Key features of the proposal are that:

- Directors will have to meet a threshold (yet to be defined) before being able to access the Business Debt Hibernation regime and putting a proposal to their creditors
- Creditors will have a month from the date of notification of the proposal to vote on it, with the proposal going ahead if 50% (by number and value) agree
- There will be a one month moratorium on the enforcement of debts from the date the proposal is notified, and a further 6 month moratorium if the proposal is passed.

Business Debt Hibernation is intended to be binding on all creditors other than the entity's employees and would be subject to any conditions agreed with creditors.

If the creditors reject the proposal, the directors will still have the range of existing options available including trading on; entering VA, making a compromise proposal or appointing a liquidator.

While a business is in Business Debt Hibernation it would be able to continue to trade, subject to any restrictions agreed with creditors.

To encourage businesses to continue to transact with a company that has entered Business Debt Hibernation, it is proposed that any further payments, or dispositions of property, made by the company would be exempt from the voidable transactions regime (excluding related parties).

Anyone continuing to trade with the company need not be concerned about a liquidator seeking to unwind transactions if the company is later placed into liquidation. This exemption would be subject to a condition that the transaction was entered into in good faith by both parties, on arm's length terms and without the intent to deprive the existing creditors of the company.

Safe Harbour Provisions

For the next six months directors who continue to trade their companies, which includes taking on new obligations, will have a "safe harbour" from potential claims under sections 135 ("Reckless Trading") and 136 ("Duty in Relation to Obligations") of the Act provided:

- in their opinion, acting in good faith, the company is likely to face significant liquidity problems in the next six months as a result of Covid-19
- the company was able to pay its debts as they fell due at 31 December 2019 and
- in their opinion, acting in good faith, it is more likely than not that the company will be able to pay its debts as they fall due within 18 months. This may be as a result of improved trading conditions or their genuine belief that they will be able to reach an accommodation with their creditors.

Under **section 135** a company director is potentially exposed to personal liability for allowing a company to trade in a way which could create a substantial risk of serious loss to creditors. **Section 136** provides that a director risks potential exposure if they agree to the company incurring an obligation which they do not reasonably believe that the company will be able to perform.

The thrust of the amendment is to encourage businesses to continue to trade through the COVID-19 measures rather than ceasing operations. While we consider this amendment to be somewhat academic, it is intended to give directors of companies challenged by the lockdown measures some assurance that they are at less risk by continuing to trade through those challenges than they would normally be.

Other Changes

The other proposed amendments are administrative and cover:

- Temporary relief from non-compliance with entity constitutions
- Use of electronic signatures and electronic communications
- Relaxation of deadlines in corporate governance matters such as the convening of AGM's and filings with the Companies Office
- Reduction of the period of vulnerability for voidable transactions to 6 months.