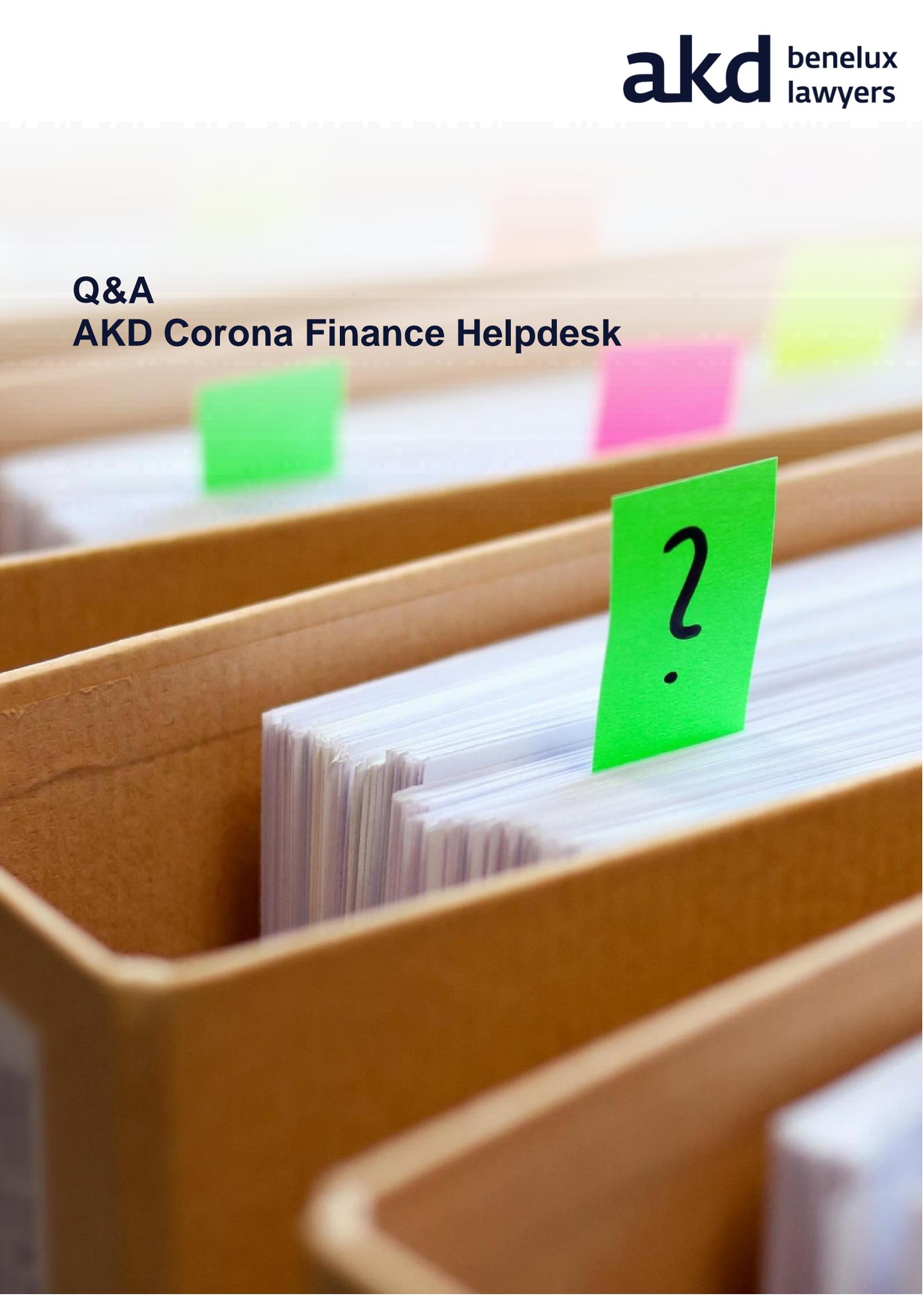


Q&A
AKD Corona Finance Helpdesk



INTRODUCTION

The corona virus can put financial performance of companies under pressure. At AKD, we receive many financing related questions, for example in the area of the consequences for existing financing, attracting additional financing, but also about what can and may one do if financing no longer proves to be sufficient.

What can you expect? How can you prepare? And how can we help you?

The working capital of my company is financed on the basis of advance payments and my turnover has shrunk because of the corona virus. In the current climate, how can I obtain financing?

Businesses see banks as their first point of contact when it comes to financing and the Belgian financial sector, together with the Ministry of Financing and with the support of the National Bank of Belgium, has elaborated an agreement concerning the issuing of credits to viable companies that are experiencing difficulties due to the corona crisis. There are of course other forms of financing that could be relevant for your company, although a number of them at present may appear less attractive, given the current stock-exchange climate.

Shares and bonds

The issuing of shares and bonds is a very common means of attracting capital. The difference between shares and bonds is that shares give the shareholder rights to profit and voting rights. As a consequence, the shareholder is able to determine the course followed by the company, which is not the case with bonds. Bonds, on the other hand, generate less profit, since they have a fixed interest rate. At the same time, they do generate greater security, because they have a fixed term, and the bond holder will be paid back his contribution at the end of that term.

Crowdfunding

The emergence of *social media* has led to many start-ups generating their financing through crowdfunding. The disadvantage of this form of financing, however, is that it rarely generates high revenue, and any revenue generated is often supplementary.

