Cooley

# Guiding Borrowers and Creditors Through the Turbulence Created by COVID‑19

March 19, 2020

The spread of COVID-19 is causing social and economic uncertainty for even the strongest companies. With the health and safety of those guiding decisions, and both short and long-term objectives in mind, we are assisting clients with contingency planning and evaluating all strategic alternatives.

Cooley restructuring lawyers increased their support of management in the boardroom, counseling directors and officers regarding their fiduciary duties in the face of liquidity issues that are magnified by the coronavirus. We are actively crafting intermediate solutions for businesses confronted with significant interruption, less access to the capital markets, overly burdensome leases and other contracts, and complex employee issues. We are also working with creditors to preserve and maximize value for all parties.

Some of the key issues we are addressing include:

1. Liquidity and access to capital
   We are working with clients on managing liquidity and are assisting borrowers in reviewing their existing loan facilities to access all available funds. Because the COVID-19 restrictions change daily, projections for revenue and cash requirements are speculative. We are advising clients on how to maintain maximum flexibility given their individual financial needs and sensitivity to risk. Borrowers and lenders alike are reacting in real time to the present circumstances. We are partnering with clients in both groups to customize negotiating strategies that are tailored to protecting their interests.

   We are also recommending that clients develop budgets indicating their projected inflows and outflows of cash for each of the next 12 weeks. In many cases, two or even three budgets are appropriate, each modeling weekly cash flow under different COVID-19 restrictions (e.g., weekly cash flow for the next 12 weeks if retail stores are shut down 14 days versus weekly cash flow during that period if retail stores are closed for six weeks).

2. Force majeure
   Many contracts contain a force majeure clause that relieves one or more obligations if performance becomes impossible due to some massive, unforeseen event (e.g., fires, earthquakes, floods or wars). We are working with clients to evaluate any such provisions in their contracts, as well as how other strategic alternatives can help address contracts that present a burden to their businesses.

3. M&A transactions
   Negotiating purchase price adjustments based upon debt, cash and working capital will take finesse given the huge fluctuations between signing and closing that may occur. Even the values of previously stable assets cannot be accurately estimated in these volatile times. Nevertheless, there will be merger activity, and Cooley professionals are prepared to advise on that strategic alternative.

4. Employment
   Many companies are facing complex COVID-19 issues with respect to their employees and temporary business closures. Cooley has developed proactive (and evolving) steps for employers to take and re-evaluate in connection with COVID-19.

5. Insurance
   Many businesses are suffering substantial losses due to COVID-19. Cooley has developed a checklist with respect to coronavirus losses, which starts with evaluating the pertinent insurance policies.

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