Issue Two | Twenty Twenty

Covisory Connect

MAGAZINE

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Founder - Covisory Group

A Strange New World

Welcome to our special post COVID-19 Lockdown edition. It is certainly a strange new world and a very unexpected place that we find ourselves in.

The lockdown period was a unique experience. Our team have used the opportunity to touch base and talk over the phone or virtually with many of you and to a lot of others. Some managed to use the time to continue working, others to learn new skills and capabilities both in NZ and overseas. As I have often said we will come out of it with family packs or 6 packs of abs. I hope your time was productive and of benefit.

It is very easy to use words like unprecedented and unheralded to describe the impact globally COVID has had. What is a lot harder to divine is what will be the opportunities will be that come from it? Travel, retail, and hospitality have all suffered and will continue to do so. Online shopping, home cooking and working from home are winners. There will be opportunities that will present themselves over the months to come. Distressed asset and aspirational asset sales will offer good buying, but like the child with a $1 coin in a lolly shop, how long can or should you wait and just how good will the buying be?

The media has also been found wanting during the lockdown. We now have reporters who tell us what is said, often parroting other reporters. What we need are journalists who question and interrogate who is saying it. Beware of false or unsubstantiated news.

While the government guaranteed bank loan scheme may not have worked, banks have been and remain very willing to make normal commercial loans with very attractive interest rates to good, financially secure, existing customers. They have to lend to someone after all.

In this edition of Covisory Connect we address a wide range of relevant topics following the COVID lockdown. We have also asked several of our contacts to contribute articles on their fields of specialities to provide you with a comprehensive range of topics.

We hope you enjoy reading through them. However, there is no substitute for informed discussion so we welcome the opportunity to work with you to help you manage the opportunities and issues that this strange new world may present you with.

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CONTENT

Meet our Team

Strangely being under lockdown has brought the team together more than you would expect having all stayed in our respective bubbles. Some of our team work from home offices or remotely all the time for others of us we mix working from home and the office. So we asked everyone the same questions – the answers were varied but sport and food did feature strongly.

What do you think are some of the positive things about working from home

1. No daily commute time
2. Love the fact that its quiet
3. Spending more time with the family (both two and four legged varieties)
4. Extra half hour in bed
5. Casual dress code
6. Very flexible work hours
7. Significantly more productive and a more conducive environment to thinking.
8. Having a qualified chef for a partner makes for great lunches!
9. The PM's daily briefing
10. Less distractions
11. Upped the amount of exercise

Any negatives you discovered while working from home during Levels 4 and 3

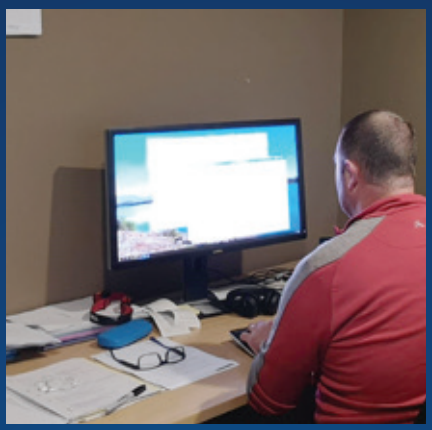
1. Hard to not switch off and not clear emails or do work – outside work hours – though I do premise this one with the fact that many are guilty of that before lock down.
2. Surprisingly it was the fact that the scenery didn't change - being able to just go somewhere else has been a relief.
3. No Sushi from Kaze!
4. Not catching up with other people and socialising
5. The family invading my workspace
6. Need to watch the trips to the kitchen
7. Miss the casual interactiom of being at the office especially to discuss ideas– Virtual Team meetings not quite the same.
8. No Barista Coffee
9. Distractions are on tap!
10. The constant noise of a Thomas the Tank Engine going around my six year olds Train track.

Chance for finishing all those projects around home.... You bet!

1. Finished repainting the house
2. A lot of Gardening
3. Train set 98% complete
4. Re-stained the boundary fence
5. 1,000 skips a day and counting (upto 50,000 when asked)
6. Finished a 1500 piece Jigsaw puzzle
7. Read plenty of books
8. Learnt how to convert stills into video

the team @ home

Amanda Davies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Half time for markets.

L, U or V for recovery?

NZ Funds' active management approach means clients' growth portfolios have performed better than the share market.

We have achieved this in two ways. Firstly, we have mitigated the downside. This means client portfolios fell less than the market selloff. Second, we have fully participated in the market rebound capturing more returns than the market as it bounced back.

It is now half time for global share markets. Markets are halfway between the high set prior to the onset of COVID-19 and the low of March 2020 when the reality of the pandemic took hold, but governments were yet to respond. Like in sport, half time gives the market time to digest what has just happened. In this case, what are the health and economic impacts of COVID-19?

The economic recovery will take time. Countries, such as Italy, who had little time to respond, are reeling from the medical and now economic horrors of the virus. They will react differently from counties such as New Zealand and Australia, who have been fortunate enough to respond quickly but who are likely on the verge of an economic recession.

The shape of possible recoveries

The first step in any economic recovery is for output to stop shrinking. But the more interesting question is what shape the recovery will take.

The debate centres around three scenarios: 'V', 'U' or 'L' . A V-shaped recovery would be vigorous, as pent-up demand is unleashed. A U-shaped one would be feebler and flatter. In an L-shaped recovery, growth would not return for some time.

L-shaped recovery

The L-shape is the most pessimistic outlook, which shows sustained weakness and more permanent damage from the COVID-19 induced lockdowns.

Unemployment stays high, and output does not fully rebound for several years.

In this scenario we may retest the share market lows seen in March with a lower chance of an immediate bounce back. However, we put little weight on a 1930's style great depression given the myriad of initiatives implemented by New Zealand and other governments including Australia, United States and China.

Unprecedented levels of government support have been implemented in less than 100 days compared to what took place in the 1930s. With no central bank and high public debt, the New Zealand government did little in the way of propping up the economy in the 1930s. In fact, interest rates remained stubbornly high.

U-shaped recovery

In the U-shaped recovery, the pickup in activity happens gradually. The second half 2020 rebound does not make up for the steep decline in the first half of this year. It may be predicated on some delay in fully reopening the economy.

In this scenario, the share market may trade in a range of ±20% over the next one to two years, as business and economies join with governments and centrals banks to implement a recovery.

