



Managing Coronavirus disruption – practical steps for businesses

By Martin Young and Sacha Pickering

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Chaos wrought by Coronavirus (COVID-19) has, in a matter of weeks, altered the social and commercial environment beyond recognition. Businesses are being forced to make existential decisions at short notice – without visibility on the duration or full extent of the disruption or the emergency assistance available – and with the country now in full lockdown. This short guide sets out certain steps and options for businesses seeking to weather the storm, based on information available at the time of writing.

This article is aimed at solvent companies; where a company is insolvent, different considerations will apply. Our article on [issues for directors trading through the Coronavirus](#) introduces some of those issues.

On 28 March, the Government confirmed that the wrongful trading regime for distressed and insolvent companies was to be temporarily relaxed (retrospectively from 1 March). While this will offer some comfort to directors faced with difficult decisions, directors' duties and certain trading offences remain in place and we would recommend that directors continue to trade very cautiously during this period. This article, and our specific article on [Coronavirus and changes to the insolvency regime](#), reflect this position.

1 Review cashflow forecasts

In a lockdown scenario businesses must prioritise assessments of how far their cash in bank, without further revenue, will sustain them. Three weeks was the initial benchmark for the length of time that businesses would need to tread water, but this is in no way guaranteed. Forecasting should, at least in theory, look ahead to conditions once trading can resume, although the assumptions required to do so will be without precedent in modern history. Government assistance, discussed in greater detail below, will be a key mitigating factor and it is

reasonable to assume that directors will be able to cite that support as a justification for reasoned operational decisions.

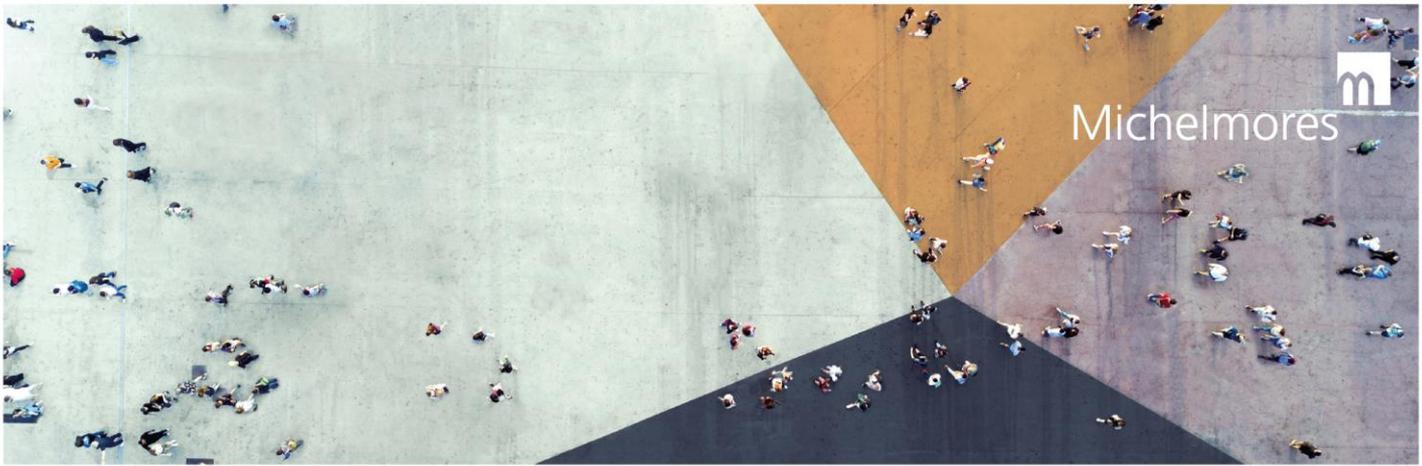
The wrongful trading regime (discussed in [our article on directors' duties and Coronavirus](#)), under which directors may attract personal liability for incurring liabilities where a company is, or is likely to, become insolvent, has been relaxed for three months from 1 March. However, directors still owe duties under the Companies Act 2006, including duties to act in the best interests of a company's members (or its creditors where the company is insolvent), and Insolvency Act 1986 provisions, including fraudulent trading and transactions defrauding creditors, continue to apply. Further details are set out in our article on [Coronavirus and changes to the insolvency regime](#).

