Covernotes

Getting a Business Back Up and Running After Coronavirus

As the exit strategy from Coronavirus is being unveiled and businesses look at what their “new” trading requires, getting up and running will present a number of challenges for many business owners. However, the business you ran before Coronavirus may not be the one to which you eventually give a trading renaissance to.

The steps required will vary greatly, according to your sector. Some will fall under ‘housekeeping’. Businesses in this category will likely need to assess their stock levels and ability to deliver their offering via their former channels. Calculations of how fast output can return to previously actual or anticipated levels may be required, along with order prioritisation. Machinery and premises checks, safety audits, a reallocation of work duties and a recall of equipment provided to those working from home are all likely actions.

Contractually, it may be vital to assess commitments to suppliers, determining whether these can realistically be fulfilled, or whether agreed terms can change. Some businesses may need to invoke a Force Majeure clause within contracts, if it references epidemics or civil emergencies as a basis on which to escape contractual obligations.

Cash flow management will be key. Decisions on which creditors to pay first may be vital. Interest on business loans accessed during the Coronavirus pandemic will need to be built into financial strategies and late payment by customers should be anticipated. Considering Trade Credit insurance could be advantageous, as it would enable you to be paid, regardless of customer practices.

Lessons learned from the pandemic should be reflected in your business going forward. Experts suggest that reliance on long lead-time global supply chains may not be wise, if suppliers closer to home can be sourced. Shortening supply chains may provide more stability, if the same products, made to the same quality, can be produced more locally. Micro supply chains can be more agile and flexible with contracts, scaling up or down, as required.

Cyber security measures and appropriate levels of cyber insurance could be a must, if your business has pivoted into online retail or adopted cloud-based technologies and video conferencing to facilitate remote working.

Businesses are likely to have experienced change to differing degrees but, where change has occurred, it is vital to ensure that the right insurance covers are in place, as well as ascertaining whether new covers are required. Additionally, risk assessments should be reviewed as soon as the doors re-open for business. It is essential to check that no covers ran out during lockdown or were cancelled as a cost-saving measure and are now required once more.

What has shone through the UK during this pandemic has been a spirit of collaboration and this needs to form the basis of relationships with suppliers going forward. The same level of collaboration should be adopted between yourself and your insurance broker. Brokers may be in greater demand than ever, as businesses emerge from lockdown as changed entities and with potentially new and dynamic strategies for a changed business world.

Essential to check no covers have run out or been cancelled during shutdown

Do Not Archive Your Business Continuity Plan ... Update it!

Business continuity plans (BCPs) have been put under great strain by Coronavirus. Where a BCP considered a 'worst-case scenario', this is unlikely to have been a pandemic affecting global and national supply chains and the entire UK workforce. Since the introduction of social distancing, many businesses have adopted new modes of working but may have also archived their business continuity plan. There are good reasons why this is ill-advised.

The duty of care that a business must show to its employees continues, wherever they are working. Employers must safeguard their workforce's health and safety and continue to carry out and review risk assessments, even if employees are working from a multitude of locations. It is not a case of out of sight, out of mind.

There is a legal background to this. Employees could, at some future point, claim an employer's lack of care led to an injury, physical or mental. Whilst legal experts feel it would be difficult for a Coronavirus-infected employee to definitively prove that a breach of employer duty was to blame for infection, claims relating to poor working practices could be successful[1].

It is recommended that BCPs are reviewed and remain fit for purpose, with 'continuity' considering employee welfare. Employers are strongly encouraged to keep abreast of every new Coronavirus development daily. They should also look to ensure all Government advice on self-protection and employee rights surrounding furloughing, sick pay, maternity/paternity pay and holiday leave are passed on.

Communication with employees is a key part of business continuity. Many will be isolated, so using technology, to keep in touch through one-to-one sessions and team meetings, is a pro-active step.

A 'good' plan may also address the impacts on employees caused by the absence of sick or furloughed workers[2]. Training needs should not be overlooked, ensuring adequate assessment and no employee should operate machinery if they have not been trained in its use. Review the roles essential to the business in the plan, and link the employees with the transferrable skills to work in them .

If staff are asked to work longer hours, there must still be compliance with the Working Time Regulations 1998, which govern daytime working hours, night shifts and rest breaks. If shorter working weeks have to be introduced, however, there should be effective communication with employees, to explain why.

All steps taken in the BCP's review should be documented. Future claims could arise from under-strain workplaces and some insurers have established HR help hubs, to provide policyholders with the best legal advice on key aspects of employment law. Check whether your policy is offering this and if you suspect a claim may occur, discuss this with us too, as policies such as Management Liability, Errors and Omissions or Cyber Insurance often require that anticipated claims are notified during the period of insurance covered by the policy.

If you have queries about existing insurance protection or want to know how purchasing cover now could possibly protect you in the future, have a conversation with us sooner rather than later. Covers as mentioned above, and Employment Practices Liability Insurance, could protect against future actions, even though the cover will not protect against situations that have already occurred. Build liaison with your broker into your BCP and you should get a much clearer picture of where you stand.