V-shaped recovery

The V-shaped recovery represents the most bullish outlook. The economy was on a solid footing before the COVID-19 shutdown, and a V-shaped rebound would consist of a rapid return to the same level of output once social distancing restrictions are removed. Growth in the second half of 2020 would make up much of the shortfall of the first half.

Because of the size and power of government stimulus and support, the scales are tipped in favour of financial assets continuing their move higher. Over the month of April, markets have recovered even as the 'real' economy works through the damage caused by COVID-19.

Some industries and sectors will take longer to recover but it does not mean they will necessary be left to collapse. The rapid rescue of Air New Zealand and Deutsche Lufthansa by their respective governments are but two examples.

Which shape is it?

We do not have a strong opinion which shape triumphs from here. Put differently, clients' investment portfolios and KiwiSaver are set up to add value under all shapes.

We do have a strong opinion on the ability of financial markets to recover faster than the 'real' economy. Therefore, no matter the shape, those with a medium- to long-term horizon should remain invested. Remaining invested in financial assets for the long term provides an incredible opportunity to build wealth.

Financial assets can rise in value even as the economy is busy repairing itself. Share markets are forward-looking, reflecting expectations of where the underlying businesses that make up the share market will be in three to five years (not months!) time. At the same time, governments and central banks are effectively protecting the financial system. They are being more aggressive and proactive than in any other time in modern history.

Portfolio positioning

Should we have an **L-shaped recovery,** our goal is to mitigate the downside. NZ Funds is well prepared for this scenario and we will be able to act aggressively in preserving clients' capital. In this scenario we would expect the economy to not be responding to government stimulus. However, clients' portfolios will not be devoid of returns. Rather, different asset classes, such as gold, are likely to generate significant capital gains.

Should we have a **U-shaped recovery** we expect there will be times where we must mitigate a further share market sell off. At the same time, recognising the ability of financial markets to recover faster than the economy, we aim to become fully invested as the market bounces. Clients will also benefit from different asset classes as the market turns.

Should we have a **V-shaped recovery**, our aim is to continue to benefit from a rising market. In this scenario we would expect clients' portfolios to rise rapidly and we are positioned to harness this should it occur. Yet we retain our ability to mitigate the downside if we are wrong.

As we reflect on three possible paths forward, NZ Funds' clients are likely to be better off remaining invested rather than trying to time markets. Even in the most negative L-shaped scenario, leaping into cash may mean a meaningful destruction in spending power and wealth as price inflation of goods and services outweigh any return generated in cash and term deposits.

As the famous investor Peter Lynch once said, "far more money has been lost by investors trying to anticipate corrections, than lost in the corrections themselves". Volatility has decreased allowing those with money to invest to build up their savings at an attractive and stable entry point.

When markets restart their upward climb, those with long-term time horizons will benefit from a share market that will be substantially higher over the next one, three and five years.

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What happens if you wish to do business outside of New Zealand?

Covisory is a member of IAPA International. Our membership in this association ultimately provides you with a more comprehensive range of expert services anywhere in the world. If you are intending to conduct business globally or if you are relocating overseas talk to us about what IAPA can offer.

Established in 1979 IAPA Is a leading global association of independent accounting, audit, tax, legal, advisory, financial, immigration and technology service firms that aim to support its members in providing their clients with a diverse range of professional, comprehensive and cost effective business solutions regardless of sector or location.

Currently IAPA comprises of over 185 member firms with officers in over 70 countries. IAPA ranks in the top 9 of associations of independent accountancy firms in the world. We know that success on a global stage comes from local knowledge and the international reach that IAPA offers allows us to tap into first-hand knowledge of local regulations, culture and customs removing the potential cross border uncertainties and increasing the opportunities for real business development for you the client.

IAPA's extensive coverage with independent member firms all over the globe, ensures that you can access a full range of professional services and advice whatever your needs and wherever you are based.

Covisory

What we do

Do you need help with a Relationship Property Agreement (RPA) or Dispute?

The Covisory Group are a team of experts assisting both businesses and individuals.

We provide a wide array of services that go beyond the realm of most Chartered Accountants and Advisors. We help our clients and their advisors with services and technical assistance to apply innovative knowledge and solutions to the challenges they face.

Business and Share Valuations

Covisory's Business Valuations team has extensive experience and expertise in assisting in the settlement of relationship property disputes.

Whilst Business and Share valuations are at the forefront of the independent expert assistance and opinions the team provides - acting for both Applicants and Defendants, as well as Court appointed – their expertise and opinions also encompass.

- **the value of partnerships and trusts,**
- **the value of other Relationship Property interests – e.g. shareholder and beneficiary current and loan accounts, the increase in the value of Separate Property when such is deemed Relationship Property, and**
- **assessing the value of Economic Disparity claims.**

Business and Share valuations have become even more complicated due to the economic fall-out from Covid-19. Many businesses will face fundamental changes in the markets they operate in, their operational practices and short to medium term business outlook generally. This will add further complexity in assessing future maintainable earnings and an appropriate earnings multiple.

Having experienced prior economic downturns, combined with their market transaction business returns data, means the Covisory team is well placed to undertake Business and Share valuations in the current environment.

The past tells us that Business and Share valuations will in general drop as a result of the economic fall-out from Covid-19. Where parties have recently concluded settlement agreements or have had orders for property disputes made by the courts, those agreements or orders could well be reviewed if value is significantly impacted by Covid-19, particularly if this is assessed to be a permanent diminution in value. Whether the diminution in value resulting from Covid-19 is temporary or permanent will form a critical judgement by the valuer in current day valuations.

Independent Trusteeships

Once an agreement has been reached on value of the property to split between the parties and the actual amount going to each party, the parties will need to determine what structure will work best for them to hold those assets. In a lot of cases this will be in a trust as opposed to holding the assets personally. A trust structure will help protect these assets against claims in the future, including future relationship property claims.

Covisory's Trust team can help in this area with both helping with the formation of a new Trust and acting as an independent trustee. We act as an independent trustee for a wide range of clients, including those who have recently separated. Often, we are acting as an independent trustee where the recipient of the asset does not have much experience in investing, and we can help clients in this area by involving professional investment advisors to help manage the assets.

In the event of a relationship property separation both parties should review their Wills and put new ones in place. This step is often missed and can have ramifications going forward as in most circumstances each spouse is the executor of each other's estate. A new Will, coupled with updated Enduring Powers of Attorney, need to be completed along with a new Trust.

Talk to us first if you need help with a Relationship Property Agreement or Dispute. We have the experience and expertise.

