



## COVID-19 and Financial Distress: Practical Measures for Company Directors from the viewpoint of a Director – Steps to save your Company

### INTRODUCTION

#### **Financial Distress**

This global financial meltdown is unprecedented as the pandemic sweeps through the world. The cause is a coronavirus disease known as COVID-19 which may lead to fatalities. The simple way to stop the virus from spreading is to keep away from physical contact and social distancing has resulted in lockdowns, closure of offices, shopping malls, etc. Everyone is affected. Companies are facing the worst and most challenging crisis in a generation. Almost every company is facing financial distress in varying degrees. The measures put in place to prevent the coronavirus from infecting more people has caused massive disruption to normal business. Stoppage of work, disruption of supply chains and a likely slowdown and even default in payments might stress the Company's cash flow. In the worst-case scenario, when the Company is unable to meet payment demands from creditors, the Company may become insolvent.



## SUPPORT FROM GOVERNMENT

### Financial

The Government has provided S\$60 billion to fight COVID-19 consisting of:

- S\$6.4 billion Unity Budget announced on 18 February 2020
- S\$48.4 billion Resilience Budget announced on 26 March and
- S\$5.1 billion Solidarity Budget announced on 6 April 2020.

These contain many measures showing the Government's support for, amongst others, companies facing financial distress. The Directors should be familiar with all the Government assistance rolled out and be proactive in tapping this resource to strengthen its cash position:

- Claim every rent and property tax relief immediately,
- Claim every worker wage supplement immediately,
- Stop payment of worker levy immediately for April 2020 and claim the levy rebate,
- Be pro-active in debt collection,
- Control payment to creditors to preserve cash in Company,
- Actively engage the workforce in cutting costs if necessary and
- Strengthen cash flow and prepare for the worst.

### Legislative

The Ministry of Law for Singapore had announced on 1 April 2020 that it intended to introduce the COVID-19 (Temporary Measures) Bill (“**Bill**”) in Parliament on or around 7 April 2020. The Bill offers temporary relief to businesses and individuals facing financial distress in these difficult and uncertain circumstances. The Bill will offer eligible businesses and individuals urgent breathing space to better manage cashflow and their creditors. The Bill will compel property owners to pass on the 100% property tax rebates given by the Government to tenants in full. The Bill will also increase the monetary thresholds and time limits for insolvency. Further, the Bill proposes temporary relief from the risk of insolvent trading. More details on the Bill has been covered in our earlier 6 April 2020 COVID-19 article entitled “Singapore proposes Temporary Measures to support Businesses and Individuals in Managing Contract Obligations and Insolvency Risk arising from the COVID-19 Outbreak” (accessible [here](#)). The Bill was passed by Parliament in one sitting on 7 April 2020.



## Duties of Directors

Directors have fiduciary duties to the companies on which boards they sit. Directors owe a duty to the Company to do their best to save the Company in times of financial distress. The Directors must act in the best interest of the Company and there is ample case law supporting the view that ‘in the best interest of the Company’ does not mean the interest of shareholders only, but all stakeholders, which would include employees of the Company.

Directors should understand that leadership in a crisis is different from leadership when times are good. A leader that has to lead in a crisis should have these attributes:

- Ability to build trust,
- Ability to stay calm,
- Ability to organise and make decisions amid the uncertainty,
- Care and concern for employees
- Communicates effectively,
- Demonstrates empathy and
- Is able to stay optimistic.

Strong directors that make the right decisions at this time will come out stronger when the Government imposed ‘coronavirus circuit breaker’ is lifted and the economy eventually recovers.

There is no one solution for all companies and all industries. Solutions will have to be on a case by case basis after undertaking a detailed review of the financial statements and projections on a worst-case-scenario basis (it seems improbable that there will be a best case scenario under current circumstances).



## STEPS TO SAVE YOUR COMPANY

Directors should immediately implement COVID-19 action plan in the work place. The immediate step for Directors to take is assessing the financial impact, especially the projected cash flow of the Company during this extremely difficult period. This would also include reviewing assets and liabilities, revenue and expenses and contingent liabilities of the Company. If required, Directors should consult industry experts, accountants and lawyers. Fear of a collapse of the company for whatever reason may be on all stakeholders' minds and Directors have to act fast to address that fear and communicate the steps it is taking to address their concerns.

