



First aid guide for directors

March 2020

We are facing an unprecedented period of adversity. The offshore financial services industry and the local communities that we serve, like the rest of the world, are not immune to the impact of the Coronavirus.

From a business perspective, the recent pandemic has already materially disrupted service lines, consumer demands and, ultimately, financial stability. We do not have a crystal ball (sadly), but the risks to businesses and business leaders who do not plan ahead and prepare for a financial downturn are a stark reality.

Our specialist teams regularly advise financially distressed companies, trustees and individuals in a contentious and non-contentious context. We would like to help you with navigating a safe path through these difficult times and are uniquely placed to offer cross border advice and assistance due to our teams in Jersey, Guernsey, Cayman and the British Virgin Islands. We also maintain a network of stellar legal firms and individuals around the globe.

The starting point is to understand the true financial health of the company. The existence or threat of insolvency raises a series of important legal considerations before any further steps are taken. Ignoring these considerations can, sadly, result in severe adverse repercussions and, in some circumstances, personal liability.

Below, we have set out a check list of key considerations for directors who might find themselves at the helm of a company in financial difficulty.

- Get a good grip on the current and projected financials of the company. Speak with your financial adviser and insist upon a clear written explanation before making any material decisions.
- Consider whose interests you are protecting. In a solvent situation your duties are to the shareholders. In an insolvent situation your duties are to the creditors. You must bear both classes in mind where the company might be or is near insolvency.
- Liaise with the company's stakeholders early on. In particular, maintain a healthy and constructive communication channel with the company's main financing creditors. This can often avoid incurring considerable time and cost and, ultimately, these allies can help save the company from liquidation.
- What are the company's immediate and future debt obligations, including the payment of salaries? Can or should the company look to legally extricate itself from any of these obligations to reduce its outgoings? Equally, what amounts are due to the company – has an analysis of the company's options and prospects of recovery in the event of non-payment by a delinquent debtor been carried out? If possible, look to reach agreements with debtors in order to maintain cash flow and avoid the time and cost associated with legal proceedings.

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- Keep detailed records. Have regular board meetings and produce sufficiently detailed minutes. This is necessary at the best of times but has a heightened importance during a crisis. Always document your decision making and require others within your company to do the same. Make notes of telephone calls and oral discussions.
- Review your professional indemnity insurance and the level of cover. Pay particular attention to the company's reporting obligations.
- No matter how bad things might get, never compromise on regulatory obligations (if applicable).
- Seek advice in relation to the potential restructuring of the business in order to cut costs and improve revenue. However, if there is no alternative but to wind up the company, consider how best to achieve this in an orderly and cost-effective manner. Look to utilise the insolvency procedure that will result in the greatest return for the company's stakeholders.

We recognise that these are challenging times and we sincerely hope that they pass soon.

Over the coming weeks and months, we will be providing updates and briefings on topics that will directly be impacted by the current pandemic.

Collas Crill prides itself on being easy to do business with; we take a hands on approach and are here to help in these uncertain times.

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