SMITH COOPER

Business Recovery & Insolvency

COVID-19 GUIDANCE

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Here for you

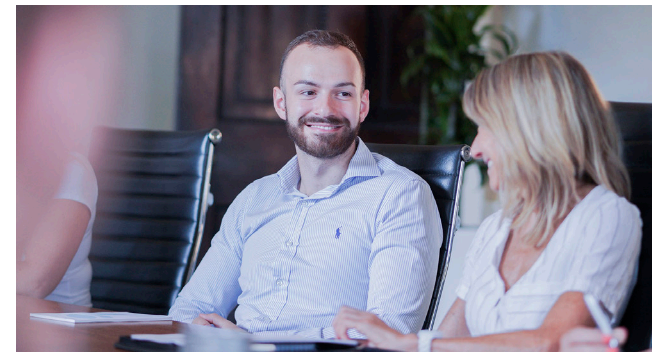
During this unprecedented period of uncertainty, the impact of the COVID-19 will inevitably cause significant financial strain on your business. We encourage you to seek help in navigating the impact of COVID-19 on your business and any repercussions for you personally. The earlier you seek professional advice, the greater the options available to you.

The unprecedented outbreak of the COVID-19 virus has affected how we all operate on a global scale, with both businesses and individuals already feeling the effects.

In times of difficulty, early intervention is paramount. The sooner we are able to understand your business and the problems you face, the more likely we are to be able to provide a strategic recovery plan, which is in the best interest of all stakeholders.

Smith Cooper are an award-winning Business Recovery and Insolvency team which includes four licensed IP's and 16 members of staff, each equipped with extensive experience and specialist knowledge. We have offices within the Midlands, London and East Anglia.

Our initial advice to you is provided without charge and where it is not appropriate to meet, we are able to provide advice over the phone or by video call.



Options for businesses affected by COVID-19

If the COVID-19 crisis is threatening the future of your business, there are measures and options to help your company navigate through the crisis.

Cash and working capital Companies that proactively manage their working capital have a competitive advantage. In a challenging world, companies that focus on maximising liquidity and free cash flow are going to be better placed to deal with the uncertainties that lie ahead.

Time-to-pay arrangements (TTP) HMRC is willing to support those who are genuinely struggling to pay outstanding tax liabilities because of these unprecedented circumstances using Time-To-Pay (TTP) arrangements. TTP's ease the pressure on companies who have found their cash flow suddenly and unexpectedly compromised as a direct result of the COVID-19 outbreak.

Administrations Administration is a formal rescue process that can assist viable companies that are struggling in the current climate, and works by providing a legal moratorium that prevents duress or creditor action, and can potentially help save the company, in whole or part.

Company Voluntary Arrangement (CVA) A CVA is a legally binding compromise agreement between a company and its creditors, and provides a company with the protection and time needed to trade out of their current difficulties over a fixed period. CVAs are often used by companies that are struggling financially, due to a debt burden, but ultimately remain viable businesses.

Liquidation Not every business can be saved - many businesses may no longer be viable, or maybe had been struggling prior to COVID-19. In these circumstances we are able to assist you in placing your company into Creditors Voluntary Liquidation. Once in liquidation, your employees will be able to claim for any monies owed to them through the Redundancy Payments Service, with our assistance.

Each option depends entirely on your circumstances, and we are able to provide tailored advice to suit your requirements

Administration and pre-pack

Administration

Company Administration is an Insolvency rescue process that is designed to assist viable companies that are struggling. It works by providing a legal moratorium preventing creditor action or duress.

If your company is experiencing cash flow difficulties, seeking prompt advice from one of our expert Insolvency Practitioners could save the business and enhance its options.

Administration is a process normally utilised where:

- The company is facing legal execution from its creditors
- The company is experiencing cash flow pressures / difficulties, which may be acute, and are hampering its ability to continue to trade the company and meet its financial obligations
- The company needs the protection afforded to it by a statutory moratorium to protect its goodwill and its assets
- The company needs to complete a project or its work in progress to secure payment of a book debt
- The company's business and its assets can be sold as a going concern where the current entity is insolvent

Pre-Pack Administration

A pre-pack enables a sale of the company's business and its assets as a going concern, without affecting the goodwill of a business or its continuity by the appointment of an Administrator. The key steps involved in the process are as follows:

1. A company is loss-making, has cash-flow issues and is under duress / pressure from its creditors, legal or otherwise.
2. An Insolvency Practitioner (IP) is contacted to review the company's current financial position and the options available.
3. Company assets are valued, and a disposal strategy identified.
4. A sale-of-business memorandum and a sales pack are prepared, to generate interest and offers to acquire the business and its assets.
5. A short period of marketing is undertaken on a no-names basis with a deadline set for receipt of best and final offers.
6. A preferred bidder is chosen, and a legal contract is issued to negotiate the terms of a going-concern sale.
7. The administrator is appointed and conducts a sale of the business and its assets as a going concern.
8. The administrator then sends his proposals for the purpose of the administration and explains the outcome achieved against a liquidation scenario.

CVA and CVL

Company voluntary arrangement (CVA)

A CVA is a legally binding compromise agreement between a company and its creditors, in relation to its debts, which is based on a proposal that a minimum of 75% of the company's creditors must agree to by way of a vote.

Creditors are then legally bound by the terms of the arrangement, including those who did not vote. This process provides for a structure for the Company's debts to be repaid over a fixed period of time, via monthly contributions to the supervisor.

Alternatively, the company can sell assets to repay creditors from the proceeds. Whatever agreement is chosen, all parties are contractually bound to adhere to the agreed terms.

