

Assessing Your Business Viability and Director Risk Guide

22 January 2021



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This note is not intended to, and does not in fact, constitute legal advice. Should you require legal advice in relation to your specific circumstances, please do not hesitate to contact one of our Restructuring & Insolvency team members, whose contact details are at the end of this note, who would be happy to assist you. Squire Patton Boggs (UK) LLP accepts no liability for any losses occasioned to any person by reason of any action or inaction as a result of the contents of this note.

Business Viability and Director Risk – Act Now

Will your business be financially viable at the end of lockdown? What challenges does 2021 pose?

What are the next steps?

Despite vaccines now being available, tough measures remain in place to deal with the ongoing COVID-19 pandemic, creating uncertainties for businesses and owners about what the future holds.



Many businesses have “survived” the difficult trading conditions of 2020, due largely to the financial support offered by the UK government, liability deferral and additional debt provided from their financiers, often backed by government guarantees. The measures in place to protect and support businesses have been extended more than once, but they will almost certainly cease in spring 2021 and, of course, deferred and new debt will have to be repaid.

There is, as yet, no insight into what the government proposes (if anything) to support businesses following the protective measures coming to an end. Yet many will need time to recover from what has been a devastating impact on health and the economy in order to return to any “normal” trading conditions.

Throughout the pandemic, business owners have had to make difficult decisions about the future viability of their business. This remains the case, and decisions remain challenging in the current environment, particularly when restrictions are imposed, lifted and then imposed again with little time to plan.

A key consideration for all business owners is that decisions have to be taken carefully in light of directors’ duties to act in the best interest of the company and its creditors as a whole. **If directors do not act in the best interests of the company and, in particular, its creditors, there is increased risk of personal liability for directors if the financial position of the company deteriorates.**

However, there are a number of ways that directors can reduce the risk of personal liability, and positive steps that can (and should) be taken to protect the business.

Now, and in the coming weeks and months, businesses will be facing difficult decisions: should the business borrow more? Should it make staff redundant? What about the furlough scheme – should staff remain on furlough? Can the business pay back previous borrowings? What happens when temporary support measures come to an end? Will a business have time to “reset” itself before deferred and new liabilities become due – many have already depleted reserves and exhausted borrowing avenues? Can the business sustain more loss? What impact has Brexit had on trade?

This brochure contains a number of guides to help navigate these difficult questions, but the key for all directors is to act now and take advice to minimise the risk of personal liability.

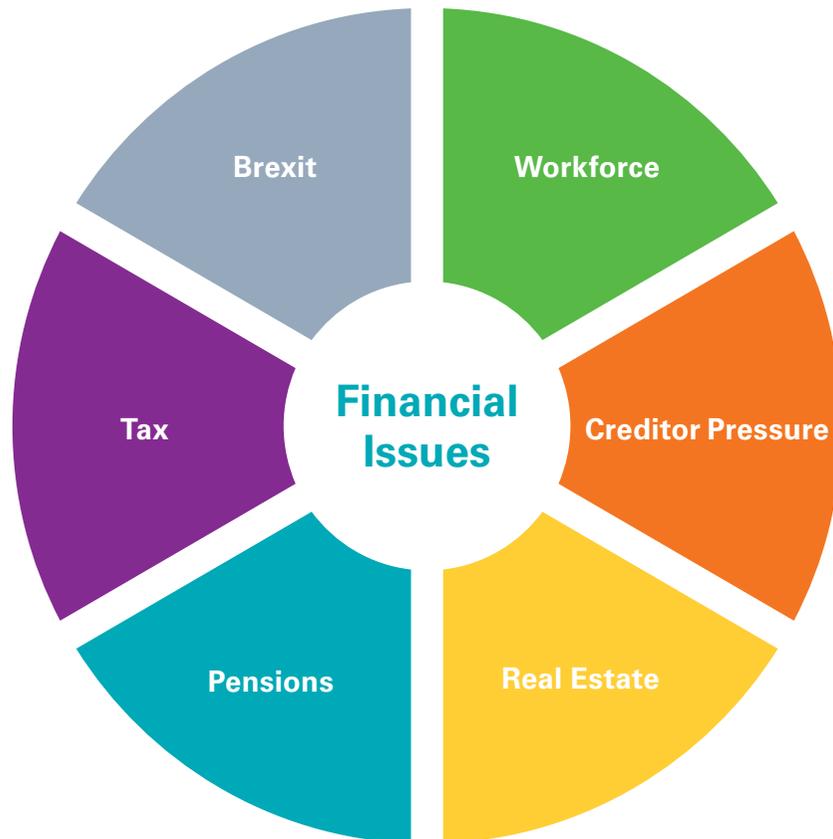
We have a team of experts who can help with decisions about employees, cash requirements and borrowings, can offer advice on restructuring options and can offer a furlough audit.

Financial Health Roadmap

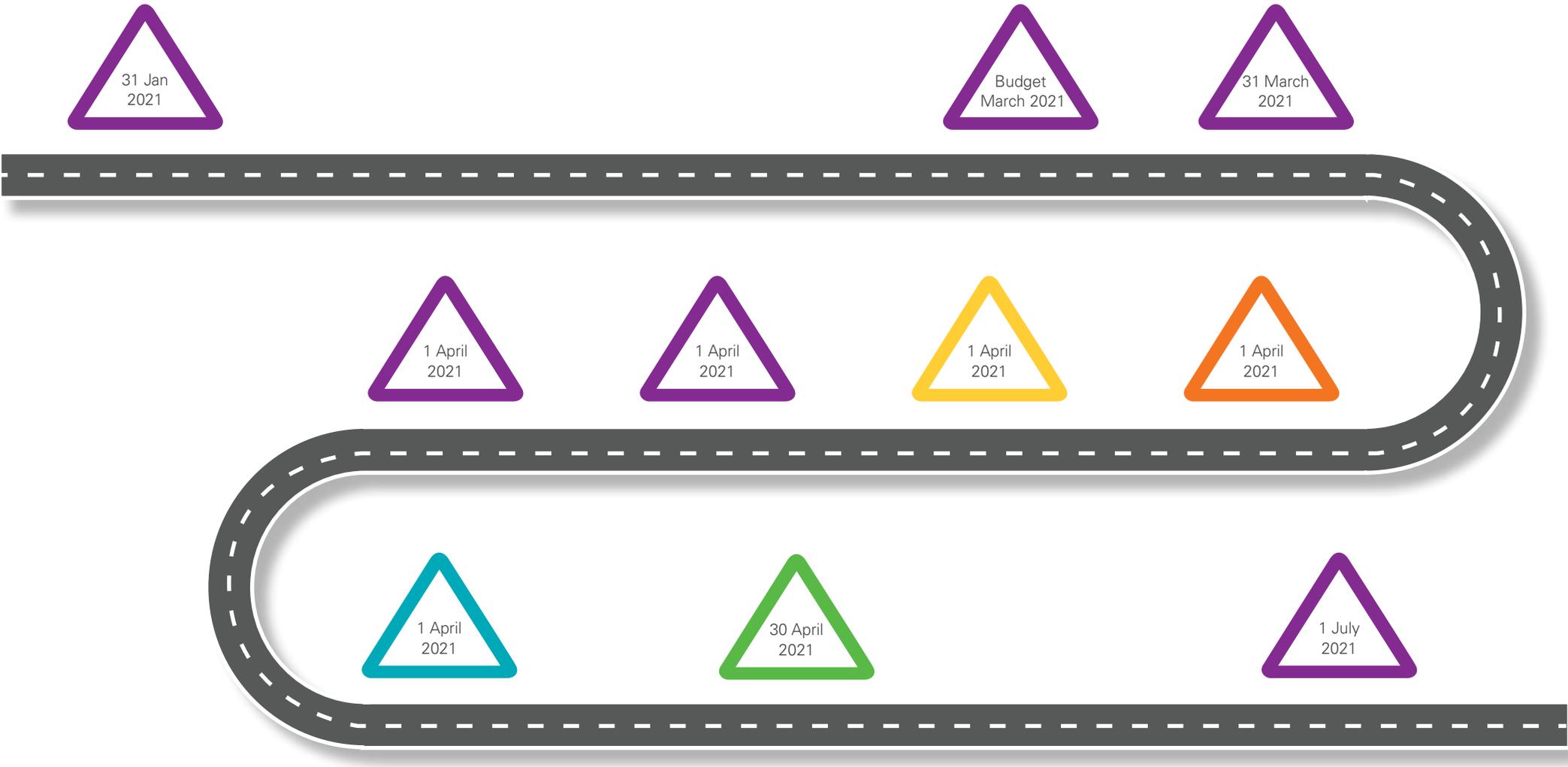
UK Business Key Dates To Manage Financial Health

This financial health roadmap helps identify key dates that may impact cash flow in the coming months and should be considered (alongside the specific financial needs of the business) when planning.

It highlights when the measures put in place by the UK Government and HMRC will change and consequently when creditor pressure may increase, when a business will be required to fund ongoing operational costs that are currently supported by the UK Government or where payment is deferred for instance by HMRC.



Click on each date for more information



Key

| | | |
|--|---|--|
|  Workforce |  Real Estate |  Tax |
|  Creditor Pressure |  Pensions |  Brexit |

Roadmap Destinations

January 2021

Income Tax: Deferral of Self-assessment Payments on Account to be Paid in Full

- On or before 31 January any income tax self-assessment payment on account due to HMRC in July 2020, that has been deferred, is due to be paid in full (either as one payment or in instalments).
- In his Winter Economy Plan, the Chancellor of the Exchequer announced that self-employed taxpayers who exercised the option to defer their second payment on account will, subject to agreeing a payment schedule with HMRC's self-service Enhanced Time to Pay facility, be allowed to pay the tax due over an additional 12-month period, with deferred amounts not due to be paid in full until the end of January 2022. No interest or penalties will be levied on the "late" payments.
- Subject to a further Time to Pay agreement, any balancing payment due for the 2019 to 2020 tax year, plus the first payment on account due for the 2020 to 2021 tax year, will still be due and payable on 31 January 2021.

March 2021

Spring Budget 2021

- The government will publish a Spring Budget on Wednesday, 3 March 2021. The Autumn Budget 2020 was postponed.

