



# Ten practical tips for dealing with anticipated financial distress of your business or your clients, customers or vendors

## Restructuring Alert

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By:

While we all struggle with the implications of coronavirus disease 2019 (COVID-19) – the immediate unknown and what may be the new norm – there are things businesses can consider doing at this time to address the impact of conducting business in a financially distressed climate. Here are ten tips businesses may wish to consider:

- 1. Maintain communication with clients, customers, vendors, supply chain and employees.** This is the time to cement relationships that will fare well for you in the future. People from all walks of life may be feeling confused, scared, frustrated and alienated. Anything you can do to keep in touch with people important to your business, whether it is just an email asking them how they are doing and wishing them well, or offering assistance, may be well received and remembered. And communicating by telephone, videoconferencing or other ways that allow people to hear your voice and see your face can make that outreach all the more meaningful.

2. **Review your contracts.** This is a good time to ensure an understanding of such terms as deadlines, notices, covenants, force majeure provisions, and termination provisions under your contracts and that any such critical dates are calendared. In particular, you may wish to confirm termination benchmarks, security for obligations, cure periods, deadlines, third-party obligors such as guarantors and bank-issued letters of credit, and assignment provisions. To the extent needed, this may be the time to amend such provisions. While it is difficult to bankruptcy-proof a transaction, there are beneficial protections for you to consider should a counter-party file for bankruptcy.
3. **Assess the viability of terms in the current and foreseeable climate.** Determining what modifications may need to be made and can be made to contracts to address any financial instability of your company or that of a counter-party can help to foster a productive and continued business relationship.
4. **Be creative.** This is the time for creative approaches and solutions. The same old way of doing business likely may not be practical for the current climate or foreseeable future. You may wish to consider thinking about alternative ways to communicate and monitor transactions when it can't be done in person, alternative resources and products, and ways to monetize your assets. For example, if you are sitting with inventory, it may be helpful to think about whether online selling is possible or whether you may be able to offer your inventory through some type of pop-up kiosk or window where people can obtain your products in a contactless fashion, without getting out of their cars or being exposed to others.
5. **Be a good partner.** We are all in this together. The financial distress of your counter-parties may affect your financial situation. The more you can do to consider being flexible and helping a counter-party to resolve its distressed situation, the more opportunity there may be to benefit your company by creating a relationship in which the counter-party will be more flexible if you encounter a problem in the future.
6. **Taking care of employees.** The concern about revenues can become all-encompassing, but businesses can't survive in the long term without their most important assets: the people that keep them functioning. You are strongly encouraged to take care of your employees and communicate with them as the situation continues to evolve.
7. **Make sure payroll tax is paid.** While it may be difficult in these tumultuous times, it is important to ensure you are meeting your payroll tax obligations. The consequences of not meeting these obligations may include getting into a trust fund tax situation in which officers or directors may become personally liable for company payroll tax obligations. The CARES Act does provide some relief in terms of an employee retention credit for the employer's portion of matching social security taxes and a payroll tax deferral, among other tax related benefits. Please see another publication by DLA Piper LLP (US) colleagues entitled *Coronavirus: Overview of tax provisions in the Coronavirus Aid, Relief, and Economic Security Act*, which addresses the various tax benefits.
8. **Check insurance policies.** Make sure you understand what coverage you have and the exemptions. While at this time insurance companies may be overwhelmed and not likely to increase insurance policies, it may be advisable to find out where additional coverage may be required and see when that can be obtained.
9. **Assess your equipment.** This period will test the efficiency and quality of your equipment. Outdated software, hardware and web-based programs may be especially detrimental in a crisis and may adversely affect your efficiency, productivity and competitive edge.
10. **Consider government assistance.** There are many programs being offered to help businesses and employees impacted by COVID-19. We are happy to review what may be applicable to your business with you.

In sum, there are a number of steps that could help address and potentially ease the burden of operating a business in a financially distressed climate. Perhaps most importantly, do not feel you have to brave this all alone. If you have any questions regarding these issues, please contact a member of DLA Piper's Restructuring group or your DLA Piper relationship attorney.

We have many publications addressing the business issues raised by COVID-19, and the most up-to-date information

concerning government assistance. Please visit our Coronavirus Resource Center and subscribe to our mailing list to receive alerts, webinar invitations and other publications to help you navigate this challenging time.