CVAs are often used by companies that are struggling financially, due to a debt burden, but ultimately remain viable businesses; they just need protection and time to trade out of their current difficulties.

Creditors are usually supportive of a CVA, as it normally means that they recover more money than they would do if the company was to be placed into liquidation.

Creditors voluntary liquidation (CVL)

Creditors' voluntary liquidation (CVLs) is a process available to directors when a company is insolvent and there is no option other than to cease trading.

The assets are realised and sold, employees are made redundant, and creditors are paid a dividend where possible.

A company is insolvent if:

i) its liabilities are greater than its assets, or

ii) it cannot meet its debts as and when they fall due

The directors resolve that a shareholders' meeting be held at which the company is placed into liquidation with 75% shareholder approval, with the creditors having the final choice on the nomination of a liquidator.

Our expert insolvency practitioners are happy to assist and advise you on your affairs at a free, no-obligation meeting.

Changes to the insolvency framework

On 28th March 2020, the UK Government announced reforms to the UK's Insolvency Framework in the wake of the COVID-19 pandemic, to help businesses combat the financial impact of the crisis. A welcome intervention for many businesses during the crisis.

The reforms are intended to provide companies with some much-needed breathing space. These are summarised to the right and detailed within this brochure.

Changes

TEMPORARY SUSPENSION OF WRONGFUL TRADING LEGISLATION

SUPPLIER RELIEF DUE TO COVID-19

BUSINESS RESCUE MORATORIUM

Suspension of wrongful trading legislation

To help businesses combat the financial impact of COVID-19, the UK Government has temporarily suspended wrongful trading provisions, one of several measures to help companies trade through financial distress as a direct impact of loss of business due to the pandemic.

Doing so essentially suspends director liability for wrongful trading during this unprecedented period and helps mitigate risk. Under existing legislation, a director would usually be held liable if they were found to have continued trading a business with no reasonable prospect of avoiding insolvency.

The pandemic has caused the majority of businesses to experience a significant reduction in turnover and caused uncertainty as to how your business will be effected at each stage of the government's plan to come out of lockdown . However, the temporary relaxation of wrongful trading provision legislation is intended to help directors of distressed businesses to continue trading, while seeking a recovery plan for the business and allow viable companies to trade through this crisis.

The new legislation is effective retrospectively from 1 March 2020.

Suspension of wrongful trading legislation

Previous legislation

S214 IA86 – The liquidator/administrator can apply to court for an order requiring a director to make a personal financial contribution to the assets of a company where a company has gone into an insolvency process and the director has continued to trade past a point when they knew, or ought to have known, that the business was unlikely to avoid an insolvency process, and have therefore failed to ensure the loss to creditors is minimised.

Changes effective from 1 March 2020

To encourage businesses to continue through this period with reduced risk to their personal liability if the finances worsen and the company goes into an insolvency process, these wrongful trading provisions have been temporarily suspended for a period of 3 months.

At present, there are no additional details on a timeline or consultation.

CAUTION

There is concern to ensure that the changes to the provisions are limited so not to risk directors abusing the situation (i.e. Selling stock obtained on credit and paying a personally guaranteed debt with the proceeds). Other existing provisions for misfeasance (S212 IA86) and fraudulent trading (S213 IA86) remain in place and directors should seek advice if they are concerned.

Despite the measures put forward by the government outlined in this report, we advise that directors remain cautious and seek professional advice if concerned. The earlier you seek professional advice, the greater the options available to you. directors who have acted as reasonably as possible and made the most appropriate decisions at the right time will avoid personal liability.

Business rescue moratorium

The government have launched a 28-day 'business rescue moratorium', available to businesses otherwise facing insolvency as a legitimate result of the COVID-19 pandemic. This can be extended a further 28 days if deemed necessary, and even further if there is >50% creditor approval.

A moratorium provides companies with much needed breathing space whilst rescue options are considered.

The introduction of a business rescue moratorium could help safeguard jobs and improve creditors' returns, or to negotiate alternative payment terms with creditors, support restructuring plans, or to prepare for a formal insolvency process.

The moratorium will prevent creditors from taking legal action against a company while it seeks a rescue or restructure and protects the flow of essential goods and services to and from the company that enable the company to continue trading.

However, a moratorium is not available to companies that were already insolvent or involved in a formal insolvency process in the 12 months prior to the crisis, and any qualifying company must be able to demonstrate that it has sufficient funds to continue trading throughout the moratorium.

Such a process will be overseen by a licensed Insolvency Practitioner (IP) – who assess whether the company qualifies - and the process is conducted out of court.

The COVID-19 pandemic has already had, and will continue to have, a significant impact on businesses of all sizes, affecting cash flow, staff retention levels and supply chains, with many companies struggling to meet their contractual obligations.

The Government has therefore announced measures to protect companies and suppliers, to help both parties continue to operate, but to ensure they are in the best possible position once normality resumes and they are able to supply and fulfil their obligations quickly.

These measures should effectively protect the essential supply of resources to minimise disruption in supply chains, but also support rescue plans. Directors are protected and under no obligation to provide any form of personal guarantee.

Suppliers

If a moratorium is in place, suppliers such as energy or broadband providers are required to continue supply to a company

Suppliers cannot rely on termination clauses triggered by a company's insolvency/ moratorium

Suppliers retain the right to terminate a contract on any other grounds per contract, for example, non-payment since the moratorium/restructuring plan

Suppliers are not required to renew supply contracts if the fixed term expires during a moratorium/insolvency process

Suppliers can apply to court to terminate its supply on the grounds of 'undue financial hardship'.

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