[1]https://www.kennedyslaw.com/thought-leadership/reports/guidance-covid-19-and-employers-liability-claims
[2]CIPD factsheet, April 22 2020, https://www.cipd.co.uk/knowledge/fundamentals/emp-law/health-safety/Coronavirus-factsheet#

The High Street in Transition: Which Insurance Covers Matter?

Coronavirus has tested the resolve of the UK's high street, accelerating the demise of major names like Debenhams, Oasis and Brighthouse, and iconic British brands such as Laura Ashley and Cath Kidston[1]. Experts predict a number of retailers, already struggling pre-Coronavirus, may go under, due to lack of buyers in the current environment.

High street sales are forecasted to fall by 70% during lockdown, according to Alvarez & Marsal, administrators for Cath Kidston[2]. Rent and overheads still need paying and the 34 British retailers the administrators studied before lockdown already had negative cash flow, so more household names may disappear.

High streets suffered their worst month on record, in March 2020[3], leading Sophie Michael, Head of Distribution and Retail at accountancy and business advice firm BDO, to say "It is likely that the pandemic has only sped up the shift away from in-store shops as consumers become even more accustomed to buying online."

According to The University of Salford Business School, "The underlying message is that a prolonged period of social distancing is going to bring changes, some permanent in the way we do all forms of commercial and social activities"[4], referencing a high-end US restaurant that has pivoted into drive-through and pop-up catering.

Online retail has boomed for some businesses, whilst local independent shops such as greengrocers, off licences and farm shops have attracted huge consumer support. A Barclaycard report on consumer spending trends says online spending rose by 5.5% and spending in specialist food and drinks stores by 30.5% in March[5].

In-store sales for March 2020 were the worst on record, dropping by 34.1%, with shoppers abandoning the high street even before lockdown on March 23[6].

With trends, such as localism, more prominent and with many more people – especially the older generation – more confident about shopping online, many retailers may move to an online sales model. Reviewing insurance covers to ensure the right protection is in place and considering three key areas: supply chain, goods in transit and cyber protection – will be important.

Keeping the supply chain flowing typically depends on having cash within the business, requiring customers to pay on time. Considering Trade Credit insurance, which sees invoices paid when due, can ease non or late-payment pressures.

Online businesses run the risk of goods getting damaged, lost or stolen in transit. It is not just the large haulage and logistics companies that require good-in-transit cover but anyone operating courier-style deliveries.

And then there is the cyber risk. The efforts of hackers are constant and losing an online facility or experiencing a data breach that sees customers' details accessed, can have major impacts, not just financially, through business rectification costs and possible GDPR fines and ransom payments, but also through reputational damage. Taking out Cyber Insurance can require a business to put certain security measures in place and is a wise purchase, particularly given the specialist IT and crisis support it can offer after an attack.

Determining required insurances is hard-to-do if you are a layman, whilst buying cover online may require you to suit tick-boxes that do not cover your circumstances. For those transitioning to new ways of doing business, having our broking support could be invaluable. If you are undergoing such a transition, having an early conversation about your insurance needs makes sense.

[1]https://www.bbc.co.uk/news/business-52300055
[2]https://www.alvarezandmarsal.com/insights/every-major-non-food-retailer-operating-negative-cashflow
[3]https://news.sky.com/story/Coronavirus-britains-high-streets-suffer-worst-month-on-record-due-to-covid-19-lockdown-11967776
[4]https://beta.salford.ac.uk/news/Coronavirus-can-high-street-survive
[5]https://www.home.barclaycard/media-centre/press-releases/Consumer-spending-declines-6-per-cent-in-March.html
[6]https://www.drapersonline.com/news/high-street-sales-worst-on-record/7040048.article

Why D&O Protection is More Important Than Ever

If you are a business owner, you will know the impacts Coronavirus has had on your balance sheet but if you are a director or manager, you may not be aware of the possible legal ramifications that could arise from the pandemic for you personally.

The potential for claims and court cases against corporate decision makers has been heightened by Coronavirus, particularly if their company is a PLC with shareholder responsibilities. A fall in the company shares' value could be viewed as the result of mismanagement and ill-advised strategies during the crisis. The insurance industry is braced for many shareholder actions, as companies enter liquidation[1].

Two lawsuits have already emerged. Norwegian Cruise Line Holdings Ltd is being sued for enticing customers to book cruises by giving false statements about the Coronavirus risk, thus endangering the lives of passengers and crew. Another action involves pharmaceutical company Inovio, which falsely claimed it had produced a Coronavirus vaccine. Its share price quadrupled, though no vaccine existed[2].

Directors could be accused of failing to exercise a duty of care over their employees, perhaps through not enforcing social distancing within business premises, or insisting employees travel to work, or due to not looking after employees' needs whilst working at home[3].

Cutting corners could have led to cases of environmental damage, attributable to the negligence of a particular manager or director. Failure to protect against cyber attacks could lead to legal prosecution, if data is breached. Not having had adequate Business Continuity Plans could be viewed as an abrogation of a director's duty.

