WILLIAM FRY

COVID-19

Impacts of COVID-19 for Borrowers and Lenders

Corporates across multiple industries are facing inevitable business interruptions and market volatility. Many, as a result of COVID-19 may experience a need for short term injections of additional liquidity, waivers of defaults under existing financial arrangements and practical workarounds to weather the uncertainty. Borrowers and lenders are encouraged to engage early to formulate pragmatic solutions before a borrower's cashflow or ability to meet its obligations reaches crisis point.

Cashflow Implications

- Borrowers and lenders should look at capacity under existing finance arrangements to determine the scope for additional indebtedness or, to the extent there is none, lenders should expect more requests to accommodate cashflow difficulties.
- Options include:
  - » A revolving credit facility
  - » Incremental / accordion facilities
  - » Bank guarantees and performance bonds in respect of existing contracts
  - » Covenants permitting alternative financial indebtedness outside of existing finance arrangements
  - » Overdraft facilities
  - » Receivables financing

In assessing the risk factors and conditionality around any proposed funding, parties will have to consider:

- Can the borrower make all necessary representations to draw funds?
- Is there any risk of default or an event of default occurring?
- Will the borrower be in a position to meet financial covenants in light of increased leverage?
- Will waivers of defaults, covenants or payment forbearance be needed in the short term?

Documentation Implications

- Existing finance terms may prove to be problematic or inflexible in the face of potential business interruption and cashflow uncertainty.
- Potential breaches arising from common documentation terms include:
  - » Breach of information undertakings and notice provisions–
    - – For corporates operating a financial year end of December 31, the deadline for delivery of financial accounts for Q1 is approaching. These borrowers may have difficulty finalising accounts, or procuring audit sign off within the specified timeframes
    - – Borrowers may have trouble complying with timeframes around notice requirements provided for in the loan documents in cases of business interruption
  - » Payment defaults in light of liquidity issues
  - » Financial covenant breaches
  - » Cross default under other material contracts or indebtedness
  - » A breach arising from suspension or cessation of business
  - » Delivery of accounts containing an audit qualification
- Potential breach under a material adverse change clause.

Practical Steps

- Early Engagement
  » Borrowers and lenders are encouraged to engage before any breaches of terms or liquidity issues reach a crisis point
  » Lenders may also want to request updated financial information, projections and budgets to be in a position to assess the full impact on their client's performance and obligations
  » Borrowers should assess and lenders should question the extent of their business interruption insurance and exceptions to such policies
- Diligence
  » Lenders may want to take steps to identify clients that are particularly vulnerable to the current market disruptions and assess potential credit risks with a view to starting timely discussions about any remediation steps
- Waivers
  » Inevitably, there will be a need to put short-term waivers in place. Consideration could be given to waivers that cover:
    – Extension of time for delivery of information
    – Extension of grace periods for any breaches
    – Short term waivers of events of default or potential events of default arising under the document
    – Short term forbearance on payments of interest and principal when due
    – Resetting financial covenants at more achievable levels
- Board Meeting and Action Plans
  » Boards should meet and ensure directors are given up to date financial and performance information so they can make informed decisions and adequately discharge their fiduciary duties
  » Directors should be comfortable they are aware of the extent of their statutory duties and exercise the appropriate levels of skill, care and diligence required of them to act in the best interests of their company
  » Given the ongoing uncertainty about the extent of the economic impact of COVID-19, directors are advised to follow conservative strategies while giving due regard to any creditors of the company.

William Fry - How Can We Help?

Please contact any member of the William Fry Banking & Finance or Insolvency & Corporate Restructuring teams if we can be of assistance with any:

- Financial restructuring options
- Covenant reviews and diligence
- New financing arrangements
- Contract disputes
- Advice on directors' fiduciary duties
- Insolvency and contingency planning

Our Team

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