Payment of VAT on Deferrals between 20 March and 30 June 2020 Due

- On or before 31 March 2021, any VAT payments that were deferred between 20 March and 30 June 2020 will be due, unless affected businesses opt-in to the VAT Deferral New Payment Scheme.
- The Winter Economy Plan introduced a VAT Deferral New Payment Scheme that will allow affected business to spread the payment of unpaid deferred VAT due over 11 equal instalments through the financial year 2021-2022. No interest or penalties will be levied on the "late" payments.
- Any cancelled Direct Debits should be re-established in good time for HMRC to process payment(s). Businesses spreading the repayment of deferred VAT should check their payment arrangements are appropriate for the VAT Deferral New Payment Scheme. VAT returns should be submitted as normal and on time. Any VAT due since 30 June 2020 should also be paid as normal and on time.

April 2021

Restrictions on Debt Collection and Creditor Action Lifted

- From 1 April the temporary restrictions on presenting a winding up petition for an unpaid debt (which apply where the reason for non-payment is COVID-19 related) end. In addition the temporary restrictions on presenting a winding up petition based on an unsatisfied statutory demand end.
- Unless arrangements have been made to pay unpaid suppliers, HMRC or landlords, aggressive creditors may threaten or bring winding up proceedings.

NB: other enforcement action (court action/enforcement of retention of title) is not restricted.

Recovery Action for Non-Payment of Rent Can Commence

- From 1 April, the temporary restrictions on landlords taking forfeiture proceedings ends as do the temporary restrictions on pursuing Commercial Rent Arrears Recovery (CRAR) to recover unpaid rent.
- Unless rent has been paid or new arrangements to pay outstanding rent have been agreed, landlords will be able to take recovery action against tenants for unpaid rent.
- As always, tenants should endeavour to pay their rent, and satisfy all other terms of their lease, if at all possible. With the end of the moratorium on landlords' ability to forfeit leases of commercial property for non-payment of rent ending, tenants that are facing difficulties meeting rent liabilities as they become due should speak to their landlord at the earliest opportunity.

VAT Rate Reduction for Hospitality, Leisure and Accommodation Expires

- From 1 April 2021, businesses in the hospitality, leisure and accommodation sectors that have been supplying food, non-alcoholic drinks, hotel and holiday accommodation or admission to certain attractions at the reduced rate (5%) of VAT, should ensure they have systems in place to reapply the standard rate (20%) for supplies made on and after that date and account for any VAT due accordingly. The Winter Economy Plan extended the period during which the reduced rate applies to 31 March 2021. Businesses utilising the Flat Rate Scheme, the Tour Operators Margin Scheme or any other applicable special retail scheme should consider the impact of the reduced rate, and subsequent reversal, on their VAT calculations and accounting.

Stage Two of UK Border Operating Model Takes Effect

- From 1 April 2021 imports of products of animal origin (POAO) and other regulated plants and plant products will require pre-notification and the relevant health documentation.

Business Rates Relief Ends

- From 1 April 2021, certain businesses in the retail, hospitality and leisure sectors in England will have to pay business rates for the 2021 to 2022 tax year as normal. Similar relief provisions in Scotland, Wales and Northern Ireland are also due to end. The next business rates revaluation in England, which had been due in 2021, has been postponed. However, affected businesses should also note that the government is consulting on a fundamental review of business rates which could result in significant changes being made to the system in the medium-to-long term.

The Pensions Regulator (TPR) Reverts to a Mandatory 90-Day Period for Reporting Late Payment of Money Purchase Pension Contributions

- In response to the pandemic, TPR granted an easement extending the period for reporting the late payment of money purchase pension contributions from no later than 90 days after the due date to 150 days. From 1 January 2021, TPR asked trustees and pension providers to revert back to reporting the late payment of money purchase contributions no later than 90 days after the due date. This requirement becomes mandatory from 1 April 2021.

Coronavirus Job Retention Scheme Ends

- As the economic effects of the pandemic are proving much longer-lasting than originally anticipated, the government has extended the CJRS to give businesses greater certainty and protect more jobs. Support under the scheme has been extended until 30 April 2021.

July 2021

Full Application of UK Border Operating Model

- From 1 July 2021 businesses importing any goods will have to make full customs, safety and security declarations at the point of importation and pay all relevant taxes and duties.

Other Cost Considerations

Redundancy Costs

- The government hopes that businesses will rely on the support offered by the UK government under the extended CJRS to avoid the need for redundancies over the difficult winter months. Some businesses may, however, consider that some redundancies are still necessary. Proper advice should be sought and if redundancies are unavoidable, the costs will need to be factored into cash flow.

Deferred Payments or Forbearance

- If a business has agreed to defer repayment, adjusted payment terms or agreed a period of forbearance with its creditors, the terms of deferral, repayment or forbearance should be reviewed, re-negotiated if appropriate and factored into future cash flow requirements – including any agreement with the company's lenders, suppliers, landlord or time to pay agreements with HMRC.



Assessing Viability and Business Risk

Key Points for UK Businesses to Consider

The purpose of this quick guide is to help organisations focus on key issues that impact viability and sustainability given the ongoing uncertainties created by the COVID-19 pandemic.



Cash Flow and Financing

Directors should prepare new cash flow forecasts for best and worst case scenarios (i.e. prolonged national lockdown and further localised lockdowns), considering any expected changes to supply and demand, any changes to operational costs and factoring in any deferrals of historic liabilities, and any new debt which has been taken on. Forecasts and projections should be continually reviewed and updated to reflect changes in the market, lessons learnt and expected government changes.

Repayment of borrowing

- Use of government schemes (e.g. CBILS, CLBILS, Future Fund, etc.?)
- Other additional borrowing from existing lenders
- When and how will payments be met?
- Is there a need to restructure debt?

Rent

- Rent holiday/reduction agreed?
- Ability to meet future (and missed) rent payments
- Restructure future rent turnover or similar arrangements
- Aggressive action from landlords when restrictions are lifted (stat demands, forfeiture, winding-up petitions)

Deferred payments

- Paying deferred VAT payments/rent/suppliers
- Meeting tax payments under time to pay agreements

Government restrictions

- Impact of lock-down on supply chain and demand

Forbearance

- Repaying existing lenders – forbearance may end and payments need to resume
- Impact of protective measures lifting, after 31 March 2021 i.e. restrictions on forfeiture and winding up petitions
- Availability of government support

Cash Flow Pressures

Suppliers

- Catching up on payments to suppliers
- Agreeing and abiding by new terms
- Ability to meet future obligations – increased costs
- Aggressive debt recovery action

Employees

- Impact of national and localised lockdowns
- Impact of required employer contributions for furloughed staff and furlough audits
- Payroll funding following end of the Coronavirus Job Retention Scheme and impact on cash and employee requirements
- End to contractual variations for paycuts
- Is a redundancy programme going to be necessary? If so, when does any consultation need to start?

Debtors

- Have debtor days slipped during COVID-19?
- What action can/should be taken to address any potential bad debt issues?
- Reduced credit terms/payment on delivery/increased prices/credit insurance



Supply and Demand

Operational

- Identify key suppliers: business critical and projected spend
- Staggered approach to resuming supply
- Able to meet expected demand
- Changes to delivery timescales
- Alternative sourcing? Costs consequences?

Pricing and payment

- Changes to payment terms/cost (e.g. cash on delivery)
- Financial health of suppliers
- Ability to obtain credit

Stock

- Import/export tariffs and taxes

Termination of existing contracts

- *Force majeure*
- Material adverse change
- Termination rights

Government restrictions

- Impact of restrictions on supply chain

De-risking the supply chain for the future

- Review of whole supply chain
- Look to achieve greater diversity in supply chain
- Potential investments in technology



Company



Shape of demand

- What demand is there?
- Impact of lock-down on future demand

End-user/customer

- Decrease in consumer confidence
- Cash-strapped customers

Changes to product and offering

- Changes to consumer habits (e.g. e-commerce and importance of home delivery)
- Increase in appetite for online suppliers and delivery services

Pricing and payment terms

- Review pricing structure, are pre-COVID-19 margins still achievable?
- Consider credit terms and customer insolvency risk
- Is credit insurance still available?
- Is invoice discounting an option to improve working capital?

Government/Other Restrictions

- Impact of any lock-down e.g reduced/ no footfall
- Impact of restrictions e.g self isolation
- Impact of social distancing measures e.g. reduced operating capacity

Employee Considerations

Business requirement/need

- Does the business need the same number of employees in light of any changes to supply/demand/business model? Are redundancies necessary?
- Re-allocation of resource according to business plan

Availability/Costs

- Impact of lockdown (existing, new, prolonged)
- Impact on employees (fear of infection, childcare responsibilities, self-isolation, or shielding etc.)
- Will there be any permanent changes to working patterns/habits that impact operational costs? i.e. increase in homeworking and decrease in office space
- Psychological support – assisting employees to adapt, support with bereavement – costs?

Long-term changes to contracts and remuneration

- Flexible remuneration plans
- Agree reductions in salary and bonuses
- Lead from the top!



