



## COVID-19 FAQs Legal and Financial Considerations

### Introduction

The rapid outbreak of the virus presents a significant business challenge and whilst there have been other 'black swan events' before, they all lacked at least one of the key ingredients of scale, severity and speed.

The Bailiwick of Guernsey is now in a lockdown situation with unprecedented restrictions not seen before, even during the Occupation. Businesses are having to review their readiness and the potential impact the outbreak may have on their operations, supply chains, employee well-being and very survival to keep the business afloat during these times.

The effects of the coronavirus are very widespread and relate to many industries, not limited only to entities operating directly in the travel and tourism industry, but affecting nearly every sector, due to the following impacts:

- Reduced consumer demand for goods and services due to lost income and/or restrictions on consumers' ability to move freely;
- Disruption of supply chains due to restrictions placed on the movement of people and goods;
- Availability of staff due to illness or restrictions of movement;
- Lack of investment in capital improvements and construction reducing demand for many goods and services.

From a business perspective, cash is king: the critical element in any time of uncertainty is to ensure that the company's liquidity position can be maintained and to buy time for the company to recover.

## FAQs – Business resilience and financial considerations

1.	What should I be thinking about with my business to be as resilient as I can be?	<p>Consider the following actions, among others:</p> <ul style="list-style-type: none"><li>- Review your debtors list and consider reducing payment terms.</li><li>- Look to issue invoices as soon as practicable, keep your paperwork up to date.</li><li>- Conduct a thorough risk assessment of business operations, to assess the level of possible interruption and see if there are ways to mitigate potential impacts, consider financials such as problems with failing debtors, but also supply chain disruption and employee resources should they be unable to work.</li><li>- Review the pace of expenditure, the goal is to attempt to slow down the cash burn rate.</li><li>- Consider creating a cash flow budget and regularly update to measure your cash flow against expenses. Model this with scenario reporting for “what if” analysis.</li><li>- If possible, re-prioritise the allocation of resources to unaffected business lines.</li><li>- Identify measures for controlling budgets and making cost savings, such as assessing the possibility of outsourcing certain business processes in a cost-effective way.</li><li>- Explore opportunities with variations on your services such as the hospitality sector providing take-out meals, the retail sector with home delivery, are there ways you can continue to provide services whilst maintaining social distancing precautions.</li><li>- Identify alternative solutions if forced to suspend operations at the business premises. For example, can you work from home? Can you use the time to bring other parts of your business up to date, recharge focus on those jobs you have been putting off concentrating on others?</li><li>- Block any discretionary spend such as marketing cost, anything that the business does not need or the ‘nice to haves’, remove or defer.</li></ul>
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2.	How do I know if my business is insolvent?	<ul style="list-style-type: none"> <li>- A business will generally be considered insolvent if either the value of its liabilities (unpaid suppliers, Revenue Service tax bills etc) are greater than its assets (cash in bank, value of stock held etc) and / or it doesn't have the available cash to pay its bills as and when they fall due for payment.</li> </ul>
3.	What should I do if I think my business is insolvent?	<ul style="list-style-type: none"> <li>- Be proactive and consider what the options for the business might be, sooner rather than later.</li> <li>- Draw up a cash flow for the next 3-6-12 months to work out where the pinch points are and what the solutions might be.</li> <li>- Talk to your customers / suppliers and see whether they can help with your cash flow in the short term to help get you through the current shortfall.</li> <li>- Consider if there are any sources of funding outside of the business e.g. director, shareholder or family member loan, that might be available to get the business through the tough patch.</li> <li>- Get in touch with your accountant to see if they can help or at least point you in direction of someone that can.</li> </ul>
4.	I am a director of an insolvent business, what should I do?	<ul style="list-style-type: none"> <li>- Don't stick your head in the sand, contact your accountant or business adviser for help, now.</li> <li>- Stop making payments out of the business until you have sought professional help or guidance and established a plan for the future of the business.</li> </ul>

5.	Who can help me?	<ul style="list-style-type: none"> <li>- Your accountant or business adviser</li> <li>- Citizens Advice Bureau</li> <li>- Guernsey Chamber of Commerce</li> </ul>

### FAQs - Liaising with your bank re liquidity, lending and cash management

Given the current business disruption, are you comfortable you have access to adequate funding to support your liquidity (cash) needs and manage through potential challenges? Cashflow forecasting and having an open dialogue with your bank are critical in these uncertain times.