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Financial Models **in Sport**

As our diet of live sport has dried up, the question on the future impact of COVID-19 on sports remains.

Large popular sporting organisations will survive due to their wealthy private ownership structures (Champion League Football Clubs, NBA, and NFL for example). Broadcast revenues will eventually return once the US and Europe reduce their current movement restrictions. However professional sports cannot expect to generate significant (if any) revenue from gate and stadium takings until a vaccine is widely available.

The significant financial reserves of organisations such as FIFA (estimated cash and near cash assets of USD 4.7 billion) and World Rugby (announced a USD100m relief fund) may provide assistance to NZ clubs and organisations involved with these sports.

However, the majority of sports in NZ are funded by participation fees and grant funding from the gaming trusts. As sports deal with how they will operate for the rest of 2020 year (and the increased health and safety costs) both funding sources are expected to reduce. Reduced participation fees are likely due to physical distancing requirements and turnover from gaming machines will reduce due to closures in the hospitality business.

Even the giant of NZ sport scene, NZ Rugby, has announced drastic cuts to competitions and players pay despite having the largest reserves of a NZ sporting organization ($75m at Dec 2018). Mainland Netball is a recent example of a semi-professional sports organisation now in liquidation.

Prudent financial management suggests that clubs and organisations should hold at least six months, if not twelve months, of their operating expenses in reserves. Given the 'hand to mouth' nature of most NZ sports clubs, very few clubs will hold that the level of reserves. t.

Boards and committees who manage the next 6-9 months successfully will deserve a huge pat on the back from their members. However, they will need to reassess their financial models for viability in a world of reduced community grant funding.

Sports NZ has announced (6 May 2020) it will be administering a $25m relief fund for community sports. This is a welcome initiative from the Government. However, the real impact on NZ sports will be seen when community sports resumes (hopefully a level 2!)

Difficult decisions will need to be made on what services these clubs and organisations can provide in the future and whether they can/should be fully funded from the users of each service.

How each sport restarts and handles their own unique opportunities and issues will be worth watching.

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Keep the money going around.

What do the various lockdown levels mean for our businesses and work and what we need to do to ensure we are in a viable position to make the most of any opportunities.

During the past weeks, I have been touching base with client and colleagues, here, in Australia and beyond to gain some further insight.

The biggest single issue facing us all in business is to make sure that we pay each other, and we get paid by each other. Whether you are a commercial landlord, distributor, or in any other sort of business the reality is money makes the world go round and at the moment money is not going around.

Yes, there is uncertainty about whether we will get paid for work done and it's natural to hang onto as much money for as long as we can just to make sure that we can get through this. Croatia did this 20 years ago; the economy went into gridlock because people did precisely this and didn't pay each other.

Even if you cannot pay all your creditors, pay some of them and in particular the smaller ones.

Many big companies haven't shown good social leadership. Companies like Fletchers, the Warehouse and Harvey Norman not paying their commercial rent without even any negotiation or in many cases not even having checked the terms of each lease shows poor social responsibility, let alone actually checking whether their subsidiaries were still operating or not or what the terms of the lease were.

Commercial property should have come out of this as a likely winner given the drop in the OCR as well as the dramatic falls in share markets worldwide. People need to invest their money somewhere.

Some of the large valuation practices are informing their clients that they can no longer rely on the valuations they had previously issued. Their approach is due to there being insufficient new market evidence as to which way commercial prices will go. The impact will vary between properties and also based on the strength of the tenant. The real question is, what is a blue-chip tenant today as opposed to what was one three months ago?

Don't expect banks to make loans to you to save your business. The banks are swamped. They have no clear idea about how to lend money in conjunction with the government. In one case, a bank asked a client to provide management accounts for February and March before they could even consider analysing a loan request.

Those management accounts have barely any relevance when a business is shut entirely in April. The Bank should have asked for a simple analysis of debtors, creditors and the cash flow forecast and its assumptions. Also, the bank applied credit lending criteria as if it were lending 100 per cent of the funds. In reality, the government is guaranteeing 80 per cent of the principle, so the bank was only really being asked to lend 20 per cent of the funds.

One major Australian bank has had more telephone and email enquiries in five days than if it had in the preceding 12 months. No wonder they are struggling to cope.

Contact your bank and try to temporarily renegotiate facilities so that you either get a complete payment holiday or that any payments are interest only.

Finally, while currently, the share market is rebounding, we will probably still see further lows in the months to come. Once listed entities around the world publish their results for quarter 1 and 2, we will be able to see just how dramatic effects of the lockdown have been on all aspects of the world's economy. The markets will come back but probably not quickly.

None of us has a crystal ball, but we all have plenty of time to think about how life will be different after this; how have we been affected but what changes should we make in our lives. I think, many of us, have experienced we are closer to our family from having spent so much time together.

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Taxing Times

Since the middle of March, the Government and Inland Revenue have made the following significant tax changes in their response to a COVID -19 economy.

First Verse

Passed into legislation on 25 March 2020, the first changes were:

- Restoring depreciation deductions for commercial buildings from 1 April 2020 on for 31 March balance dates;
- Increasing the low asset write off to $5000 for a year and increasing provisional tax thresholds;
- Bringing forward application dates for the refundability of research and development tax credits; and
- Providing Inland Revenue with discretion to write off use of money interest resulting from the COVID 19 environment.

Chorus

More significant tax changes were announced on 15 April with the stated intention of improving the cashflow of small and medium sized business. These changes have now been passed into legislation.

These changes include:

- A carry back scheme where tax losses recorded in the 2020- or 2021-income year can be offset against tax profits made in the previous income year. This will allow previous tax payments to be refunded;
- A "same or similar business" test will be included in the loss continuity rules for the 2021 income year, this may allow losses to be carried forward and utilised even if the 51% shareholder continuity of ownership has been breached; and
- Inland Revenue given more discretion to temporarily change due dates for certain tax returns and payments.

A small business loan scheme is now being administered by Inland Revenue.

Under the scheme, loans of up to $100,000 are be available to small/medium businesses who have up to 50 employees. The amount of loan depends on the number of people employed in the business. The amount starts at $10,000 plus $1,800 for each person in the business.

Loans are interest free if repaid within a year. An interest rate of 3% will apply for maximum term of five years.

Loan applications opened on 12 May 2020.

What Can You Do NOW

Relief and opportunity are available in these tax changes. The full extent and impact will be known once we see how Inland Revenue is operating in the changed environment.

