

**Board Briefing Series**

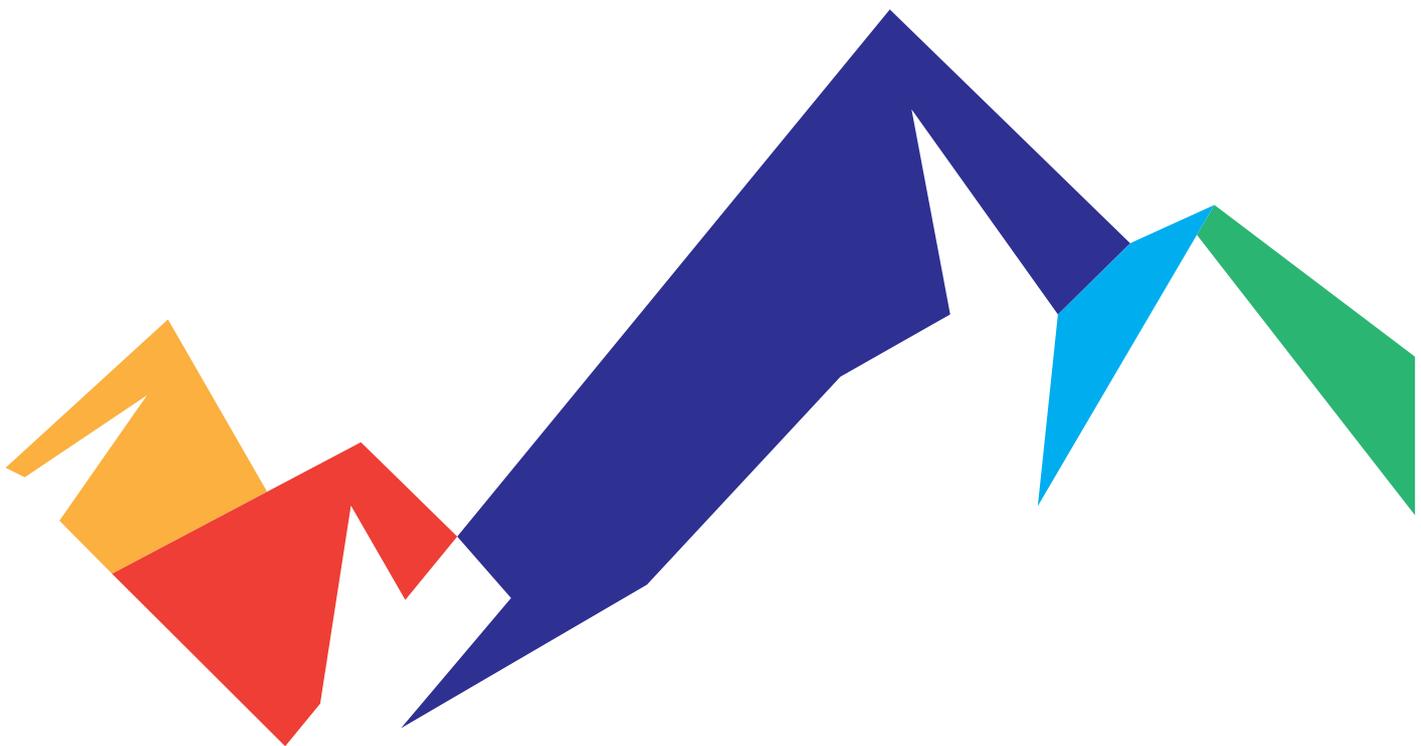
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# Inoculate Your Board Against Coronavirus

Board Briefing Series ref no: CP03

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This article is one of a series of Board Briefings that consider the various challenges and opportunities facing directors which result from the turbulence for business caused by the Coronavirus Pandemic. It is written from our perspective as turnaround investors who have the benefit of objectivity and the desire to ensure that any businesses we invest in will both survive and grow.



Over 30 years' experience of backing  
directors by investing in their business

## Executive Summary

The Coronavirus has brought about uncertainty and is likely to lead to huge change. It has exposed many businesses and their models for making money, some of which will not survive whilst, at the same time, it has created opportunities for others to embrace a new world.

Boards need to not only ensure their companies survive short term, by managing tactically, but to prepare and position for the long term by thinking and resourcing strategically.

This Board Briefing outlines some key considerations for the board of directors.

### Inoculate Your Board Against Coronavirus

**In any emergency situation there are winners and losers. Not since the second world war (1939-1945) has there been global disruption on the scale caused by the Coronavirus. The WTO forecast that world trade could fall by between 13% and 32% in 2020, depending on assumptions about the length and severity of the Coronavirus Pandemic.**

Unusually, there is no shame for a board of directors to admit it is in unfamiliar territory facing a financial and operational crisis that will require radical decisions. The board that had been well composed with experience to thrive in normal market conditions and has worked effectively as a team to drive profits based on productivity and efficiency is now likely to at least be feeling unsure about the business' future and possibly experiencing personal anxiety.

