

# Legal issues arising from Covid-19





# What we'll cover in this session

---

1. Releasing restricted and endowment funds
2. Trading companies in trouble
3. Borrowing, lending and security
4. Gift Aid: refunds and re-opening
5. The Corporate Insolvency and Governance Bill
6. Your questions



# Releasing restricted funds

## Key questions:

- What do you want to do?
- How big is the fund?
- For larger permanent endowment funds, where did it come from?

Third party involvement – Charity Commission and donors

Releasing capital	Changing purposes
<u>Gross income in last financial year did not exceed £1,000 OR the market value of the endowment fund does not exceed £10,000 OR neither:</u>  Statutory power available; Charity Commission consent not needed and no powers to object.	<u>Gross income in the last financial year did not exceed £10k:</u>  Statutory powers available; Charity Commission consent not required, but Charity Commission can object within 60 days.
<u>Gross income in last financial year exceeded £1,000 AND the market value of the endowment fund exceeds £10,000:</u>  Statutory powers available; Charity Commission consent not needed but can give directions, must consider and notify within 3 months. Donor’s wishes relevant.	<u>Gross income in the last financial year exceeded £10k:</u>  Charity Commission scheme likely to be required – more challenging

# Trading companies in trouble

---

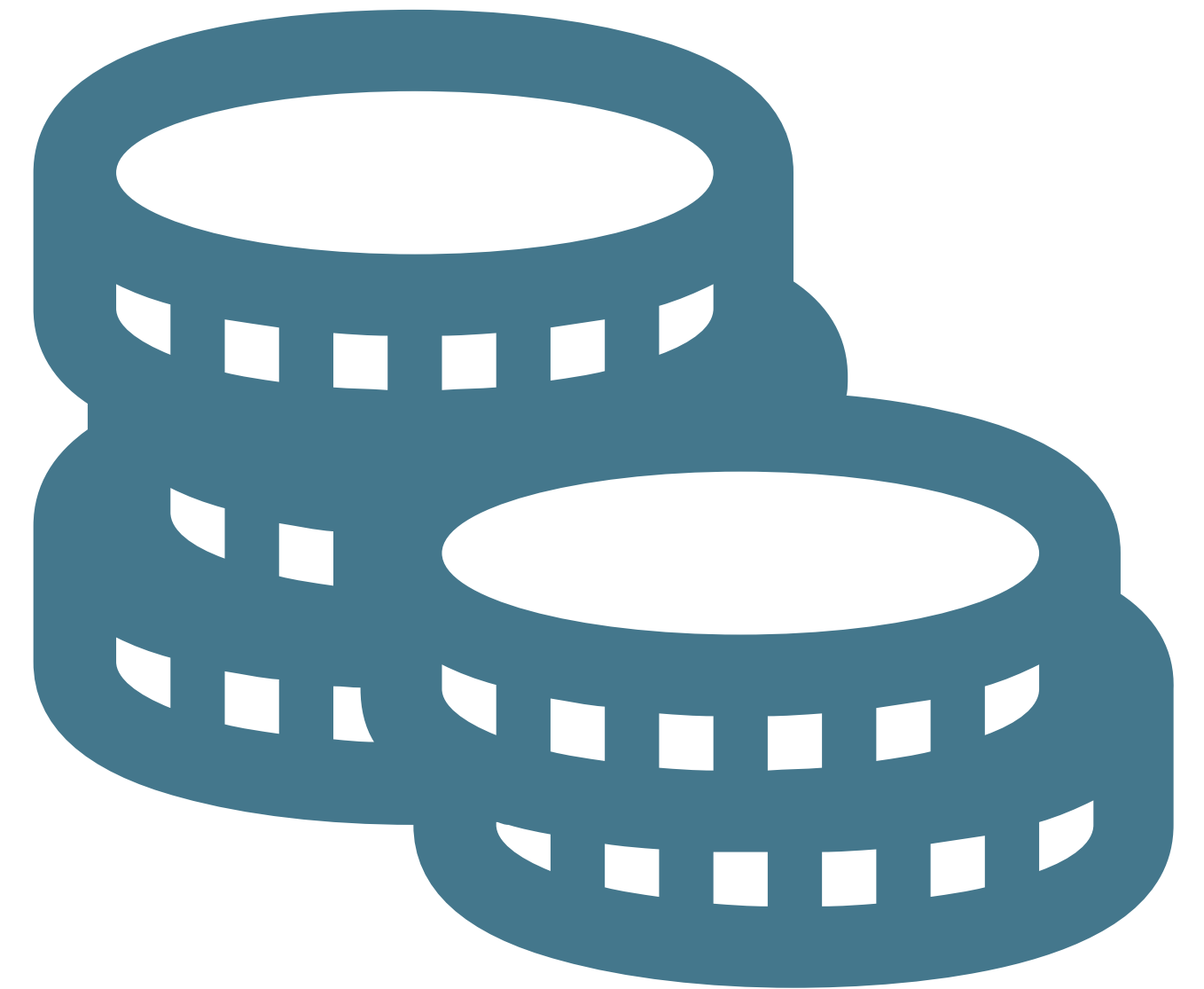
- General principle: mustn't sub a sub
- Look carefully at contractual arrangements:
  - Licence of premises
  - Loan finance
  - Social investment?
  - Bigger picture
- Company law member powers



