

As we see more businesses having to close doors or adapt to a new set of rules, we set out some of the issues we anticipate for those needing to shut down, but preserve their businesses, at least until the lockdown is over. One message is clear: employers, employees, suppliers and customers are facing unique challenges and the best way to survive is to identify the issue, understand the options and engage with pragmatism.



### Employees

- Much has been written about what support is available for those who are not needed to work due to the lockdown and developments need to be followed closely.
- Many employees will be furloughed, i.e. granted temporary leave of absence, but kept on the payroll, with the government paying 80% of salary (capped at £2,500 per month). Note that an employee cannot be partially furloughed, e.g. work three of five days per week. This is available only to employees who are not working at all. Wording on the government website suggests consent is required to designate employees as furloughed and we suggest that is followed. It would appear some employers are treating employees as furloughed, and seeking to rely on implied consent if they do not object, but it is not clear yet if that approach will be challenged.
- There may also be layoff provisions in the contract of employment that can be relied upon, although if the intention is only to lay employees off for the duration of the lockdown, they may be better off financially by being furloughed.
- Employees will need to be paid before an application can be made to the Coronavirus Job Retention Scheme. Businesses with cash flow issues should apply to the government loan scheme to cover. Employers can top up the amount employees receive. We imagine the 80% funding is being managed by HMRC, in part, because it has easy access to PAYE records to ensure only legitimate claims are met. It is still unclear exactly how the claims process will work, and how long a business would have to wait to receive a payment from the government.
- For those businesses where employees can work from home, it will be important to ensure that employees have access to as much as possible of the business' technology to operate remotely and to try to implement electronic options to deal with things once done easily in the office, such as signing, dating, scanning and sending documents.

### Supply Chain

- Some businesses might need to take a longer-term view to assist suppliers that may go out of business if they do not receive some payments now, whilst others will need to seek some relief in their own supply chain.
- We have already seen examples of large customers withdrawing from the market and closing for good, leaving suppliers who have already sourced the raw materials as part of existing orders with only a claim against a company that will likely have no money to pay. Those reliant on customers or suppliers completing existing contracts need to establish a dialogue as quickly as possible.
- Suppliers may want to consider their payment terms – is cash on delivery now appropriate?
- Customers may want to offer other solutions where cash is tight, perhaps longer-term commitments or payment schedules.
- Businesses will want to think about ways to retain customers and what can be offered to them whilst the business is not operating as usual. This may include offering products or services online or by post, or suspending regular payments for services currently impossible to provide.

### Insolvency and Restructuring

- Existing legislation applies until any COVID-19 legislation supersedes it. Directors must remain mindful of this and avoid wrongful trading.
- It remains important for any struggling business to keep creditors at the forefront of the mind. Whether action or inaction is causing detriment, the message must be to be sensible and realistic. Utilise the financial support or dispensation offered, but as matters stand, only if directors have cause to reasonably believe that the business can ultimately survive. A tough question for many businesses right now. In keeping with dispensations on this point being granted by the Australian government, we would expect Parliament to clarify how directors can best conduct business in the current climate and stay within the confines of the law.
- Certain insolvency processes can provide the benefit of a moratorium if creditors are proving aggressive. However, right now, a business that is prevented from trading pre a formal insolvency will not be able to do so in insolvency, and it is highly likely there will be little appetite for acquiring businesses at price levels that might have been agreed before the lockdown.
- We have noted that the High Court in London has already adjourned hundreds of winding-up petitions due to be heard on 25 March for at least 12 weeks and we expect more adjournments to follow.