The key issues the board needs to face about surviving the crisis are discussed below and in more detail in future Board Briefings.

Equally important, however, is one of strategy and how the board positions the business for a new 'normal' and crucially how it takes advantage of the changed circumstances, especially as the Government is, for example, currently considering how to protect and to encourage more in-country manufacture of essential resources following the exposure of weaknesses and vulnerabilities in the global supply chain during the height of the pandemic.

### Directors' Duties before Coronavirus

**In truth, all too few directors undertake the minimum prudent level of due diligence before agreeing to serve in the official capacity of "director" as defined in The**

**Companies Act 2006. How many directors realise that by agreeing to serve they take on the insolvent liabilities of the company they serve from the day they join the board. As a minimum, a would be director should obtain a statement of affairs for the company they serve dated on even date with their appointment.**

There is a myth that non-executive directors somehow have a lower level of responsibility under the law. In truth every director has responsibility for governance and compliance with all aspects of the law. Lacking experience or expertise is no excuse or defence at law.

The Coronavirus pandemic introduces new risk and responsibility for directors. Firstly, many companies have moved into an insolvent position as a direct result of the impact of lockdown. It is imperative that directors take immediate steps to avoid committing offences for wrongful insolvent trading. Furthermore, and without wishing to sound melodramatic, there are a number of new health and safety issues which might, if neglected, expose directors to the risk of corporate manslaughter charges.

In planning for the short term and for recovery of the business as the Coronavirus-related restrictions ease, directors need to be familiar with the legislation as well as with any regulations relevant to their particular business.

In developing a strategy for both the early stages of the pandemic and for recovery of the business as the Coronavirus-related restrictions ease, directors will also need to be mindful of these as they could have a personal impact on actions taken by them, albeit there have been some relaxations introduced to help businesses during the crisis, but bear in mind that these may be for a limited time only.

The Appendix to this Board Briefing sets out a number of the most relevant Acts of Parliament that all directors of all companies must comply with.

## Insolvency rules relaxed during Coronavirus

**Wrongful trading provisions have been temporarily suspended, meaning directors could continue trading through the pandemic without the threat of personal liability.**

Statutory Demands, written demands from creditors to pay a debt, have been suspended where the debt has been caused by the Coronavirus crisis.

Winding-up petitions, which allow creditors to demand that a company in default of its debt payments is closed down, are also suspended until at least the end of June.

In addition, HMRC has confirmed that until July 1, (subject to review) it will support a three-month deferral of contributions for companies already subject to ongoing Voluntary Arrangements and that it will not petition for bankruptcy or winding up orders except where those involving fraud or other criminal activity.

Bearing in mind that these relaxations are for a limited time only, it is therefore essential that directors understand their duties as outlined in the first section above as they plan their strategies for resuming activity as the pandemic restrictions are eased.

## Employees' health and safety

**Many businesses have taken advantage of the furlough provisions, currently under review, or have asked their employees to work remotely.**

As they start to resume in-premises activity directors should be mindful that under Health and Safety regulations business locations must be safe locations and therefore risk assessments must be carried out and measures for safe social distancing and hygiene will need to be put in place.

Directors should therefore be mindful of the laws mentioned above:

Health & Safety at Work etc Act 1974 and its subsequent Regulations, the Corporate Manslaughter and Corporate Homicide Act 2007 as well as the Employment Act 2008 and its associated Regulations.

These are likely to have a significant impact on businesses resuming activity as working conditions will likely be different from pre-Coronavirus for many months after the peak of the epidemic.

## Decisive action for post-pandemic recovery

The foundation for a successful turnaround is a clear and well-defined process driven by directors who are confident it can be achieved.

Strategies will require stakeholder buy-in, clear communications and decisive action to implement the plans followed by rigorous discipline in both achieving targets and measuring results.

The Government Assistance is like your NHS ventilator, it is there to keep your business alive for a brief period. Reflect and plan for survival by acting decisively.

Do not delay in matching the experience within your board to the radically new "normal". Every director in every company must satisfy themselves either personally or by the knowledge and experience of fellow directors or specialist external advisors that their company is in full compliance. The demand for business turnaround experience and knowledge of the specialist business survival tools is massively outstripping supply and whilst this may be a mitigating factor if the director can demonstrate their efforts to comply it is not of itself a defence at Law.

## APPENDIX

### Directors' duties are defined by:

Common law, by specific legislation such as the codification contained within the Companies Act 2006 and by general statutory compliance to other laws, including, but not limited to Health & Safety at Work etc Act 1974 and its subsequent Regulations, the Corporate Manslaughter and Corporate Homicide Act 2007, the Employment Act 2008 and its associated Regulations, the Competition Act 1998, the Supply and Sale of Goods Act 1994, the Data Protection Act 2018 and General Data Protection Regulations, the Money Laundering Regulations 2007 and by Anti-discrimination legislation covered by Race and Framework Directives.

