

## CLIENT ALERT

### Restructuring Measures to Combat the Effects of COVID-19

Apr.20.2020

In these unprecedented times, all businesses will be facing issues they have never encountered before. The disruption caused by the measures imposed to combat the COVID-19 outbreak are significant and wide-reaching, impacting every business and its suppliers, customers, workforce, investors and lenders. Companies find themselves operating in the shadow of potential bankruptcies along the supply chain, in their customer base and their trading partners globally and are facing a myriad of issues related to business disruption, salvaging relationships and restructuring liabilities and business structures to facilitate ongoing trading. To ensure an ability to recommence trading when the current lockdown is over, clients may need to take a number of steps to keep their business alive. Some of the key questions arising are set out below:

**Q: Am I able to restructure my financial facilities or defer payments?**

A. In a joint letter from the Chancellor, the Bank of England and the FCA dated 25 March 2020, UK Lenders have been requested by the Government to maintain and extend lending despite the uncertain economic conditions, to assist in ensuring that otherwise viable businesses will survive the impact of the pandemic when restrictions are lifted. The letter also requested lenders to make facilities available under the Schemes referred to below. Lenders should therefore be sympathetic to requests to restructure repayments but borrowers should have a continuing dialogue with their lenders at all times to ensure transparency and maintain relationships.

**Q: I need urgent funds. Can I access the government-guaranteed loans available? Are there other lenders who can step up and help? Will I have to give a personal guarantee?**

A. The Coronavirus Business Interruption Loan Scheme (CBILS) enables UK based SMEs with a turnover of up to £45,000,000 to access facilities of up to £5,000,000, backed by an 80% government guarantee. The government will cover the first 12 months of interest and any lender fees. CBILS is also available to the self-employed, provided they do not exceed the turnover threshold, hold a business bank account and generate more than 50% of their turnover from trading activity. We cover CBILS in more detail in our alert, [Coronavirus Business Interruption Loan Scheme](#). Businesses should look to their own lender first to access CBILS but if that lender is not registered with the scheme, applications can be made to other registered banks. No personal guarantees will be required as a condition for accessing the facilities.

The COVID-19 Corporate Financing Facility is also available to help support larger non-financial firms, where the Bank of England will buy short term debt from larger companies in an attempt to provide liquidity and support larger companies affected by a short-term funding squeeze.

**Q: How do I renegotiate my key customer and supplier contracts? Do I need to invoke force majeure or business interruption clauses or reserve rights?**

A. Everyone involved in your customer base or supply chain will be impacted by the lockdown measures. As with your lenders, it is important to have a regular dialogue so that mutual variations to existing terms can be agreed whilst the lockdown is in place and for a period thereafter. Maintaining relationships with your counter-parties will be critical to successfully re-launch and facilitate recovery of your business once restrictions are lifted. Force majeure and other business interruption clauses can be invoked if contractually permitted but maintaining your relationships should be the prime concern.

**Q: I have no funds to pay rent. Am I able to defer payment of rent? What are the consequences?**

A. The Government has introduced protection until 30 June 2020 preventing commercial tenants who cannot pay their rent because of COVID-19 from being evicted or having their leases forfeited. As a result, no business will automatically forfeit their lease and be forced out of their premises if they miss a payment for the period to 30 June. The Government can extend this period if needed. This is not a rental holiday - all commercial tenants will still be liable for the rent, which is delayed and not waived and must be paid once the period of grace expires. Consequently, if you have sufficient cash flow to pay your rent in whole or in part during this period, it would be prudent to do so.

**Q: How can I manage/mitigate supply chain interruption?**

A. Communicate proactively with counterparties and establish a process for mutually agreed amended performance. This will also help to provide insight into their current financial situation and business plans. Determine whether there are viable alternatives for sourcing your supplies or services and whether termination of your existing contract is an option or advisable. Consider offering your supplier assistance if they are critical to your business and a viable alternative is not available.

**Q: What are my obligations to my staff? Can I access government aid for furloughed staff? Am I able to cut pay? Can I reduce the workforce and/or introduce flexible working? Do I need to keep their jobs open?**

A. On 20 March 2020 the Government announced the Coronavirus Job Retention Scheme, which will currently apply until 31 May 2020. All employers are eligible for the scheme which applies to any type of employee contract, whether full-time, part-time, agency, flexible and zero-hours (including for employees on parental leave) provided the employee was on the payroll as at 19 March 2020. Claims will be backdated to 1 March 2020. Under the job retention scheme, HMRC will reimburse:

- 80% of the employee's usual monthly wage costs (excluding bonus and commission) up to a cap of £2,500 per month
- Employer National Insurance Contributions
- Minimum employer pension contributions.

