After the pandemic: What businesses should be thinking about now to get ready

An unprecedented range of support measures have been made available to UK businesses during the coronavirus pandemic. But as restrictions ease and financial support is withdrawn, many directors will be left to make difficult decisions about the future viability of their business.

Now is the time to start thinking about how the withdrawal of pandemic-related public funding will affect your business. Because the sooner you start to put measures in place, the more options you will have in the future.

Cash flow forecasting

Realistic forecasts should be prepared for best- and worst-case scenarios to predict the business' financial future, taking into account:

- Where and when cash is coming in and going out.
- Any CBILS, BBLS etc. or other additional borrowing and how that will be repaid.
- Any deferred debt accrued e.g., VAT, rent, suppliers.
- The end of any leniency given by existing lenders, landlords or other creditors.
- The end of furlough.
- The impact of COVID on clients/ customers and their ability to pay.

Forecasts should be kept under continued and regular review and updated to reflect any changes

Credit control

Late payments can be debilitating to a business' cash flow and have a direct impact on its viability. A clearly defined credit control procedure based on best practice and past experience is critical. Regular review of sales ledgers will expose payment activity, upcoming and late payments allowing cashflow forecasts to be updated.

It's important to carry out customer due diligence before offering credit and continue to:

- Obtain business information.
- Carry out regular credit checks.
- Follow key events filed on the customer's public record.
- Identify whether credit insurance is available.
- Take deposits and pre-payments where possible.

Act early, be sceptical of excuses for non-payment and always follow through on warnings to demonstrate a persistent and professional credit control strategy. Be tough – stop supplying (particularly if debts are stacking up), charge late payment interest and take legal action.

Finance

Forecasting may reveal a shortfall or show capital expenditure is required to adapt operations because of a change in market conditions. If that is the case, then what are the options for how that funding requirement will be met? This could include:

- A sale of part of the business or certain assets.
- Restructuring the company's existing debt e.g., via a refinance or consolidation.
- Invoice discounting to improve working capital.
- Private equity.
- Director or shareholder loans.
- Pay as You Grow scheme / agree other debt forbearance arrangements.
- A time to pay arrangement with HMRC.

Any decision by the directors to take on more debt should be done in accordance with their duties to the company (and, where appropriate, its creditors).

Employees

Thinking early about the impact of any decisions on your workforce is important. The pandemic has shown that employees are often willing to adapt to change when they understand it's needed to secure the long-term future of the business.

However, sometimes reorganisations and reductions in headcount are inevitable and understanding your obligations as an employer is key to managing the risk. Questions to ask include:

- Are redundancies necessary to save the business?
- Are the same number of employees needed in light of any changes to supply/demand/the way in which the business now needs to be structured?
- How will you determine which employees leave?
- What will redundancies cost and how will those costs be funded?
- Is consultation required? Is there a recognised trade union or will there be employee representatives?
- How will any consultation obligations impact on timings?

Businesses also need to think about the effect this will have on the staff that remain, particularly in terms of how the messaging is managed and making sure that they feel their colleagues have been dealt with fairly.

Directors' duties, disqualification & personal liability

Directors must act in a way that they consider would be most likely to promote the success of the company for the benefit of its members. If the company is insolvent, the directors' duty is to act in the interests of the company's creditors.

In doing so, they must take into consideration: the consequences of their decisions, the interests of employees, the need to support business relationships with suppliers, customers and others, the impact on the community and environment and the standard of business. A breach of these duties is actionable and may result in personal liability for the directors. This could lead to being disqualified from acting as a company director for up to 15 years and being subject to a compensation order.

If the company goes into liquidation or administration, the directors may also find themselves personally liable for:

- **Misfeasance** where a director has misapplied, retained or become accountable for any money or property of the company, been guilty of any misfeasance or breached any other duty owed to the company.
- **Wrongful trading** if they've allowed the company to continue to trade in circumstances where he/she knew or ought to have known that there was no reasonable prospect of avoiding insolvency and did not take all reasonable steps to mitigate the loss to creditors.
- **Fraudulent trading** where the director allowed the company to carry on business with the intent to defraud creditors or for any other fraudulent purpose.