And then there are breaches of contract - anticipated to be another area from which litigation could arise between customers and suppliers. The company representative who decided not to honour contractual terms could be held legally accountable.

So many possibilities exist that insurers are now, reportedly, increasing renewal premiums on Directors & Officers (D&O) Insurance – which protects directors against claims brought by regulators, shareholders, creditors, employees and other parties - by as much as 400%[4]. Some companies are reportedly having difficulty buying protection for their directors, whilst others are having to accept policy exclusions, one of which may well reference losses arising from future pandemics.

Whilst cost-cutting will be a temptation for all businesses during and in the aftermath of the Coronavirus outbreak, cancelling D&O cover is ill-advised. It could actually be viewed as being more important than ever[5]. Our efforts will be directed towards working with clients, to get them the best possible premium and level of cover, as their policies renew, as well as getting new clients the best deal.

For directors and senior managers without D&O Insurance, the advice is to put a safety net in place, to help protect your personal financial assets (and avoid a possible prison sentence, in the most serious cases). In economically difficult times, the business world could become highly litigious. Spending money on D&O cover now, should assist if an expensive legal action needs to be defended in the future.

[1]https://uk.reuters.com/article/us-health-Coronavirus-insurance-director/insurers-fret-as-company-bosses-face-Coronavirus-legal-claims-idUKKBN21J60R
[2]https://finance.yahoo.com/news/inovio-shareholder-alert-class-action-215000870.html
[3]https://www.pinsentmasons.com/out-law/analysis/Coronavirus-do-insurance-claims
[4]https://www.telegraph.co.uk/business/2020/03/30/directors-risk-insurers-raise-premiums/
[5]https://www.willistowerswatson.com/en-GB/Insights/2020/04/covid-19-and-executive-risk

Lloyd's Has Changed but Remains Unsurpassable

Commercial insurance underwriting – born in a 17th century London coffee shop in – has been forced to change methodologies due to Coronavirus but remains as relevant a skill as ever, potentially becoming even more important in the post-Coronavirus era.

The concept of commercial insurance provision was devised by Edward Lloyd, a man well-versed in marine news who recognised that mariners needed protection for their cargoes. Marine insurance became his coffee house's speciality and by the 1730s he was dominant in the shipping insurance world[1].

By the time of the American Revolution (1770s) and the Napoleonic Wars (early 1800s), marine insurance had become a necessity. The Lloyd's coffee house had become a den of gambling and dabbling in speculative risks, so the Lloyd's marine business left and set up in new premises, where broker, John Julius Angerstein, became a formidable underwriter, on a global scale.

In 1799, the loss of insured ship, The Lutine, which ran aground off the Dutch coast, losing her cargo of gold and silver, was a stark reminder of the risks faced. In 1858, when her bell was salvaged, it was hung in the Lloyd's underwriting room. A tradition of ringing it once if a ship was lost and twice if it returned home safely, was born.

By then, Lloyd's had competition from Nathan Rothschild's Alliance Insurance Company, formed in 1824 and was insisting on more financial security behind its members. In 1870, a new development – writing business for a 12-man syndicate rather than two or three, saw Lloyd's regain ground.

Only a recognised Lloyd's broker could sign a Lloyd's policy after 1871 and the signing of this became a ritual, upheld to this day and accompanied by a flourish of fountain pen and ink, with sometimes 20 signatures and stamps on each deal. But things have had to change.

For the first time ever, in over 300 years, the Lloyd's underwriting room has closed. Queues of brokers lining up at underwriters' desks to finalise deals were hardly conducive to social distancing, so The Lutine Bell has been rung for what could be some time. Underwriters within more than 90 Lloyd's syndicates have packed up their pens and gone digital, embracing new technology. Face-to-face meetings have given way to video conferencing and underwriting room banter has been replaced by the

> "Whilst risks may change, the Lloyd's market to which we have open access remains at the heart of commercial insurance broking."

[1]https://www.lloyds.com/about-lloyds/history/corporate-history

remote wearing of "silly hats"[2], to keep up the spirits of those who have done the day to day broking, astute underwriting and even the exceptional underwriting feat of insuring the hands of Rolling Stones guitarist, Keith Richards.

The provision of insightful insurance covers continues, however, and Coronavirus is probably the catalyst for a change that had to come. CEO John Neal is accelerating change and the Lloyd's community is embracing electronic trading[3].

The lesson is that, whilst risks may change, the Lloyd's market, to which we can offer our clients superb access, remains at the heart of commercial insurance broking. The Lutine Bell is a reminder of what can go wrong but also the symbol of an underwriting entity that has its finger on the pulse, ensuring that businesses like yours have the protection you need, through brokers like ourselves privileged enough to be able to access and offer what Lloyd's provides. The methodology is different; the benefit unaltered.

[2]https://www.insurancejournal.com/news/international/2020/03/30/562705.htm
[3]https://uk.reuters.com/article/us-lloyds-of-london-results/insurance-market-lloyds-of-london-returns-to-profit-braces-for-Coronavirus-idUKKBN21D0T6

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