



ASIC
Australian Securities &
Investments Commission

Temporary restructuring relief

The information in these FAQs is a summary giving only basic information about temporary restructuring relief. It does not cover the whole of the relevant law regarding this topic, and it is not a substitute for professional advice.

It is important directors seek advice from a trusted adviser such as a suitably qualified financial adviser, accountant, registered liquidator or lawyer if they are considering whether eligibility for temporary restructuring relief.

Directors should be very wary of unsolicited approaches from people who offer to help restructure a company and enable the business to continue without having to pay any of the company's debts.

If the advice you get sounds too good to be true, you should get a second opinion from another adviser.

If you need help to understand your legal obligations and personal liability you should consider engaging a suitably qualified adviser.

Before you engage an adviser ask the following questions:

- is the adviser a member of a professional body and are they subject to a code of conduct?
- is the adviser regulated by ASIC, the Australian Taxation Office or another government agency?
- is the adviser listed on ASIC's banned and disqualified persons register, or have they entered into an enforceable undertaking (you can check this on ASIC's website where all enforceable undertakings with ASIC are kept)?
- if you receive bad advice or suspect misconduct, can you give a report or complaint to a professional body or a regulator?
- does the adviser have the right qualifications to assist you? You may need to consider engaging separate advisers for advice about the affairs of a company, and advice about your personal financial affairs.

Note: italicised terms in this FAQ are the subject of further information in this FAQ.

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1. Overview of the temporary restructuring relief

What is the temporary restructuring relief?

The temporary restructuring relief extends, to 31 March 2021, certain measures implemented by the government to assist companies continue to operate during the COVID- 19 pandemic.

The measures that have been extended include, for companies eligible for temporary restructuring relief:

- a. increasing the amount that must be owed to a creditor from \$2,000 to \$20,000 before the creditor can issue a statutory demand for payment on the company;
- b. increasing the time a company has to respond to a statutory demand from 21 days to 6 months; and
- c. providing a director with a temporary safe harbour from personal liability for insolvent trading for debts incurred in the ordinary course of business before any appointment of an administrator or liquidator of the company during the period of safe harbour protection.

When is the temporary restructuring relief available?

Directors must act before 31 March 2021 if they wish to access the temporary restructuring relief. Further information on accessing the temporary restructuring relief is provided in these FAQs.

How does my company access temporary restructuring relief?

A company can access temporary restructuring relief if, during the period 1 January 2021 to 31 March 2021, the company directors:

- make the required declaration about the company's eligibility for temporary restructuring relief; and
- publish notice of the making of the declaration on the Published Notices Website.

To ensure the temporary restructuring relief does not cease, directors must also give ASIC a copy of their declaration no later than 5 business days after it is made. Further information on accessing the temporary restructuring relief is provided in these FAQs

When does the period of temporary relief begin?

The period of relief only begins when the directors have made a declaration about the company's eligibility for temporary restructuring relief and published notice of making the declaration on the Published Notices Website.

So, if the directors do not make the declaration and publish the notice until (say) 21 January 2021, the company is not be eligible for temporary restructuring relief for the period 1 January 2021 to 20 January 2021. This means the safe harbour from personal liability for directors incurring debts in the ordinary course of business is not available for the directors between 1 January 2021 and 20 January 2021, and the increased thresholds and time periods for statutory demands does not apply during that period.

To ensure the temporary restructuring relief does not cease, directors must also give ASIC a copy of their declaration no later than 5 business days after it is made.

How long does the temporary restructuring relief last?

The temporary restructuring relief lasts for an initial period of three months after a declaration is made and notice of the declaration is first published on the Published Notices Website.

The initial temporary restructuring relief period can be extended for a further one month in some circumstances. Further information on extending the initial relief period is provided in these FAQs.

If not extended, the declaration will expire after the initial three-month period.

Can the period of temporary restructuring relief be extended?

Yes.

A company may extend the period of temporary relief if, before the initial three-month relief period expires, they:

- a. continue to have reasonable grounds to believe:
 - i. the company is insolvent, or likely to become insolvent;
 - ii. the company has resolved that a restructuring practitioner for the company should be appointed;
 - iii. there is no external administrator appointed to the company (an external administrator includes a liquidator or provisional liquidator, administrator or administrator of a deed of company arrangement, or either another restructuring practitioner or restructuring practitioner for a restructuring plan made the

company); and

- b. have taken all reasonable steps to appoint a restructuring practitioner but have been unable to do so; and
- c. make a further declaration about the company's eligibility for temporary restructuring relief; and
- d. publish a notice on the [Published Notices Website](#) that the company has made a further declaration no later than two weeks **before** the initial three-month relief period expires; and
- e. give a copy of the further declaration with ASIC no later than 5 business days after publishing the notice on the Published Notices Website.

