

## Business and continuity planning

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### Introduction

Covid-19 is affecting individuals and businesses on a local, national and global scale. An enormous number of businesses are facing sudden, unexpected economic and other business-related pressures (particularly, in the retail, restaurant, hospitality and travel sectors). Reductions in work or sales and increasing numbers of late (or no) payment from customers, without any significant decrease in business costs, have combined to create substantial cashflow problems for many businesses. Numerous businesses have either already closed or gone into liquidation or administration or are close to being forced into doing so.

This article is intended to assist business owners, directors and managers to manage and mitigate those risks so that their business can survive the coronavirus outbreak.

### Current position on Government Assistance

At the time of writing, the UK Government has announced and/or implemented numerous measures in order to try to assist businesses, business owners and employees. Several of these involve the temporary removal, reduction or deferral of business costs and others involve the direct underwriting of the costs of retaining employees.

### What steps should directors be taking?

Business and continuity planning is essential. However, when there is a financial or other crisis affecting your business, it is likely to become more important than ever. You need to objectively assess the short-term, medium-term and long-term future of your business, with a particular focus on short-term continuity planning to enable your business to be successfully navigated through the period of the coronavirus outbreak.

This is likely to involve regularly undertaking 5 steps - collating relevant information and documentation; reviewing it in detail; assessing it; determining what actions are required and when; and implementing them. The mantra to follow is: **COLLATE/REVIEW/ASSESS/DECIDE/IMPLEMENT/REPEAT!**

### When should directors be taking these steps?

These steps should be carried out immediately. They should be repeated regularly throughout the period of the coronavirus outbreak and afterwards until your business has stabilised. Inevitably, some steps will need to be repeated less often than others, depending on their rate of change and the nature of your business. In any event, a regular collation, assessment, review, decision-making and implementation process is likely to help make your business more efficient and effective and, therefore, more profitable.

### How should directors be taking these steps?

You are likely to be able to carry out most steps without external assistance. Where appropriate, you may require the assistance of external professionals (for example, solicitors, accountants or insolvency practitioners) to assist you.

How each business carries out its business and continuity planning and what it includes is likely to vary significantly from business to business. However, it may include some or all of the items referred to below.

The collation and assessment phase may include matters such as:

1. **Government measures and assistance** – The UK Government has announced a variety of measures to assist businesses, business owners and individuals through the coronavirus outbreak. You should ensure that you are aware of and understand those measures, which may assist your business. It is usually possible to set up

automatic alerts so that you are kept up to date.

2. **General business and market sector information** - You should ensure that you are aware of general and sector specific business information and developments, which may assist your business. Again, it may be possible to set up automatic alerts so that you are kept up to date.
3. **Company financial information** – You will need accurate and up to date management accounts, cash-flow statements and projections.
4. **Inventory of stock, equipment and materials** – You should ensure that you have an accurate and up to date list of your current levels of stock, equipment and materials and make a realistic forecast of your short-term requirements.
5. **Suppliers** – You need to identify any weaknesses in your supply chain and among your service providers. Your suppliers and service providers may be facing similar problems to you. They may be prepared to accept temporary changes to arrangements in order to maintain customers and minimise their own disruption (for example, reduced prices, increased credit or improved payment terms).
6. **Customers**– You need to identify any weaknesses among your customers and fulfilment agents. Again, they may be facing similar problems to you. You need to ensure that you fulfil contracts with customers and that your customers can and do pay you. If there are any signs that your customers may become insolvent, try to adjust your contracts and, in particular, your security and credit terms. If there are any signs that your fulfilment agents may become insolvent, try to identify alternatives.
7. **Banks, lenders and other creditors** – You need to review your existing financial arrangements and, in particular, the terms of any loan or other funding agreements in order to assess matters such as available funding, the risk of breaching financial or other covenants and the risks of failing to meet any scheduled repayments. Your bank may be prepared to vary the existing arrangements by granting a repayment holiday, agreeing a short extension to your facility or overdraft or restructuring payments. If your existing bank is not willing to assist you, an alternative lender may be willing to do so or it may be possible to raise additional equity finance from existing or new shareholders to bridge cash flow constraints. At the time of writing, the UK Government has announced various measures relating to borrowing including the Coronavirus Business Interruption Loan Scheme.
8. **Contracts** – Review your contracts in order to assess which ones you wish to retain and whether there is any scope for permanently or temporarily adjusting them, where appropriate. Ensure that you can comply with those contracts that you wish to retain. If there are contracts, which you no longer require, you will need to assess whether it may be possible to terminate them at no or no significant cost.
9. **Property** – You may own or occupy property as a freeholder, leaseholder or licensee. In the latter 2 cases, your landlord may be willing to consider temporarily reducing the rent for an agreed period or granting a payment holiday. If you are a freeholder, you may have the reverse problem to deal with. If you are a licensee, there may be scope to reduce the size of your premises and, consequently, your costs. At the time of writing, the UK Government has announced various measures relating to property including a business rates holiday for retail, hospitality and leisure businesses in England for the 2020 to 2021 tax year.
10. **Employees** – You should assess your staffing requirements. In particular, you may need to consider making redundancies. However, there are numerous alternatives to redundancy, which may enable businesses and the relevant staff to survive the coronavirus together. At the time of writing, the UK Government has announced

