



CASH FLOW PROTECTION ASSET PROTECTION

Availability: During and outside normal office hours.
Meetings: Video conferencing and teleconferencing available.
Payment: Tailored fee-payment solutions. We acknowledge the current commercial reality.

Businesses will close. Debtors will be slow to pay. Contracts will go into default. New work will be delayed.

Now is the time to analyse your business operations, assets, structure, and most urgently **cash flow**.

Don't wait until it is too late and collapse/failure is inevitable; options are more limited the closer the business is to collapsing.

You should already be:

1. Revisiting your cash flow forecast (or preparing it now for the first time, if you don't have one).
2. Taking steps to improve the cash flow forecast, or at least minimise the downturn's effect on it.

We at Murfett Legal want the business of our clients (and new clients) to survive.

Accordingly, we are encouraging all past and current clients to meet with us to discuss the below matters, amongst others. We call it a Legal Health Check.



If you wish to have this meeting, please email any of the following senior members of our team and we will set a meeting time and send you a list of the documents to collate and bring to the meeting:



[Jason De Silva](#) - Director

jason.desilva@murfett.com.au



[Kelly Parker](#) – Director

kelly.parker@murfett.com.au



[Mike Frampton](#) - Partner

mike.frampton@murfett.com.au

How can you improve cash flow? We outline below some of the matters we will discuss in our Legal Health Check meeting.

Explore eligibility for financial relief

Banks and the government are offering various relief measures. Links to some examples are below:

<https://www.ausbanking.org.au/banks-small-business-relief-package/>

<https://www.ausbanking.org.au/second-stimulus-package-will-help-support-small-business/>

<https://www.ato.gov.au/Individuals/Dealing-with-disasters/In-detail/Specific-disasters/COVID-19/>

<https://www.ato.gov.au/Media-centre/Media-releases/Support-measures-to-assist-those-affected-by-COVID-19/>

Negotiations with creditors

Consider whether you can improve cash flow by negotiations with your creditors to ease up on contractual or statutory payment requirements such as:

1. Banks/financiers;
2. ATO;
3. Trade creditors; and
4. Lessors.

Negotiations with debtors

When negotiating with your debtors to ensure they pay their debts to you, keep in mind that they are also trying to improve their own cash flow. The laws are changing (at least temporarily) to extend the time for payment under statutory demands (from 21 days to 6 months) and increase the threshold amount owed before such a demand can be issued (from \$2,000 to \$20,000); you should expect that payments will be slower and accordingly payment plans are likely to become more common. See https://treasury.gov.au/sites/default/files/2020-03/Fact_sheet_Providing_temporary_relief_for_financially_distressed_businesses.pdf.

In that regard:

1. If you have the ability in your contractual agreement with your debtor to take security for your debt, and you haven't yet done so, attend to this as a priority. Secured creditors (if they aren't too late, and their security is not held invalid) may be able to be paid ahead of unsecured creditors, and can avoid the dreaded "*unfair preference claim*" if a debtor later becomes insolvent and is liquidated. If you don't have the ability to take security, consider negotiating for the same as part of any payment arrangement.
2. Get agreement in writing. Written terms of payment are a lot easier to prove than verbal terms, and an acknowledgment in writing that the debt is owing (and specifying the amount of the debt) makes any later dispute a lot easier to win, and therefore reduces legal costs.
3. Specify the dates for payment of any instalments, and be specific. An agreement such as "*You'll be paid when I get some money in*" is ineffective, as it is too ambiguous to enforce. You also don't know when to expect funds, or when the agreement has been breached.

Obtaining more finance

You may be considering obtaining finance to get you through the slow times.

This requires a thorough analysis of your business and an honest account of whether it remains viable.

You should consider at least the following before borrowing further funds:

1. Whether your business is operating as efficiently as possible, and its cash flow is optimised. Don't borrow monies only to have it wasted in an inefficient operation.
2. Whether the finance you obtain will result in the business surviving, or whether you are throwing good money after bad. You need to model the finance and its repayment into your cash flow forecast. If even with such finance your business won't last long, there may be other avenues available to you, such as debt-restructuring, informal turnarounds, Voluntary Administration or even Liquidation (and purchasing the business back from the liquidators).
3. Will you be able to be re-paid first ahead of other creditors (if you are borrowing personally against your home to on-loan it to the business, for example). Simply transferring personal funds into your business account does not provide you any protection; if you are going to personally take the role of a bank for your business (by lending the business your own money), then do what the banks do and take security over the business' assets if possible. This requires that the security be put in place via a contract before you loan any monies to the business, otherwise any late-granted security may be at risk of being invalid and unenforceable if the business eventually fails.



Asset Protection

You should also be considering, holistically, whether:

1. The business is structured in such a way as to ensure that the main assets are protected (e.g. equipment, Intellectual Property etc); and
2. Your personal assets are exposed to the business' failure. There are many ways a director can be liable for the debts of a failed company. See for example <https://www.murfett.com.au/Claims-Against-Directors-During-a-Liquidation>

Some topical related articles are:

<https://www.murfett.com.au/Media-and-Resources/Articles/In-Tough-Times,-Adapt-Your-Approach-To-Legal-Issue>

<https://www.murfett.com.au/Media-and-Resources/Articles/ATO-Court-Hearings-Negotiating-Extra-Time-Adjou>

[https://www.murfett.com.au/Media-and-Resources/Articles/Business-Exit-Disputes-\(aka-Shareholder-Disputes\)](https://www.murfett.com.au/Media-and-Resources/Articles/Business-Exit-Disputes-(aka-Shareholder-Disputes))

For further information or assistance contact Murfett Legal on [+61 8 9388 3100](tel:+61893883100).

Author: [Jason De Silva](#) (Director: Business Advisory, Insolvency & Litigation)

Email: jason.desilva@murfett.com.au

Murfett Legal is a leading law firm in WA, providing services in litigation, corporate and commercial, employment and workplace relations, insolvency, debt collection, business restructuring, Wills & estates, property, leasing, settlements, liquor licensing and intellectual property.