

COVID-19: PRESSURE POINTS: MEASURES IMPOSED IN RESPONSE - MANAGING SUPPLIER DISTRESS (GLOBAL)

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Legal Briefings

**WITH THE UNCERTAINTY, SUPPLIERS WILL HAVE A
COMPETING DEMANDS ON THEIR TIME**



The uncertainty over the overall impact and duration of Covid-19, together with the measures imposed in response can present a complicated and time-consuming scenario for suppliers.

It may take time to understand fully the impact on the business (possibly on incomplete facts) and prepare a sensible strategy to trade through the current disruption.

Where there is pressure from financial creditors (for example following a financial covenant breach or other event of default) or key counterparties, then the supplier's management may have significant difficulties stabilising the business.

EACH SUPPLIER'S BUSINESS WILL BE DIFFERENT BUT CRITICAL FOR IT TO IDENTIFY A FULLY FUNDED RECOVERY PLAN



SPOT THE SIGNS OF SERIOUS FINANCIAL DIFFICULTY

- Good quality existing contacts at the supplier will often give some detail on any issues facing the supplier – although they may not be aware of all matters
- Nuances around engagement with creditors in supplier’s public announcements/disclosures (i.e. “constructive ongoing negotiations with financial

creditors” or references to actual or anticipated covenant breaches)

- Falling prices of listed shares or publicly traded debt
- Aggressive cash management and involvement of restructuring advisers (financial and legal)
- Attempts to reopen the underlying commercial terms (i.e. not just payment terms). Note that a supplier commencing negotiations with creditors as a result of financial difficulties will need to be mindful of insolvency events of default in finance documents and key commercial contracts
- Particularly aggressive contractual arguments or litigious approach – often an attempt to justify a basis for revisiting the commercial deal
- More complex approval process for the supplier to sign off on changes to commercial terms (potentially requiring financial creditor consent)
- Appearance of new personnel in communications with the supplier
- Non-performance (can trip cross-default provisions causing wider consequences)

MOVING FORWARD

- As a general rule, the earlier you can identify financial distress in a key supplier, the more options you will have to address the issue
- Developing a robust contingency plan will be critical to understanding what to do should the worst happen and the supplier fail – it will also inform how willing you may be to reach a commercial compromise and support the supplier to avoid a failure
- There are established restructuring tools that can assist in developing creative solutions to address a problem. To the extent you are not familiar with these then it would be sensible to incorporate these tools and their possible application to the specific facts of the relevant supplier at an early stage as these can help inform your strategic thinking
- AND check if there is a responsive trade credit or credit risk insurance policy somewhere in the supply chain. If there is, it is essential that the terms are complied with – frequent slippages occur due to matters such as late notification or renegotiation of supply terms without insurer consent

- Proposed [changes to insolvency laws](#) could give customers more breathing space from pressure from suppliers to make payments and help ensure continuity. Keep an eye out for bulletins flagging any changes.

[More on navigating the COVID-19 Outbreak](#)

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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