Should you require bank funding, prior to engaging with your bank it is important that, as a minimum, you prepare a best estimate short-term cashflow forecast. This is not only to ensure you have an understanding as to your current financial position, but also to inform discussions with your bank as to what banking facilities you will need to support your liquidity and manage through future potential challenges.

Under **normal** trading conditions we would expect businesses to have rolling 12-month cashflow forecasts to help manage cash peaks and troughs throughout their annual cycle.

However, in times of crisis, such as this, the focus needs to be radically shortened to a rolling **week-by-week** or even **day-by-day** focus on liquidity. Understanding your cash burn rate and when you are likely to run out of cash, is imperative. And this is particularly important given that we currently have no clear idea as to the likely **duration** of the current economic conditions.

Below are some FAQs to assist your cash management and discussions with banks:

1.	Who should I contact if I have a banking or liquidity question?	<p>You should call your normal Relationship Manager in the first instance, or in the case of smaller businesses, the general contact number.</p> <p>We understand that most local Relationship Managers have full remote connectivity and are working hard to deal with customer requests. Banks are currently being inundated with queries so do have as much relevant information to hand as possible for when you speak to your Relationship Manager.</p>
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2.	What information should I have to hand prior to contacting my bank?	<p>It is essential that you have a clear understanding of your current financial position (this may include a combination of business and personal if you have cross/personal guarantees) and that you have an idea of what you want from your bank. So, have to hand:</p> <ul style="list-style-type: none"> <li>- All bank account details and details of any lending facilities (account numbers and approx. balances)</li> <li>- Any mortgage/loan facility agreements, including overdrafts, lines of credit, revolving credit facilities etc.</li> <li>- Have a pre-prepared best estimate cash flow forecast for the next 17 weeks (being one fiscal quarter plus an additional month).</li> <li>- Any other pertinent information that may add background and context to your discussions.</li> </ul>
3.	What do I need to consider when doing a 17-week cashflow forecast?	<p>Factor the disruption and uncertainty as best as you can when preparing your cash flow forecast, including:</p> <ul style="list-style-type: none"> <li>- Assess your projected cash receipts based on: <ul style="list-style-type: none"> <li>o known debtor positions - review aged debtors and actively follow up outstanding debtors as cash collection is essential at this time.</li> <li>o Current and future sales – you will need to review your usual profile of fees carefully based on your best estimate of economic impact. Time based fees, in particular, may need to be revised based on realistic staff utilisation due to disruption and impacts of remote working.</li> </ul> </li> <li>- Expenses: <ul style="list-style-type: none"> <li>o Start with fixed costs i.e. the ones you know are unlikely to change (mortgage/rent, salaries, insurance etc). Are any of these able to be deferred in the short/medium term?</li> <li>o Factor in any likely changes to variable costs based on your current and forecast</li> </ul> </li> </ul>

		<p>operating model and focus on how these can be minimised (i.e. utilities and cleaning if office is shut).</p> <ul style="list-style-type: none"> <li>○ Seriously consider deferring dividends and distributions which may put undue strain on cash reserves.</li> <li>- Make a note of assumptions are you making.</li> <li>- Stress test your cash flow forecast i.e. model it over a range of scenarios (best/base/worse case) to assess the potential financial impact across your business. This will also help to highlight likely minimum and maximum funding requirements, and the weeks/months where credit is critical.</li> </ul>
4.	How do I go about negotiating with my bank?	<ul style="list-style-type: none"> <li>- There is not a one-size-fits-all approach to negotiations - it will very much depend on a number of factors, including your existing relationship and history with your bank. However, having the right information to hand is key, so it is important that you start negotiations with an idea of what you want/need as a minimum position.</li> <li>- Banks will primarily be looking at your cash burn rate to ascertain how long current cash reserves are likely to last so they can work out likely funding requirements. So, have an up to date cashflow forecast to hand to assist with discussions.</li> <li>- Don't be afraid to ask the bank what it is able to offer.</li> </ul>
5.	What do I need to be aware of when extending facilities?	<ul style="list-style-type: none"> <li>- Facilities take time to put in place, so speak to your bank as early as possible.</li> <li>- Depending on your liquidity position (identified from your cashflow forecasting), it may be appropriate to draw facilities sooner rather than later, as financing is likely to be harder to obtain in the immediate post crisis landscape.</li> <li>- Do be mindful that any additional lending will require additional security, plus extra costs, so consider all other funding alternatives to</li> </ul>

