

COVID-19, 'Safe Harbours' and what this means for Governance Boards of Sporting Organisations

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Many of you will have seen or heard of Minister Grant Robertson's recent announcement around what is being loosely called a 'safe harbour' for company directors during the COVID-19 lockdown. In summary, there is to be a temporary law change brought about as a response to the extremely adverse effects of the COVID-19 lockdown on the financial viability of many New Zealand businesses and on our many sporting bodies as well.

WHAT WILL 'SAFE HARBOUR' OFFER?

The Government has been quick to outline a legislative scheme which at a very high level will provide breathing space for governance boards of sporting bodies, temporarily relieved from the uncertain and unsettling threats of trading while insolvent, while they try and work out if and how they will be able to come through the COVID-19 lockdown in satisfactory financial health.

The proposed regime continues to develop, with more information about it becoming known on a daily basis. The legislation required to effect these changes is still in the early stages of drafting. While the drafting is yet to be seen, and the devil will be in the detail, we believe we have heard and seen sufficient now both from Minister Grant Robertson and from the publicly available Cabinet paper to provide comfort that the publicly announced scheme will proceed.

WHAT WILL THE SCHEME LOOK LIKE?

Broadly, the scheme will have two parts:

1. The first is effectively a short-term recalibration, a loosening if you like of the otherwise potentially harsh operation of the insolvent trading laws for 'companies'. While early announcements and the Cabinet paper appear to address the insolvent trading laws for 'companies' only, indications are that we should expect the changes to extend to a recalibration of the equivalent legal framework as it currently applies for governance boards of sporting organisations as well.
2. The second is a business standstill regime. This is designed to protect otherwise good businesses and sporting organisations, good that is but for COVID-19 lockdown, by providing a statutory moratorium on enforcement by their creditors while those businesses and sporting organisations work together constructively to formulate a short to medium term trading plan (a business standstill agreement, or 'BSA') which suits both sides to the maximum extent it can. Once the BSA has been prepared and formally approved by creditors, that will provide the basis upon which you will be able to continue to operate (access utilities like power and gas for your premises, pay rent, operate facilities such as social rooms, purchase or continue to lease equipment and where relevant, pay staff).

WHEN WILL THE SCHEME BE INTRODUCED?

Unfortunately not likely to be before 28 April 2020 when Parliament returns to the House. But the publicly released Cabinet paper indicates that the operation of the scheme is to be backdated to Friday 3 April 2020, being the date Minister Grant Robertson announced the scheme to the New Zealand public.

NEXT STEPS

Immediate planning. Get yourself prepared now as if the scheme was to come in to force immediately so you are ready for when it does. Before you can access the benefits of the scheme outlined above, your organisation must answer the following questions in the affirmative:

1. In good faith and as a governance board, have you, your creditors or your debtors been affected by the COVID-19 lockdown such that your organisation faces or is likely to face significant liquidity problems in the next 6 months?
2. Was your organisation able to pay its debts as they fell due as at 31 December 2019?
3. In good faith and as a governance board, do you consider that it is more likely than not that your organisation will be able to pay its debts as they fall due within 18 months (for example, because trading conditions are likely to improve or you are likely to be able to reach an accommodation with your creditors)?

If you answer yes to all of 1 - 3 above, then you should get prepared to move to the next stage being the preparation of the BSA. The BSA may yet be a standard form document able to be downloaded from a MBIE's website, but that is yet to be decided. MBIE has signalled that the scheme, when launched, will be accompanied by comprehensive guidance material.

Depending on the complexity of your organisation and the skill set and time availability of your board members, you may or may not need to engage an expert to assist you with the exercise of making your way through the scheme. As business impairment happens all the time and for a whole range of reasons, there are highly skilled financial and legal experts who are ready to assist now. The vast majority of those financial and legal experts, and they are located right across the country, are members of the industry body RITANZ - you may wish to tap in to their resources [here](#).

If you would like to discuss these issues and how your organisation can work through them, please contact Buddle Findlay.



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