



Financial Restructuring & Reorganization ADVISORY ■

MARCH 30, 2020

Economy in Chaos: Is Bankruptcy Inevitable for My Business?

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As the world economy weathers the coronavirus (COVID-19) pandemic, businesses small and large are facing unprecedented challenges. Restricted travel, reduced consumer demand, and shelter-in-place and shelter-at-home measures have resulted in mass closures of businesses and record unemployment, with unemployment applications reported in the last week exceeding 3 million—higher than at any time since the Great Depression. As every business struggles to find its new normal, many are simply hoping to survive. While there is no one-size-fits-all solution, there are things any at-risk business can be doing to prepare—whether for the best or the worst. Here are some things you can consider right now.

Suspend Nonessential Spending and Hold On to Cash

Maintain liquidity to the extent possible and hold cash reserves to the extent feasible. While the financial markets are facing unprecedented unpredictability, be mindful that in many contexts cash is king. Suspend nonessential spending and focus efforts on maximizing existing revenue-generating channels. Evaluate expenses to trim nonessential costs, which may include assessing labor force requirements or liquidating certain assets.

Take Affirmative Steps to Restructure Current Obligations

Your lenders, lessors, and trade creditors will appreciate a direct and honest outreach. Talk to them about your situation and discuss possible modifications, deferrals, and relief that may be available—if possible, *before* a default. Even if they are not subject to mandates, other creditors may have temporary programs in place to defer payments or penalties. Conversely, creditors will benefit from early and frank conversations that may help them stay front of mind—and front of the line.

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Pursue Available Relief

The [Coronavirus Aid, Relief, and Economic Security \(CARES\) Act](#) was signed into law on March 27, 2020. The CARES Act includes relief for small businesses (those with less than 500 employees), including an employee retention credit, which incentivizes employers to keep employees on the payroll, as well as the temporary reversal of a provision in the 2017 Tax Cuts and Jobs Act to allow businesses to carry back losses to any of the last five years.

Be Aware of State and Federal Emergency Measures

Many states have passed emergency legislation imposing moratoriums on evictions and foreclosures that may provide needed breathing room for your business. Additionally, institutional lenders (e.g., Fannie Mae and Freddie Mac) are putting policies in place to encourage servicers to consider forbearance for borrowers, which some predict may become a federal mandate.

Take Stock of Critical Documents

An early assessment of your business's documents may help direct your conduct. For example, awareness of required debt-to-income ratio triggers may suggest allocation of cash flow or the need to identify expenditures that can be reduced or eliminated; other document provisions may lead to avenues of relief.

Leases, supply, and other business agreements

Review leases and other contracts your business is obligated to perform. Look for clauses that may excuse or delay payments or other performance due, such as [impossibility, impracticability, force majeure, and "act of God" clauses](#).

Insurance policies

Assess coverage and exclusions for business interruption, trade disruption, or civil authority insurance; keep an eye on efforts to compel insurers to cover for coronavirus-related interruptions (e.g., New Jersey Bill A-3844).

Debt instruments

Be cognizant of terms such as debt-to-income ratio requirements and other conditions or events that may trigger defaults, acceleration, and recourse provisions. Assess covenants in bond indentures and similar instruments to have an understanding of any financial covenants that may be triggered by a drop in financial status (e.g., debt-to-equity ratio, coverage ratios, minimum cash flow requirements, minimum EBITD/EBIT ratios) or "call" provisions, which allow the issuer to redeem the bond before maturity.

Seek Federal Bankruptcy Protection

If bad turns to worse, and creditors are taking actions against the company, bankruptcy can provide a critical "pause," allowing an opportunity to reorganize, sell your business as a going concern, or liquidate with the protection of the automatic stay. Significantly, the CARES Act amends the Small Business Reorganization

Act to increase the eligibility threshold to file under Subchapter V of Chapter 11 of the U.S. Bankruptcy Code to businesses with less than \$7.5 million of debt; this opens up a simpler, often less-expensive bankruptcy avenue to more small businesses.

Before making the decision to pursue this course, ask yourself if you have time—does the business have cash—and is harm imminent? Do you anticipate that creditors will be more willing to work with you given the current crisis? Then, be sure you have clearly delineated goals for the bankruptcy; whether it is reorganization, sale, or liquidation, you will need sufficient financing to cover expenses through an exit.

Alston & Bird has formed a multidisciplinary [task force](#) to advise clients on the business and legal implications of the coronavirus (COVID-19). You can [view all our work](#) on the coronavirus across industries and [subscribe](#) to our future webinars and advisories.

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