### 1. Manpower

Top on the mind of Directors should be the Company's manpower. With significantly lower sales and collections- how to save jobs and help its employees overcome the crisis? We have more information in our 10 April 2020 article entitled *Singapore Employers' Obligations To Their Employees During the Covid-19 Outbreak* (accessible [here](#)). If pay cuts are necessary, it should start from top management and Directors to show leadership – lead by example (accessible [here](#)).

#### Freeze hiring in crisis times.

Know and understand the various safe-distancing measures implemented by the Government. Directors must ensure that they and the Company discharge their duties and responsibilities to their employees to protect their health and safety. Most importantly, the Directors must ensure that the employees of their business segments which are not categorised as 'essential services' are able to and do actually work from home ("WFM") from 7 April 2020 to 4 May 2020.

The Directors should have a manpower plan and release the plan to their employees. Build a team of management executives that can engage employees to address their concerns and support the manpower plan.

Use digital technology to keep engaging your employees and assist your employees to WFM.

During the crisis, train your employees so that the Company will quickly grow its revenue and profits when the economy recovers. Tap the SEP Training Support Scheme or SME Go Digital Scheme.

## 2. Cashflow

Directors should immediately relook, update or do a cashflow budget based on a worst-case scenario. Look at how much cash reserves the Company has and how long the cash will last in a worst-case. Cut and save cost and defer capex. If there is inadequate cash reserve, the Directors will have to look at debtors and assets to dispose of to raise cash. In addition, Directors should also look at other ways to raise cash to meet cashflow needs.

See where and how much the Company can tap the support schemes from the Government to keep manpower intact and improve cashflow. Know and understand the Unity, Resilience and Solidarity Budgets. In relation to employees, there are the Jobs Support scheme, Wage Credit Scheme, the Enhanced Jobs Support Scheme and Further Measures to Ease Labour Costs to support your cashflow, save jobs and stay viable. In relation to rental costs, there are property tax rebates and Further Support for Rental Costs.

Test the solvency of the company.



## 3. Debtors

Directors should review the debtors aging list in detail for cashflow and potential bad debts. Collect as much as the Company can. Your debtors may be slower in their payment. The customers of your Company should be facing the same challenges. Discuss with debtors to reach an understanding as to when outstanding bills will be paid. This will go a long way to maintaining a long-term relationship with your customers when the economy recovers. In addition, estimate the defaults in debtors and make provision or your auditors will raise queries on potential bad debts and impairment.

## 4. Creditors

Directors should review the creditors aging list in detail. Manage the payments based on what your cashflow allows. Assess the company's financial ability in meeting the creditors payment. Plan for additional finance to prevent creditors from taking actions. The suppliers of your company should be facing the same challenges. Reach an understanding with your creditors if you are unable to pay on time. This will go a long way to maintaining a long-term relationship with your suppliers when the economy recovers.



## 5. Bank loans and covenants

Directors should check all the outstanding bank loans and bank facilities for covenants, guarantees and securities given to the banks to see any breach or likely breach. Every bank will have different policies in this crisis. Engage with your bankers and discuss solutions, if required. DBS, OCBC and UOB have started their COVID-19 loans and financial packages for SMEs to overcome the crisis. These would include the Government- supported Temporary Bridging Loan Programme, the Enterprise Financing Scheme – SME Working Capital Loan and Enterprise Financing Scheme – Trade Loans, for the period from 8 April 2020 until 31 March 2021 whereby the Government would bear 90% of the risk if the debts turn bad. There is also Loan Insurance Scheme available.

Discuss with your bankers how to restructure the bank loans if necessary, how to increase your facilities with additional collaterals, etc.

If you have a bond due for repayment, you may have to restructure the repayments terms.

## 6. Assets

Look at available assets to sell or to pledge as collateral to banks to raise cash. Valuation of assets in a crisis and during a volatile period will be challenging. Consult a professional valuer if required. In addition, Directors must understand the laws and director's responsibility while discharging his duties especially in the way company assets are disposed at low value quickly in exchange of cash which may result in the possibility that the director may breach his role in protecting the interest of creditors.