Does it cost anything to access the temporary restructuring relief?

No. There are no application fees or other fees to access the temporary restructuring relief.

The company may incur costs in seeking advice from a trusted adviser such as a financial adviser, accountant, registered liquidator or lawyer.

2. Eligibility for temporary restructuring relief

Is my company eligible for temporary restructuring relief?

A company is eligible for temporary restructuring relief if:

- a. the directors make a declaration (and publish notice of the declaration on the Published Notices Website) that there are reasonable grounds for the directors to believe that:
 - i. the company is insolvent, or likely to become insolvent before the declaration expires; and
 - ii. the *eligibility criteria for restructuring* would be met if a restructuring practitioner were appointed on the day the declaration is published on the Published Notices Website, or on any day after that on which the declaration has not expired; and
 - iii. the board has *resolved that a restructuring practitioner for the company should be appointed*; and
 - iv. there is no external administrator appointed to the company (i.e there is no current appointment of a liquidator or provisional liquidator, administrator or administrator of a deed of company arrangement, or either another restructuring practitioner or restructuring practitioner for a restructuring plan made the company); and
- b. the declaration described at a) above has not expired; and
- c. the company has not otherwise ceased to be eligible for temporary restructuring relief; and
- d. the company has not previously been eligible for temporary restructuring relief that has ceased.

The directors must make a declaration about meeting the *eligibility criteria for restructuring* – what is the eligibility criteria?

The eligibility criteria for restructuring is, on the day on which a restructuring practitioner for the company is appointed:

- a. the total liabilities of the company do not exceed \$1 million, with liabilities calculated based on any liability to pay an *admissible debt or claim*;
- b. no person who is a director of the company, or who has been a director the company within the 12 months before the appointment of the restructuring practitioner, has been a director of another company that has been under restructuring or subject to the simplified liquidation process within the period of the preceding 7 years. This criterion does not apply to:
 - i. a related body corporate (Company A) of the company (Company B), if Company A is under restructuring and a restructuring practitioner was appointed no more than 20 business days before the day on which the eligibility criteria for Company B is to be met; or
 - ii. a related body corporate (Company A) of the company (Company B) if Company A began to follow the simplified liquidation process no more than 20 business days before the day on which the eligibility criteria for Company B is to be met.
- c. the company has not been under restructuring or subject of a simplified liquidation process within the preceding 7 years.

When can a company appoint a restructuring practitioner?

A company may appoint a restructuring practitioner for the company if:

- a. the eligibility criteria for restricting are met in relation to the company on the day the appointment is made; and
- b. the board has resolved to the effect that, in its opinion, the company is insolvent or is likely to become insolvent at some future time, and that a restructuring practitioner should be appointed.

The company must appoint a restructuring practitioner in writing.

What is an *admissible debt or claim*?

An admissible debt or claim in relation to a company under restructuring is a debt or claim that would be admissible to proof against the company under s 553(1) of the *Corporations Act 2001* if:

- a. the company were wound up;
- b. the amount of the debt or claim is determined at the date a restructuring practitioner is appointed by the company;

but does not include:

- c. entitlements of an employee of the company (including superannuation contributions payable by the company) at the date a restructuring practitioner is appointed by the company ; or
- d. a debt or claim that is contingent on circumstances occurring after a restructuring practitioner is appointed by the company.

How do the directors make a declaration about the company's eligibility for temporary restructuring relief?

From 1 January 2021, go to the ASIC website (www.asic.gov.au) and search for **EX07 - Temporary restructuring relief documents**. In the Related Information section of that page you will find a Declaration of eligibility for temporary relief template. This is not an ASIC approved form but directors can consider whether to use it to make the declaration

Directors can then complete, sign and date the declaration form.

How do I publish notice of the declaration on the Published Notices Website?

To publish a notice on the Published notices website the directors will need to go to the website (www.publishednotices.asic.gov.au) to create a user account.

Once you are registered and have a user account you can sign into the website and create and publish the notice. Use [this guide](#) to help you create and publish a notice.

There is no fee for publishing this notice.

How do I give a copy of the declaration to ASIC?

Directors can give a copy of the declaration to ASIC either:

1. through the Company Portal, accessible from ASIC's website (www.asic.gov.au); or
2. it can be given by the company's registered agent through the Registered Agents Portal.

You must be registered to use the Company Portal. There is information on the ASIC website on registering and using the Company Portal - <https://asic.gov.au/online-services/company-officeholders/>

To give ASIC a copy of the declaration through the Company Portal:

- a. Access the Company Portal and log in using the company ACN, user ID and password
- b. Select "Start new form"
- c. From the screen select – "EX07 – Temporary restructuring relief documents"
- d. Select the type of declaration being given to ASIC – for initial relief select "Copy of declaration of eligibility for

- temporary restructuring relief (Initial Relief)
- e. Complete the other questions asked
- f. Attach a copy of the declaration
- g. Make the declaration and submit the form

How do the directors make a declaration about the company's eligibility for extended temporary restructuring relief?