In order to participate in the Scheme, employers must:

- Write to each furloughed employee confirming that they have been furloughed and keep a record of the communication
- Make claims to HMRC under the scheme [here](#) (which the Government expects to be live by 20 April 2020). This effectively puts the employees' jobs "on ice" to be redeployed once your business recommences trading.

**Q: Am I liable to continue making PAYE and VAT payments during the lockdown? Am I liable to pay rates?**

A. The Government has introduced a number of measures to assist businesses including:

- [Deferral of VAT payments](#) - a UK business with a VAT payment due between 20 March 2020 and 30 June 2020 may defer the payment for three months
- [Self-assessment payments](#) - payments on account due by 31 July 2020 may be deferred until January 2021
- [Business rates](#) – a business rates holiday for the 2020 to 2021 tax year has been introduced for all retail, hospitality, leisure and nursery businesses in England (and Wales, Scotland and NI, with some minor variations)
- [HMRC Time To Pay](#) – businesses in financial distress with outstanding tax liabilities may be eligible to participate in HMRC's Time To Pay scheme. If you may need time to pay, you should contact your tax advisers to liaise with HMRC as soon as possible.

**Q: Can I claim against my insurance products (including credit insurance) for the interruption caused to my business?**

A. The COVID-19 pandemic has led to insurers being inundated with claims for cancellation and disruption and other insured claims. Policy wording across insurers will vary widely and a close review of the exclusions will be necessary. Many policies (following the previous SARS outbreak) will contain pandemic or epidemic exclusions but this may not rule out all claims. Check if there are any add-on products purchased which cover infectious diseases. There may also be claims for loss arising out of denial of access to premises and also actions against insurance brokers in circumstances where there has been a breach of duty to the insured client. Credit insurance policies are more likely to respond to a specific loss of business and may limit the number of claims that can be made in the policy period.

**Q: I cannot pay my creditors. Do I need to enter insolvency? Will directors incur personal liability if I continue to trade? Should I seek standstill agreements with creditors?**

A. The Government is introducing measures to relax some insolvency legislation for a period and the insolvency courts have taken immediate steps to prioritise genuinely urgent hearings by adjourning hearings, conducting hearings by video conference and establishing temporary procedures for the listing of winding up and bankruptcy petitions.

Wrongful trading provisions are to be temporarily suspended retrospectively from 1 March 2020 for three months, to allow directors to continue trading during the pandemic and avoid personal liability even where they consider that there is no reasonable prospect that the company will avoid going into an insolvency process. Further, measures are being proposed for: (a) a moratorium for companies allowing them time to explore rescue options while preventing creditors from taking action to recover sums due; (b) protection of certain supplies to enable companies to continue trading during the moratorium; and (c) a new restructuring plan which will bind dissenting stakeholders. See further our note [U.K. Government Faces Urgent Pressure to Reform Insolvency Law](#).

**Q: What if there has been alleged margin manipulation, overstatement of revenues, financial or other material misstatements in prospectus materials, capitalisation of expenses, fraud or other improper acts by companies, their boards or agents?**

A. The pandemic will undoubtedly negatively impact many companies' financial performance. Consequently, it is expected that there will be a temptation by some to engage in improper acts to prop up performance, including insider trading, financial statement manipulation, fraud and selective disclosure. Given that such claims can give rise to a number of complex actions including class litigation, regulatory sanctions and implications for D&O insurers, we recommend you seek legal advice promptly if you have been affected by any of these issues.

**Q: Is now a good opportunity to invest in distressed companies?**

A. Many private equity firms and other investors are sitting on large amounts of cash they are ready to invest. It is estimated that such funds dedicated to buyouts have more than \$2 trillion of funds raised but not yet invested. The COVID-19 pandemic is putting many businesses under increasing distress and, notwithstanding the Government relief measures outlined above (and similar measures internationally), investment will be key to their survival. There will be many opportunities for investors to assist, from a perspective of finance, supply chain access, essential resources, turnaround expertise or other critical support.

**Q: If I want to diversify my business and contract with the government for essential COVID-19 supplies/services, how best should I approach this?**

A. Many companies will have a business or premises that could be adapted to provide goods and services to assist in combating the pandemic. If you can assist with the production and manufacture of medical tests or equipment, supply of hotel rooms, transport and logistics for moving goods or people, warehouse or office space, expertise or support in IT, construction, project management procurement or engineering, social care or childcare, should contact the Government by visiting <https://www.gov.uk/coronavirus-support-from-business>.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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