## 7. Funding – shareholders, bankers

Look to shareholders, bankers or new investors to raise cash. If your business model is relevant when the economy recovers, it should not be difficult to find investors.

## 8. Operations – Contracts, Contingent liabilities

Review all existing contracts to identify contingent liabilities. Understand whether any force majeure clauses in such contracts can be invoked (please refer to (i) article entitled *Force Majeure because of Coronavirus/Covid-19* (accessible [here](#)) and (ii) article entitled *COVID-19: Asia Guide to Force Majeure* (accessible [here](#)). However, it may be advisable to exercise prudence when triggering force majeure clauses because this will likely result in a breakdown of business relationship – you may never be a business partner of the contractual counterparty again when the economy recovers.

Understand the Bill passed in Parliament on 7 April 2020. Look at

- relief from contractual obligations for certain scheduled contracts and
- qualified relief from insolvency proceedings during the prescribed period of the Act to protect your Company and the Directors.

Request your in-house lawyers to advise the Directors or consult legal advisers, if required.

If your company is a listed company on the Singapore Stock Exchange required to hold your annual general meetings (“AGM”) in April 2020 because the year end of the Company is 31 December 2019, please note that on 7 April SGX Regco announced that SGX and ACRA will grant automatic 60 day extension of time for holding AGMs (please refer to article entitled *SGX and ACRA Grant Automatic 60-Day Extension of Time for Holding AGMs* (accessible [here](#)).

## 9. Restructuring

Based on your cashflow budget on a worst-case scenario, it may be inevitable that the Company has to be restructured. Certain activities of the Company may have to be suspended due to low demand. Work out a restructuring plan.

## 10. Turnaround strategy

Plan to the post crisis strategy to maximise from the recovery if it comes. Identify what are the new profitable business that will survive the crisis and are set to grow when the economy recovers. The 2 Chinese characters for “crisis” mean “danger,” and “opportunity.” As the Directors face the crisis, they should also not miss the great opportunity to grow.





## 11. Be Practical and Realistic

We urge Directors to have a close assessment of their business and its risk profile to see whether its current problems are indeed caused by COVID-19 or whether COVID-19 merely accelerated underlying problems and made them happen sooner.

Directors should be practical and realistic. If the Company is fighting for its survival, the Directors may want to seek the protection of the court at an early stage before it is too late.

## 12. Look forward

Keep looking forward..... The spread of the coronavirus will be under control. New vaccines are being developed and tested. The crisis will eventually pass.

With the financial support from the Government and the Bill introduced by Parliament, most companies should be able to overcome the crisis with confidence. In the event that even after taking all the above steps business still fails, Directors should consider whether a scheme of arrangement, judicial management or liquidation would be the most suitable last resort.

In conclusion, all companies are likely to have been through some form of crisis, and how they manage the crisis will determine their success after the crisis. Several listed companies on SGX and other companies which started business before 1985 facing the crisis today would have survived the crisis of 1985 (Pan Electric crisis), 1997 (Asian Financial crisis) and 2008 (Global Financial crisis) and would probably already have developed the right crisis leadership skills and decision-making processes. **You can do it too.**



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RHTLaw Asia offers a different perspective on client experience and commercial thinking. As a leading regional law firm headquartered in Singapore, clients can expect intelligent and innovative solutions from a team that is attuned to the nuances of doing business in Asia. With access to our own ASEAN Plus Group, a network of leading firms comprising over 2000+ lawyers in 16 jurisdictions around Asia, as well as our membership with The Interlex Group, a global network of leading law firms, we help clients understand the local challenges, navigate the regional complexity to deliver the competitive advantage for their businesses in Asia.

We collaborate closely with the RHT Group of Companies to provide an all-rounded integrated business solution. We believe in pushing the boundaries of what can be achieved for our clients in this evolving marketplace.

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**RHTLaw Asia COVID-19 Response Team will continue to bring you further updates following developments in Parliament.**

**Join us for an upcoming webinar on:**

**“COVID-19 (Temporary Measures) Act  
– Its Legal and Practical Implications”**

**Visit our RHTLaw COVID-19  
Resource Centre for more updates**