Operational Costs

Licences

- Renewals/periodic fees payable to ensure licence continuation
- Inability and capacity of named individuals/licence holders/trained individuals to carry out role (e.g. long-term absences, sickness, self-isolation)
- Licence amendments to reflect changed trading arrangements (e.g. changes to hours or activities)

Increased health and safety costs and compliance with social distancing

- Strategies for effective social distancing – screens, changing shift patterns, use of different parts of premises, monitoring symptoms, track and trace, etc
- Travel to work and transport
- Sanitisation and cleaning programmes

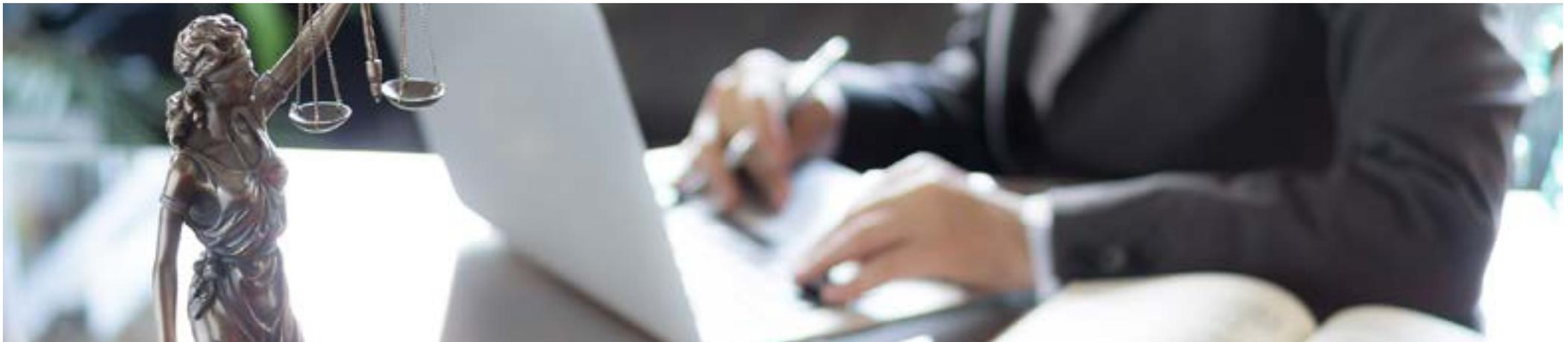
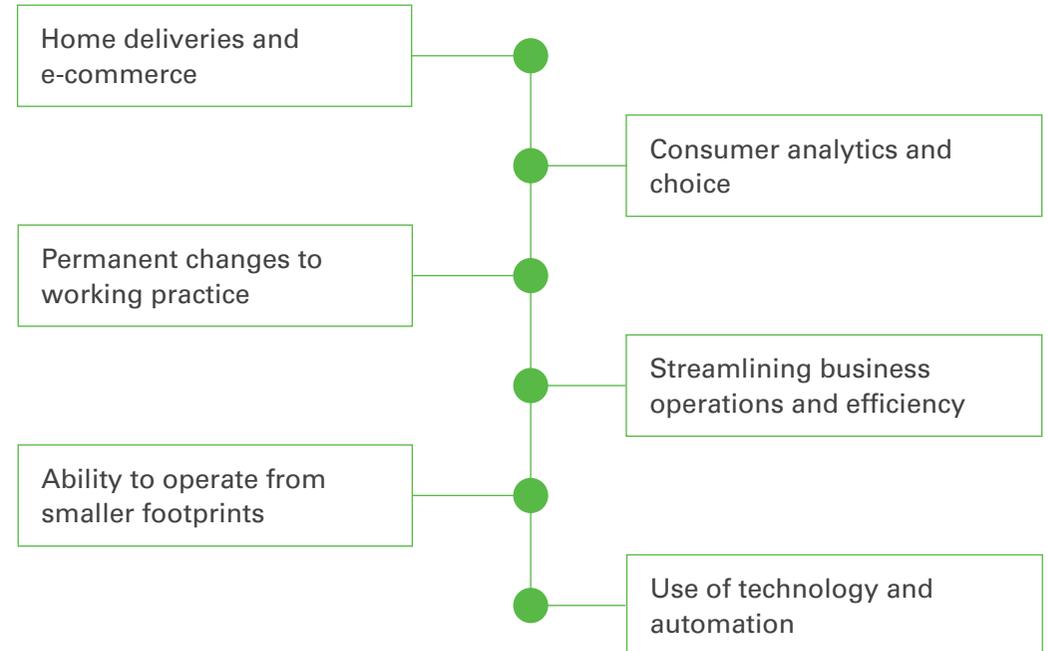
Changes in operational practices and procedure

- Changes to real estate footprint to accommodate changes to employee and working practices (e.g. reduced office space or larger warehouses)
- Investment in technological capabilities to accommodate changes
- Greater automation of processes (or parts of processes)

Opportunities and Lessons Learnt from COVID-19

Statistics show that most consumers do not want a return to “normal” and we can expect significant behavioural changes.

Many businesses have already made changes to their day-to-day operations, many changes will be permanent or will require further adaption to meet new government guidelines but all will impact on future cash requirements.

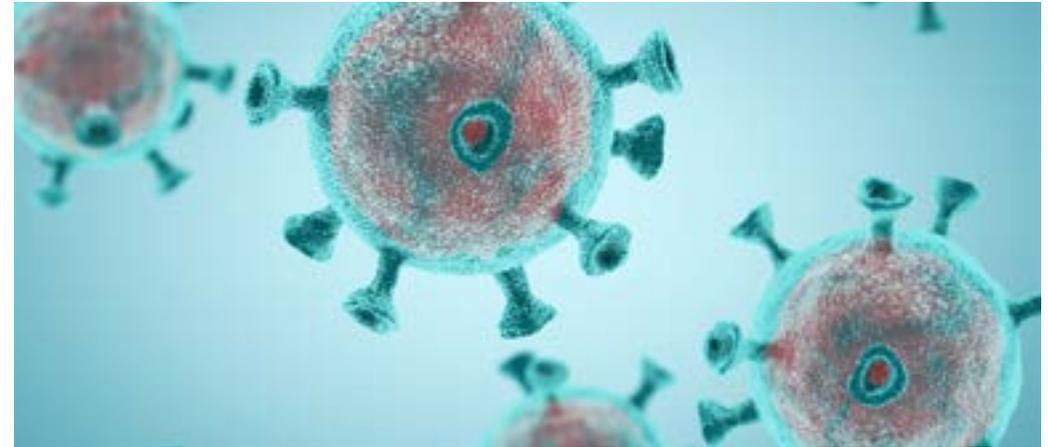


Directors' Duties and Related Matters, in the Context of COVID-19

Scope and Purpose of This Note

This note summarises the duties that directors of companies incorporated in England and Wales are subject to.

This note explains those duties, and matters that directors should consider in relation to them, in the context of the COVID-19 pandemic.



Commentary

Directors' Duties

- Directors have statutory duties that they owe to the company. Each director owes these duties individually. In the exercise of those duties, generally and while the company trades solvently, the directors must act in the way they consider in good faith would be most likely to promote the success of the company for the benefit of its members as a whole. Their statutory duties require that directors also take into account wider factors, such as the environment, employees, the standard of their business conduct, business relationships with suppliers and customers, and any other relevant circumstances.
- If the company becomes insolvent, while these statutory duties are still owed legally to the company, they become subject to other interests to which the directors should have regard, such as those of the creditors of the company. However, the interests of the shareholders are still relevant.
- A breach of any of the statutory duties is actionable by the company, and any right of action could be exercised by an appointed insolvency practitioner should the company later enter a formal insolvency process.
- The law makes no distinction between executive and non-executive directors or shadow directors. All members of the board have the same duties to the company. A director must exercise reasonable care, skill and diligence. This means the care, skill and diligence that would be exercised by a reasonably diligent person with the general knowledge, skill and experience that may be reasonably expected of a person carrying out the functions carried out by a director in relation to the company and the general knowledge, skill and experience of that director.
- While the interests of shareholders remain relevant during any period in which the company is or may be insolvent, the directors should not be influenced by any power any individual shareholder has to remove or replace the directors (or any of them) and must act in what they consider to be in the best interests of the company's creditors as a whole.

Trading Insolvently/Wrongful Trading

- A company is likely to be insolvent if:
 - It cannot meet all its present and due payment obligations (i.e. it is unable to pay its debts when they fall due), in which case it is likely to be insolvent on a cash flow basis.
 - The value of its assets is less than the amount of its liabilities (taking into account its contingent and prospective liabilities), in which circumstances it is likely to be insolvent on a balance sheet basis.
- Within these two tests of insolvency, there is much case law (recent and historical) beyond the scope of this note, setting out exactly what must be taken into account. However, in the current COVID-19 environment, it will, in many cases, be incredibly challenging (if not impossible) for businesses to accurately project their cash flow forecasts and/or value their assets for the purposes of these tests. In those circumstances, directors should take a cautious approach on the solvency tests, and if in doubt, presume insolvency.
- Directors should be aware that while there is no statutory prohibition against trading while insolvent, there could be some degree of risk of the directors being required to contribute personally to the assets of the company if they continue to do so.
- If the directors continue to trade in circumstances where they knew or ought to have concluded that there was no reasonable prospect that the company would avoid going into insolvent liquidation, then they may be liable for wrongful trading under section 214 of the Insolvency Act 1986 (IA 1986).
- In such circumstances, the directors could be personally liable for any losses suffered by creditors caused by continued trading **unless** they take **every** step possible with a view to minimising those losses that they ought to take.
- The key consideration for directors is, therefore: “Is there a reasonable prospect of avoiding insolvent liquidation?” If there is, the directors will not be liable for “wrongful trading” so long as they hold that belief reasonably, having regard to information available to them and the standards of skill and care expected of them.
- The directors should, among other things, consider whether:
 - The company is presently operating within existing facilities while managing the position with creditors generally
 - The company qualifies for the government’s Coronavirus Business Interruption Loan Scheme (CBILS), Coronavirus Large Business Interruption Loan Scheme (CLBILS) or the COVID Commercial Financing Facility (CCFF)¹ (while these measures are still available), and have received an indication from the company’s bankers that they would support the company with those facilities
 - The company is eligible for any grants, rates relief or other support being made available by the government² in response to COVID-19
 - The company’s financiers have withdrawn any facilities previously made available to it (such as overdraft facilities) or have indicated that they will be unable to provide ongoing support
 - The impact on the company’s cash flow will be material if the company has chosen to defer payment of any VAT for the period from 20 March to 30 June 2020 or the impact on cash flow of any other payments that the business has agreed to defer (note that the company will also have the option to repay that deferred VAT liability in 11 monthly instalments between March 2021 and March 2022)
 - The company is able to apply for a “time to pay” (TTP) arrangement with HMRC to spread its current tax liabilities over a period of three to 12 months