The directors should also be aware of transactions that may be reviewed by an insolvency office holder if the company goes into liquidation or administration and may attract personal liability for the directors.

Whenever there is a threat of insolvency, the directors should seek professional advice as soon as possible.

Insolvency regimes

The two key tests for insolvency:

1. A company cannot meet its payment obligations when they fall due (cash flow test)
2. The company's debts are greater than the value of its assets (balance sheet test)

If directors seek advice from an insolvency professional early enough, it may be possible to preserve the business via the following rescue procedures:

- **Moratorium** - this provides the company with a short breathing space, free from creditor action under the supervision of a licensed insolvency practitioner monitor.

- **Administration** – here the company may be reorganised, or its assets realised (e.g by way of a sale of the business as a going concern) with the benefit of a statutory moratorium and under the control of an administrator who must try to achieve one of the three statutory objectives.

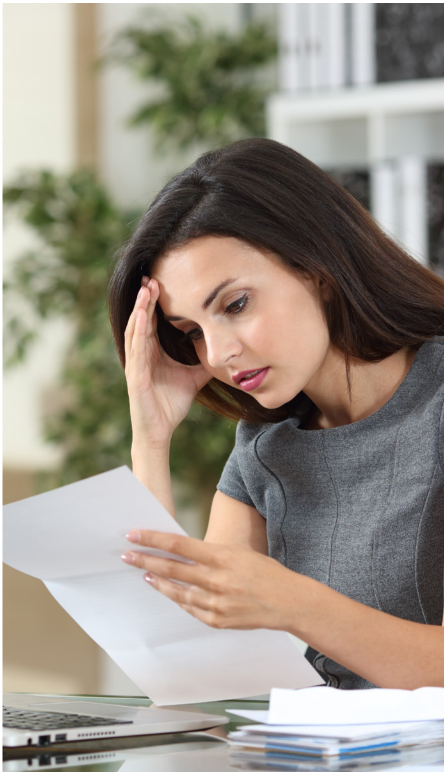
- **A company voluntary arrangement** where the company enters into a binding agreement with its creditors which is overseen by a licensed insolvency practitioner acting as a supervisor. The affairs of the company continue to be under the control of the directors.

- **A restructuring plan** where the company enters into a compromise or agreement with its members and/or creditors which is overseen by the court.

Where rescue is not a viable option, the business may be shut down via the following closure procedures:

- **Creditors' voluntary liquidation** initiated by the company's directors and shareholders. Here the business is closed down and a licensed insolvency practitioner acting as liquidator collects in and realises the company's assets for the benefit of creditors.

- **Compulsory liquidation** initiated by the court following a petition for winding up made by the company's creditors, directors or shareholders.



Practical guidance

Decisions taken by directors should be properly recorded to help mitigate the risk of directors being held personally liable for action taken by the company prior to an insolvency event.

Particularly as the conduct of the directors will likely be reviewed by an insolvency office holder.

Directors should:

- Regularly monitor the financial position of the company and the tests for insolvency.
- Hold regular board meetings to review the position.
- Document all decisions taken.
- Seek advice from an insolvency professional at the earliest opportunity.
- Formulate a credible strategy and contingency plan.
- Scrutinise proposed transactions and make sure they are legitimate and for the benefit of the company and its creditors.

It's important to take appropriate advice (either from a licensed insolvency practitioner, insolvency lawyer or reputable turnaround professional) as early as possible whenever there are signs of financial distress.

Early advice is likely to provide more options and may be the difference between the business surviving or not. You can get a **free, 30-minute consultation** with one of our specialists who can talk you through any of the issues raised in this article.

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