# Borrowing, lending and granting security

---

- Borrowing
  - Lenders taking security – consider sections 124-126 Charities Act 2011
- Lending
  - Investment duties – does it stack up as an investment?
- Charity Commission guidance on decision-making



# Gift Aid

---

- Refunds?
  - Gift Aid payments
  - Commercial arrangements
- Member-only reopening?



# Governance aspects of the Bill

---

- Bill applies to Companies Act Companies, CIOs and bencoms
- Operative between 26 March and 30 September (the “relevant period” – can be extended)
- Mainly applies to members’ (i.e. general) meetings
- During the relevant period, general meetings:
  - Can be held, and votes cast, by electronic or other means
  - Grace period for AGMs until 30 September 2020
- General meetings can also be used to make constitutional changes



# Corporate Insolvency and Governance Bill

---

## INTRODUCTION

- The aim of the Bill is to “give companies breathing space and keep trading while they explore options for rescue”.
- These are initial thoughts on the Bill – subject to Change as the Bill progresses through the final stages in the House of Lords and it is seen how the law (once enacted) is implemented in practice.



# Corporate Insolvency and Governance Bill

---

## KEY PROVISIONS

- The Bill provides for:
  - a **moratorium** for companies giving them breathing space from enforcing their debts for a period of time whilst they seek a rescue or restructure (in a new Part A1 to the Insolvency Act 1986 (“**IA 86**”) and new Schedule ZA1);
  - a disapplication of the rights of a supplier to **terminate contracts** as a result of a company’s insolvency;
  - a new **restructuring plan** (in a new Part 26A to the Companies Act 2006)
- The Bill also provides for the **temporary prohibition** on **wining up petitions** and suspension of liability for **wrongful trading** to protect companies from aggressive creditor action and support directors to continue trading through the Covid-19 crisis.
- The Bill also permits the Secretary of State temporarily to amend corporate insolvency and related legislation for up to 6 months in order to to mitigate the effects of coronavirus. This power expires on 30 April 2021.

# Temporary Suspension of Wrongful Trading Provisions

---

## THE ORIGINAL ANNOUNCEMENT

- On 28 March, the government statement that “there will be a temporary suspension of wrongful trading provisions for company directors, to remove the threat of personal liability during the pandemic”, retrospectively from 1 March 2020.
- The purpose was to “give company directors greater confidence to use their best endeavours to continue to trade during this pandemic emergency, without the threat of personal liability should the company ultimately fall into insolvency”.



# Temporary Suspension of Wrongful Trading Provisions

---

## THE PROVISIONS IN THE BILL

- Assumption that directors are “not responsible for any worsening of the financial position of the company or its creditors that occurs between 1 March 2020 and one month after the Act comes into effect”.
- Time period for the assumption may be extended by up to 6 months or it may be ended earlier if it is clear that the pandemic is no longer having an impact on the business.

# Temporary Suspension of Wrongful Trading Provisions

---

## ANALYSIS

- Unclear how the courts will interpret this “assumption”.
- Wrongful trading remains in law and directors may still be found liable.
- Exemptions for financial services companies.
- Potential personal liability for trustees of unincorporated charities.

## OUR ADVICE FOR DIRECTORS/TRUSTEES?

- Trustees/directors should not change the way they act and should continue to monitor unrestricted cash flows and reserves carefully and seek advice as soon as possible where there are potential issues.



# In summary

---

We have looked at:

1. Releasing restricted and endowment funds
2. Trading companies in trouble
3. Borrowing, lending and security
4. Gift Aid: refunds and re-opening
5. The Corporate Insolvency and Governance Bill

# Questions and contact details

---



**Laetitia Ransley**

Associate

Charity & Community

+44 (0)20 3375 7152

[laetitia.ransley@farrer.co.uk](mailto:laetitia.ransley@farrer.co.uk)



**Nyla Yousuf**

Partner

Banking and Finance

+44 (0)20 3375 7549

[nyla.yousuf@farrer.co.uk](mailto:nyla.yousuf@farrer.co.uk)



Farrer & Co LLP  
66 Lincoln's Inn Fields  
London WC2A 3LH

+44(0)20 3375 7000  
[enquiries@farrer.co.uk](mailto:enquiries@farrer.co.uk)  
[www.farrer.co.uk](http://www.farrer.co.uk)

F&  
Co