Regardless of the relaxation of the wrongful trading rules, directors should continue to trade very cautiously, and use such cashflow forecasting as is feasible to try to establish when a company is, or is likely to become, insolvent. Engaging financial advisors may assist with forecasting and contingency/post-lockdown recovery planning, as well as potentially providing directors with an additional layer of justification for decisions.

2 Cut costs

Employees the Government's announcement on 21 March of its Coronavirus Job Retention Scheme, under which it will pay 80% of the wages of furloughed employees (capped at £2,500 per employee per month), was welcome news. In the context of total lockdown, taking advantage of this scheme will be essential. Our [update on the Job Retention Scheme](#) contains more detail.

How the scheme (currently set to run for three months) will work in the long term, and whether some businesses may still be forced to make redundancies or take other precipitous action, remains unclear. Under lockdown, even the 20% contribution by employers may prove unfeasible. Generally speaking, terminating an employee's fixed term



contract in response to Coronavirus disruption will, if a full redundancy process is not followed, expose the employer to a claim for unfair dismissal. A proper redundancy procedure entails expense and takes time, and may not therefore be feasible where the end-point of the disruption remains unknown. If all else fails, mothballing the business, discussed below, may be an alternative.

Freezing or minimising orders from suppliers should be undertaken as appropriate. Dialogue with suppliers should be maintained and plans put in place for resumption at the end of the lockdown period.

Defer capital expenditure and investment. Spending on longer-term projects or improvements that will not generate cash in the short term will, generally, be inappropriate during lockdown and the period immediately following it. Recruitment, marketing, premises moves and technology overhauls may need to be postponed.

Suspending payments to creditors, including landlords and suppliers may, if those creditors are not essential suppliers or likely to take enforcement action, provide breathing room. Non-payment should be considered very carefully as, depending on a company's circumstances, directors may be required to have regard to the interests of that company's creditors. Non-payment may also constitute an event of default under the company's banking documents. The Government has declared a three-month moratorium on commercial leasehold forfeiture (in respect of non-payment of rent only, so that service charges and other agreed leasehold costs remain payable), although this is a stopgap measure which does not authorise non-payment of rent nor rectify breaches of banking covenants.

Mothball the business. A draconian step, but one which may offer longer-term certainty. A company may enter a solvent liquidation, in which an insolvency practitioner takes control of the company, settles its liabilities from its available assets and returns the surplus to its shareholders. Solvent liquidation can, depending on the circumstances,