- Its shareholders have been made aware of any additional working capital requirements and have indicated a willingness to extend facilities to the company
 - The company is able to furlough employees (i.e. grant them a period of leave instead of making them redundant) given that the government will pay up to 80% of wages
 - There is a realistic prospect that the company can be sold as a going concern at a value sufficient to ensure all creditors will be paid in full, with a return to shareholders, and have instructed advisors to market the business; note that this is likely to be far less achievable in the current climate compared to a non-COVID-19 impacted market
- The directors should be aware that there may be a risk of challenge to their view if any assumptions that they were making relating to these points prove to be materially inaccurate, particularly as a result of the fast-developing situation with COVID-19. If the company subsequently enters into an insolvency process, then the period of trading prior to that formal insolvency process will be reviewed by an insolvency practitioner with the benefit of hindsight. To mitigate against this risk, the following matters should be carefully and regularly reviewed during this period of uncertainty to ensure that so far as possible:
 - Any new credit, supplies and services are necessary and bona fide for the purpose of continuing the business; if the business intends to take on further credit by way of CBILS, CLBILS or CCFF, the directors should be of the view that the funding will enable the business to survive the pandemic and continue on a business-as-usual basis once the pandemic recedes and normal trading patterns resume; the directors should ensure that when applying for funds under CBILS, CLBILS or CCFF, they provide full disclosure to its bankers regarding its financial position.
 - Any transactions out of the ordinary course of trade are the subject of particular scrutiny and avoided wherever possible.
 - The company is able to meet payroll for those employees that it has “unfurloughed”
 - It is appropriate for the company to utilise the Coronavirus Job Retention Scheme.
 - No creditors are specifically preferred (see below) or transactions entered into at an undervalue (see below) unless in good faith and that are critical to ensure the survival of the business and the prospects of achieving a turnaround and/or solvent disposal/restructuring.
 - The directors work to develop expeditiously a credible business plan for the immediate term with as realistic and prudent assumptions as it is possible to make in the current circumstances, incorporating reasonably achievable options for a recovery for creditors and (if possible) a return to shareholders.
 - The directors consider what contingency strategies could be put in place to protect the interests of creditors should the new business plan prove unsuccessful (see below).
 - The directors consider the net deficiency position of the company’s assets immediately and analyse whether it is believed continued trading will either reduce or increase that deficiency. The directors should keep this under regular review with a comparative analysis of the net deficiency compared against what would be the position if continued trading had not occurred and regularly forecasted for a week in advance. This will provide supporting evidence that losses to the company were constantly under review and corrective action to reduce losses was taken at an early stage. The analysis must show that any continued trading is intended to reduce the net deficiency of the company, but also that it is designed appropriately so as to minimise the risk of loss to individual creditors. This exercise should be further reinforced by circulating the net deficiency analysis to an insolvency practitioner each week for advice in respect of continued trading.
- The board should keep full and accurate minutes of its reviews, decisions (including any dissenting views of individual directors), the reasons for those decisions and the information (particularly financial information that should be attached to the minutes) upon which such decisions are based.

1 Further detail can be found at www.businesssupport.gov.uk/coronavirus-business-support.

2 See above link for further detail.

Impact of Relaxation of Wrongful Trading Rules

- On 25 June, the Corporate Insolvency and Governance Act received Royal Assent and temporarily relaxed the wrongful trading provisions under UK Insolvency Laws.
- Under the initial temporary provisions (that applied from 1 March until 30 September 2020 to all companies (save for some exceptions such as building societies and banks)) when determining whether a director is liable to make a contribution to the assets of a company for wrongful trading, the courts had to assume that a director was not responsible for any worsening of the financial position of the company.
- The measure enabled businesses to continue to operate and/or to be mothballed without creating additional unnecessary risks for directors, encouraging companies to take advantage of the unprecedented financial support offered by the government to help support cash flow if the directors reasonably believed that doing so was in the best interests of the company/creditors.
- On 26 November, the temporary provisions described above were re-introduced, so that they applied to any trading during the period between 26 November 2020 and 30 April 2021. Note that the temporary provisions do not, therefore, apply to any trading between 1 October 2020 and 25 November 2020.
- While the changes to the wrongful trading provisions may provide some comfort to directors concerned about incurring additional credit or borrowings during this period, directors should still adopt the best practice outlined in the section above. However, in all probability with far more leniency being shown, provided directors have properly evaluated and documented their decisions and they are reasonable in all the circumstances, the likelihood of liability for wrongful trading appears to be significantly reduced.
- With that in mind, if directors cannot satisfy themselves on the points listed under trading insolvently/wrongful trading above, to mitigate against any risk, they should, at the very least:
- Ensure that they monitor UK government advice that impacts their business and any new or amended UK government financial support that is made available
 - Seek professional advice at the earliest opportunity
 - Refrain from entering into transactions that are not in the ordinary course of their business
 - Minimise their outgoings and preserve cash as best they can



Possible Redundancies

- The directors should consider, at an early stage, whether redundancies to the company's workforce may be necessary in order to save the business, and if so, whether consultation is required pursuant to TULRCA.
- If the business is contemplating redundancies, but only because of the impact of COVID-19, they should also consider whether it is instead preferable to furlough those employees that would otherwise have been made redundant (this scheme is currently available until 30 April 2021).
- Under section 188 of TULRCA, there is an obligation on the company to inform and consult appropriate representatives of affected employees when 20 or more redundancies are proposed to take effect in a period of 90 days or less. The appropriate representatives of affected employees are either trade union representatives or, where no trade union is recognised, employee representatives elected for the purposes of consultation. The directors should consider what steps will need to be taken to effect collective consultation. Consultation must last for a minimum of 30 days where 20-99 redundancies are proposed (or at least 45 days if 100 or more redundancies are proposed) prior to any dismissals taking effect.
- For completeness, where an employer proposes to dismiss fewer than 20 employees within a 90-day period, there is no requirement to consult collectively with representatives of affected employees. However, an employer is still required to follow a fair procedure if it wishes to avoid unfair dismissals.
- Under section 193 of TULRCA, there is an obligation on the company to notify the Secretary of State (currently via the Department for Business, Enterprise and Industrial Strategy (BEIS)) in writing using Form HR1 in a collective redundancy situation. Again, notification is to be received by BEIS at least 45 days before the first dismissal takes effect where the company is proposing to dismiss 100 or more employees, reduced to at least 30 days for between 20 and 99 employees.
- The directors should keep full and accurate minutes of the board's proposals, and in respect of decisions taken to make any employees redundant, ensure that consideration has been given to the company's obligations to consult collectively and to notify the Secretary of State. In the case of the collapse of parcel delivery firm City Link Limited, a prosecution was initially brought against the directors for not notifying the Secretary of State. While the City Link directors were eventually acquitted on the narrow facts of that case, there is a real risk that directors who are proposing to make redundancies could be prosecuted for failing to notify in the event of any delay in doing so. The directors may even wish to notify the Secretary of State as a protective measure. While it remains to be seen how strictly this requirement will be enforced in the current circumstances, directors should continue to comply with the notification provisions to avoid risk of prosecution.

Contingency Strategy

- Given the ongoing restrictions in the UK placed upon businesses and individuals and the economic conditions as a result of the pandemic, directors should immediately consider what steps they should be taking in order to protect the business. A number of businesses in these circumstances will be at risk of trading while insolvent (and may be in real difficulty in assessing the company's financial position, given the dramatic impact caused to cash flows, trading and the value of assets). The directors will need to take every step to minimise losses to creditors. This does not necessarily mean an immediate cessation of trading, but a number of businesses are likely to need to restructure to address the changes in supply and demand and we would recommend taking urgent further advice on the options available.

Challengeable Transactions

• General

Certain transactions that take place at a time when a company is insolvent, or becomes insolvent as a result of the transaction, are open to challenge by an appointed insolvency practitioner if the company subsequently enters a formal insolvency procedure.

Directors, to the extent responsible for such transactions, can be held personally liable for any loss suffered by the company as a result of the transaction, both under IA 1986 and as potential misfeasance.

Directors should be aware of the grounds for such challenges and, in considering any relevant transactions, determine whether it is appropriate for such transactions to proceed. Any such decisions should be carefully minuted.

• Transactions at an Undervalue (s 238 IA 1986)

A transaction will be at an undervalue if it is a gift by the company, or the company receives no consideration, or the value of the consideration received by the company (in money or money's worth) is significantly less than the value of the consideration given by the company in the transaction. It will be challenging in the current circumstances to value certain classes of assets accurately, but directors should keep records of the basis on which the disposed asset was valued, and why.

Any such transactions taking place within two years of formal insolvency will be open to challenge, if they took place at a time the company was insolvent or became insolvent as a result of the transaction (which is presumed if the transaction was with a connected party).

However, the transaction will not be subject to challenge if:

- It was done in good faith for the purpose of carrying on the business
- The directors had reasonable grounds for believing that it would benefit the company

Therefore, in considering any asset disposal to raise liquidity (for example) at less than market value, the directors should address specifically whether it is justifiable on the grounds set out above. We recommend specific advice is taken in relation to any relevant transaction, and the decision is carefully minuted at the time.



• Preferences (s 239 IA 1986)

A preference is a transaction with a creditor (or a surety or guarantor of any of the company's liabilities) under which the creditor is placed in a better position than it would have been in if the transaction had not occurred and the company proceeds into insolvent liquidation.

A preference is open to challenge if the company proceeds into formal insolvency within six months of the transaction in question if the creditor is not a connected party, and within two years if the creditor is connected. This is provided the company was insolvent at the time, or became insolvent as a result of the transaction (which is presumed if the creditor is connected).

However, in effecting the preference, the company must have been influenced by a desire to give the creditor the preferential position. This is presumed for transactions with connected creditors, but can be rebutted.

In circumstances where decisions have to be made on a daily basis during cash flow difficulties as to which creditors to pay, preference issues are highly relevant. In this regard, the directors should consider the following:

- Is the payment necessary for the continued operation of the business and, therefore, necessary to preserve the prospects of a going concern survival and payment in full to creditors, i.e. **is it business critical?** This may include payment to key suppliers of goods and/or services where such supplies are critical and cannot easily be resourced elsewhere at the speed and price required. Consideration should be given as to whether payment over time for historical debt can be agreed as a condition of continued supply.
- Is the payment necessary to avert action being taken by the creditor, which may prejudice the survival of the business? If payment is made under threat of winding up proceedings, or legal proceedings that the company cannot defend or afford to defend, or to avoid restraint on goods, it is unlikely to be considered a preference. Evidence of this threat and the company's response should be documented.