		<p>ensure you make an informed and sustainable long-term decision.</p> <ul style="list-style-type: none"> <li>- Your bank may look to seek a personal guarantee before granting extensions to loans, so this needs to be considered in advance of your discussions.</li> </ul>
6.	What other things should I consider before approaching my bank?	<p>Consider approaching creditors for forbearance arrangements, for example:</p> <ul style="list-style-type: none"> <li>- Discuss the possibility of rent deferrals with your landlord</li> <li>- Look at negotiating a deferral of utility payments</li> <li>- Consider other (non-bank) credit arrangements that may be able to be deferred (i.e. equipment leases)</li> <li>- Discuss the possibility of amalgamating other debt arrangements?</li> </ul>
7.	What board or governance points should I be aware of?	<ul style="list-style-type: none"> <li>- It is imperative that Boards document (minute) all assessments and decision making, including in respect to assessments of solvency (balance sheet and cashflow solvency), as this is may be scrutinised in future.</li> <li>- Ensure all supporting information used when making decisions is kept, as this will evidence the data that you had to hand when decisions were made.</li> </ul>

### FAQs – Remote working

Given the current COVID-19 lockdown conditions remote working has become commonplace on the island. Whilst some firms may have already had remote working capabilities, notwithstanding the technological aspects, there are significant ‘softer’ challenges that arise when your entire workforce is required to work remotely.

Our advice to any business, where remote working hasn’t previously been the norm, would be to start any conversations by highlighting that any changes to ways of working are there to protect employee health and continued employment and that everyone needs to work together to achieve this.

Set expectations and parameters early, tell managers how to manage a virtual team, tell them how to hold a wellbeing conversation, and make them understand that productivity is affected by remote access – acknowledge that many things just take longer remotely.

Finally, remember positive intent. Most employees will want to do their best and work as hard as possible, but the current situation will hamper their efforts. This will be as frustrating for them as it is for you and your management team. Empathy will be key.

Below are some FAQs to assist:

1.	My employee contracts note their place of work as our offices, is working from home legally covered?	<p>Check the wording of your employment contracts.</p> <ul style="list-style-type: none"><li>- If the wording allows you to vary or direct the way in which the employees carry out their duties, you may be able to rely on this mobility clause. Case law on this issue has found that even where this express clause exists, employers may still be in breach of contract if they use it to make an unreasonable demand of their employee (e.g. requiring them to move away from family at short notice). However, we imagine that the present climate is likely a reasonable basis for a request that the employee works from home for the time being. Reassure your employees that it is not your intention this will be a permanent move, and you will of course be keeping the new arrangements under review as the global situation progresses.</li><li>- If your contracts don't contain a mobility clause, best practice is to obtain your employees' written agreement to this temporary change in their terms and conditions after a period of consultation. Given the imposition of a lockdown it was likely not practical for you to do this prior to the change. It is advisable to now issue a written update confirming the new arrangements, ask your employees to let you know of any concerns or suggestions they have, and seek their written agreement to the change.</li><li>- Overall, we want to stress that this is the time for flexibility on both parts. If you feel you are</li></ul>
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		<p>likely to be met with resistance from employees, you may want to emphasise in your communications to them, that their amenability to this change helps support the business through this difficult period and will assist in your aim of avoiding job losses.</p> <ul style="list-style-type: none"> <li>- Bear in mind also the wellbeing of your employees whilst they are working from home. Your duties as an employer to take reasonable care of the health and safety of your employees extends to home working, so make sure you offer as much support as you can. Home working can be a new and isolating experience for those who are not accustomed to it, so ensure that you or your managers are arranging regular check ins with employees, whether these are video calls or simply a phone call.</li> <li>- If you have any concerns do consult your lawyer.</li> </ul>
2.	Am I legally required to reimburse staff for working from home costs reasonably incurred?	<ul style="list-style-type: none"> <li>- If you provide your employee with the necessary equipment to carry out their role, there should not generally be any extra expenditure incurred. However, you may wish to enter into an agreement with your employees if they agree to provide their own equipment, or you wish to offer a contribution to their running costs such as broadband/telephone bills/their own home insurance cover.</li> <li>- There is no specific legal requirement in relation to costs of home working, so it is open to you to reach an agreement that works for you and your employees. Ensure however that you communicate this position to your employees from the outset. Let them know that any such expenditure which they expect to be reimbursed for requires prior written approval of the employer.</li> </ul>