## Environmental, Licensing, and Health and Safety Regulations

- Businesses that must adhere to existing regulations will need to consider how to deal with them in lockdown. If any workplace is to remain closed for an extended period, ensure that there will not be a breach of any environmental legislation or any possible risk due to a shutdown.
- Consider questions such as: How long can a substance safely stay in a tank? Is there any equipment or vessels that need to be checked and maintained? Are there any places susceptible to leaks? Is there waste needing disposal? Does the fire risk assessment need updating?
- From a health and safety perspective, will sites be left secure? A site with hazards and obstacles may leave a business open to risks not only from vandals and thieves, but could also present a risk to members of the public who may have an accident on the premises. Consider employing security (for as long as that may be allowed) and a walkthrough of the site to eliminate or minimise any obvious risks.
- Licences and authorisations – Do they need renewing or updating in the lockdown and what would be the effect of non-compliance? Are there any notification requirements to any local authority or other body if the business is getting completely or partially locked down?
- Any publican or restaurateur with a premises licence will still have annual fees to pay. Consider if they will fall due for payment during the lockdown. If not, the licensing authorities are required to suspend premises licences for non-payment, which would present an issue on re-opening. You may consider surrendering a licence, but need to weigh that against the costs and time associated with getting a new licence which could stall the re-opening.

## Other Payments

- The lockdown does not automatically mean payments due under contractual agreements (loans, guarantees, rent, etc.) are paused. Businesses may risk being in breach of agreements.
- Many businesses will need to take advantage of the anticipated legislation in the Coronavirus Bill currently going through Parliament, which states that any commercial tenant that cannot pay rent due to COVID-19 will not be evicted over the next three months. Rent will still be due, so it seems a stay in enforcing collection by eviction only.
- Until the position in relation to tenants is clear, we have noted that many landlords have been aggressive with their non-paying tenants and reviewing their options from statutory demands to exercising Commercial Arrears Rent Recovery. We are also aware of landlords forfeiting rent deposits and making demands of guarantors as alternative methods of recovery. However, these instances mainly seem directed against those refusing to pay anything, as opposed to those willing to pay something.
- There are other well-publicised loan schemes, plus a reasonable expectation that financiers and government departments will be slow to force due payment and, in fact, may offer some assistance, such as HMRC offering time to pay arrangements and deferrals on VAT payments, and some rates relief for certain businesses in the retail, hospitality and leisure sectors.
- However, businesses might be affected in other ways. We have seen an FX swap provider pull out of all their swaps early, leaving the counterparty with losses to deal with. The FX swap provider was nervous about credit risk and the swaps potentially costing the provider too much to honour in an uncertain financial market.
- We understand the Pensions Regulator is insistent that pension scheme contributions are adhered to, which will cause further pressure on businesses.
- Businesses should check that insurance premiums can be met and the position regarding empty premises. It is imperative to be in dialogue with their insurers. We understand credit insurers are withdrawing cover, which will be difficult to replace/reinstate in the current climate.
- An urgent review of non-critical payments should be undertaken and consideration given to cancelling standing orders and direct debits. Are you paying for a service you are not going to be using? Can payments be stopped, cancelled or suspended?

## Filings

- Consider what filings are due in the lockdown period and seek extensions absent any instruction that filings are suspended.
- Companies House is currently allowing businesses to apply for a three-month extension for filing accounts through a fast-track online system, citing COVID-19 reasons. Businesses are advised to plan ahead and make extension applications well ahead of impending deadlines, but the extension should be automatically granted.

There will inevitably be business casualties across many sectors in these uncertain and unprecedented times. Those businesses that act quickly to avail themselves of the support they need, and act sensibly and engage with any counterparty with pragmatism, maximise their chances of survival through the lockdown.

## Key Contacts



**John Alderton**  
Partner, Leeds  
T +44 113 284 7026  
E john.alderton@sqirepb.com



**Susan Kelly**  
Partner, Manchester  
T +44 161 830 5006  
E susan.kelly@sqirepb.com



**Russ Hill**  
Partner, Birmingham  
T +44 121 222 3132  
E russell.hill@sqirepb.com



**Devinder Singh**  
Partner, Birmingham  
T +44 121 222 3382  
E devinder.singh@sqirepb.com



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Our COVID-19 Summary of Government Financial Support [guide](#) sets out which companies are eligible for financial support, what the criteria is for applying and how the financial packages can be accessed. It is regularly updated when further information is available – check back for updates or subscribe to our blog.

For further information and to receive updates relating to the legal impact of COVID-19 please sign up to our [COVID-19 Resource Hub](#).

For further detail from the Government about the financial measures click on the links in this Quick Guide.