In the meantime, we suggest the following course of actions with respect to tax:

- Pay PAYE and GST on time and in full if possible. With respect to income tax payments, consider whether the above relief options provide any assistance or consider buying tax payments from an IRD approved tax pooling intermediary such as Tax Management NZ Ltd;
- If unable to pay, document/evidence the actions you took to try and find funding for these payments i.e. discussions with banks, alternative financing;
- Complete your accounts/tax return for 2020 income year as soon as possible; and
- Give consideration to 2020 deductions for annual leave payments after balance date and bad debts.

Completing accounts and understanding your current financial position will be crucial in the coming months. From a tax point of view, it will enhance your decision making as you look for any tax relief or explore potential investments that may arise.

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Case Study

Our client was a non-active investor in a company involved in the manufacturing and installation of a property related utility. As well as installation the company also serviced the installations.

The client was getting frustrated with the information they were being provided in relation to their investment. They requested that Covisory conduct a review of the company's operations with a focus on the accounting and financial systems.

Covisory reported back to the shareholders highlighting several issues that needed addressing:

- An out of date accounting system that needed to be replaced or would no longer be supported.
- A level of dysfunctionality at senior management level regarding the strategic direction of the company particularly in relation to the implementation of systems and IT.
- The limited input of the external accountant who were engaged in a reactive year end role rather than any ongoing value-added role.

The shareholders requested Covisory work with them and senior management as they addressed the identified issues. There were several options to be considered.

The outcome of this process was that the shareholders decided to adopt the options recommended by Covisory which meant a restructure of management and implementation of a cloud-based accounting system.

This was a difficult process. Covisory was able to provide a highly experienced consultant who oversaw the change on a day to day level. This ensured a minimum of disruption and an effective implementation of change.

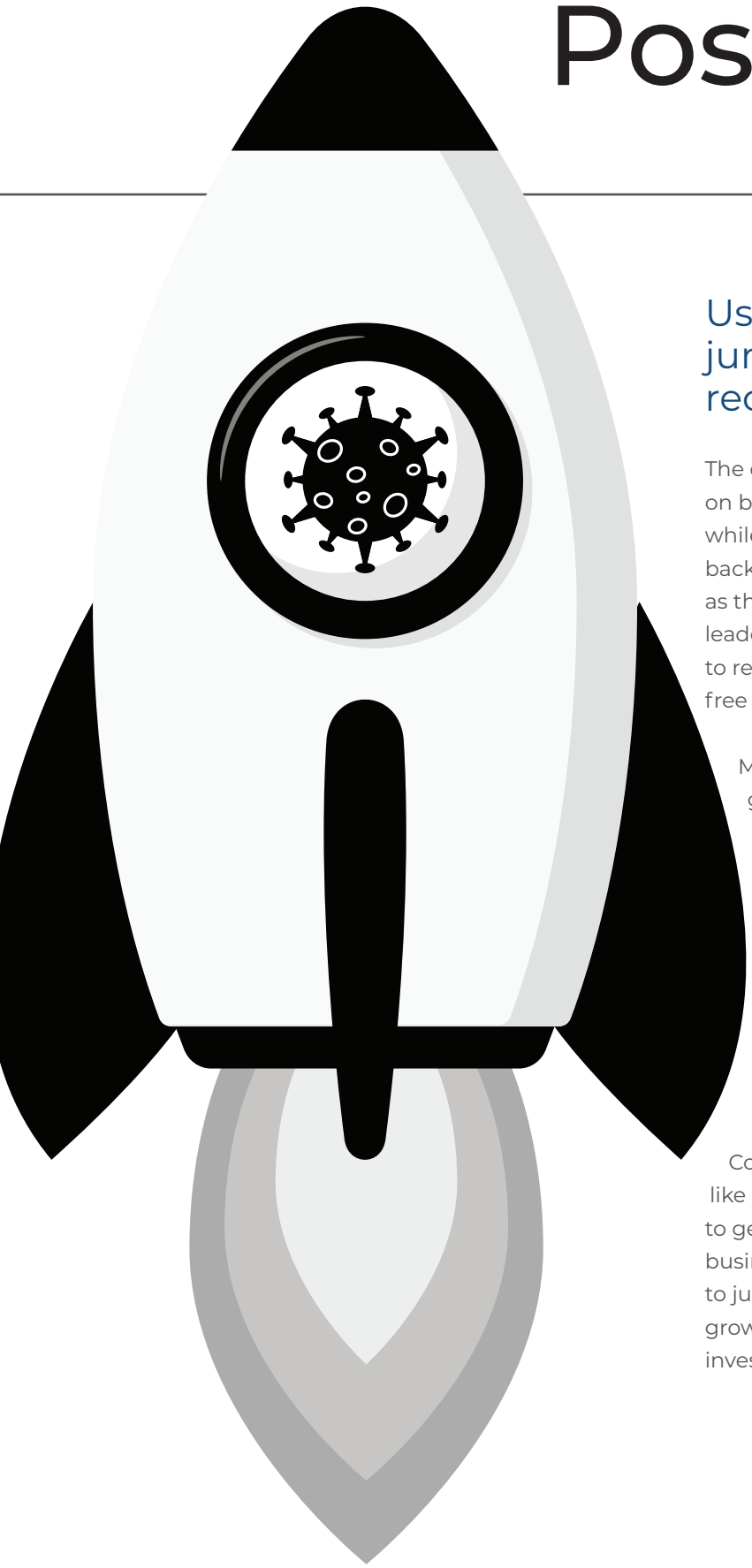
Once change had been affected the consultant was contracted on a part time basis in an overall management role for the company. Covisory has been appointed as the company's accountants. The shareholders now receive monthly reports and are fully informed in relation to their investment. The company is functional and profitable with increasingly aligned systems and communication levels.

The Covisory team are also assisting in the implementation of a cloud-based inventory system. In conjunction with the consultant they are also reviewing all the data flows arising in the business and examining ways IT and systems can be streamlined and standardised to provide more effective information for management, customers, and suppliers.

As any business owner will testify, businesses are multi-faceted with any number of issues and challenges. With Covisory's unique mix of specialist expertise and depth of experience we are ideally placed to help with any issues or challenges you may face – large or small.

Covisory

Post Covid



Use invoice discounting to jump start your business' recovery from COVID-19

The coronavirus crisis is putting enormous pressure on businesses, driving some into administration, while others are forced to lay off workers and scale back due to the extended global lockdown. Even as they struggle to mitigate the damage, business leaders are asking themselves how they will manage to recover when restrictions on businesses and the free movement for consumers is finally lifted.