Directors must first resolve that the company is eligible for extended temporary restructuring relief.

From 1 January 2021, go to the ASIC website (www.asic.gov.au) and search for EX07 – Temporary restructuring relief documents. In the Related Information section of that page you will find a Declaration of eligibility for temporary relief template. This is not an ASIC approved form, so is not required to be used but directors may use it to make the declaration.

Directors can then complete, sign and date the declaration.

How do the directors give a copy of the declaration extending the temporary restructuring relief to ASIC?

Directors can give the declaration with ASIC either:

1. through the ASIC Regulatory Portal accessible from ASIC's website(www.asic.gov.au); or
2. it can be given by the company's registered agent through the Registered Agents Portal.

You must be registered to use the Company Portal. There is information on the ASIC website on registering and using the Company Portal - <https://asic.gov.au/online-services/company-officeholders/>

To give ASIC a copy of the declaration through the Company Portal:

- a. Access the Company Portal and log in using the company ACN, user ID and password
- b. Select "Start new form"
- c. From the screen select – "EX07 – Temporary restructuring relief documents"
- d. Select the type of declaration being given to ASIC – for extended relief select "Copy of declaration of eligibility for temporary restructuring relief (Extended Relief)"
- e. Complete the other questions asked
- f. Attach a copy of the declaration
- g. Make the declaration and submit the form

How do I publish notice of the declaration extending the temporary restructuring relief on the Published Notices Website?

Further information on how to do this will be provided in an update to this FAQ.

There is no fee for publishing this notice.

3. How does temporary restructuring relief end?

How does temporary restructuring relief end?

A company ceases to be eligible for temporary restructuring relief if any of the following occurs:

- a. the initial declaration under which the company was eligible for temporary restructuring relief expires;
- b. the directors fail to give a copy of their declaration about the company's eligibility for temporary restructuring relief to ASIC within 5 business days after making the declaration;
- c. a restructuring practitioner, voluntary administrator, liquidator or provisional liquidator is appointed to the company
- d. the directors make a declaration that the company is not eligible or should not be treated as eligible for temporary restructuring relief
- e. the court orders that the company is not to be treated as eligible for temporary restructuring relief. A creditor or ASIC can apply to the court for this order or the court can make the order on its own initiative.

4. What a director must do if they realise the company is no longer eligible for temporary restructuring relief

What must I do if I realise the company is no longer eligible for temporary restructuring relief?

If the directors have made a declaration that the company is eligible for temporary restructuring relief, and the declaration has not expired, and one or more of the company directors become aware that there are **not** reasonable grounds to believe:

- a. the company is insolvent or likely to become insolvent; and / or
- b. the *eligibility criteria for restructuring* would be met in relation to the company if a restructuring practitioner were appointed

the directors must, within 5 business days after one or more of the directors become aware of the matters at a) and b) above :

- c. make a declaration that the company is not eligible for temporary restructuring relief;
- d. publish notice of the declaration on the Published Notices Website; and
- e. give a copy of the declaration to ASIC .

A failure to take the steps set out at c) – e) above is a contravention of a civil penalty provision of the *Corporations Act 2001*.

The directors may also make a declaration that the company is not to be treated as eligible for temporary restructuring relief for any other reason. If they do, the directors must:

- a. publish notice of the declaration on the Published Notices Website; and
- b. give ASIC a copy of the declaration within 5 business days of making the declaration.

How do the directors make a declaration that the company is not eligible, or not to be treated as eligible temporary restructuring relief?

Both types of declarations must be in writing.

Early January 2021, ASIC will provide a template document that can be used for this purpose. This will not be an ASIC approved form, so is not required to be used, but directors may use it to make the declaration (when available).

Directors can then complete, sign and date the declaration.

How do directors give a copy of the declaration that the company is not eligible or not to be treated as eligible for temporary restructuring relief to ASIC?

Directors can give the declaration to ASIC either:

- a. through the ASIC Regulatory Portal accessible from ASIC's website (www.asic.gov.au); or
- b. it can be given by the company's registered agent through the Registered Agents Portal.

Further information on how to do this will be provided in early January 2021.

How do directors publish notice of the declaration that the company is not to be treated as eligible for temporary restructuring relief on the Published Notices Website?

To publish a notice on the Published Notices Website the directors will need to go to the website (www.publishednotices.asic.gov.au) and create a user account.

Further information on how to do this will be provided in an update to this FAQ.

There is no fee for publishing this notice.