Succeeding in uncertainty: What every Crypto CEO needs to know about cash flow difficulties and insolvency

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Three key steps you can take to stabilise your cash position

For CEOs and Directors of crypto firms under pressure and experiencing financial and liquidity challenges, what actions can be taken to protect and sustain your business during this period of uncertainty?

The following three key steps should be considered by crypto management teams as they seek to stabilise their cash position:

Step 1: Understand your financial position

Quickly assessing your cash position means you can anticipate potential short and medium term financial implications of any external shock (e.g. COVID-19):

a) Ensure that you have a robust cash forecast in place

- Such a forecast can highlight any liquidity pinch points and give you increased confidence for making rapid tactical business decisions
- Also provides a foundation for cash improvement initiatives and opportunities to release trapped cash, e.g. stretch credit terms with suppliers, reduce capital expenditure

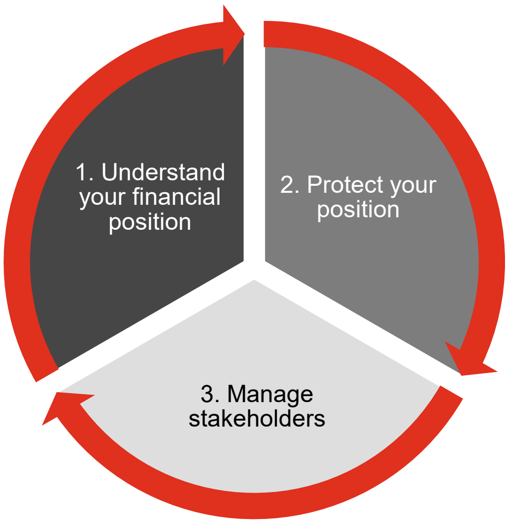
Step 2: Protect your position

Once you have clarity on the cash position, take immediate action to ensure you can maintain this position, whilst identifying opportunities to access new money, if required.

a) Implement cash conservation measures and optimise working capital to preserve liquidity, e.g. cancelling non-essential orders, reduced working weeks

b) Explore options for additional funding from existing lenders, new funding from alternative providers or cash generation via equity release

c) Consider disposal of crypto assets or non-core assets to fulfil immediate cash requirements



Step 3: Manage stakeholders

Alongside Steps 1 and 2, the leadership of the crypto firm needs to rapidly assess who their key stakeholders are to better manage potential disruptions to smooth business operation. Careful management of these stakeholders can help reduce pressure in an already stressed and uncertain environment.

a) Develop a clear communication plan to ensure consistent messaging across all channels

- Stakeholders may have conflicting interest and will each have their demands for real time information. They include:
- employees (internal)
- customers, suppliers, lenders, shareholders, regulators and government bodies (external)

b) Be proactive in engaging early with each stakeholder

- Take the time to understand their current position and how they may act
- Assess the potential impact on your business and work with stakeholders to mitigate the impact

In the unfortunate event that your crypto firm becomes insolvent, what are the 3 common misconceptions about a director's role and duties?

In reality, even by taking the above steps, it is possible that matters are out of your control and you may find yourself in the unfortunate situation of a potential insolvency of your crypto firm. It is vital that you ensure all Directors continue to fulfil their duties and responsibilities in compliance with relevant regulations and legislation during this period of uncertainty and that appropriate advice is sought.

1. Your fiduciary duty will shift from your shareholders to your creditors

As a director of a company in good financial standing, you owe a duty to act in good faith and in the best interests of all its shareholders. When a company is in financial distress or becomes insolvent, the onus shifts and the interests of the company's creditors are paramount. Your fiduciary duty shifts form shareholders to creditors. You must act in a way to minimise the potential loss to them.

Failure to consider the interests of creditors when your company is in financial distress can lead to legal proceedings being brought against you and potentially disqualification from taking on other director appointments in the future.

2. While you may nominate a liquidator there is no guarantee that your choice will be appointed

A liquidator is an approved individual qualified by experience (e.g. a PwC insolvency partner) appointed to manage the affairs of a company in liquidation.

Their main responsibilities are to collect in the assets of the company in order to settle its outstanding debts, but also to investigate the conduct of the directors and eventually dissolve the company. Upon the appointment of a liquidator, the powers of the directors cease but not the duties.

In the case of a compulsory liquidation, a disgruntled creditor will have made the decision to appoint a liquidator through a Court process. Whilst you may be able to put forth a choice of liquidator, there is no guarantee that your named individual will be appointed – in the usual course, the creditors, and or the Court will make that decision.

It is also worth noting that regardless of whether a liquidator was nominated by you or another party, a liquidator in a compulsory liquidation is an officer of the Court and their powers and conduct are governed by the legislative framework of the jurisdiction in which they have been appointed. Their primary duty is to the Court and to the creditors of the company, not to you. Note that in most jurisdictions, the liquidator is a personal appointment and not the firm for whom he or she works for.

3. The jurisdiction of the insolvency proceeding matters

Most crypto firms operate in jurisdictions across the world. When a firm faces an insolvency situation, the Centre of Main Interest ('COMI') becomes relevant when considering which jurisdiction's laws take precedence if insolvency proceedings have commenced in different jurisdictions. As a general rule of thumb, the COMI may be presumed to be where the firm's registered office is located, where the company conducts the administration of its business regularly.

It is important to understand COMI as some jurisdictions have insolvency frameworks that are more creditor friendly versus some locations being more protective of the debtor (i.e. your company) by reference to the extent of control retained by management, amongst other factors. More guidance can be shared by experienced legal and financial advisers in navigating through COMI issues should the crypto firm be heading towards insolvency.

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