Many companies are already relying on debt and government support to remain afloat right now. When the time comes, many will not have the access to sufficient credit or investment to finance their recovery. They wonder how they will pay their suppliers to get their operations running again, and whether their customers—who are likely in a similar situation—will be able to pay them. For businesses or the economy as a whole to recover, this uncertainty needs to be addressed.

Companies need alternative financing options like invoice discounting and supply chain finance to get their operations moving again. This provides businesses with fast access to cash that they can use to jumpstart their operations and stimulate renewed growth, which they will be able to use to bring back investors, and to access new sources of credit.

Economic recovery requires financial security

Traditionally, businesses rely on investors and credit to finance their operations. However, the economic downturn that the coronavirus has triggered has put businesses into precarious positions that are unattractive to investors, while also making investors generally more cautious. At the same time, businesses are using what credit they can access to keep themselves afloat. When the time comes to get back to work, though, companies are going to be faced with a problem.

In order to recover when the crisis ends, businesses need to be able to pay their employees and their suppliers both to get their operations running, and to ensure that consumers (their workers) have the funds to bring consumer demand back to normal.

Additionally, they need to feel secure in their investments, meaning that they need confidence that their customers will be able to pay. The key to providing this financial security will, for many businesses, be an alternative finance tool like invoice discounting.

What is invoice discounting?

Invoice discounting is a way for businesses to secure some payment on outstanding invoices immediately, so that those funds can be reinvested into the businesses as soon as possible. Additionally, it is a way for businesses to quickly access funds without waiting for a customer to get around to payment. Rather, the initial payment comes from their financial institution.

Instead of waiting for invoices to come due and customers to pay their bills, businesses can exchange the outstanding invoice for cash up front by working with an institution like our partner —Fifo Capital. When discounting the invoice, Fifo Capital issues most of its value in cash within a few hours, and the remaining funds when the client makes payment. Unlike a loan, this doesn't involve borrowing any funds, so no time-consuming credit check is needed. Additionally, this means that funds accessed in this way are not considered loans, and don't involve the business taking on any additional liabilities.

Using invoice financing to boost your recovery

Coming out of the coronavirus lockdown, many businesses will face significant debt, and be forced to attempt to revitalise their operations on very tight budgets. This might make it difficult to manage the costs of scaling their operations back up to a

profitable level, which is necessary to begin any meaningful recovery. Invoice finance, as well as similar tools such as supply chain finance, can help businesses to boost the limited working capital available to facilitate their growth. Most importantly, invoice discounting is a way for businesses to increase the total capital available to them without impairing their ability to borrow or attract investment.

The benefit of credit free financing

Because invoice discounting does not require businesses to borrow money, it doesn't impact their debt-to-equity ratio. This makes it easier for businesses to concurrently access credit, or to attract investment to finance growth. In the end that means more possible funding sources for businesses who will already have stretched many of their traditional options to their limits.

The coronavirus pandemic presents businesses all over the world with an unprecedented challenge. For many, though, the real work will only begin when lockdowns are lifted, and the time comes to get the economy back on its feet.

To return to growth, businesses need financial security both for themselves and for their customers. Invoice finance, as well as other alternative financing tools can provide them with the means to get back on their feet as quickly as possible. To explore how these options can help them, it's important for business leaders to work together with their financial representatives and discuss what approach will best serve their business.

Contact your Covisory business advisor or visit https://fifocapital.co.nz/invoice-finance/ for more information.

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Strategies for Companies in Insolvency

The need to deal with creditors. The number one priority for companies with viable businesses that are unable to meet their debts is to deal with their creditors.

The options for doing so are:

a. **A debt moratorium using the Government's recently announced debt hibernation scheme;**

b. **A compromise with creditors;**

c. **Voluntary administration;**

d. **Restructuring operations into a new company.**

Before I look at these options I would like to emphasise at the outset that whichever option is chosen, it must be coupled with a plan to restore the viability of the business. For example, a debt moratorium that merely buys time and is not coupled with other steps will not ultimately achieve anything nor will it gain creditor approval.

Debt Moratoriums

The debt hibernation scheme introduced by the Government as part of its COVID-19 insolvency laws re-write (a 6 month freeze on existing debts with 50% creditor approval, by value and by number), has already proved popular. Undoubtedly that is because of its simplicity and automatic stay on creditor action for the one-month period from notice of the proposal being given to creditors.

The burning issue is how to encourage creditors to approve the moratorium. Plainly, creditors will only give their approval if they believe their prospects of recovering amounts presently owed to them are heightened by waiting. Secured creditors will need to be persuaded that they will recover a greater amount by allowing the company to continue rather than putting it into liquidation, whereupon they stand first in line to recover amounts realised in liquidation. Unsecured creditors need to be similarly persuaded.

Debt Moratorium

To persuade secured and unsecured creditors alike, the moratorium proposal will need to be accompanied by a plan to:

a. **Raise new capital; or**

b. **Remodel the business into a smaller state to match revenues to the scale of the business and to restore it to profitability; or**

c. **Sell the business as a going concern.**

Creditor support will be dictated by the viability and preparedness of steps to effect one of these plans. If capital raising is intended, creditors will undoubtedly require information to apprise them of the likelihood of the capital being successfully raised (ie the amount, on what terms and from whom, preferably underwritten). Above all, the capital raising will need

to be shown to be sufficient to restore the company's balance sheet and working capital to viable levels to allow the business to operate.

If possible, companies should include a term sheet for the capital raise with the notice to creditors.

If either a remodelling of the business or a proposed sale of it is intended, again details should be included in the notice given to creditors.

That detail should:

a. **In the case of a remodelling of the business, include financial projections once the remodelling has been completed. Central amongst these projections will be the assumptions around leased premises and other long-term commitments as these may not be so easy to "remodel";**

b. **In the case of a proposed sale of the business, it would be advisable to be able to point to a business broker agreement or appointment of a financial advisor and an appraisal for the business and of the market for it.**

What is the plan if the moratorium is not approved? It would be helpful in the notice to be given to creditors to answer this. It might be as simple as saying that the company will fail, and only secured creditors are likely to see any recovery. Whatever the plan is or the result of creditors not approving the moratorium should be spelt out.

Compromises with Creditors

This entails asking creditors to take a haircut (although it is also possible to restrict the compromise to a moratorium on debt for a period that extends beyond the 6 month availability under the debt hibernation scheme; one year perhaps). Asking creditors to take a haircut will be appropriate when a capital raising and/or a remodelling of the business is, on its own, an insufficient leg up for the company.

