

# CLIENT ALERT

March 2020

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## **BANKRUPTCY, INSOLVENCY & CREDITORS' RIGHTS**

### **MANAGING UNCERTAINTY THROUGH FINANCIAL CRISIS REQUIRES PROACTIVE GUIDANCE**

The COVID-19 situation has already had a significant effect on the economy, and it will no doubt continue to do so. Almost every type of business is likely to experience some form of financial upheaval. We simply cannot have a widespread shutdown of industries (service or manufacturing) without an accompanying impact on cash flow. This, in turn, affects not only immediate day to day operations, but the potential ability of a business to recover and re-establish itself once stability returns. Hence many businesses will need some sort of financial restructuring, whether that means merely a level of discussion with a subset of creditors or a more fulsome process. The impact will similarly be felt amongst the lender community, just as it will among the industry community.

While we don't know how the COVID-19 virus will finally be contained or when the multitude of closures and stop-work and stay-home orders will be lifted, based upon our years of experience in advising clients in crises, we can reasonably anticipate the following in the interim:

- Issues will affect all sides — borrowers, lenders, trade creditors, landlords, employees, equity holders, etc. — as revenues are impacted, defaults increase, and credit tightens. For companies that were already distressed, the current crisis may be the straw that breaks the camel's back.
- Businesses tend to move slowly or even freeze up when faced with uncertainty, but a wait and see approach is not likely to be a longterm solution in the current environment. A better solution is likely to be a pro-active one.
- Cash is and will be king for the foreseeable future. It will be necessary for almost everyone to take measures to preserve cash. Preparing and updating cash flow projections and determining the business' "burn rate" will be critical.
- Now is the time to actively review loan agreements, to analyze credit availability, and to consider issues that may arise with loan covenants. It will likely be necessary to negotiate with lenders regarding amendments, waivers, and forbearances to address business disruption.
- Consider the review and revisions that will be necessary to your business plan and explore the ins and outs of developing an overall restructuring plan. It may be necessary to consider bankruptcy or other turnaround solutions that can be implemented to achieve new goals.
- Realize that adversity can also present opportunity. Consider seeking advice on how to evaluate possible transactions that may present themselves, and how to put buyers and sellers together. Insolvency situations present unique opportunities to complete deals.

Dickinson Wright has taken its own proactive measures and formed a SOLVENCY TASK FORCE to assist clients with their questions as we all address this period of financial uncertainty. Often a number of options are available to a struggling client, all of which might not be readily apparent. Our focus is helping clients sort out what to do with limited resources, connecting them with other needed financial advisors, advising on transactions that may arise in this context, and if needed, helping them seek relief from the courts. Sometimes the answers are not pretty – or easy. But there are always answers. Below is a list of our attorneys by our offices—but we are not location-specific. You can contact any of us as you find most useful for your situation—and we'll make sure you get lined up with the right personnel.

#### **DICKINSON WRIGHT SOLVENCY TASK FORCE**

Please see Page 2 for the complete Task Force List.

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