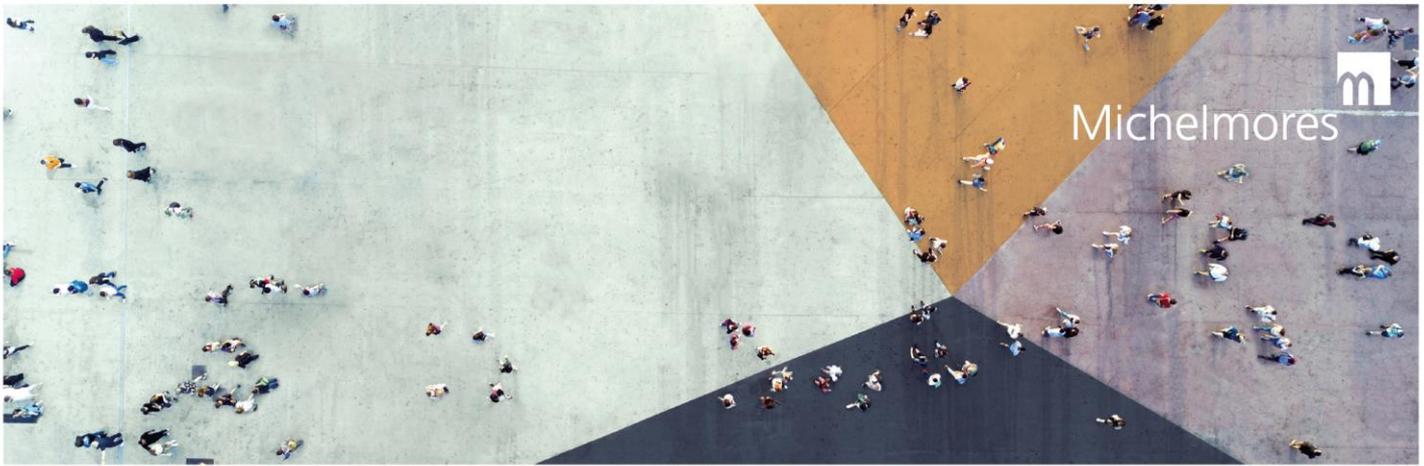
allow business owners to extract surplus cash from a business, retain its intellectual property (including branding) and warehouse it until the period of turbulence ends; following which they re-animate it as a new company. How this affects the business commercially is a tricky call. It should be emphasised that a company that is insolvent, or was insolvent at any time during the preceding 12 months, cannot use this process, and specialist insolvency advice should be obtained in those circumstances.

3 Explore funding options

Government relief may be available. 12 months of rate relief, as well as grant funding, have been confirmed for retail, hospitality and leisure businesses, and Time to Pay arrangements with HMRC are reportedly being agreed summarily, subject to monitoring requirements. The Coronavirus Job Retention Scheme is discussed above.

The Coronavirus Business Interruption Loan Scheme, which is available from week commencing 23 March to small and medium-sized enterprises (SMEs), commits the Government to guaranteeing 80% of a loan (up to a maximum loan amount of £5m) to a qualifying business, subject to certain restrictions. The Government will meet interest payments on the loan for the first 12 months. Companies with annual turnover above £45m will be ineligible.

The Covid Corporate Financing Facility for large businesses is also available as of 23 March. The scheme will run for an initial period of 12 months and involve the Government purchasing newly-issued commercial paper issued to 'firms that can demonstrate that they were in sound financial health prior to the impact of Coronavirus' and that 'make a material contribution to the UK economy'. The minimum issue size is £1m. There are concerns that a large number of businesses fall between the cracks in the criteria for this scheme and those for the Coronavirus Business Interruption Loan Scheme – failing to meet the 'material contribution' aspect of the former and the turnover limit of the latter.



Drawing down on existing facilities, obtaining new credit or negotiating forbearance with lenders can provide breathing room while other mitigation is undertaken. Dialogue with lenders should be maintained throughout. **Insurance policies** should be reviewed to establish whether pandemics (and, following the commencement of lockdown, mandatory closure of business venues) are covered. Cover is, generally, unlikely to be available, as business interruption provisions usually require quantifiable physical damage to property as the basis of a claim. Policies may, however, contain relevant extensions or specific disease-related wording. Our article on [insurance cover in the context of Coronavirus](#) contains a more detailed account.

The Financial Conduct Authority (FCA) has written to listed companies requesting that they observe a moratorium on publication of their preliminary financial statements until Sunday 5 April. The moratorium, which is voluntary, applies only to full-list PLCs and does not relate to trading updates issued by Regulatory News Service (RNS). In the meantime, PLCs should be able to provide sufficient information to the market in the form of RNS updates without publication of financial statements. Where a PLC has concerns about the impact of delaying publication, it is understood that the FCA has, to date, been responsive in fielding questions. Private companies may apply online to Companies House for a three-month extension to the deadline for filing accounts.