In like fashion to a proposal made under the debt hibernation scheme, the success of a compromise proposal lies in your ability to persuade creditors to approve it. The approval threshold is 75% by value and by number of the creditors affected. Approval will not be possible without the support of your secured creditors. Equally, approval will not be possible without the support of small creditors, as these will form the majority of creditors by number. This mix usually means offering the small creditors a greater amount per dollar of debt than is offered to large creditors. Alternatively, you might pay out the small creditors in full in which case they will not be included in the compromise proposal and their support is not required.

Where do shareholder loans and other related party debts fit in?

It is best to treat them as a separate class of creditor. Should you elect to roll them in with other unsecured creditors, perhaps with the design of achieving the 75% threshold, you will be in peril of an unfair prejudice claim.

In any event, most compromise proposals involve shareholders committing to inject additional capital on the condition that creditors agree to the compromise proposal.

I anticipate many companies following a two-step approach that entails a debt moratorium under the debt hibernation scheme, followed by a compromise proposal. The moratorium will gain the company time to determine the extent of compromise that is needed of creditors and to put together any proposed injection of capital. Such a two-step approach is perfectly permissible and indeed wise.

Voluntary Administration

I recommend this option only where all other alternatives have failed. It entails appointment by the board of an external administrator, and hand over of control of the company to the administrator.

Voluntary Administration

By going into voluntary administration, all company debts are immediately frozen. Unlike the debt hibernation scheme or creditor compromises, no approval of creditors is needed and therein lies the attraction of voluntary administration.

The purpose is to buy time to allow the company to continue as before. Creditors are given the opportunity to vote on the arrangement at a watershed meeting. The fate of the company will turn on the outcome of that vote.

Restructuring into a New Company

It is feasible to carry on your business in a new company, leaving the debts behind in the existing company. For example, say you operate 5 stores and you wish to close 3 of them, and continue to operate the other 2. Is that possible? Yes, it is, but it requires the existing company to be placed into liquidation, receivership, or voluntary administration. It also requires the new company to pay fair value to the old (failed) company for the assets to be employed by the new company.

Restructuring of this type requires considerable planning and agreement of the liquidator, receiver or administrator. Nevertheless, this is a viable means of remodelling your business to suit smaller scale operations in circumstances where the company's long-term commitments (leases for example) do not make this possible by other means.

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Coronavirus

and some key employment law issues

Employees Working from Home

Under Alert Levels 4 and then 3, many employees were asked to work from home.

Working from home will continue to some degree for some employees under Level 2 (whether by necessity or desire) and may be more prevalent in the long run when pre-COVID 19 life returns. The relevant issues do not, to a large degree, stem specifically from the COVID 19 crisis, but it does necessitate an increased focus on health and safety.

In broad terms, there are two areas of focus concerning employees working from home:

- **Working and**
- **Health and Safety.**

Working

Employers need to consider:

- That employees know what they're required to do and that they have the tools/equipment to do it, i.e. that the employer has provided them with the equipment or if they will use their own devices, that the employer meets their work-related expenses;
- There must be a clear understanding of what must be done, how, and when.
- If employees are required to work, the employer must provide them with the resources (tools/equipment, appropriate access to the internet, etc.). Where staff have internet access, phones, etc., the additional costs due to business use should be met by the employer.
- Dealing with computers, emails, security, confidentiality, and privacy etc. may require consideration because staff may be using their own devices and be under less supervision. A remote access policy may be wise where employees will access the employer's computer systems remotely.

As noted above, these requirements relate to any situation where an employee works from home.

Health and Safety

- The employer will still have some obligation to ensure the health and safety of staff working from home. The staff have an obligation to take care of their own health and safety. The parties must work together to identify and eliminate (as far as possible) any potential hazards.
- The employer could assess workplace health and safety risks at the remote/home location by getting a qualified, such as an occupational therapist, to inspect the home set up. Alternatively, staff could be required to complete an appropriate checklist, supported by photos where applicable.
- The position should be checked/reviewed from time to time.

Two Key Employment Law Issues

There are many employment issues with dealing with these extra-ordinary times. I want to focus on two:

- **Redundancies and**
- **Variations to Employment Terms**

Redundancy

Under the old Wage Subsidy rules (for all applications made before 4.00 pm 27 March 2020, while employers were required to use their best endeavours to retain employees at least at 80% of normal pay, there was no express requirement to retain employees. Redundancy is therefore clearly an option under these rules if there are no other alternatives, e.g. agreeing on varied employment terms or taking annual leave or unpaid leave.

Under the new rules, employers must retain named employees for whom the subsidy has been received. Technically, this does not change employment law – an employer could arguably legally still make an employee redundant. However, a number of lawyers have said the redundancy is not an option during the Wage Subsidy period. If redundancy is possible as a matter for employment law, it would at least be a breach of the terms of receiving the Wage Subsidy grant.

In terms of the real world, a business may not be able to survive, and in that case, redundancy of all employees would be one circumstance where it simply is not possible to retain employees. There may be issues in that case, whether the employer should have sought the subsidy and whether there would be any obligations on directors to refund the subsidy or part of it.

As to not complying with the terms of the Wage Subsidy under the new rules, the declaration that's required from each employer requires them to agree to repay the subsidy, or any part of it, for which the employer doesn't meet the obligations for its use or for which the employer ceases to be eligible. It also requires the employer to notify MSD within five working days if any named staff end their employment.

It may be that if an employer makes any named employees redundant, provided that the employer repays the portion of the subsidy to the Government that relates to the balance of the 12 weeks for which the named employees were no longer employed, the employer would be acting consistently with that declaration.

If redundancy is inevitable, the proper procedure should be followed. One aspect of this is in consulting the employee before any decision is made and giving the employee a reasonable time to consider what is proposed and to raise queries, comments, and suggestions. Typically, an employee, when faced with possible redundancy, should have between 1-2 weeks to consider what is proposed and to respond. These extra-ordinary times might now allow normal "niceties" but shorter periods may be risky.

Variations

For many businesses, perhaps together with the issue of redundancy, this is the key employment law issue in these times. Many businesses will have had to consider variations to employment terms.

I know that many of my employer clients have had to negotiate with staff on variations. There may be a need to negotiate further variations.

Employers cannot under contract, and employment law unilaterally vary employment terms. However, some employment agreements may contain clauses allowing employers to vary some terms. Those clauses may be lawful, depending on how they are drafted.

