

COVID-19 RESOURCE CENTER

Seeking a Protective Stay in Troubled Times

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The COVID-19 pandemic has caused many significant (and radical) changes to our daily lives and many companies are reeling from what was a sudden (and, typically, adverse) shift in their businesses. Many businesses have been forced to shut their doors and cease all meaningful operations while we attempt to control the spread of COVID 19. Other businesses remain open but have experienced sharp declines in revenue or are otherwise suffering from cash flow challenges. In short, even profitable and successful businesses might now be reevaluating their finances and their ability to continue business in the same way that they have historically done. Many might just need a reprieve to reevaluate their business and financial projections, and in other instances, they might want to consider whether their business now need to be restructured.

In the face of a liquidity issue, early consultation with legal and financial advisors is critical, as it is important to understand the options while choices are still available. As set out below, there are several paths a business can take when facing a cash crunch; the sooner it addresses issues, the more choices it has. Early consultation with advisors can also ensure directors and officers remain abreast of the potential pitfalls and liabilities, and potentially avoid litigation related to governance, which might deplete already strained cash reserves.

There are a range of tools available to an organization suffering from solvency issues and many recognize the value in an ongoing business and are designed to preserve business value and allow an entity to emerge from financial distress rather than destroying goodwill and future value by pushing it into liquidation or bankruptcy.

If a company has debt of more than \$5,000,000, it can consider initiating proceedings under the Companies' Creditor Arrangement Act ("CCAA"), and companies with lower levels of debt can consider filing a proposal under the Bankruptcy & Insolvency Act ("BIA"). Companies who successfully utilize either of these tools can emerge from the process and continue to operate (albeit, their business might be modified from what they had previously been).

Companies seeking to file a proposal under either the CCAA or the BIA will be granted a stay prohibiting creditors from initiating or enforcing claims against the company. This stay gives the company "breathing space" while it considers options and a proposal to present to its creditors. If a company proceeds under the BIA, a stay is automatic upon the filing of a "notice of intention to file a proposal" while a Court order required for stay and protection under the CCAA. The stay is powerful and is designed to provide a company with some room while it fully considers its options for a proposal to its creditors.

In addition to the stay, the CCAA or proposal process includes certain features that might provide assistance, including the ability to disclaim unwieldy leases or contracts or get temporary debtor-in-possession financing to address immediate cash needs. There are also tools whereby they can seek, a measure of protection for directors, officers and key employees.

There may also be a measure of relief for employment liabilities. The directors of a company filing for protection under either the CCAA or BIA might also realize some relief as section 96 of the Employment Standards Act provides

that a director's or officer's liability for certain payments owing to employees may be limited where a company has filed for protection under "an insolvency act" (which includes the BIA and CCAA). Employees may also benefit from a successful restructuring, as continued employment might be possible.

The powerful stay and tools granted under the BIA and CCAA give insolvent companies the necessary relief (and space) so they can restructure, but there are also tight timelines and restrictions. If you are experiencing commercial difficulties and are concerned that your company might be heading into insolvency, it is important to seek advice on your options as early as reasonably possible.



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