

The UK government has released its recovery strategy dealing with how the UK might move from lockdown to the “new normal” enabling some businesses to re-open. The ability to begin rejuvenating businesses that have been **mothballed** for the past couple of months is good news but corporates should proceed with caution as they take steps to revamp the workplace. Those businesses that are still restricted from opening (largely those in hospitality and leisure) will have consider whether the business can survive an extended period of lockdown or whether it is appropriate to consider restructuring the business. Our **quick guide to unlocking** sets out the key considerations for all businesses thinking about unlocking.

## Workforce

There are plenty of uncertainties for many businesses, particularly around the practicalities of gaining or keeping the confidence and **support of employees** around their personal safety, whilst simultaneously reactivating operations.

Other uncertainties relate to health and safety, trade and credit insurance and sector specific issues including real estate, construction, retail, leisure, the position in different jurisdictions across the globe and the staggered nature of the global recovery.

## Supply and Demand

A sensible start point is working out the demand for products and whether **supply chains** remain intact and are now adequate to meet demand.

To this end it is essential that businesses communicate with existing customers to understand their needs and how the staggered lifting of restrictions will affect them. Directors need to work out what changes can and need to made to their offering – production capability and manufacturing output, online capability and different/better delivery services are a good start point and each business will face its own particular opportunities and challenges.

Having understood the demand, directors should conduct the same exercise in relation to suppliers, and will want to know how they have coped during lockdown and what they are capable of sourcing and delivering as restrictions ease.

Boards should consider opportunities with regard to alternative sourcing in what will be a very choppy and changing market place. Possibly cheaper sources and definitely seeking to de-risk their supply chains by diversification and, where practical, shortening the chain.

Suppliers and customers also need to be mindful that the Government has committed to introduce legislation barring “ipso facto” termination clauses on insolvency. The precise details are in draft legislation currently going through Parliament.

## Cash Flow

Once satisfied there is still a business to revamp then boards will need to carefully and thoroughly address the business’s cash position. They need to work up Plans A, B and C – best and worst case scenarios and something in between.

There will be a lot of pressure on profitability from all directions. Thought must be given to any deferred liabilities – **the obvious one being rent** – plus any newly acquired debt taken on to help manage through the fallow period of lockdown.

The forbearance currently being exercised by financiers will come to an end, so lending costs and repayments need to be factored in. Protective legislation may eventually be repealed or become obsolete for instance, in relation to anxious or opportunistic creditors and their ability to issue winding-up petitions. The current **government financial support** systems will have to wind back over time.

The Coronavirus Job Retention Scheme is in place until 31 October and possibly there will be some allowances to taper the furlough relief to allow partial return to work, but will that falling away, coupled with the new shape of businesses, call for redundancies?

On a more positive note the UK government has announced that it will further support businesses through a trade credit insurance guarantee, saying that trade credit insurance provides cover to hundreds of thousands of business to business transactions, particularly in non-service sectors, such as manufacturing and construction.

The government’s guarantee would assist in insuring sellers against buyers defaulting on payment and it should give businesses more confidence to trade with one another as the economy kicks back in.

As they dust off the books, finance directors should **identify likely bad debts and fully provision**, including checking debtor days as they will almost certainly have slipped during lockdown. Consideration should be given to reducing credit terms, perhaps asking for cash on delivery and there may be potential to increase prices. At the end of the day the books need to be balanced. The likelihood is things may not look great and directors need to be mindful of their wider duties

For those businesses still affected by lockdown, please refer to our [quick guide to mothballing](#).

Our [quick guide to unlocking](#) sets out the key considerations for all businesses thinking about unlocking.

Or access our self-assess using our [online tool](#).

Our employment team provide up to date alerts on furlough and returning to work.

[To subscribe or review the latest updates.](#)

For more detail and insight into matters [impacting supply chain](#).

Our [real estate quick guide](#) sets out what measures are currently in place to support businesses.

See our [quick guide](#) to what financial support packages and relief is currently available to UK businesses

See our [alert](#) on the Do’s and Don’ts of how to manage distressed customer relationships.

## Directors Duties

The focus of **directors' duties** shift when they are no longer confident that the business will remain solvent.

A business is statutorily insolvent when it cannot meet its debts as they fall due, or when its assets are less than its liabilities.

At that point the directors' duties switch to a requirement to take decisions for the benefit of the company's creditors as a whole.

Companies' financial positions across UK plc will almost certainly not look as strong as at the end of 2019. Auditors will find it more difficult to sign off going concern statements and there will be impairments. If a company is insolvent then duties owed to shareholders will be secondary. Whilst they remain relevant, directors should not be influenced by any power of shareholders to remove them when they are looking at tricky business decisions. In an insolvent situation directors must act in the best interests of the company's creditors.

Directors may take some comfort from the Government's announcement of a temporary suspension of wrongful trading from 1 March in relation to COVID-19 related matters. However, the precise terms of the suspension are in the draft legislation currently going through Parliament.

[See our more detailed guide on directors' duties.](#)

## Supporting Economic Recovery

Finally it is worth emphasising that the instinctive desire by all parties to assert rights against defaulting counter parties should be expressed carefully. The UK government has issued **guidance** on responsible contractual behaviour in the performance and enforcement of contracts impacted by the COVID – 19 emergency.

In essence this document flags up that all parties to contracts impacted by COVID-19 should act responsibly and fairly, in order to protect jobs and the economy.

It exhorts individuals, businesses (including funders) and public authorities who are parties to active contractual arrangements which are materially impacted by COVID-19 to consider their behaviour as part of the national response to the public health emergency.

It encourages responsible and fair performance and enforcement of contracts as the circumstances in which we collectively find ourselves are unprecedented and exceptional.

The guidance is clearly designed to discourage what it describes as a "plethora of disputes". The underlying message is clear: use your energies and your money to get the economy going again and not to sue each other. The government says it will keep behaviour relating to contracting under review, and there must be a risk that pursuing COVID-19 related disputes in a way which is judged to be unreasonable could lead to some form of regulatory intervention, and certainly to reputational damage. The risk is likely to be significantly increased for businesses that have received taxpayer funded support.

The guidelines expressly state that they do not override contractual rights or the law of the land and so we can be sure the Courts will not consistently factor in this guidance. However litigation risk will rise and all judges factor justice and morality into their thinking where the law is at all unclear or allows for a range of outcomes.....as it often does.

So corporates should pay attention to the "overall morality" of any claim when estimating prospects of success. Further, many contracts impose obligations of "reasonableness" or "reasonable endeavours" and it is very likely that the Courts will interpret those words through the prism of this guidance whilst it applies. Companies in none or lightly regulated sectors and may not be heavily impacted by this, but there will be reputational issues to be factored in when assessing claims and defences. For further information and support.

And finally as a business considers how it can try to return to a degree of normality, it is worth bearing in mind that the Government has committed to provide additional restructuring tools in the form of a Corporate Moratorium and a Restricting Plan. Again, the precise details are in draft legislation currently going through Parliament. These tools may provide a business with the additional rest-bite needed to successfully restructure and so survive the impact of the pandemic.

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