Under the old and new rules, the parties can agree to vary employment terms – this is just basic contract law. In the present context, if, for example, retaining an employee on 80% of normal pay simply isn't an option, the parties could agree on different rates of pay, hours and/or duties. Provided that under the new rules, the employee receives at least the amount of the subsidy (or their normal pay if it's less than the subsidy). Note that the law relating to the minimum wage remains in place – employees must be paid at the not less than the minimum wage.)

An agreement could be reached on taking accrued annual leave or annual leave in advance, accrued sick leave, or unpaid leave.

With annual leave, if agreement cannot be reached, the employer can require annual leave to be taken on giving 14 days' notice. That requirement may have been a problem for some employers, particularly at the beginning of the Alert Level 4 lockdown where only a couple of days' notice of lockdown was given.

A point not understood by many employers (possibly partly because of the way that some payroll programmes work) is that annual leave entitlement accrues at the end of each 12 months of employment. Internal systems may show accruing annual leave during a year, but that is not annual leave – the employee has no right to take it, and the employer cannot require the employee to take it.

Employees would want to see that any variation is temporary. This could be tricky. Even when there is a move to Alert Level 2, it will take time for many businesses to gain momentum. One option may be to agree to review the agreed changes at a specified time and after that at set intervals, with a view to the parties reinstating the original terms as and when it would be reasonable to do so. In some cases, it may be possible to refer to a benchmark when reversion to normal remuneration or hours etc. could be resumed.

Where an employment agreement allows an employer to vary hours or duties etc. unilaterally, the entitlement should only be used after consulting with the employee in good faith and in acting fairly and reasonably. This may involve some form of restructuring, especially where more than one employee is affected.

Some employment agreements contain a force majeure clause. That may allow some flexibility, e.g. to enable an employer to require an employee to take annual leave or to suspend employees without pay, but much will depend on how the clause is drafted. No matter how it is drafted, the employer should act in good faith and fairly and reasonably. An employer would need to consider whether anything that they propose pursuant to the clause breaches the terms of the wage subsidy.

This article does not constitute any form of legal advice. You should consult a lawyer formally if you want legal advice.

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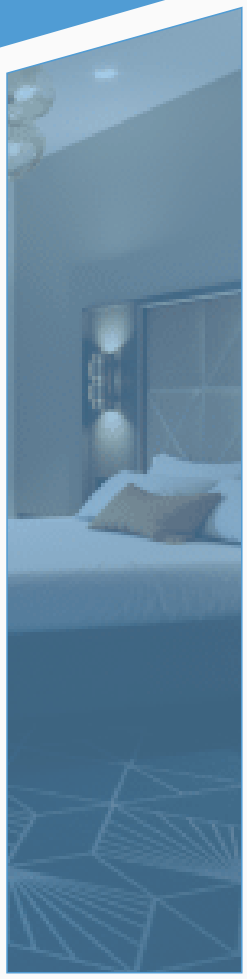
Support **Local**

In order to assist our local tourism industry in these extremely challenging and unprecedented times **Covisory has provided the following NZ company an insert in Connect Magazine free of charge.**

SARIN HOTELS

Dedicated to provide premium services to all our guests



New Zealand has always attracted tourists for its pleasant atmosphere, magnificent mountains and beautiful lakes. To cater the needs of tourists and local guests, there are many hotels providing hospitality services in the country. Prominent among these is a line of hotels which are called Sarin hotels. They are a part of Sarin Investments which is a family driven company established in 1996 in New Zealand.

The key promoter of the company is Raman Sarin who has worked with several internationally recognized 5 Star brand hotels and world class convention centers for more than 20 years at senior management positions before establishing Sarin Investments. He brought the wealth of knowledge and experience gained while working with industry leaders and established the company. He started operating it under the 'Quest Serviced Apartments' banner. With the kind of experience he had, success caught on soon from 3 to 5 properties and the company started growing steadily and with the upcoming 2022 it's going to be from 5 to 10 properties.

Presently, the company **owns and operates 5 Hotels**

SARIN
HOTELS

PROXIMITY
APARTMENTS

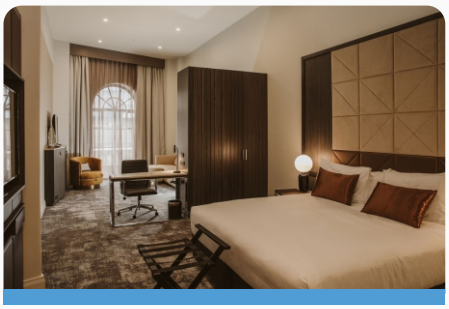
Auckland is a city of wonderful contrasts. It's a place to admire the most beautiful harbourside vistas, some epic volcanic cones and loads of parks, gardens and greenery. Proximity Apartments are positioned in prime locations within the very heart of Manukau city centre, offering homely comforts within minutes from Auckland airport.

Of all the Manukau Apartments, Proximity Apartments Manukau offers immediate access to the city's many restaurants, Westfield Shopping Mall, Government Offices, Rainbows End, Vodafone Events Centre (formerly known as TelstraClear Pacific) and the SkyCity Cinemas. If you are planning to visit Auckland make sure you check in with us we will do everything to make your holiday an amazing experience.

No trip to Wellington is complete without a visit to the incredible Museum of New Zealand Te Papa Tongarewa. While you discover great treasures and stories of this country, do not forget to make your stay happy with us at DoubleTree by Hilton Wellington. Situated across the famous Wellington Cable Car, this sophisticated hotel in the Central Business District is 7 minute walk away from Queens Wharf and a kilometer from the landmark pedestrian mall on Cuba Street.

It is well equipped with swanky rooms with contemporary décor, flat-screen TVs, minibars and rainfall showers, Wi-Fi access, suites with sofa beds, espresso machines and separate living areas. Some of the rooms have a beautiful city view. Room service is offered 24/7.

DOUBLETREE
by Hilton Wellington



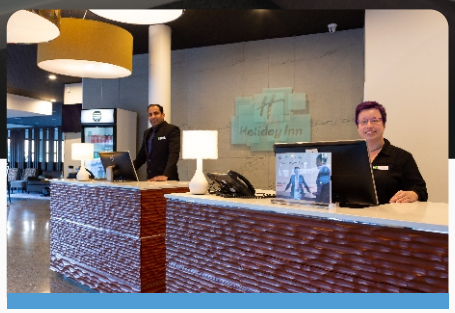
sarin.co.nz

SARIN HOTELS

HOLIDAY INN
Queenstown

The beauty of Queenstown is that it has four distinct seasons, offering a unique experience each time you come. Located towards the bottom of NZ's South Island, Queenstown the city alone is beautiful, set on the edge of Lake Wakatipu with views of the mountains at arm's reach. There is so much you can do here.

