COVID-19: Financial crisis response and contingency planning

The outbreak of COVID-19 is placing unprecedented commercial and operational pressures on an array of business sectors in the UK economy. Guidance recommending the restriction of movement and social gathering aimed at slowing the spread of the virus has also produced a very immediate 'cash shock' for some.

Whilst a wide-ranging package of support measures announced by HM Government has been broadly welcomed by UK businesses, it is evident the cash flow benefit of certain schemes may not arrive quickly enough for some. Those facing a cash crisis need to act quickly on contingency planning options.

When to consider contingency planning

Cash generation/ preservation All available steps have been taken to preserve and/or generate cash, such as delaying payments or accelerating receipts, have been undertaken.

Government support Where access to cash support from HM Government initiatives (e.g. the Coronavirus Job Retention Scheme or the CBILS) is timing beyond the immediate cash funding need.

Limited refinancing options All conventional i.e. non-COVID related, refinancing options with lenders have been exhausted.

Forecast cash crunch Short Term Cash Flow Forecast (STCFF) indicates an imminent cash shortage.

Potential options

The level of disruption being experienced across the economy is limiting the effectiveness of certain typical crisis response options, e.g. an accelerated business sale process. However, the addition of certain Government support measures is raising the opportunity to explore new options for businesses in financial distress. Placing a business into a temporary 'hibernation' state for a short period until more normal economic conditions prevail is now an option that KPMG's Restructuring Team are developing for certain scenarios.

1 'Hibernation'

With support from landlord and the Government's COVID-19 Job Retention Scheme, it may be possible to place viable businesses into 'hibernation'.

This would involve closing all sites for a period of time, with an exit via CVA or accelerated sale of business at a later point.

This is an unusual option and key considerations are overleaf.

2 Limited trading in Administration

This may be appropriate for businesses where there continues to be partial ongoing trading.

Such examples might include retailers with an online revenue stream as well as physical stores, whereby the ecommerce site continues to generate revenue for the wider business whilst under the unique protection of the Administration regime.

3 Full shut down

If mothballing is not possible and solvent wind down not appropriate, then a full shutdown may be the most suitable option.

Depending on nature of the business, a range of insolvency regimes may be considered, including administration and liquidation.

Hibernation considerations

Hibernation is a highly unusual option but it may be suitable for certain businesses in the current circumstances. Key considerations of this approach would include:

Costs and liabilities

For the option to work effectively, it is essential that costs are kept as low as possible and liabilities are managed. Negotiations with key creditors will be key to this strategy e.g. landlords, utility providers, in order to help facilitate significant cost reduction.

Employees

How key staff can be retained under HM Government's COVID-19 Job Retention Scheme, and the extent to which redundancies will be required. This will involve detailed scenario modelling to determine if planned retention levels are viable.

Stock and logistics

Strategy for stock held in warehouses, in upstream supply chain, retail stores etc.

Communication with warehouse or distribution providers to understand ownership, liens and costs of storage.

Exit strategy & communications/PR

Consideration of how the strategy would be communicated to key trading partners and stakeholders (internal and external) before and during hibernation would be key in managing the exit thereafter.

Directors' considerations

Legal advice

Legal advice is crucial for Directors of any business in financial distress and guidance should be sought on 'reasonable and appropriate' conduct in particular circumstances. In the current COVID-19 environment, which is presenting unique and extraordinary circumstances, there is likely to be more complexity in the interpretation of such matters, particularly in the context of the 'whatever it takes' support HM Government is offering.

Health and safety

Employers have a duty to ensure the health and safety of their employees and customers so far as is reasonably practicable, including taking reasonable steps to control the spread of COVID-19 at premises under their control.

Director's duties

Under English law, Directors are not required to file for insolvency proceedings in the event of financial distress or insolvency. However, there are personal liability and disqualification risks to consider if they incur liabilities past the point at which a 'reasonable prospect' of avoiding insolvent liquidation was clear.

Wrongful trading

Wrongful trading or 'trading irresponsibly' is a civil offence and is covered by section 214 of the Insolvency Act 1986.

How KPMG is helping

KPMG is actively engaging in dialogue with HM Government agencies, regulators, HMRC and primary lenders/funders on the mechanisms required to support otherwise viable businesses deal with the existential economic challenges derived from the COVID-19 outbreak.

As one of the largest Restructuring practices in the UK, KPMG's team of Insolvency Practitioners is leading the development of the Hibernation strategy and is already deploying this for clients in acute and immediate financial distress.

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