

Introduction

Welcome to this special edition newsletter which focuses on advice for businesses affected by the coronavirus (COVID-19). Our aim is to provide useful tips and information for business owners and directors in this unprecedented time.

I will start by offering up one crucial piece of advice - 'keep calm'. It's the number one tip in my article 'Dealing with distress: Top 10 tips for dealing with COVID-19 and financial distress' - and for good reason. There is an overload of information to take in right now and couple this with anxiety, it's more important than ever to stop, take a moment and think pragmatically. Our tips will help you to clearly identify the facts about your business, provide focus for a plan of action and, we hope, alleviate some of the stress and uncertainty you might be feeling right now.

Over the next weeks and months many businesses will come under strain. There have already been extraordinary measures put in place by the Treasury to support businesses and we think it is likely there will be more to come. Directors will, no doubt, be conscious of their duties and responsibilities under the Insolvency Act and Companies Act however, we would urge you to read 'Directors' Duties and COVID-19' and to seek professional advice prior to making any snap decisions. I would also like to reiterate what Dominic Dumville advises - document, document, document. It's vital that you evidence your decision making - please read the article to find out why.

Should your business be in a position where you need to confront the fact that it is indeed in financial distress,

fear not. There are many options for consideration and Chris Laughton looks at these in his article 'Options for Directors: COVID-19'. As is always the case, where viable, we will endeavour to support businesses seeking to continue to trade. That may mean temporary or permanent restructuring measures are needed to get through this difficult time. When this is not possible, we will still work to generate the most positive outcome for the business, preserving jobs and value.

Hopefully the articles will allow business owners and directors, as well as advisors, to understand where they stand and to start to formulate a strategy for the coming weeks and months. However, the Mercer & Hole Corporate Restructuring partners are available to advise when required and, with years of experience in advising financially stressed businesses, are well placed to identify further options and actions which could assist during these difficult times. Please feel free to speak to [me](#) or one of my fellow Corporate Restructuring Partners, [Steve Smith](#), [Chris Laughton](#), [Peter Godfrey-Evans](#) or [Dominic Dumville](#) if you require advice specific to your business.

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Dealing with distress: Top 10 tips for dealing with COVID-19 and financial distress

- 1. Keep calm** – In the words of Douglas Adams DON'T PANIC, these are uncertain times but at some point life will return to normal and people will need the service/product you provide.
- 2. People** – Follow Public Health England recommended precautions to help prevent the spread of disease. For your organisation understand which people perform which critical task and what happens if they are out of the business for a period; share skills, information and training to increase resilience to absences.
- 3. Cash is King** – have you got cash flow forecasts, have these been subject to sceptical revisions in light of Coronavirus? When will the cash run out?
- 4. Manage costs** – what is necessary spending and what is unnecessary spending? Are there current commitments which can be put on hold or adjusted to current requirements?
- 5. Flexibility** – how can your business change to combat threats identified; flexible working, reducing capacity, different product mix etc?
- 6. Document decisions** – why is a payment business critical, why are your actions in the interests of creditors, why are you continuing to trade? Decision making during times of stress can be difficult to analyse retrospectively, so make sure your actions are justifiable based on the information you have at the time.
- 7. Identify key suppliers** – what happens if that supplier goes bust? Identify an alternative supplier(s), are you in a position to make a strategic acquisition?
- 8. Identify key customers** – are they financially vulnerable to the current crisis, what happens if they go bust? How are you managing debt collection, to what extent can you support customers with time to pay to protect your future route to market? Where either suppliers or customers go into an insolvency process seek advice as to your rights, continuation of supply, and potential outcomes from the process, so that you can understand the impact on your business.
- 9. Get advice** – trading in the twilight zone is notoriously tricky but the current climate makes it even more so. Personal liability can occur because of breaches of the Insolvency or Companies Acts, including:
 - Trading while insolvent (Wrongful or fraudulent trading)
 - Transactions at an Undervalue
 - Preference transactions
- 10. [Our Corporate Restructuring and Insolvency team](#)** are specialists in advising on financial crisis. We are happy to have initial conversations with clients about their specific circumstances without initial cost or commitment.

If you require advice on any of the aspects raised in this article, please contact one of our [Corporate Advisory partners](#).

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Options for Directors: COVID-19

As is our continuing guidance during this difficult time the first step is not to make a snap decision. The government has already committed significant resource to assist businesses during this period, most of which will start to come on stream during w/c 23 March and into early April, it is highly likely that there will be more assistance to come.

While many options will remain the same for distressed companies as they would under 'normal' economic conditions, there are a couple of options which become more prevalent in the current circumstances:

1. Restructured trading:

- Finding a way to continue to trade. Directors are likely to be acting in the interests of creditors if they can find a form of trading which helps the company to survive. The government clearly hopes that most businesses which have become distressed as a result of Coronavirus can fall into this category. Finding a way to trade may include:
 - Reduction in costs.
 - Negotiations with landlords.
 - Access to government loans and grants.
 - Change in product/service mix.
- Crucially, continued trading should be based on a previously solid business which will, or currently expects to, return to profitability post crisis.

2. Mothballing:

- If a business can effectively wind down costs to zero or almost zero, in the expectation of ramping activity back up when trading conditions improve, mothballing may be a solution for how to deal with this uncertain period. If there remains the threat of action from creditors, it may be possible to mothball inside the protection of administration.

3. Company Voluntary Arrangement:

- Allows a company to enter into a standstill agreement with creditors, to undertake some meaningful restructuring, and to continue to trade. Importantly the day to day operation of the business is left in the hands of the directors. This could become a crucial mechanism to protect and reset distressed businesses which cannot achieve Option 1.

4. Administration:

- The primary aim of administration is to rescue the company as a going concern. The immediate benefit of administration is protection of the administration moratorium. In administration the company can continue to trade (if economically viable), or the business and assets can be sold to return value to the estate, establish a new viable trading entity, and preserve some employment. Transactions can be completed quickly where circumstances dictate.

Good businesses need to survive and for those that face distress it is clearly hoped that sufficient measures can be put in place to enable them to continue to trade during some form of temporary or permanent restructuring. Commencing an insolvent liquidation remains an option for any business in distress but it is hopefully one which can be avoided where other options can provide more value and the prospect of continuing to trade.

If you require advice on any of the aspects raised in this article, please contact one of our [Corporate Advisory partners](#).

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Directors' Duties and COVID-19

At the time of writing (19 March) Directors retain their duties under the Insolvency Act and Companies Act. However unlike in Germany and Spain where obligations to file for Insolvency protection were far stricter, our insolvency regime is more nuanced when it comes to the obligation to file for insolvency, and snap decisions should not be made at this time.

The next few weeks will see businesses come under enormous strain, it is not going to be easy to keep going BUT the Chancellor confirmed he did not want to see businesses go bust and we agree. He unveiled significant support for business, including the ability to obtain cheap (initially interest free) loans, with the aim of relieving cashflow pressures. Assuming you had a stable business pre-COVID-19, and are facing temporary (albeit unknown) cashflow insolvency, it may well be in creditors' interests to access the loan funding (amongst the other reliefs/grants available) and to take other reasonable steps to see you through the coming weeks and months.

Our [Top 10 Tips](#) remain as a starting point for dealing with the current crisis. Documenting decisions through minutes of board meetings (considering the impact of daily briefings from Number 10), cashflow forecasts supplemented by the govt. backed loan over a reasonable period, and a plan to return to profitability when 'normal' trading returns may well justify the continuation of trade.

Please see [our website](#) for further commentary on the developing situation.

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