If you ever plan to visit this beautiful place, make sure you stay with us at Holiday Inn, Queenstown Frankton Road! Holiday Inn Queenstown is your home away from home. The modern contemporary hotel offers value and a wide range of facilities to provide the best experience which makes the travel better. It is just seven minutes drive away from Queenstown Airport and 10 min away from city center. Holiday Inn Queenstown offers 75 spacious rooms and state-of-the-art facilities.



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IBIS STYLES
Invercargill

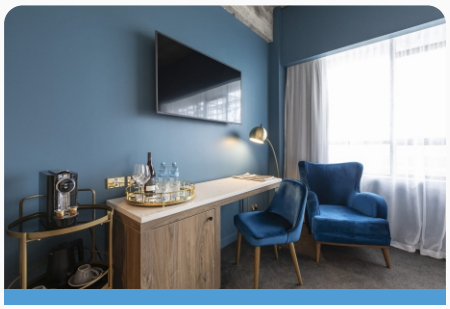
Invercargill is a beautiful city in Southland, filled to the brim with bars, restaurants and shops. It's an ideal vacation destination because there is a lot you can do in this warm and friendly town! Must visit Chiaroni Gallery, Oreti Beach with crystal clear waters and a gorgeous horizon, you'll be sure to fall in love with this wonderland!

Ibis Styles Invercargill is centrally located, i.e. it is only a couple of minutes away from cute cafes, restaurants and other popular destinations of Invercargill! It offers comfortable accommodation for corporate and leisure travelers. It provides amenities like well appointed and clean apartments complete with Kitchenette in each room, complimentary Wi-Fi, off-site Gym access, in-house movie theatre, games room, pool table, guest lounge and secure on site car park. So, what are you waiting for? Book a room at IBIS STYLES, INVERCARGILL at affordable rates and get great accommodation options based on your needs.

Christchurch is one of the world's most unique destinations, combining urban regeneration and innovation with heritage, culture and exhilarating activity. It is a place filled with beautiful attractions. It is widely known as New Zealand's Garden City and Hagley Park is a true testament to this title. It is the largest urban park in the city.

If you're looking to stay at Christchurch, the MUSE Hotel will prove comfortable and delightful to you. The hotel boasts a fusion of designer chic surroundings, expressive local art and luxurious comforts to provide each guest with a unique and exceptional experience during their stay. From our vibrant brasserie serving breakfast and lunch to the captivating corridors that guide you to your room, the MUSE is the inspiration that Christchurch has been waiting for.

THE MUSE HOTEL,
Christchurch



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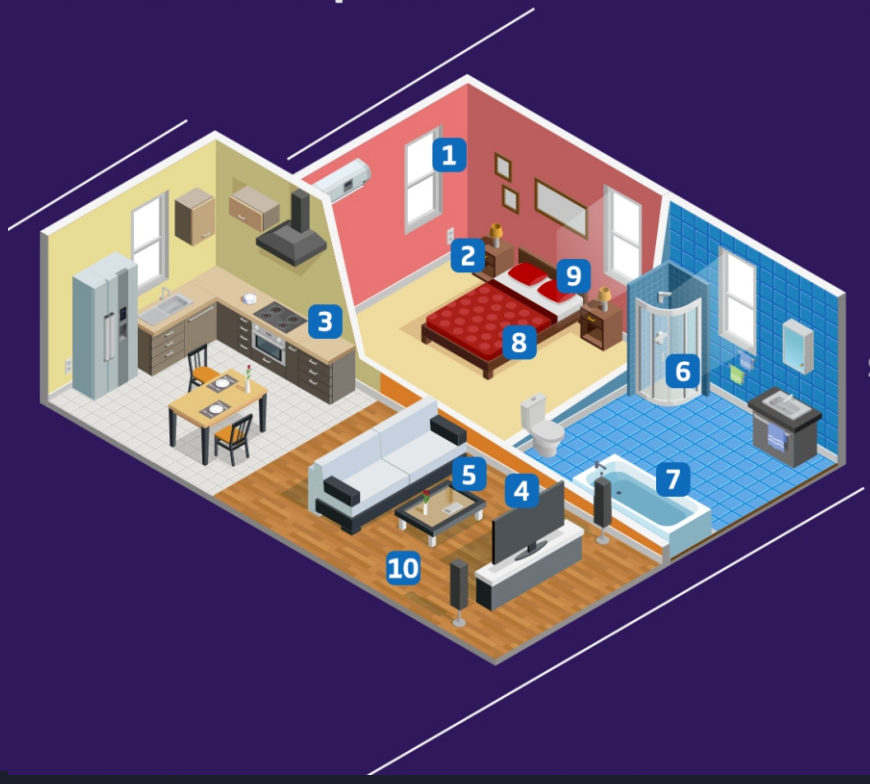
SARIN HOTELS

In the light of recent events, Sarin hotels have adopted WHO's guidelines of social distancing and disinfection of the hotel premises. Following measures are being taken to ensure the cleanliness and safety.

We are cleaning & disinfecting high touch areas for COVID-19 prevention.



1. Doors, Windows, Drawers
2. Switches - Lights, Lamps
3. Food & Beverages, Kettle, Coffee maker
4. Remote Control - TV, AC
5. Telephone - Headset & Dialpad
6. Bathroom handles - Shower, Toilet flush, Taps
7. Bathtub, Mirror
8. Furniture - Bed, Chair, Table
9. Curtain, Sheets, Pillow covers, Drapes
10. Carpet & Flooring

When a guest goes to a hotel room, he wants it functional and beautiful. He goes on a trip for an escape from his life and the stay should be the least of his worries. It is the hotel's responsibility to make him feel welcomed and safe. Sarin hotels were established on the same principles. So come out, chill in the hotel room watching TV, eat whatever you want and sleep till the afternoon because your hotel stay can be the best part of your vacation.

SARIN
HOTELS

THANK YOU FOR YOUR SUPPORT

We always look forward to serve you at our properties

sarin.co.nz

#a team connected

#your team

TAXATION, BUSINESS,
ACCOUNTING, TRUST'S, AML

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Covisory

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