4 Diversification

Certain industries, including food, media, healthcare commodities and delivery services are trading well, at least in the short term, in the Coronavirus chaos. While some businesses are more adaptable to an environment of mass reclusion than others, there may be opportunities to adjust business models in novel ways to fit the altered market, helping companies to ride out the crisis.

Migrating online. As society has retreated indoors and communicates almost solely through the internet,

businesses formerly reliant on physical presence should consider whether their offering can be adapted to a primarily virtual format. Multi-platforming, or coordinating bricks and mortar supply with online trade, has been a high street imperative for some time. This process seems now to have been, at least temporarily, brought forward by several generations. Entering online marketplaces and using new or existing infrastructure to fulfil contracts may allow some businesses to continue in an altered form.

Alternative delivery methods for existing services may become available; the relaxation of planning laws for pubs, allowing them to serve meals and non-alcoholic drinks as takeaways, may add a new dimension to the prepared food market at a time in which the food supply landscape has changed dramatically. Other relaxations of laws and regulations, or changes in consumer habits, may arise in due course.

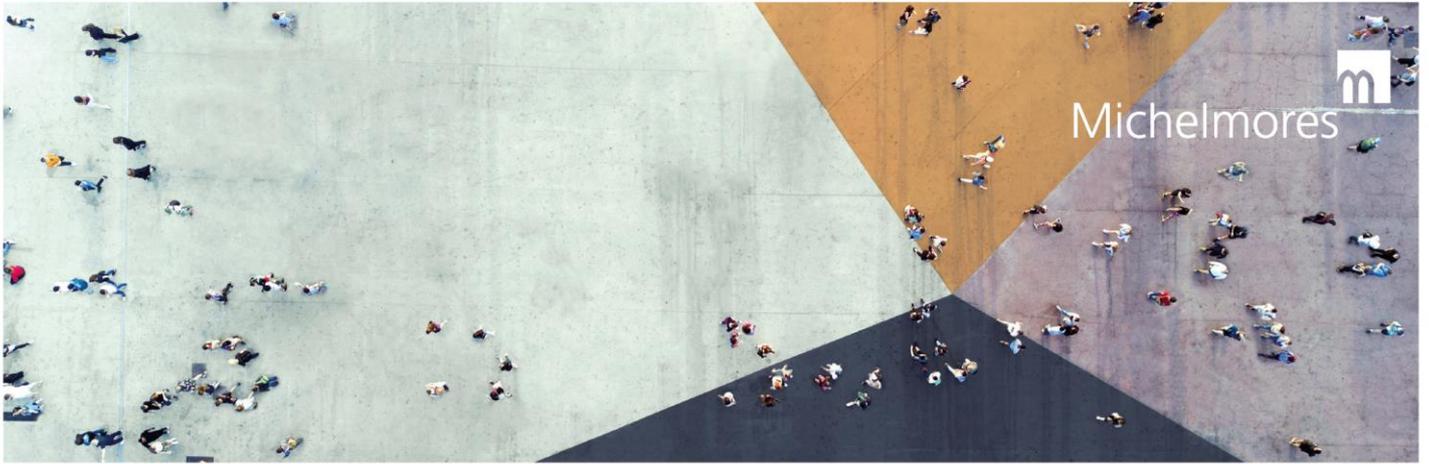
Repurposing production to in-demand goods can turn a crisis into an opportunity. Brew Dog and Louis Vuitton parent company LVMH have moved into hand sanitiser production, and private manufacturers are dedicating factory resources to medical ventilator production. Businesses with transferable plant, access to raw materials and versatile staff may be able to temporarily metamorphose in this way.

If you require legal advice on Coronavirus disruption planning, please contact a member of our specialist teams.

For corporate and commercial advice, please contact [David Thompson](#) or [Richard Cobb](#).

For employment advice, please contact [Andrew Tobey](#) or [James Baker](#).

For insolvency advice, please contact [Sacha Pickering](#), [Charles Maunder](#), [Douglas Hawthorn](#) or [Karen Williams](#).



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