

Restructuring options to encourage business viability in light of COVID-19

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The number of confirmed cases of COVID-19 continues to rise in Canada and globally and this novel pandemic is having unprecedented effects directly on businesses and the economy more broadly. Companies are facing liquidity challenges and difficulties maintaining their credit obligations due to a suppressed market and government-introduced restrictions. While government supports such as the Canada Emergency Wage Subsidy help to ease the burden on businesses during these difficult times, those who are ineligible for such assistance or who are under severe financial stress may need to take further steps in order to maintain stability and viability.

It is unclear how long the effects of this pandemic will continue and companies should evaluate their options early on and prepare contingency plans for a potential long-term depression in both the Canadian and global markets. Companies who are already significantly impacted by the pandemic should commence discussions with their creditors as soon as possible, which may allow for creative solutions and beneficial arrangements for all parties involved. Multiple options are available.

Creditor arrangements

Given the current economic and social environment, one of the most prudent and practical options available to both debtor companies and creditors alike is to negotiate arrangements such as forbearance agreements, other deferral arrangements, or [converting the debt into distress preferred shares](#). Typically, forbearance agreements involve a creditor refraining from taking enforcement action against a debtor for a certain period of time in exchange for certain concessions from the debtor such as additional security, an agreement by the debtor to comply with other conditions, and the implementation of a repayment plan. While these agreements can often be difficult to obtain, creditors may be more willing to negotiate these types of accommodations given the current economic climate.

However, companies should be wary of potential pitfalls of entering into such agreements, specifically when nearing insolvency. For instance, there are consequences where one creditor is preferred over another. Other considerations include the potential liability of a company's directors and officers.

Formal restructuring

For other companies, arrangements with individual creditors may not be adequate to meet their financial needs or remedy their particular financial issues. In those cases, companies may elect to enter into formal restructuring proceedings. Under the *Companies' Creditors Arrangement Act* and the *Bankruptcy and Insolvency Act*, the ultimate goal is for the parties to implement an arrangement with creditors to allow the business to continue while implementing a plan or schedule to repay debts. A monitor or trustee will oversee the affairs of the company while the company itself remains in control of its operations.

There are a number of benefits to entering into formal restructuring, including (i) a stay of proceedings, which prevents creditors from taking action and provides a company with time to organize its affairs, (ii) the power to terminate unprofitable contracts, (iii) the ability to pay key suppliers while other creditors are not being paid, (iv) the potential to secure financing with a court-ordered super priority, and (v) the possibility of court-approved sales of assets. In a formal restructuring all of these occur with Court supervision and increased transparency which limits the potential liability of a company's directors and officers (including by way of a court-ordered release).

Pre-emptive planning and preparation

Companies that have managed to avoid major repercussions thus far ought to still consider steps to prepare and plan for potential issues that may arise in the future. For example, updating cash flow projections regularly, reviewing existing financial arrangements to ensure they can still meet their obligations, considering pre-emptive adjustments to such arrangements, and engaging in proactive discussions with lenders to promote transparency and avoid the risk of a future default. Preparing early and thoroughly for potential liquidity issues may ensure that a business is able to survive when it otherwise would not be able to do so.

Looking to the future

COVID-19 continues to impact industries across Canada in varying degrees with very few maintaining the same level of functionality as their pre-virus operations. With the possibility of long-term social distancing together with the potential implementation of more stringent measures to "flatten the curve" and hinder the re-emergence of the virus, there will likely be an increase in the need for creative solutions between creditors and debtors to provide debtors with the flexibility they need to continue to operate their businesses while at the same time providing creditors with a level of comfort and security. Solutions such as forbearance agreements or other informal arrangements will be vital to promote business survival throughout this global crisis. Companies should be vigilant in their financial planning, consistent in their communication with their various creditors, and aware of the options available to them if they are faced with a situation where their liquidity is at risk.

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