

# 10 TIPS

## FOR COMPANIES OPERATING IN THE CURRENT ENVIRONMENT



### EXAMINE BUSINESS FUNDAMENTALS

#### MONITOR CASH FLOW

- Regularly monitor cash and cash-flow against forecasts.
- Stress-test forecasts and prepare contingency analysis.
- If cash-flow is tight, consider (i) causes, and (ii) how they can be addressed—including steps to preserve cash (e.g., deferral of Cap Ex and cost-cutting), but also access to existing credit commitments or new credit.
- Keep debt or days as low as possible.

#### UNDERSTAND YOUR MARKET

- Understand the threats and opportunities in your industry, and get insight on how competitors are responding.
- Be familiar with the pressures on your customers and suppliers. Are there ways you can support them which also benefit your business?
- How can you set your business apart to strengthen your performance during a challenging market?

#### KNOW YOUR DUTIES AS MANAGEMENT

- Boards should meet frequently during tough times, and discussions and decisions should be carefully documented.
- When liquidity is tight, directors should be mindful of (i) breaching their duty to promote the success of their company for the benefit of its stakeholders (and in particular, its creditors); and (ii) wrongful trading, as these may lead to personal liability. Note that while wrongful trading is to be suspended in a number of countries (as in the UK from 1 March), directors' fiduciary duties typically remain.

### REVIEW COMMERCIAL ARRANGEMENTS

#### ANALYSE CONTRACTUAL OBLIGATIONS

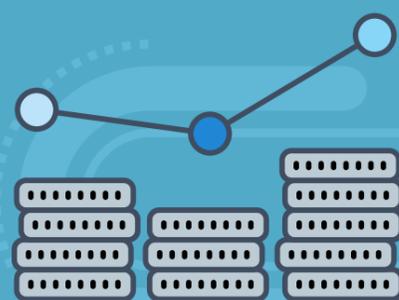
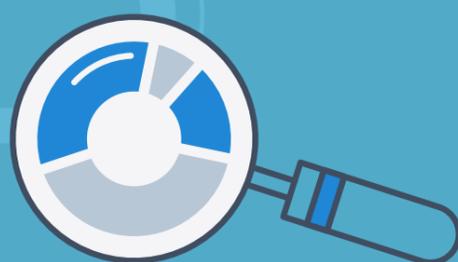
- Know your obligations. Are any more difficult/more costly/impossible to perform? Consider mitigating steps.
- Identify/review any covenant, repeating representation, or event of default issues.
- Examine the impact of any material adverse change clauses.
- Be aware of reporting obligations, and consider if required deliverables will be available on time.

#### AVOID POTENTIAL BREACHES

- If a breach could arise, evaluate the options open to you to avoid this or limit the impact.
- In your finance documents, are there financial covenants to be tested? If so, are there EBITDA or CNI “extraordinary items” or similar adjustments that could be used?
- Check for cross-default and cross-acceleration provisions and assess potential cross-exposure.
- Could you seek a pre-emptive waiver or extension, or undertake other liability management exercises?

#### HANDLE DEFAULTS

- Consider countermeasures and open dialogue with counterparties. Can some breaches be “toughed out” to conserve cash?
- Do grace periods provide any protection?
- Do force majeure clauses help? Has your contract become “frustrated” or “impossible” at law? Be careful, however, of the consequences of each.
- Do you have a dispute resolution mechanism to deal with any breach?



### CONSIDER FINANCIAL SUPPORT OPTIONS

#### AVAILABILITY UNDER EXISTING FACILITIES

Do you have available commitments on which you can draw? While it is often easiest to draw down an existing facility, be wary of:

- repeating representations and whether directors should be comfortable with them at the time made;
- draw-stops, including material adverse change; and
- springing covenants triggered by a draw-down.

#### THIRD-PARTY DEBT

Consider:

- baskets/ratios, including (i) unused super senior baskets; (ii) ability to incur senior debt under ICAs; (iii) permitted separate collateral (this may also mitigate MTM issues); and (iv) MFN/restraints on interest rate/fees/maturities;
- the nature of lenders—beware “loan to own”;
- asking existing debt to PIK; and
- last resorts and their costs: trading administration, or Ch. 11 DIP financing on unencumbered assets.

#### GOVERNMENTAL RELIEF

Consider the availability of governmental relief—in the UK, this includes such measures as:

- the Coronavirus Job Retention Scheme;
- the Coronavirus Business Interruption Loan Scheme (CBILS) and Coronavirus Large Business Interruption Loan Scheme (CLBILS);
- HM Treasury and the Bank of England's joint COVID-19 Corporate Financing Facility (CCFF);
- business rates holidays and local authority grants;
- Statutory Sick Pay refunds; and
- HMRC's Time to Pay service.

### ONGOING COUNSEL

#### OPEN DIALOGUE WITH ADVISORS

- Legal and financial advice can ensure that potential opportunities and liabilities are suitably managed.



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