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# Managing a company during Covid-19: SA directors and their duties

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The effects of Covid-19 on the economy has led to many companies facing the possibility of being declared financially distressed. The mounting pressure on directors to appropriately fulfil their duties in response to this crisis will continue into the foreseeable future.

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**Risk advisory: Practical considerations and steps for directors**

While South Africa waits to see just how devastating the effects of Covid-19 will be, boards must implement good governance and put contingency plans in place to cope. Companies must assess the viability of their business model, while considering employee safety, availability of government assistance and the need for additional or modified disclosure (for instance, guidance on revenue). Some ways in which this can be done are:

**Conduct regular board meetings and keep detailed minutes**

Every material decision of a company must be recorded to keep stakeholders informed. In times of distress, situations can change rapidly and it is crucial that a plan is put in place of how to return to financial health. Regular reviews of those plans must be undertaken and recorded. Boards should regularly address safety issues and mitigation protocols during board meetings.

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**Focus on managing cash flow**

An honest appraisal of the financials should be undertaken to have a clear picture of the financial position of the company and whether it is indeed financially distressed or heading towards a point where carrying on business operations would constitute reckless trading.

The Companies and Intellectual Property Commission (CIPC) released a practice note providing that it will not invoke its powers under section 22 of the Act (‘Reckless trading prohibited’) for the time being, in the case of a company which is temporarily insolvent and which continues to carry on business or trade. In doing so, the CIPC must have reason to believe that the insolvency is due to business conditions caused by the Covid-19 pandemic. This practice note will lapse within 60 days after the declaration of a national disaster has been lifted. However, it is important to note that the CIPC has merely given an indication of its practice. This practice note does not release a company from its statutory obligation under section 22 of the Companies Act. The board of a company is still obliged to fully apply the solvency and liquidity test wherever required by the Act.

**Equal treatment of creditors**

Boards need to make sure that creditors are not preferred. Dispositions without value must not be made prior to formal insolvency procedures being implemented. The board needs to limit exposure if it seems unlikely that the company will not be able to trade out of its financial position.

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**Review the company’s contracts**

Boards should check the terms of existing contracts for protection of the company, including revising the *force majeure* clauses where possible, or including express ‘infectious disease’, ‘lockdown’ or ‘pandemic’ wording into new contracts.

**Review the company’s insurance programme**

Boards should ensure that insurance arrangements can cover Covid-19 related cancellations or business interruptions and seek professional advice on the adequacy of the company’s D&O insurance coverage.

**Ensure ongoing communication and engagement with all stakeholders**

It may be required by the JSE listing requirements for listed companies to update their stakeholders with all material information. It is recommended that all companies keep their stakeholders informed so as to bolster the support of the boards’ management by its stakeholders.


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**Consult with experts in respect of Covid-19 issues**

Apart from staying on top of developments in respect of Covid-19, including changes to laws and government programmes, directors should consider seeking expert advice on Covid-19 issues. Expert advice includes legal opinion as well as advice of financial advisors, in order to better understand the company's exposure to risk and financial projections.

**Corporate restructuring**

Where it is unlikely that a distressed financial situation will improve post-pandemic or where a company will not be able to trade out of its position, boards need to consider implementing corporate restructuring techniques. Corporate restructuring may involve cost reductions, attempts to raise funds through the issue of shares, loans or disposals (for fair value), attempts to negotiate a debt standstill and debt restructuring, or placing the company in business rescue or proposing a voluntary liquidation.

## ABOUT THE AUTHOR

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