

# The impact of coronavirus on borrowers and lenders

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As companies worldwide continue to assess and react to the outbreak of COVID-19, the consequences of the virus are increasingly having an impact on businesses on a global scale.

Beyond the obvious health concerns, the spread of coronavirus presents major challenges for many businesses, including the disruption to international supply chains and the effect on workforces, which will lead to challenges for some businesses in meeting contractual obligations and accessing sources of funding.

Whilst central banks across the world have promised to assist the stabilisation of the financial markets in order to ease the economic impact of coronavirus and the UK Government on March 3, 2020, announced measures to help businesses with short-term cash flow problems, including time to pay arrangements, it is apparent that businesses can expect disruption for some months to come. Certain sectors are likely to be more immediately impacted, such as the airline, hotel and tourism industries.

## What issues may arise for companies?

As a result of COVID-19, directors should consider the following risks:

- What is the effect on the company's ability to meet existing contractual obligations?
- Are there termination clauses within existing contracts:
  - Can the company's counter-party terminate?
  - Can the company terminate?
  - What are the legal and practical consequences of termination?

- What is the impact on the company's own suppliers and customers?
- Are alternative suppliers or customers available and in what timeframes?
- Will the sudden movements in equity markets and currencies have an impact on any derivative contracts?
- Will the company be breaching banking arrangements? Could this trigger cross defaults?
- What will be the impact on the company's audit sign off?  
For those with a December 31 year end, are there post balance sheet events

## What issues may arise for lenders?

The impacts on businesses can very quickly create issues for a company's lenders. Banking documents may be breached in the short term where the business outlook and general disruption will trigger:

- Look forward financial covenants
- Material adverse change clauses
- Updated valuations on assets
- Borrowing base requirements on depleted stock
- Upcoming audits
- Payment defaults

More worryingly, the disruption to businesses could cause a very sudden liquidity crisis and a borrower may well be looking to its lenders to provide liquidity in the short term.

## How can Norton Rose Fulbright assist?

We are able to assist businesses navigate the risks and advise as to the legal obligations in the context of COVID-19 on a cross-border basis including:

- **Contingency planning and board meetings** – Directors should meet regularly to review the risk to the business. We can provide input into these reviews and assist with any contingency planning required for the business.
- **Directors' liability** – Any distressed scenario creates a necessity for robust independent and practical advice for the directors, including in relation to their fiduciary and statutory duties and practical steps and considerations.
- **Financing arrangements** – We can advise as to the security and subordination position, enforcement options and the impact of a formal insolvency as part of an options review. In our experience, successful turnarounds are assisted by a prior contingency planning process to ensure stakeholders are able to navigate challenges appropriately.
- **Insolvency and restructuring advice** – We can assist on the negotiations with the borrowers and other stakeholders, and facilitation of restructuring agreements, amendments to finance documents, inter-creditor arrangements and new security documents.
- **Disputes** – There are likely to be breaches of contract by suppliers which will lead to claims for loss and damage. Immediate collation and preservation of evidence to bring or defend such claims are key to the success of such claims. The timely implementation of documented mitigation strategies will be key. We can assist with advice on any disputes and appropriate processes for immediate evidence gathering.

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