various measures relating to the protection of staff including the Coronavirus Job Retention Scheme pursuant to which the state will pay to employers 80% of a retained employee's wages, up to a monthly cap of £2,500.

11. **Insurance** – You should identify what insurance cover you have and read through the relevant parts of the policies in order to assess whether they may assist you. Typical types of insurance cover that may be relevant include business interruption, keyman, employer's liability, crisis management, mitigation, and reputational insurance. You may wish to seek assistance and guidance from your insurance broker.
12. **Litigation** – In relation to any existing or potential litigation, there may be a risk that your opponent becomes insolvent. The uncertainty created by the coronavirus outbreak is likely to encourage the resolution of disputes as parties seek certainty of outcome, wish to avoid wasted time and costs and prefer to focus on other issues. Where there is no resolution, parties may wish to consider how they can obtain security from the opponent (for example, via a payment into court or security for costs).

The review and decision-making process may include matters such as:

1. **Departmental reviews, meetings and reports** – Depending on the size and structure of your business, your initial review and internal reporting may be carried out departmentally. These will need to deal with the information and documentation obtained during the collation and assessment phase.
2. **Assessing your current financial status** – You will need to assess the financial information and documentation obtained during the collation and assessment phase. It is likely that you will need to do so more regularly than usual.
3. **Solvency and risk of insolvency** - You will need to determine from your financial and other information whether you are insolvent or if there is a risk that you may become so. It may be that you will need to make this assessment regularly until there is greater stability.
4. **Revising your business plan and budget** – You should review and, where appropriate, adjust your business plan and budget to reflect the impact and predicted effects of the coronavirus outbreak. This should assist you (a) to determine what steps you need to take in order to continue trading, and (b) in your discussions with your bank (or other funders), creditors, customers and suppliers.
5. **Board meetings** – You should hold regular full board meetings in order to discuss the up to date financial and other information and documentation, which has been collated (and, perhaps, provisionally assessed at departmental level). Informed decisions can then be made on a collective basis. Depending on the financial status of your business, it may be necessary to hold these meetings more regularly than usual - weekly or even daily.
6. **Advice from external professionals (for example, solicitors, accountants or insolvency practitioners)** – Internal and external professionals should be consulted, where appropriate, at an early stage. They may be able to assist you (among other matters) to understand issues, identify potential solutions and negotiate with other parties. Evidence that you sought and acted upon professional advice may reduce the risk of any personal liability if your business becomes insolvent and subsequently enters into liquidation.
7. **Maintaining records** – It is vital that you prepare and maintain detailed board minutes of all meetings setting out the matters discussed, decisions made and the reasons for those decisions. Clearly written board minutes reduce the risk of later misinterpretation of Board decisions and, where relevant, may reduce the risk of any personal liability if your business becomes insolvent and subsequently enters into liquidation. They may also assist you in ensuring that you fully consider relevant issues when making decisions.

The implementation phase is likely to require a significant amount of co-ordinated communication in order to ensure that it takes place as efficiently, effectively and smoothly as possible. It may include matters such as renegotiating existing contracts, focussing on cash collection, cutting costs (for example, making employees redundant) or resolving disputes. Whatever it is, it should be monitored closely until it is concluded.

### **Why should directors be taking these steps?**

These steps are important because there may be a risk of personal liability for directors if their company becomes insolvent and subsequently enters into liquidation (or a similar procedure). In particular, directors will wish to avoid being accused of wrongful trading, fraudulent trading or any similar breaches of their duties. They will also wish to avoid being disqualified as a director. See our separate Factsheet on Directors, Insolvency and Personal Liability.

If you would like more information about business and continuity planning and related legal issues, please visit [www.orrlichfield.com](http://www.orrlichfield.com) or email [enquiries@orrlichfield.com](mailto:enquiries@orrlichfield.com).



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