### Directors' duties in an insolvency

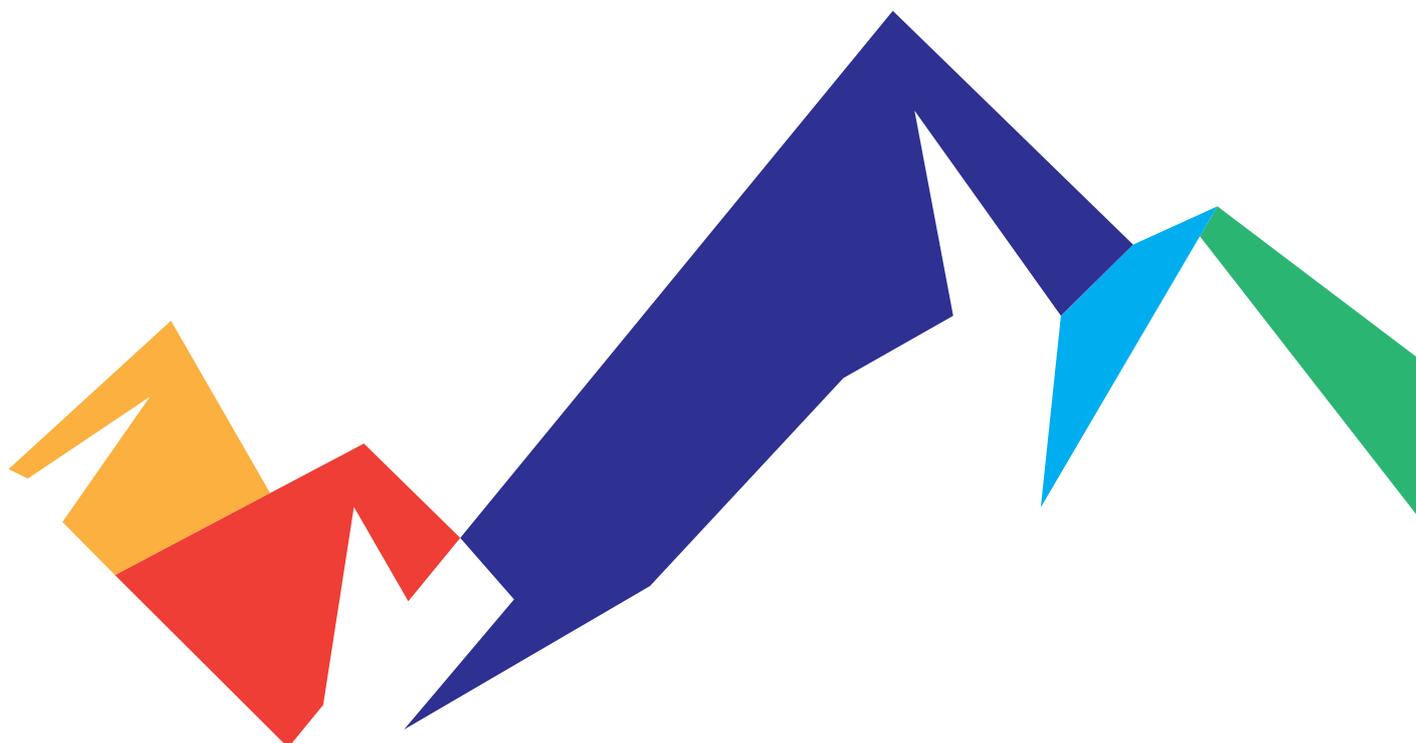
These are included in various Acts, including, but not limited to the Insolvency Acts 1986 and 2000, the Enterprise Act 2002, the Company Directors' Disqualification Act 1986 and the Corporate Manslaughter and Corporate Homicide Act 2007.

## Questions for the Board

Does our team have all the right players to win in the current situation?

Do members understand their duties and liabilities?

Are we thinking strategically enough about a future beyond the immediate crisis?



### About K2 business partners

Trading as **K2 business partners** since 2001, we are turnaround investment partners, each of us with over 30 years' experience of backing directors by investing our time and expertise in the turnaround of their business and the realisation of business value.

We focus on companies with £5m-£20m turnover led by committed boards and with assets that other investors find difficult to value.

K2 invests in companies that manufacture and supply house building and construction products and services; IT & technology service providers; database, branded and intellectual property businesses; and industrial manufacturers.

For more information visit [www.k2-partners.com](http://www.k2-partners.com)

Are there any topics you would like us to cover in our Board Briefing series? Please let us know at [info@k2-partners.com](mailto:info@k2-partners.com)