• Directors' Remuneration, Expenses and Employees

- As connected creditors of the company, particularly careful attention should be paid to discharging outstanding expenses claims and arrears of remuneration to directors. If the company is continuing to trade on the basis that the directors hold a reasonable belief that the company will avoid insolvent liquidation and pay all creditors in full, it would be questionable if, at the same time, significant arrears of expenses and remuneration are discharged when other creditors are not being paid.
- Employees, on the other hand, will be a necessary part of continuing to operate the business. As directors under a contract of employment are employees and a critical requirement to ensure the company is managed through this phase, ongoing payments of remuneration and expenses (and general payroll) may be appropriate to ensure continued services to the company. This is subject to any requirement identified in the business plan to effect employee cost reductions, in particular those resulting from the furloughing of employees, to take advantage of the government underwriting 80% of the employment costs of those furloughed employees. Payment of arrears of remuneration and expenses claims may be justifiable in the circumstances, if not to do so would cause genuine financial hardship for the director personally, such that the director could not continue with their responsibilities without seeking an alternative source of income. If such circumstances exist, any such director should consider taking independent advice on their personal position if the directors as a whole consider such payment cannot be made presently within the resources available.

• Unpaid National Insurance Contributions (NIC)

- If a company does not pay the correct amount of NIC, HMRC has the power under s121C of the Social Security Administration Act 1992 to issue Personal Liability Notices to recover the unpaid NIC plus interest and penalties from the directors or any other officers personally. Before issuing a notice, HMRC must be satisfied on the balance of probabilities that the failure to pay was due to fraud or neglect, judged by an objective test.
- HMRC will consider issuing a notice where, in the face of persistent failure to pay NIC, a company made significant and/or regular payments to other creditors, connected persons or companies, or in the form of directors' salaries.

• Offences Under the IA 1986

The directors should be aware that since 1 October 2015, the right to bring claims for certain offences under the IA 1986, including Fraudulent Trading and Wrongful Trading, has been extended to an administrator and/or can now be assigned by an appointed insolvency practitioner (i.e. either a liquidator or administrator). For the sake of completeness, we set out below a summary of the other main offences that will be investigated by the appointed insolvency practitioner if the company proceeds into formal insolvency:

– Fraudulent Trading: (s213 IA 1986)

It is an offence to knowingly carry on the business of a company with intent to defraud creditors and any person who does so may be ordered by the court to make such contributions to the company's assets as it thinks fit.

– Misfeasance or Breach of Fiduciary Duty: (s212 IA 1986)

It is an offence for a director of a company to have misapplied or retained or become accountable for any money or other property of the company or been guilty of an misfeasance or breach of fiduciary duty in relation to the company, allowing the court to order the director to repay, restore or account for the money or property together with interest or contribute to the company's assets by way of compensation.

Director Disqualification

- Where a company proceeds into formal insolvency, the appointed insolvency practitioner has a duty to report to the Secretary of State on the conduct of each of the directors and former directors of the company. The Secretary of State must then decide whether to bring proceedings against the directors to disqualify any of them from acting as a director or in the promotion, formation or management of any company on the grounds of unfitness, for between two to 15 years.
- The directors should, therefore, be aware that should it not prove possible ultimately to effect a solvent turnaround and/or disposal, their conduct as directors (particularly at this time and going forward) will be subject to such scrutiny.
- It is, therefore, critically important for this reason, and to deal with risks in relation to all the matters raised in this note, that the directors regularly (i.e. at least weekly, and preferably every few days during the pandemic) review the ongoing financial position and progress of the business plan, any relevant transactions for which particular consideration should be given, and its continuing belief in the appropriateness of continuing trading (or continuing to "mothball"; as applicable).
- All such reviews should be carefully minuted, to include the information available to the directors, matters discussed, all views expressed and considered, any decisions reached and the rationale for such decisions having regard to the points and recommendations made in this note. The directors should also keep a notebook of daily discussions and matters, so that there is always a contemporaneous note to support their actions in the conduct of the business during this time.

Personal Guarantees

Directors should be aware that any who have given personal guarantees may be personally liable for the company's debts under them.

Deposits and Trust Accounts

- There is no case law or statutory authority that states, in the company's present circumstances, the directors are under a duty to protect deposit creditors by the operation of a trust account to "ring-fence" deposit monies.
- By contrast, there is case law authority that highlights the risk of a preference in creating a trust for such creditors and using company funds to place monies into a trust account for this purpose. Further, within the context of director disqualification, the courts have held that where directors are pursuing a reasonable prospect of avoiding an insolvent liquidation and a full return to all creditors, there is no legal obligation to depart from normal trading practice so as specifically to protect deposits and pre-payments by a trust account.
- Where there is uncertainty regarding the current position, we do not believe the directors could be criticised for seeking to protect deposits received going forward by the operation of a properly constituted trust account, but would make the following comments:
 - At the time of receipt of the deposit, it must be paid on an express trust obligation (or on terms that evidence a trust) such that the deposit is properly held on trust. This would require clear terms and conditions with such customers to this effect (which we would be happy to assist with) and making sure operational practices are in place to ensure those terms apply. Even if deposits have been received, and placed in a separate account, there would remain a preference risk if the account is not properly constituted as a trust account to avoid the fund being regarded as an asset of the company.
 - Placing deposits on trust would reduce the working capital available to the company with which to pursue a recovery strategy that protects all creditors and a return for shareholders, thereby shortening the time available to achieve this.
 - If, in light of these comments, the directors elect not to proceed with arrangements for placing deposits on trust, we would nevertheless recommend that an account be set up or kept open (as applicable) for that purpose should it prove necessary in due course. In the meantime, the directors should take care not to actively encourage higher levels of deposits than would ordinarily be experienced to avoid any criticism in that regard.
- Should the company be at risk of trading while insolvent, we believe the courts are likely to consider placing deposits on trust as a step that "ought to be taken" to minimise losses to creditors.

Restriction on the Use of Company Names: (s 216 IA 1986)

- In the event that the directors wish to consider a management buyout from insolvency practitioners, they should be aware that it is an offence for a director or shadow director of a liquidated company to be involved either directly or indirectly with a new company with a similar name for a period of five years beginning with the day on which the old company went into liquidation. If a director breaches this provision, the penalties include imprisonment, a fine or both, together with personal liability for the debts of the new company.
- However, there are specific circumstances in which the above section will not apply and we can advise you further if required.

Summary of UK Government Financial Support

Around the globe, many Governments have reacted quickly to try to mitigate COVID-19's impact by implementing financial support schemes and resources to help support local businesses. This guide summarises the financial support measures that are available to UK businesses.

Financing Facility Support

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| Coronavirus Business Interruption Loan Scheme (CBILS) | <ul style="list-style-type: none"> Government is providing lenders with a guarantee of 80% on each loan. Scheme is designed to boost lenders' confidence in providing finance to small businesses. Scheme supports loans and other types of financing of up to £5 million in value. Scheme is offered through accredited lenders. Businesses can access the first 12 months of the finance interest-free, as government will cover the first 12 months of interest payments. Finance terms are up to six years for term loans and asset finance facilities and up to three years for overdrafts and invoice finance facilities. However, the government intends to allow CBILS lenders to extend the term of a loan up to ten years. There is no fee for smaller businesses to access the scheme, but there is a fee for lenders to access it. For all facilities, including those over £250,000, CBILS can now support lending to smaller businesses even where a lender considers there to be sufficient security. Insufficient security is no longer a condition to access the scheme. No personal guarantees can be given for facilities under £250,000. | <ul style="list-style-type: none"> Small businesses are eligible for this scheme. Business must generate more than 50% of turnover from trading activity. Detailed eligibility criteria should be consulted here and an eligibility checklist can be consulted here CBILS covers a range of finance products including term facilities, overdrafts, invoice finance facilities and asset finance facilities. | <ul style="list-style-type: none"> Business must be based in the UK in its business activity. Business must have a turnover of no more than £45 million per annum. Business must operate within an eligible industrial sector. Business must have a borrowing proposal, which would be considered viable by the lender were it not for the COVID-19 pandemic. Business must self-certify that it has been adversely impacted by COVID-19. Business must not have been classed as an 'undertaking in difficulty', if applying to borrow £30,000 or more. Originally, the determination as to whether a business constituted an 'undertaking in difficulty' was as at 31 December 2019. However, new guidance issued on 25 September 2020 allows for the 'undertaking in difficulty' assessment to be determined at the date of application for a scheme facility. | <ul style="list-style-type: none"> Businesses should look to apply via a lender's website in the first instance. A full list of participating lenders can be found here. The British Business Bank is accepting applications for new lenders to undergo accreditation. Not all accredited lenders can provide every type of finance available under the scheme. An in-depth FAQ page can be accessed here. | <ul style="list-style-type: none"> CBILS has been extended for new applications to 31 March 2021. |

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| | <ul style="list-style-type: none"> Personal guarantees may be required, at a lender's discretion, for facilities above £250,000, but these are capped at a maximum of 20% of the outstanding balance of the CBILS facility after the proceeds of business assets have been applied. A Principal Private Residence (PPR) cannot be taken as security to support a personal guarantee or as security for a CBILS-backed facility. | | <p>This means that a business that was an 'undertaking in difficulty' on 31 December 2019 but, at the date of application for a scheme facility, is no longer an 'undertaking in difficulty' will now be (in principle) eligible for the scheme.</p> | | |
| Coronavirus Large Business Interruption Loan Scheme (CLBILS) | <ul style="list-style-type: none"> Government is providing lenders with a guarantee of 80% for loans. The guarantee covers interest and fees, as well as the principle. Scheme is designed to boost lenders' confidence in providing finance to businesses impacted by COVID-19. Loans backed by guarantee under scheme is offered at commercial rates of interest. The scheme is available through a series of accredited lenders, listed on the British Business Bank website. Accredited lenders making use of the scheme pay a small fee in order to benefit from a partial 80% government guarantee on each CLBILS facility. Lender fees vary according to length of facility. No personal guarantees are permitted for facilities under £250,000. For facilities of £250,000 and over, claims on personal guarantees applied to scheme facility cannot exceed 20% of losses on the scheme facility after all other recoveries have been applied. | <ul style="list-style-type: none"> Businesses with an annual turnover of more than £45 million. The scheme is open to sole traders, freelancers, body corporates, limited partnerships, limited liability partnerships or other legal entities carrying out a business activity in the UK with a turnover of over £45 million. The turnover of the business must generate more than 50% of its turnover from trading activity. Sole traders and freelancers are eligible as long as the business is operated through a business account. Finance provided can include loans, asset finance facilities, revolving credit facilities (including overdrafts) and invoice finance facilities lasting up to three years. | <ul style="list-style-type: none"> Business must be UK-based in its business activity. Business must have a turnover of more than £45 million per annum. Business must have a borrowing proposal, which, were it not for the current pandemic, would be considered viable by the lender, and for which the lender believes the provision of finance will enable the business to trade out of any short-to-medium term difficulty. Business must self-certify that it has been adversely impacted by COVID-19. Business must not have received a facility under the CCFE scheme, CBILS or Bounce Back Loan Scheme. | <ul style="list-style-type: none"> Businesses should consider applying via their own lender's website in the first instance. Not all accredited lenders can provide every type of finance available under the scheme. A full list of participating lenders can be found here. Lenders who wish to offer larger loans need to undergo further accreditation checks. An in-depth FAQ page can be accessed here. | <ul style="list-style-type: none"> CLBILS has been extended for new applications to 31 March 2021. |

