**ParryField Lawyers**

**CID Webinar: Lawyers, Steven Moe and Kris Morrison**

**Summary of discussion**

**(CID team notes. If you want official legal advice, get in touch with ParryField direct)**

**Wage subsidy:**

* The spirit of the law is clear – its about saving jobs where you can, while you work out the long term.
* There is flexibility around the criteria and high trust.
* Don’t need to be able to prove 30% drop now. Just document your assumptions, processes and decision-making. The worst that can happen is that you have to pay some of it back later.
* Document the BAU cap on operational spending, and the challenge of sticking to that if applying for the subsidy etc. Again, there is flexibility and high trust. As long as you can show your thinking.
* Make the case that your income is ‘lumpy’ which makes the 30% comparison between years hard.
* You can still apply for the subsidy if you have reserves, but document your decisions. Eg ‘reserves were set aside for another purpose’. What issues did you consider when deciding not to use reserves for salaries? What mitigating actions did you take first before applying for the subsidy? What expenses have you reduced?
* Bottom line – document, document document everything!

**Rent/lease:**

* Have a look at your contract. If its an ADSL contract, and the contract is not older than 2012, you are covered by the ADSL clause – that in an emergency (like the ChCh EQ or an epidemic) where you can’t occupy because of a government order, you should get a ‘fair proportion’ of your rent reduced during the emergency.
* Then you need to negotiate what is ‘fair’. 100% unable to use the space, therefore 100% reduction? But that might not be realistic. Depends on the circumstances
* If you have an older contract, you can still negotiate a reduction. If you have a ‘force majeure’ (or ‘act of god’) clause this will be easier. That clause could be very specific (in the event of an EQ/epidemic etc). But even if not, you can still negotiate.
* Read your contract. It may be possible to suspend the contract under an ‘act of god’ clause.
* You can also use a ‘Doctrine of Frustration’, which is similar to ‘Act of God/Force Majeure legal principles.

**Insolvancy:**

* The Board has obligations not to allow the organisation to continue as a going concern if it can’t pay its bills. Board members may even be personally liable for ongoing trading activity if the organisation is insolvent
* But these are extraordinary times and parliament is rushing through changes to legislation to help organisations manage. We will keep a watching brief.
* Options are to go into ‘hiberation’, or ‘safe harbour’ by pausing all activity and waiting for the lockdown to finish.
* Again – document everything. If you can make the case that you were solvent, but COVID-19 meant liquidity was a problem, then you have a strong case to make for continuing.
* Boards need to: *1. Ask Questions 2. Be rigorous 3. Document everything.*

**Employment and redundancies:**

* Employment law still applies and you have to go through a full process of consultation etc.

**Health & Safety**

* If staff are working from home, then home is a workplace, and employers are responsible for H&S.
* Check that staff have a good desk/chair/screen set up.
* Make counselling/mental health support available.
* Adjust your expectations about what people can deliver under these circumstances.

**Privacy and confidentiality**

* You are still responsible for keeping all confidential materials and data bases private and safe. Make sure your online systems are secure.