

MARCH 2020

**AUTHORS**

JEFFREY C. HAMPTON

MARK MINUTI

MICHAEL L. GESAS

# Financial Strategies for Minimizing Businesses' Distress in the Midst of COVID-19

## SUMMARY

**COVID-19 is causing unprecedented business disruption both currently and for what may be an extended period of time. A significant number of business operations are at a standstill, resulting from state mandated closures, supplier shortages and related supply chain challenges. Businesses are also facing disruptions due to just-in-time manufacturing interruptions and a lack of demand, leading to immediate liquidity challenges. It is imperative for businesses to assess their current financial positions and strategic plans in order to minimize further interruptions and the risk of financial distress. Below are several strategic issues that businesses should consider during this pandemic.**

1. Review your credit facility to refresh your understanding of financial covenant requirements that may be at issue or subject to potential default in light of resulting business interruption and challenges. If there are any that present a concern, be prepared to discuss them with your lender in an effort to reach an understanding as to a waiver of the covenant requirement, a modification of the covenant benchmark, or a forbearance agreement to clarify that an exercise of remedies will not be pursued.
2. Consider the implications of customer financial challenges and the possibility of delayed or reduced invoice payments or no payments for an extended period of time. Working with counsel, explore potential rights under the customer agreement and/or the Uniform Commercial Code (UCC) to alter current payment terms and, possibly, seek adequate assurance of future performance in accordance with the UCC.
3. Review critical product supply agreements to determine remedies available if the supplier's performance is hindered or delayed in light of conditions resulting from COVID-19 (such as the inability to receive product). Remedies (such as seeking an alternative supplier, or "covering" for increased price of the alternative goods sourced or that are available in such a situation as provided under the UCC and potentially under the supply contract and contractual remedies) should be considered and planned for.
4. Revisit cash flow projections and business plans to determine the potential need to modify current spending plans in the event of a downturn in your industry or from interruptions in the supply chain. Most importantly, communicate any such issues promptly with your lender, as appropriate, and keep a clear line of communication open going forward.

5. Be vigilant in terms of a potential increased risk of fraud in light of potential business strains and customer and supplier financial challenges.
6. Be mindful of how lenders in your specific industry may be responding to the situation and changing marketplace and be prepared to address misconceptions.
7. For those in the health care industry (particularly long-term care facilities), be sensitive and mindful of increased risk of financial challenges in light of rapidly changing requirements issued by regulatory agencies and the ability to address these from current liquidity. If current liquidity is not sufficient, be proactive in your outreach to resources to address this shortfall in an effort to avoid potential future litigation.
8. Many business agreements will likely be renegotiated and modified as a result of the impact of these unprecedented events. If you are planning to restructure debt facilities or other business arrangements, be mindful of the fact that modifications of certain types of agreements may have significant unintended legal and tax implications.

Saul Ewing Arnstein & Lehr's restructuring team is continually tracking the developments of other potential effects stemming from COVID-19. For questions about how to handle financial challenges at this time, please reach out to Jeffrey Hampton, Mark Minuti, or Michael Gesas.

This alert was written by Jeffrey C. Hampton, chair of the Firm's Bankruptcy and Restructuring Practice, Mark Minuti, a member of the practice, and Michael L. Gesas, vice chair of the practice. Jeffrey can be reached at (215) 972-7118 or at [Jeffrey.Hampton@saul.com](mailto:Jeffrey.Hampton@saul.com). Mark can be reached at (302) 421-6840 or at [Mark.Minuti@saul.com](mailto:Mark.Minuti@saul.com). Michael can be reached at (312) 876-7125 or at [Michael.Gesas@saul.com](mailto:Michael.Gesas@saul.com). This alert has been prepared for information purposes only.

Did you find this information useful? Please provide your feedback [here](#) and also let us know if there are other legal topics of interest to you.

The provision and receipt of the information in this publication (a) should not be considered legal advice, (b) does not create a lawyer-client relationship, and (c) should not be acted on without seeking professional counsel who have been informed of the specific facts. Under the rules of certain jurisdictions, this communication may constitute "Attorney Advertising."