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| | <ul style="list-style-type: none"> • Finance terms are from three months to three years. • Larger businesses are now able to borrow up to 25% of turnover, up to a maximum of £200 million. The previous maximum loan size available under this scheme was £50 million. • Government has announced that the scheme has been expanded to ensure that large firms that do not qualify for CCFF can meet their cash flow needs. | <ul style="list-style-type: none"> • Larger businesses opting to participate in the Bank of England's CCFF scheme are not eligible for CLBILS. • Businesses can use the scheme while receiving other types of COVID-19 aid, other than CCFF. • Businesses that have had <i>de minimis</i> state aid in the past can still benefit from the scheme as long as the eligibility criteria is met. | <ul style="list-style-type: none"> • The amount borrowed should not be greater than (i) double the borrower's annual wage bill for the most recent year available; or (ii) 25% of the borrower's total turnover for the most recent year available; or (iii) with appropriate justification and based on self-certification of the borrower, the amount may be increased to cover their liquidity needs for the next 12 months. • Scheme is open to businesses operating in all sectors, except for credit institutions (falling within the remit of Bank Recovery and Resolution Directive), insurers and reinsurers (not insurance brokers), building societies, public-sector bodies, further-education establishments (if they are grant-funded) and state-funded primary and secondary schools. • Business must not have been classed as an 'undertaking in difficulty'. • Originally, the determination as to whether a business constituted an 'undertaking in difficulty' was as at 31 December 2019. However, new guidance issued on 25 September 2020 allows for the 'undertaking in difficulty' assessment to be determined at the date of application for a scheme facility. | | |

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| | | | <p>This means that a business that was an 'undertaking in difficulty' on 31 December 2019 but, at the date of application for a scheme facility, is no longer an 'undertaking in difficulty' will now be (in principle) eligible for the scheme.</p> <ul style="list-style-type: none"> • Businesses borrowing more than £50 million are subject to restrictions on dividend payments, senior pay and share buy-backs during the period of the loan, including a ban on dividend payments and cash bonuses, except where previously agreed. More information is available British Business Bank website here. • Restrictions on businesses wishing to borrow more than £50 million include: not making any dividend payments other than those that have already been declared; not making any share buybacks; not paying any cash bonuses, or awarding any pay rises to senior management (including the board) except where they were (a) declared before the CLBILS loan was taken out, (b) the payment is in keeping with similar payments made in the preceding 12 months, and (c) payment does not have a material negative impact on borrower's ability to repay the loan. More information is available British Business Bank website here. | | |

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| <p>Covid Corporate Financing Facility (CCFF)</p> | <ul style="list-style-type: none"> • HM Treasury and the Bank of England are providing a financing facility to help companies bridge through COVID-19-related cash flow disruption. • CCFF provides funding by purchasing commercial paper of up to one-year maturity issued by businesses materially contributing to the UK economy. • The terms of CCFF are comparable to those prevailing in markets prior to the COVID-19 economic shock. • The fund purchases commercial paper during a defined period each business day. • The minimum size of an individual security that the fund purchases from an individual participant is £1 million nominal. | <ul style="list-style-type: none"> • UK-incorporated companies, and their finance subsidiaries, making a material contribution to the UK economy. • Businesses can have foreign-incorporated parents but must have genuine business in the UK. • Businesses capable of issuing commercial paper. • Terms and conditions can be found here. • Businesses opting to participate in the CLBILS are not eligible for the CCFF scheme. • The Bank of England has published a list of companies who are benefiting under CCFF as well as additional information on the usage of the scheme here. | <ul style="list-style-type: none"> • Business must be able to prove they were in sound financial health prior to the economic shock produced by COVID-19. • Business need not have previously issued commercial paper. • Commercial paper needs to have a maturity of one to 12 months; where possible a credit rating of A-3/P-3/F-3 from at least one of Standard & Poor's, Moody's and Fitch as at 1 March 2020; and issued directly into Euroclear and/or Clearstream. • Companies that do not have a credit rating can review the advice on this page. • As of 19 May 2020, businesses wanting to borrow money beyond 12 months are subject to restrictions on dividend payments, senior pay and share buy-backs during the period of the loan, including a ban on dividend payments and cash bonuses, except where previously agreed. | <ul style="list-style-type: none"> • Application forms have been published on the Bank of England's website and can be found here. • The documents that need to be completed include: CCFF Application Form, Issuer Eligibility Form, Issuer Undertaking and Confidentiality Agreement, Guarantee document (if commercial paper is issued by entity other than primary entity in group) and associated legal opinion from primary group entity. • Completed application documentation should be sent to cff-applications@bankofengland.co.uk. • Businesses whose commercial paper is offered to the fund in the primary market are asked to contact the Bank of England via the following email address: applications@bankofengland.co.uk • The CCFF closed to new applications from counterparties and issuers looking to become eligible on 31 December 2020. Eligible issuers that have already signed up to the CCFF as at 31 December 2020 will continue to be able to issue new Commercial Paper until the closure of the CCFF. | <ul style="list-style-type: none"> • The facility is now available. • Application forms, terms and conditions, operating procedures and a full pricing schedule are available here. • Not all banks issue commercial paper, a full list of the banks that do can be found here. • Purchase operations are held every working day between 10 and 11:00 a.m. • The CCFF will close for new purchases from issuers with effect from 23 March 2021. This means that the Facility will make no purchases of Commercial Paper after 22 March 2021. |

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| | | | | <ul style="list-style-type: none"> The CCFF will close for new purchases of Commercial Paper from eligible issuers with effect from 23 March 2021. This means that the facility will make no purchases of Commercial Paper after 22 March 2021. | |
| Coronavirus Future Fund | <ul style="list-style-type: none"> The scheme issues convertible loans between £125,000 to £5 million to innovative companies that are facing financial difficulties due to the COVID-19 outbreak. The scheme is aimed at businesses that are unable to access other government business support programmes because they are either pre-revenue or pre-profit and typically rely on equity investment. Government provides loans subject to at least equal match funding from private investors. The scheme delivers an initial commitment of £250 million of new government funding. The convertible loans may be suitable for businesses that rely on equity investment and are unable to access the CBILS. The scheme is delivered in partnership with the British Business Bank. The headline terms have been published and can be accessed here. | <ul style="list-style-type: none"> Businesses based in the UK and able to raise at least equal match funding from private investors. In order to be eligible for the scheme, each of the investor(s) and the company must meet specific criteria. Investor eligibility criteria can be found here. | <ul style="list-style-type: none"> Company must have raised at least £250,000 in equity from third-party investors in previous funding rounds in the last five years (from 1 April 2015 to 19 April 2020, inclusive). If the company is a member of a corporate group, it must be the ultimate parent company. Company must not have any of its shares or other securities listed on a regulated market, a multilateral trading facility, a recognised investment exchange and/or any other similar market, stock exchange or listing venue. Company must be a UK incorporated limited company. Company must have been incorporated on or before 31 December 2019. At least one of the following must be true for the company: half or more employees are UK-based; and/or half or more revenues are from UK sales. | <ul style="list-style-type: none"> The investor, or lead investor of a group of investors, applies for the fund by certifying that they meet the scheme eligibility criteria and by providing key investment details. The business will then need to confirm the accuracy of the investment application before submitting the full application. Applications are via the British Business Bank website. The British Business Bank has stated that the application form asks a number of questions on diversity and inclusion to help monitor the diversity of the portfolio loans backed by the scheme. | <ul style="list-style-type: none"> The scheme is open to applications until 31 January 2021. |

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| Bounce Back Loan Scheme | <ul style="list-style-type: none"> • Businesses can apply for new Bounce Back Loans for 25% of their turnover. • Loans are available for a minimum of £2,000 up to a maximum of £50,000, with the government paying the interest for the first 12 months. • After 12 months, the interest rate will be 2.5% a year. • Most businesses should receive their loans within 24 hours of approval. • The government guarantees 100% of the loan to the lender. • Loan terms will be up to 6 years and no repayments will be due during the first 12 months. • The government is working with lenders to agree a low rate of interest for the remaining period of the loan. • On 24 September 2020, the government announced that the new 'Pay as you Grow' options will allow all businesses that borrowed under the BBLS to have the option to repay their loan over a period of up to ten years. • The new 'Pay as you Grow' options will also enable UK businesses to move temporarily to interest-only payments for periods of up to six months (an option which can be used up to three times), or to pause their repayments entirely for up to six months (an option which can be used once and only after having made six payments). | <ul style="list-style-type: none"> • Small businesses based in the UK and established before 1 March 2020. • Business must have been negatively affected by COVID-19. | <ul style="list-style-type: none"> • Business must be based in the UK in its business activity and must have been impacted by COVID-19. • Business must not have been classed as a "business in difficulty" on 31 December 2019. • Business must be engaged in trading or commercial activity in the UK and must have been established by 1 March 2020. • Business must not be using the CBILS, CLBILS or CCFF, unless the Bounce Back Loan will refinance the whole facility. • Business must not be in bankruptcy or liquidation or undergoing debt restructuring at the time it submits its application for finance. • Business must derive more than 50% of its income from its trading activity (this does not apply to charities or further-education colleges). • Business must not be in a restricted sector. • The scheme is not available to businesses in the following sectors: credit institutions, insurance companies, public sector organisations and state-funded primary and secondary schools. | <ul style="list-style-type: none"> • Applications are via a "simple, quick, standard form" that businesses will need to fill in. • The scheme is delivered through a network of accredited lenders. • If a business has already received a loan of up to £50,000 under CBILS and would like to transfer it into the Bounce Back Loan Scheme, it can arrange to do so via its lender until 31 January 2021. • Further information is available on the British Business Bank website here. | <ul style="list-style-type: none"> • The scheme is open to applications until 31 March 2021. |