Business Angels

Business Angels can also make a contribution to the funding of your business. These are wealthy private individuals who invest in a business from a commercial point of view. These *Business Angels* not only supply capital but also inject knowledge, experience and a broad network.

Factoring

Factoring is another opportunity for attracting capital. If you opt for factoring, you cede your claims against your debtors to a factoring company. The factoring company does not pay out the full amount, but a share. Example: you have a claim worth €100. You cede this to the factoring company for €80. Although you suffer a loss of €20, you are able to collect the majority of your claim.

Leasing

If you need vehicles or machines for your business operations, leasing can be a good solution. Example: you sell your machine to party A. In return, you receive a full purchase amount. After you have sold the machine, you immediately lease it, for a fixed monthly amount. At the end of the lease period, you then purchase the machine for a symbolic amount.

Is this the right time to attract new credit?

Undoubtedly the banks are monitoring the developments closely. Although these are uncertain times for both entrepreneurs and banks, in collaboration with the Belgian government, the Belgian banks have demonstrated that they are willing to join forces and take measures to offer entrepreneurs as much support as possible in these difficult conditions.

Together with the Minister of Finance and with support from the National Bank of Belgium, for example, the Belgian financial sector has elaborated an agreement for viable companies affected negatively by the corona crisis. This agreement is based on two pillars:

1. The financial sector undertakes to offer viable businesses and self-employed professionals and mortgage borrowers who are threatened with payment problems due to the corona crisis a payment extension through to 30 September 2020, without charging any additional costs.
2. The federal government intends to activate a guarantee scheme for all new credits and credit lines with a maximum term of 12 months, issued by banks to viable nonfinancial companies and self-employed professionals.

This guarantee scheme will have the following characteristics:

- The total guaranteed amount is 50 billion euros.
- All new credits and credit lines with a maximum term of 12 months (excluding refinancing credits) that are issued up to and including 30 September 2020 will be covered by the guarantee scheme.
- Once the guarantee scheme has expired, a balance will be drawn up of the losses made on the credits within the guarantee scheme. The distribution of the burden between the financial sector and the government will be as follows:

- The first 3% of the losses on the total new credits will be borne entirely by the financial sector.
- For losses of between 3% and 5%, 50% of the losses will be borne by the financial sector and 50% by the government.
- For losses in excess of 5%, 80% of the losses will be borne by government and 20% by the financial sector.

What is the current situation with regard to interest rates?

As a consequence of the corona crisis, short and long-term interest rates have fallen. Banks that wish to ensure the stability of credit lending to the affected companies may borrow money from the European Central Bank at an interest rate of -0.75 percent. A rate of this kind has never been seen before and is incredibly cheap. It means that it has become cheaper to borrow money, for example from a bank. Furthermore, it is not unlikely that the ECB will further reduce the interest rate. The European Commission and other European institutions are also expected to take action. Finally, you are always able to cover the risks of fluctuating and possibly rising interest rates by agreeing on a so-called 'hedge' with your financier.

What aspects should I, as a director, particularly focus on if my business suffers financial problems as a result of the coronavirus?

- What are the key points I should consider within my organisation?

In the current circumstances, it is even more important than at other times to prepare good liquidity forecasts. Given the fact that the circumstances change almost daily, there are few organisations that will avoid the need to increase the frequency of management reports. These improve the options for making timely adjustments in the event of significant changes.

Management information is also important to determine whether all ratios and other covenants in the credit documentation are satisfied. If this is no longer the case, it would seem wise to enter into discussions with your financier.

Finally you can use this management information to assess whether your company is and remains able to fulfil its current obligations, such as paying salaries and making rent payments.

- Can I, as director, be held personally liable if my company is no longer able to meet its obligations?

In the unfortunate circumstance that your company is no longer able to meet its obligations as a result of the current crisis, in the worst case scenario, the outcome will be a bankruptcy. In that case, a receiver or creditors could possibly hold you, as director, liable for the losses they suffer.

- Am I permitted to issue additional securities at the request of my creditors? The credit documentation generally states that your financier may call for additional securities. In that case, generally speaking it is permitted and sometimes even required that you issue these additional securities to your financier, even if the financier does not grant any additional credit.

New financiers or existing financiers that award additional credit will call for new or additional securities. That is entirely permitted.

It is not always permitted to accommodate trading creditors if they request security for their existing claims. It depends on the specific circumstances of the case.

- Over the coming period I am unable to meet contractual obligations; what should I watch out for, against the background of the coronavirus, and am I able to avoid those obligations? If you recognise that the company will be (temporarily) unable to meet all its obligations as a consequence of the corona crisis, you may be able to appeal to *force majeure*, unforeseen circumstances or contractual *force-majeure* provisions.

An appeal to *force majeure* is most likely to succeed if your company is hindered by statutory corona measures in itself delivering the performance (on time). This situation for example arises if a major event is unable to be held due to it being banned.

More likely however, you will be facing unforeseen circumstances. Belgian contracts are governed by reasonableness and fairness. On that basis, parties are required to take account of one another's interests. Reasonableness and fairness may result in an obligation to renegotiate. If negotiation provides no solutions, under certain circumstances a change to the contract may be demanded, via the courts.

Finally, it is possible that the contract contains a *force-majeure* provision. In that case, interpretation of that provision will determine whether the corona crisis or its consequences qualify as *force majeure* or an unforeseen circumstance as intended in the contract and, if yes, what its legal consequences are (for example (temporary) suspension, obligation to renegotiate, (partial) dissolution or amendment).

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