

Seeing Around Corners: Positioning Your Business For A Post-Lockdown Environment

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I don't need to tell you what a challenging time this is. All of us have seen firsthand how businesses are being tested in a way they've never experienced before. The road is long and sometimes very difficult.

Developing A New Way To Serve Customers In Lockdown Mode

But here is the good news: Business leaders - many of you reading these words - are rising to the occasion. Many businesses I talk to have successfully shifted operations to allow working from home, implemented recommended health and safety practices, marshalled their financial resources, and developed new ways of serving their customers while in lockdown mode. They've made it through Phase One.

Now, as the economy gradually reopens - state-by-state and sometimes community-by-community - businesses will need to shift once again to learn to function in an economy and marketplace without precedent and certainty. The challenges of operating in this environment are significant, including (but not limited to) the physical layout of workplaces, staffing levels, rethinking business models and capital needs, and rebuilding the confidence of employees and clients/customers.

While each business will need to make its own decisions about these and many other issues, here are some considerations that may help smooth the path to a business recovery:

Maintain Detailed Records And Documentation

I can't emphasize this enough, especially to companies that received loans under the SBA Paycheck Protection Program (PPP). As of this writing, the SBA has approved more than 4.2 million PPP loans, enabling many businesses to stay afloat, retain employees, and continue to serve customers and clients. However, the program has also led to cases of "borrower's remorse," as loan recipients become concerned that they will eventually be accused of violating (even if inadvertently) the program's somewhat opaque and ever-changing guidelines.

A particular concern is the requirement that borrowers needed to certify in good faith that their PPP loan request was necessary. The certification stipulates, in part, that, "[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant." While the SBA has said it will not automatically review recipients of loans under \$2 million, it still has the right to do so, and as such, it is still prudent to maintain precise records that will show that the money was used only for qualified expenses within the periods allowed under the program.

Insufficient attention has been paid to the \$2 million safe harbor referred to above. In its most recent Final Interim Rule, the SBA has said that loans below that threshold will be assumed to have met the uncertainty provision. However, that only protects the borrower from SBA scrutiny - it does not protect the borrower from Whistleblower actions, Justice Department actions and other scrutiny - so if you feel your loan certification may not be well documented or supported, we have advised our clients to speak to legal counsel for further advice.

To mitigate the risk that their certification may be questioned in the future, we have advised companies to compile as much contemporaneous documentation as possible on the state of the business and management's projections or assumptions at the time of the loan application. We feel this is a critical component of being able to prove you met the uncertainty certification.

If you did not do this at the time of application, do it now while the details are still fresh in your mind. Referring back to projections of revenues, expenses and cash

flow that were done at the time are especially important in this regard, of course. But you should also document your “mindset” at the time of application. What did you believe would happen to your business activity during a lockdown? How many employees might you have had to furlough or dismiss under a worst-case scenario? What sources of liquidity were available to support your ongoing operations if the PPP loan had not been approved?

Prepare Alternative “Back-to-Work” Scenarios

Even for those businesses that did not avail themselves of the PPP program, documentation and data are extremely valuable tools. You should closely monitor the performance of the business on a daily basis, so you’ll have the information needed to make decisions and pivot quickly in response to the conditions that prevail once your operations return to a more normal level of activity.

We recommend that every business have multiple “back-to-work” plans, since so much about the coming business climate is still unknown. For example, you should plan for a range of contingencies in case customer and transaction volume ramps up more slowly than expected, employees are reluctant to return due to health and safety concerns, or alternative supply chains need to be developed. Your plans also should address how employees will get to work if public transit is impaired, and whether more of your business will be conducted virtually. Most importantly, you also should consider how the business would survive if a second major wave of COVID-19 infections led to another lockdown. At Anchin, we are running these scenarios regularly – so we can continue to provide our clients with first-class service, while ensuring the health and welfare of our employees.

Get Physical

Among the back-to-business issues you’ll need to consider is how to configure and manage your physical space to address concerns arising from the pandemic. Some questions you’ll need to ask include: What changes do you need to make to the layout of offices, stores, factories, warehouses and/or other facilities to

accommodate social distancing? How will staff, customers/clients and suppliers or service providers enter, leave and circulate within your premises? What investments will you need to make in technology (back office or customer-facing), building systems (HVAC, for example), structural elements such as barriers and signage, and supplies of sanitizer and personal protective equipment? Equally important, what training will you need to provide for employees so they are able to operate in a strange new environment?

Give Yourself Some Credit

This really comes back to my first point. This crisis has truly tested the mettle of businesses – and their owners and employees – in ways that were unimaginable just eight weeks ago. If your business is now at the point that you are considering how to reopen, it means you’ve come through many daunting challenges and have demonstrated the adaptability and resiliency of your operations and your team. Many of the changes you’ve had to adopt, such as accelerating your technology investment or rethinking your product/service offerings, may be sources of new opportunities in the future. And, for businesses that have gone above and beyond to respond with “heart” to the needs of customers, employees, and the community, you have probably built up an incredible reservoir of goodwill that will benefit your business in the long run.

Reopening and running a business in the aftermath of the pandemic may prove to be just as difficult as closing down during the lockdown period. But careful monitoring, documentation and contingency planning – along with a positive attitude – should help your business to return to vibrant operation. The same determination and discipline that got your business through the lockdown will serve you well in the economic environment to come.

Read the article on [Value Walk](#)