Other Financial Support

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| Employment measures: | | | | | |
| Coronavirus Job Retention Scheme (CJRS) | <ul style="list-style-type: none"> Businesses that cannot maintain their workforce due to COVID-19 can continue to furlough their employees and apply for a grant under the scheme. For claim periods running to the end of April 2021, the government will pay 80% of wages up to a cap of £2,500 for hours not worked by employees and employers must pay employees for any hours worked as normal, as well as employer National Insurance contributions and employer pension contributions for those hours. The £2,500 cap is reduced proportionately to the number of unworked hours. The existing CJRS calculation of 80% of usual wages and of usual hours will apply to all employees who were eligible under CJRS even if a claim was not made in respect of that employee under CJRS to 31 October 2020. Where an employee was not previously eligible for CJRS, the calculation will take account of updated reference periods. Full details of the calculation have been shared in guidance. | <ul style="list-style-type: none"> All UK businesses whose operations have been severely affected by COVID-19. Businesses will be able to use the extended scheme even if they did not use the CJRS previously and whether their businesses remain open or are required to close under local or national restrictions. Any entity with a UK payroll including businesses, charities, recruitment agencies and public authorities. The government expects that publicly funded organisations will not use the scheme, but partially publically funded organisations may be eligible. There is no financial impact assessment test. | <ul style="list-style-type: none"> Eligible employers will be able to claim for employees who were employed and on their PAYE payroll on 30 October 2020. The employer must have made a PAYE RealTime Information submission to HMRC between 20 March and 30 October, notifying a payment of earnings for those employees. Employees do not need to have been furloughed under the CJRS previously. Employees who were on the payroll on 23 September 2020 but were made redundant or stopped working for their employer after that date can be re-employed and claimed for under the scheme. Employees can be on any type of employment contract, including full-time, part-time, agency, flexible or zero-hour contracts. To be eligible for the grant, employers must have confirmed to their employee (or reached collective agreement with a trade union) in writing that they have been furloughed or flexibly furloughed. | <ul style="list-style-type: none"> Applications will once again be through an online gateway. Employers must keep a written record of any agreements with employees for at least five years. Records of the amount claimed and the claim period for each employee must be kept for 6 years. Full guidance for the CJRS extension has now been published. From February 2021, the government will publish information about employers who claim for periods starting on or after 1 December 2020. | <ul style="list-style-type: none"> Support under the extended scheme has been available from 1 November and will run until the end of April 2021. |

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| Statutory Sick Pay (SSP) | <ul style="list-style-type: none"> • Refund to cover up to two weeks' SSP per eligible employee off work due to COVID-19. • Refund would cover employees in a variety of circumstances, including those who are eligible for SSP because they or someone they live with has coronavirus symptoms or has tested positive for coronavirus, they have been notified by the NHS or public health authorities that they have been in contact with someone with coronavirus, etc • A business can claim from the first qualifying day the employee is off work. A 'qualifying day' is a day an employee usually works on. • The current weekly rate is £95.85. Employers who pay more than the weekly rate of SSP can only claim up to the weekly rate paid. • The scheme covers all types of employment contracts, including full-time employees, part-time employees, employees on agency contracts and employees on flexible or zero-hour contracts. | <ul style="list-style-type: none"> • Businesses must be UK based. • Business must be an SME. • Businesses must have a PAYE payroll scheme that was created/started on or before 28 February 2020. • Businesses must maintain records of the statutory sick payments for at least 3 years following a claim. | <ul style="list-style-type: none"> • Employers must have fewer than 250 employees determined by the number of people employed as of 28 February 2020. • The scheme covers period of sickness starting on or after 13 March 2020. • Employers should maintain records of staff absences and payments of SSP, but a GP fit note is not required from employees. • If evidence is required by an employer, those with COVID-19 symptoms can get an isolation note from NHS 111 online and those living with someone that has symptoms can obtain a note from the NHS website. • The claim amount should not take a business above the state aid limit under the EU Commission temporary framework, when combined with other aid received under the framework. For most businesses the maximum level of state aid that may be received is €800,000. | <ul style="list-style-type: none"> • There is an online service to claim back SSP • Records of all SSP will need to be kept including: reasons why an employee could not work, details of each period when an employee could not work including start and end dates, details of the SSP qualifying days when an employee could not work, National Insurance numbers of all employees SSP has been paid to. | <ul style="list-style-type: none"> • The online service to claim is now available. |

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| Self-Employment Income Support Scheme (SEISS) grant extension | <ul style="list-style-type: none"> The grant extension is for self-employed individuals who are currently eligible for the Self-Employment Income Support Scheme and are actively continuing to trade, but are facing reduced demand due to coronavirus (COVID-19). The extension will provide two grants and will last for six months, from November 2020 to April 2021. Grants will be paid in two lump sum instalments each covering a three-month period. The first grant will cover a three-month period from 1 November 2020 until 31 January 2021. The Government will provide a taxable grant calculated at 80% of 3 months average monthly trading profits, paid out in a single instalment and capped at £7,500 in total. The first grant will be increased from the previously announced level of 55% of trading profits to 80% for November 2020. This therefore increases the total level of the grant from 55% to 80% of trading profits for 1 November 2020 to 31 January 2021. The second grant will cover a three-month period from 1 February 2021 until 30 April 2021. HMRC will review the level of the second grant and set this in due course. The grants are subject to Income Tax and National Insurance Contributions. | <ul style="list-style-type: none"> Must have submitted an Income Tax Self-Assessment tax return for 2018-19 tax year. Must have traded in 2019-20 tax year. Must either be trading when applying or would be trading were it not for COVID-19. Must intend to continue trading in 2020-21 tax year. Must have lost trading/partnership profits as a result of COVID-19. | <ul style="list-style-type: none"> To be eligible for the grant extension self-employed individuals, including members of partnerships, must: <ul style="list-style-type: none"> have been previously eligible for the Self-Employment Income Support Scheme (although they do not have to have claimed the previous grants); and declare that they intend to continue to trade and either: <ol style="list-style-type: none"> are currently actively trading and intend to continue to trade; or were previously trading but are temporarily unable to do so due to coronavirus. | <ul style="list-style-type: none"> The online service for the third grant has been available since 30 November 2020. Further guidance can be found on GOV.UK here. | <ul style="list-style-type: none"> The scheme has been extended. The extension will last for six months, from November 2020 to April 2021. |

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| Tax measures: | | | | | |
| Value Added Tax (VAT) Deferral New Payment Scheme | <ul style="list-style-type: none"> The VAT payments deferral scheme ended on 30 June 2020. However, in his Winter Economy Plan set out on 24 September 2020, the Chancellor announced businesses who deferred VAT due from 20 March to 30 June 2020 will have the option to pay in smaller payments over a longer period. Instead of paying the full amount by the end of March 2021, businesses that deferred VAT due from 20 March to 30 June 2020 will be able to opt to make up to 11 smaller, interest free, monthly instalments before the end of March 2022. The first instalment must be paid before the end of March 2021. | <ul style="list-style-type: none"> All UK VAT-registered businesses that deferred VAT due from 20 March to 30 June 2020. | <ul style="list-style-type: none"> Outstanding deferred VAT due from 20 March to 30 June 2020 under the VAT payments deferral scheme. The business must be up to date with their VAT compliance obligations including the submission of its returns and the correction of any errors. | <ul style="list-style-type: none"> Businesses that deferred VAT due from 20 March to 30 June 2020 will need to opt-in to the scheme. | <ul style="list-style-type: none"> The Value Added Tax (VAT) Deferral New Payment Scheme is optional. Businesses must opt in before the end of March 2021. Agents cannot opt in on behalf of a business. Although not currently available, the opt in process will be conducted online. |

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| <p>Temporary reduced rate of VAT for hospitality, holiday accommodation and attractions</p> | <ul style="list-style-type: none"> On 8 July 2020, the government announced that it would introduce a temporary 5% reduced rate of VAT for certain supplies of hospitality, hotel and holiday accommodation, and admissions to certain attractions. | <ul style="list-style-type: none"> The following supplies will benefit from the temporary 5% reduced rate of VAT: <ul style="list-style-type: none"> – food and non-alcoholic beverages sold for on-premises consumption, for example, in restaurants, cafes and pubs – hot takeaway food and hot takeaway non-alcoholic beverages – sleeping accommodation in hotels or similar establishments, holiday accommodation, pitch fees for caravans and tents, and associated facilities – admissions to the following attractions that are not already eligible for the cultural VAT exemption such as: <ul style="list-style-type: none"> - theatres - circuses - fairs - amusement parks - concerts - museums - zoos - cinemas - exhibitions - similar cultural events and facilities | <ul style="list-style-type: none"> Being an organisations that make supplies of hospitality, hotel and holiday accommodation and admission to certain attractions, and their advisers. | | <ul style="list-style-type: none"> The changes take effect from 15 July 2020 and the government is extending the temporary reduced rate of VAT (5%) from 12 January to 31 March 2021. |

