



Coronavirus COVID-19: considerations for businesses, directors and lenders

Service area / [Restructuring and Insolvency](#)

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This briefing looks at the potential impact of COVID-19 on business and examines steps that can be taken by stakeholders and directors to recognise, manage and mitigate the risks presented by COVID-19. In particular, we look at:

- the potential impact on business;
- managing insolvency risk;
- considerations for directors; and
- considerations for lenders.

Global outlook

The coronavirus continues to create an evolving list of challenges. But whilst the health and economic impact of the COVID-19 outbreak is being felt worldwide, companies and their directors can take proactive steps to combat its negative effects.

Certain forecasts about the impact of COVID-19 make for harsh reading. The Organisation for Economic Cooperation and Development (OECD) has predicted the global economy could slow to 2009 recession level, and share prices have tumbled, with the Dow Jones down 7.5%, the Nikkei down 9.1% and the FTSE 100 down 11% at the time of writing. In the UK, we have seen Exeter-based Flybe enter administration citing, among other factors, the drop in custom due to coronavirus, exacerbating the problems the business faced prior to a Virgin Atlantic-led consortium buying the company last year.

But as with other insolvency risks facing markets right now – including Brexit, the decline in oil price and other market specific growth concerns – the key to containing the effects of the current coronavirus outbreak lie in management and mitigation.

Impact of COVID-19 on businesses

The markets are indicating that a recession is possible, albeit not inevitable. What is inevitable however is that businesses will continue to face greater pressure in the breakdown of international supply chains, disruptions to manufacturing, cash flow issues and labour shortages.

As the prospect of these factors increase so does the insolvency risk for companies.

Where a company fails, or is at risk of failing, to meet its contractual obligations the risks of an insolvency event become more acute.

Managing an insolvency risk

As the business community continues to feel the brunt of the uncertainty brought about by coronavirus at both a local and international level the following considerations may assist in the management, and mitigation of potential insolvency risks:

- Review contracts to consider whether a default or insolvency event has (or could be) triggered and whether 'force majeure' clauses are in operation and the implications that may have for your company.
- Review the company's balance sheet/cash flow position with financial and legal advisors for early detection of solvency concerns providing the potential for early intervention.
- Tailor future new contracts to include clauses that will give your business the flexibility it needs in times of restricted liquidity or economic uncertainty and even to account for epidemics such as with COVID-19.

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- Set up alerts to keep apprised of market developments and the financial position of business partners, suppliers (and rivals).
- Communicate with your business partners and customers to attempt to fulfil contracts. The reality is most parties to a supply chain and most service providers will be adversely affected in some capacity so an upstream or downstream party will likely be accommodating in an attempt to minimise their own disruption.
- Financial reporting – companies face a challenge in meeting their duties to report while accurately assessing risk. Disclosing risks to the market can result in creditor / shareholder action and liquidity problems, so careful thought should be given to the terms of any disclosure.
- Equally, regulated businesses will still need to meet regulatory obligations so far as it is reasonable to do so, even in the face of unexpected global challenges. Systems should be put in place so that a company can maintain, for example, compliance standards even in the face of staff shortages or self-isolation.
- In terms of any ongoing or pending litigation there is a live risk that your opponent may be insolvent. In that regard it is worth considering whether an application for security for costs may be advisable to protect your interests in the litigation.
- On the same note, businesses should make sure that contingency plans and steps to mitigate the effects of COVID-19 (and indeed any similar threat) are carefully documented so that there is a clear decision-making trail.
- In terms of any disputes or ongoing litigation, the uncertainty and upheaval in the business community may provide fertile ground for settlement and for resolving disputes without recourse to further litigation.

Consequences for lenders

Where a company experiences the issues outlined above, those difficulties will likely have an impact on the companies banks and lenders. The operational issues caused by coronavirus and the knock-on effect of that for the company's lending arrangements will lead the lender to review and assess:

- Whether any covenants have been breached or is there likely to be an event of default under any facility documentation or security.
- Does the company require further assistance with its short-term liquidity and what the risks are in providing that finance?
- Has there been a material adverse change in the circumstances? Should the security position be reviewed or revalued? Should enforcement options be considered?

Considerations for companies/directors

If a company enters the '[zone of insolvency](#)' its directors must be mindful of ensuring that they continue to comply with their common law fiduciary and (depending on the jurisdiction) statutory duties. Indeed, business decisions will require increased scrutiny in times of global crisis.

As a result of COVID-19, and in addition to the risks referred to above, directors should consider the following factors:

- Can the company still meet existing contractual obligations? Is there provision to terminate existing contracts?
- If the company holds securities, should these be reviewed or revalued? Should enforcement options be assessed?
- Is there a business continuity plan in place?
- Is the company in breach of its financial covenants with a lending institution? Can the company meet its existing debt arrangements?
- What is the impact on the company's shareholders and accounts?
- Should the company consider restructuring steps?
- Does the company have any litigation exposure and should early advice be proactively sought, or should PI insurers be put on notice?
- Is there a need to increase the frequency of management accounting and internal financial reporting? Is there a need for advice on solvency? It is possible that the emphasis on the duty to act in the best interests of the company can shift so that predominant regard should be given to creditors when there is a real risk of insolvency. This can be difficult to determine in practice – particularly in times of global distress.

How can we help?

Carey Olsen is a market leader in providing cross-border restructuring and insolvency advice in partnership with the world's leading offshore insolvency practitioners. We are positioned to advise on the legal implications of the COVID-19 outbreak for your business and advise you on how to mitigate the risks and comply with your legal obligations. A dedicated note regarding the impact on employers can be found [here](#). In all our jurisdictions, we are reviewing the impact of potential measures that may be taken by the government to ease and assist with cash flow and distress issues experienced by companies during this time of business uncertainty.

Our services include:

- Advice on directors' duties and potential liabilities.
- Review of relevant contractual provisions including in respect of financing arrangements.
- The review of security for lenders and advice on enforcement options.
- Insolvency and restructuring advice.
- Regulatory advice.
- Employment law advice.
- Negotiation of financial arrangements.
- Advice on commencing and defending litigation.

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