

**ADVISORY**
Industry Information

Covid-19 Ireland Update - Protect your Business and Stay Resilient

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In the space of less than three months, the Covid-19 pandemic has had a fundamental impact upon society throughout the world. As governments endeavour to best protect their citizens from the spread of the pandemic, the focus rightly is on the protection of public health. Many countries are imposing lockdown and social distancing protocols with the aim of flattening the curve of infection.

While most businesses, understandably, have the safety and wellbeing of their employees and clients as their fundamental concern and priority, the economic shock of the pandemic is already being felt in many industries.

For many, the pandemic has entirely disrupted business plans and foreseeing how businesses and industries can adapt and survive has become a pressing concern.

As the impact of the pandemic on society evolves on a daily, if not hourly basis, predicting how far reaching the effects will be felt is fraught with difficulty.

However, while we hope for the best, we must prepare for the worst. There are a number of resilience and mitigation actions that Irish businesses can take to protect themselves.

In that regard, we have set out below high-level considerations that businesses should bear in mind in these most pressing times.

Short Term Considerations

Financial Review

For companies, the directors must, as soon as practicable, carry out an extensive review of the financial position. Among the issues to be considered are, where possible, the pausing or postponing of any discretionary expenditure and a strategic review of long term plans and financial commitments.

Cash Flow

Management of cash flow is now fundamental to survival. Cash and credit control could be the difference between the continuation of a business and insolvency. In terms of outstanding debt, it is important to engage with customers and other debtors to ascertain the likelihood of receiving full payment or arranging an alternative payment schedule. In engaging with customers and clients, it is also important to understand their likely service/supply needs over the next period so that income and demand can be estimated.

In terms of payments out, where a company, which now finds itself under significant financial pressure, is making payments to a creditor, it must ensure that the reasoning behind those payments are carefully considered and properly minuted.



Employment and Pensions

As cases of Covid-19 continue to spread, Irish-based employers should take steps to ensure they are meeting their legal obligations to employees and prepare a contingency plan in case employees are required to self-isolate.

In [a recently published advisory](#), our employment colleagues Susan Battye and Jennifer Bassett examine the possible impact on sick pay, illness benefit, remote working, lay-off and/or short-term working and unpaid and paid leave.

To the extent that there are pension obligations on the business, there should be early engagement with the pension trustees in relation to same.

Litigation

If the business is a party to litigation in Ireland or elsewhere, the pandemic will impact upon the continuation of the proceedings in the short term as courts are closed and matters adjourned. This should afford the business an opportunity to review the costs of continuing with the litigation and whether a negotiated settlement is a better outcome, if it results in the payment of a sum which could be crucial to cash flow management.

Supply Chain – Counterparty risk analysis

Any impact on one's supply chain must be considered, as this may cut into targets and require alterations or a pivot to alternative suppliers or services. In considering the viability of counter parties, and the impact which the failure of a supplier or service provider would have on the corporate, consideration needs to be given to reviewing the relevant contractual terms, including where appropriate retention of title provisions, deposit payments, and shorter payment windows. If that counterparty is not based in Ireland, consideration needs to be given to your business' entitlements if the counterparty were to enter a foreign insolvency process.

Were a company to subsequently fail, the directors' failure to review the plan for the business could be impugned with significant negative consequences for those directors.

Force Majeure

The ways a party to an Irish law contract might seek to avoid or postpone its obligations if the pandemic impacts its ability to perform under the doctrines of force majeure and frustration are considered in another of our recently published advisories [here](#).

Medium Term Considerations

Debt Restructuring

It is crucial to now review and consult with legal advisors regarding the suite of covenants contained in facility agreements.

The borrower covenants will likely include representations and undertakings on behalf of the borrower – these should be reviewed to understand whether these can continue to be satisfied.

Many facility agreements will contain financial performance and leverage covenants – these may be adversely effected as a result of Covid-19 and amended turnover/profit forecasts.

Where there are guarantee obligations, the probability of these being called in and relied upon should be investigated. If there is intra-group guarantees and security, a review should be undertaken to establish the risk of contagion from one company to the wider group and how best to insulate against this.

In light of this, it is crucial where concerns exist to engage with lenders regarding express forbearance or waivers of default.

It will need to be borne in mind that the lender will also be experiencing significant operational difficulties as a result of the pandemic.

While the lenders should have processes in place to ensure business continuity, restructuring or revised financial arrangements which require the approval of a credit committee may be impacted upon due to remote working arrangements and self-isolation protocols.



Formal Insolvency Proceedings

There is no obligation under Irish law on a company or its directors to take steps to place the company into an insolvency process within a specific time frame when a company is insolvent. However, Irish case law makes it clear that directors of a company (in or heading towards insolvency) have a duty to act in the best interests of the creditors of a company as a whole (as opposed to the company's members). Frequently, it will be the case that having recognised the insolvency, the directors have no alternative but to recommend to the shareholders that the company be placed in liquidation so that the remaining assets be realised for the benefit of the creditors to be distributed in accordance with the Companies Act 2014.

However, this is not always the case. There will be circumstances in which better value and a more favourable outcome can be achieved by an attempt to rescue the company, whether by trading forward in the expectation of a full recovery (with or without the appointment of an examiner - which is Ireland's corporate rescue process) or by endeavouring to realise the assets on a going concern basis in the hope of achieving an outcome more favourable than could be achieved in liquidation. Therefore the cut-off point will very much depend on the picture on the ground.

Examinership is an Irish law statutory scheme for the rescue of a company or group of companies which usually comprises three main components, namely; (i) new investment, (ii) a forced write-down of the company's liabilities, and (iii) a legal 'stay' which prevents enforcement action being taken during the period of examinership.

Government Supports & Proposed Rescue and Restructuring Scheme

In addition to the previously announced €200m SBCI Working Capital Scheme, the Irish Government has announced that there will be an additional €200m of supports including a Rescue and Restructuring Scheme available through Enterprise Ireland for viable but vulnerable firms that need to restructure or transform their businesses. At time of writing, the Irish government are still finalising the details of this Scheme.

Walkers' experienced Insolvency and Corporate Recovery team is available to offer real-time guidance on all aspects of recovery, insolvency and pandemic driven difficulties which businesses in Ireland may now face. We can: -

- » Advise lenders and borrowers in relation to any debt restructuring or defaults
- » Assist Directors with liquidity issues, difficult decisions and their legal duties
- » Advise on the impact of supplier and other stakeholder insolvencies on the business and how best to mitigate against same
- » Devise strategies for restructuring negotiations with creditors, suppliers and stakeholders
- » Assist to ensure maximised supports are provided from government schemes
- » Provide legal support for contingency planning around more formal restructuring via examinership and scheme of arrangement

Contacts

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