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| Enhanced Time to Pay (for Self-Assessment taxpayers) | <ul style="list-style-type: none"> Subject to agreeing a payment schedule with HMRC's self-service Time to Pay facility, self-employed taxpayers who deferred their payment on account due on 31 July 2020 will, be allowed to pay the tax due over an additional 12 month period with deferred amounts not due to be paid in full until the end of January 2022. Any balancing payments due for payment in respect of the 2019-20 tax year and the first payment on account due for the 2020-21 tax year, also due on 31 January 2021, are also eligible for Enhanced Time to Pay. | <ul style="list-style-type: none"> Any balancing payments due for payment in respect of the 2019-20 tax year and the first payment on account due for the 2020-21 tax year, also due on 31 January 2021, are also eligible for Enhanced Time to Pay. | <ul style="list-style-type: none"> Enhanced Time to Pay is available for self-employed taxpayers (with at least £32, and up to £30,000, of Self-Assessment liabilities due) who deferred their second payment on account for the 2019-20 tax year, originally due by 31 July 2020. Taxpayers must have no outstanding tax returns (including their 2019-20 tax return), no other tax debts or HMRC payment plans. The Enhanced Time to Pay payment plan must be set up within 60 days after 31 January 2021 (i.e. by 1 April 2021). Tax due under Enhanced Time to Pay will be subject to interest. Interest will be applied to any outstanding tax from 1 February 2021. Any deferred amount will need to be paid in full on or before 31 January 2022. | <ul style="list-style-type: none"> Taxpayers can set up an Enhanced Time to Pay payment plan online. | <ul style="list-style-type: none"> Enhanced Time to Pay payment plans can be set up now. |
| Support for Businesses Paying Tax | <ul style="list-style-type: none"> Support made available for businesses and self-employed people in financial distress with their outstanding tax liabilities. Support is provided through HMRC's Time to Pay service. This allows businesses and individuals to enter an agreement to pay outstanding tax liabilities in instalments, over a period of time, with the possibility of delaying the first payment for up to 3 months. | <ul style="list-style-type: none"> All arrangements are to be agreed on a case-by-case basis. Arrangements will be tailored to individual circumstances and liabilities. | <ul style="list-style-type: none"> Businesses and self-employed people in financial distress with outstanding tax liabilities. | <ul style="list-style-type: none"> Calls can be to HMRC's dedicated helpline on 0800 024 1222 (Monday to Friday 8am to 4pm). | <ul style="list-style-type: none"> Calls can be made as of now. |

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| Relief From Business Rates (Retail, hospitality and leisure sector) | <ul style="list-style-type: none"> A business rates holiday for retail, hospitality and leisure businesses for 2020 to 2021 tax year. | <ul style="list-style-type: none"> Retail, hospitality and leisure businesses. Properties that will benefit from the relief will be occupied properties wholly/ mainly used as: <ul style="list-style-type: none"> Shops, restaurants, cafes, drinking establishments, cinemas, live music venues, properties for assembly and leisure, hotels, guest and boarding premises, and self-catering accommodation. | <ul style="list-style-type: none"> Business must be based in England. Similar schemes are available in Scotland, Wales and Northern Ireland. | <ul style="list-style-type: none"> No action to be taken. Local councils will apply the discount automatically. A business rates calculator is available here to calculate the charge saved. | <ul style="list-style-type: none"> Business Rates Relief applies to your business rates bills for the 2020 to 2021 tax year. |

Grant measures:

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| Local Restrictions Support Grant (LRSB) schemes | <ul style="list-style-type: none"> The LRSB schemes are designed to support business providing in-person services to customers from their business premises that are either: <ul style="list-style-type: none"> required to close under widespread national 'lockdown' restrictions or Local Covid Alert Level 'Very High' restrictions – the Local Restrictions Support Grant (Closed) scheme, or able to remain open but have been severely impacted by Local Covid Alert Level 'High' or 'Very High' restrictions – the Local Restrictions Support Grant (Open) scheme. <p>The LRSB schemes work in combination with an adjustment mechanism that takes into account support already provided.</p> | <ul style="list-style-type: none"> The LRSB schemes are available to businesses that pay business rates on their premises. Businesses must be solvent. Businesses that were in administration, are insolvent or where a striking-off notice has been made will not be eligible for grants. The precise eligibility criteria differs slightly depending on the applicable scheme: | <ul style="list-style-type: none"> Business must be based in England. Local Authorities should set out the scope of their discretionary grant scheme on their websites. Similar schemes are expected to be available in Scotland, Wales and Northern Ireland. | <ul style="list-style-type: none"> The LRSB scheme is operated by local authorities. The government will provide additional funding to the Local Authorities to meet the cost. Grants for businesses in these areas will be available at the sole discretion (in terms of eligibility and precise grant) of the relevant Local Authority. Eligible affected businesses should contact their Local Authority to apply for the grants. | <ul style="list-style-type: none"> Funding for the LRSB schemes will be provided to local authorities. Local authorities will determine the payment schedule and timings for the grants. Funding for areas that have been subject to restrictions on socialising already (before the tier system was introduced) will be backdated to the point at which the restrictions were imposed (back to 1 August 2020). |
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| | <p>Local Restrictions Support Grant (Closed Businesses) scheme</p> <ul style="list-style-type: none"> For eligible businesses that were open as usual but then required to close for a consecutive period of no less than 14 days due to national 'lockdown' restrictions or restrictions in an area with a Very High local COVID alert level, grants of up to: <ul style="list-style-type: none"> £667 per 14-day restriction period (£1,334 per 28-day restriction period under national restrictions), per property, will be provided to businesses operating from premises with a rateable value up to and including £15,000. £1,000 per 14-day restriction period (£2,000 per 28-day restriction period under national restrictions), per property, will be provided to businesses operating from premises with a rateable value over £15,000 but less than £51,000. £1,500 per 14-day restriction period (£3,000 per 28-day restriction period under national restrictions), per property, will be provided to businesses operating from premises with a rateable value of £51,000 or over. | <p>Local Restrictions Support Grant (Closed Businesses) scheme</p> <ul style="list-style-type: none"> Businesses must have been open as usual, providing in-person services to customers from their business premises, before being required to close for a consecutive period of not less than 14 days (on or after 9 September 2020) under either: <ul style="list-style-type: none"> widespread national 'lockdown' restrictions; or Local COVID Alert Level 'Very High' restrictions. Businesses eligible are all those mandated to close including non-essential retail, leisure, personal care, sports facilities and hospitality businesses. Businesses ineligible for support include those that: <ul style="list-style-type: none"> do not depend on providing direct in-person services from premises and can operate their services effectively remotely; are subject to restrictions that are implemented for less than 14 days; are closed for less than 14 days; have chosen to close but were not required to do so. | | | <ul style="list-style-type: none"> This scheme is initially expected to run until April 2021 (but will be reviewed in January). |

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| | <p>Local Restrictions Support Grant (Open Businesses) scheme</p> <ul style="list-style-type: none"> For eligible businesses that are able to remain open but are severely impacted by the restrictions in areas with either a Very High or High local COVID alert level, discretionary implied grants of up to: <ul style="list-style-type: none"> – £934 per 28-day period, per property, for businesses operating from premises with a rateable value up to and including £15,000. – £1,400 per 28-day period, per property, for businesses operating from premises with a rateable value over £15,000 but less than £51,000. – £2,100 per 28-day period, per property, for businesses operating from premises with a rateable value of £51,000 or over. The Local Restrictions Support Grant (Open Businesses) Scheme ceases to apply when national restrictions are imposed by the government. Local Authorities for areas subject to national and Local Covid Alert Level Very High restrictions will also receive additional funding under the Additional Restrictions Grant scheme. Local Authorities will receive a one-off lump sum amount equal to £20 per head in the area when the restrictions are imposed. The government intend the additional funding to cover grants for businesses that have been severely affected by restrictions but which would not otherwise be eligible under the main LRGS schemes (e.g. market traders that do not occupy a property on which they pay business rates). | <p>Local Restrictions Support Grant (Open Businesses) scheme</p> <ul style="list-style-type: none"> The grants are discretionary. Local Authorities have the freedom to determine the precise eligibility criteria. Local Authorities will receive funding from central government based on the number of hospitality, accommodation and other leisure businesses in that area and the government expect the funding to be targeted at businesses in the hospitality and leisure sector. <p>Additional Restrictions Grant scheme</p> <ul style="list-style-type: none"> The grants are discretionary. Local Authorities will determine which businesses are eligible for grants from this additional funding. Local Authorities will also have discretion on how, and how much, funding will be provided. Local Authorities will receive funding from central government. | | | |

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| | <ul style="list-style-type: none"> It should be noted that any grant income received by an eligible business is taxable. | <ul style="list-style-type: none"> Grants count towards State aid provided to a business. The total de minimis State aid that a business is allowed to receive over a 3-year period is €200,000. If the business has already reached that threshold, it may still be eligible for funding under the COVID-19 Temporary Framework. The limit for the Temporary Framework is €800,000 (which, when combined with de minimis State aid, brings the upper limit on total aid available to a company to €1 million). | | | |
| Coronavirus Funding for Frontline Charities | <ul style="list-style-type: none"> The government has set out a £750 million package of support to provide funding for frontline charities. The funding is to ensure charities providing vital services can continue to do so during the COVID-19 pandemic. Charities will benefit from direct cash grants to ensure they can meet increased demand resulting from COVID-19. £360 million will be directly allocated by government departments to charities providing key services and supporting vulnerable people. £370 million is envisaged for small and medium-sized charities working to the benefit of local communities. | <ul style="list-style-type: none"> UK charities providing vital services during the COVID-19 pandemic, including hospices and support for domestic abuse victims. Charities benefiting from the funding include hospices, victim charities, St John Ambulance, vulnerable children charities and Citizens Advice. | <ul style="list-style-type: none"> Must provide a service considered vital during the pandemic. | <ul style="list-style-type: none"> Government departments are working to identify priority recipients. | <ul style="list-style-type: none"> The funding was announced on 8 April 2020. |

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| Grants for retail, hospitality and leisure businesses | <ul style="list-style-type: none"> Businesses in the retail, hospitality and leisure sectors are to receive a one-off grant worth up to £9,000 per property. There will also be a new £594m discretionary fund made available for councils to support other business. | <ul style="list-style-type: none"> The one-off top-ups will be granted to closed businesses as follows: <ul style="list-style-type: none"> – £4,000 for businesses with a rateable value of £15,000 or under – £6,000 for businesses with a rateable value between £15,000 and £51,000 – £9,000 for businesses with a rateable value of over £51,000 | <ul style="list-style-type: none"> Further details are to be provided by the government in due course. | <ul style="list-style-type: none"> Further details are to be provided by the government in due course. | <ul style="list-style-type: none"> The grants were announced on 5 January 2021. |
| Other measures: | | | | | |
| Insurance | <ul style="list-style-type: none"> Government has stated that since advice to avoid social gatherings on 17 March 2020, businesses with insurance cover for both pandemics and government-ordered closure will be able to make claims. | <ul style="list-style-type: none"> Businesses with insurance cover for pandemics and/or government-ordered closure. | <ul style="list-style-type: none"> Businesses will need to check the terms and conditions of their specific policies. | <ul style="list-style-type: none"> Businesses will need to contact their insurance providers. | <ul style="list-style-type: none"> Claims can be made as of now. |

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