

# Further details provided on ‘safe harbour’ and business debt hibernation schemes

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At the beginning of last month, the government announced that it would introduce a number of changes to the *Companies Act 1993* (see our articles on the announcement [here](#) and [here](#)). These changes included a ‘safe harbour’ scheme for directors in respect of their duties under sections 135 and 136 of the Act and a business debt hibernation scheme.

Now that Parliament is sitting again, the government has introduced a Bill to bring these changes into effect and we expect it to come into force in the next couple of weeks. In this article, we set out a few key details in the Bill.

## The ‘safe harbour’ scheme

When announcing the changes, the government flagged the key conditions around the proposed ‘safe harbour’ provisions and these conditions appear in the Bill. While the provisions provide directors with shelter from particular duties until 30 September 2020 under certain circumstances, they do not provide directors with a free pass. Directors will need to carefully consider whether the company is likely to get back to a position where it can pay its debts as they fall due by 30 September 2021. The Bill also gives the government the right to extend the ‘safe harbour’ periods if required.

## The business debt hibernation scheme (BDH)

The government’s previous announcement in respect of the business debt hibernation scheme left us with a number of questions that can now be answered (subject to any changes as the Bill goes through Parliament). In particular, we can now confirm:

- That there will be entry criteria for BDH, and directors voting in favour of the scheme will need to make a statutory declaration;
- The protection for the debtor company will last for an initial period of one month after it has delivered a notice to the Registrar stating that its board has agreed to enter into BDH;
- The creditors of the company will, during this initial month, be able to vote on whether to allow the protection to continue for a further six months – the approval of a majority of creditors in number and value is needed for this extension;
- Related parties’ votes will be disregarded unless a court orders otherwise;
- Secured creditors with a charge over the whole, or substantially the whole of the debtor’s property (like a GSA granted to a bank) will not be able to take enforcement action during the initial one month period, but will be able to

enforce their rights (including by appointing receivers) during the extended six month hibernation period;

- The hibernation period will not affect money owed to employees;
- Debts cannot be cancelled under BDH;
- While a company is in BDH, certain voidable transaction provisions do not apply; and
- Creditors will not be able to enforce guarantees (e.g. a personal guarantee granted by a director) in respect of the company's debts during the hibernation period.

## Comment

The details of the Bill introduced yesterday do not come as a surprise, but will provide greater certainty for businesses and directors about the relief available. The Bill highlights the limited purposes and scope of BDH, which will not apply to entities established on or after 25 March 2020 and will not be available after 24 December 2020 (unless the scheme is extended). If a company's business requires serious restructuring, a creditors' compromise or VA will be necessary after BDH. Helpfully, it is now much clearer how the business debt hibernation scheme will work in practice and we are encouraged that related party votes will be disregarded when creditors vote on a scheme.

Alongside other measures announced over the last few weeks such as the wage subsidy, small business loan scheme and support for tenants and landlords struggling to pay rent or mortgage payments (albeit only in the form of extended notice periods), the changes will hopefully provide some breathing room while we await the 'new normal'. However, we recommend that any directors considering whether the 'safe harbour' regime applies to them or companies considering the business debt hibernation scheme seek financial and legal advice before doing so.

If you are worried as to how these schemes will apply to you or your business, or wish to discuss your options more generally, please get in touch with the authors of this article.

## Your Key Contacts



**James McMillan**

Partner, Auckland

D +64 9 375 1154

M +64 27 432 2570

[james.mcmillan.nz@dentons.com](mailto:james.mcmillan.nz@dentons.com)



**David Shillson**

Partner, Wellington

D +64 4 498 0890

M +64 21 995 176

[david.shillson@dentons.com](mailto:david.shillson@dentons.com)



**Patrick Glennie**

Senior Associate, Auckland

D +64 93 75 1116

[patrick.glennie@dentons.com](mailto:patrick.glennie@dentons.com)