		<ul style="list-style-type: none"> <li>- If you have any concerns do consult your lawyer.</li> </ul>
3.	Do I need to inform my insurers that staff are working remotely?	<ul style="list-style-type: none"> <li>- Yes, depending on the nature of your business, you will likely need to ensure that your employer's liability insurance extends to home working arrangements, as well as possibly your professional indemnity insurance (if applicable). Check the terms of your existing policies, and if in any doubt, contact your insurer.</li> </ul>
4.	How can I readily assess the health and safety risks associated with employees working from home?	<p>Under the current conditions, in short, you can't. But you can give employees guidance about them assessing their own risks.</p> <ul style="list-style-type: none"> <li>- Given the speed at which remote working measures have been introduced, it is unlikely that many employers would have the time to do in-depth risk assessments at employees' homes.</li> <li>- Occupational health and safety discussions are important, and you need to be aware of any employees with specific barriers to an effective home working environment.</li> <li>- A quick tip guide that employers can email out to their people would be beneficial.</li> <li>- However common sense should prevail - working hunched on a sofa all day is unlikely to be sustainable.</li> </ul>
5.	How can I keep staff motivated and mentally well while isolated?	<p>Clear and regular communication is key.</p> <ul style="list-style-type: none"> <li>- Daily calls to cover personal wellbeing and not just work based targets.</li> <li>- Check in with individuals constantly outside of a team call, regularly remind teams that you are here to help them however they need.</li> <li>- Office wide check-ins and forums are also well received and help with team morale.</li> <li>- Employers need to be prepared for manager productivity to drop as virtual management of teams is much more time consuming.</li> </ul>

		<ul style="list-style-type: none"> <li>- Empathy is key, everyone has different challenges and many employees will feel bad that they can't give the same 100% that they can in the office. Acknowledge this and use it to guide your communications.</li> <li>- Offering flexibility will motivate people - be particularly mindful of employees with children or dependants who will struggle to maintain full chargeable hours. Undertake an assessment to allow employees to provide a realistic assessment of their available hours</li> <li>- Don't introduce measures that put people under pressure to always be available.</li> </ul>
6.	How do I deal with employees who are balancing home-schooling with working from home	<ul style="list-style-type: none"> <li>- Most staff we have spoken to in this situation are struggling much more than expected.</li> <li>- Employers need to start conversations now about allowing time off/sabbaticals, temporarily reducing working hours or changing work patterns, so that employees don't become over stressed or feel compelled to resign.</li> </ul> <p>Retaining your workforce will be key when we return to normal business conditions, so do approach this proactively.</p>
7.	What IT security measures and cyber security risks do I need to consider for employee remote working?	<p>It is important to provide full employee training on risks faced in an at home environment and to set clear guidelines as to what is acceptable and what is not, for example regular reminders:</p> <ul style="list-style-type: none"> <li>- To not leave a laptop next to an open window or near sources of moisture;</li> <li>- To not give work logon details to family members;</li> <li>- To not allow family members to access a work laptop or work email account;</li> <li>- To not send work related information to/from personal email addresses;</li> <li>- To not print work related material on private printers etc.</li> </ul>

		These may seem obvious, however remote working may be new to a lot of employees, and cyber/IT risks may become exacerbated when entire families are on lockdown, with shared access to computers and email.
8.	What can I do if my staff do not have access to laptops	Some businesses offer remote VPN where you can access a network from a personal device. We would warn that this significantly increases IT/cyber security risks as personal devices are unlikely to conform to your normal security policies.

In summary, in these unprecedented times, there is an opportunity to engender great loyalty from your staff. The key will be ensuring legal compliance, sensible monitoring, avoiding heavy handedness and putting onus on realistic output, and above all showing genuine trust and empathy.