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The Corporate Insolvency and Governance Act 2020 – How will this impact charities?

APPLICATION This note looks at the changes being made to the corporate insolvency regime and governance structure in the UK that have been introduced by the Corporate Insolvency and Governance Act 2020 (the "Act") and how they relate to charitable bodies.

1. The Corporate Insolvency and Governance Act 2020 – How will this impact charities?

1. This note looks at the changes being made to the corporate insolvency regime and governance structure in the UK that have been introduced by the Corporate Insolvency and Governance Act 2020 (the "Act") and how they relate to charitable bodies. Part A of this note applies to charitable companies, and the majority of the provisions also apply to CIOs. Part B of this note will apply to charities, unregistered trusts and educational bodies.
2. As a direct result of the Covid-19 pandemic the government have sought to ease the financial strain that many charitable bodies find themselves under. Not only have charities found that their finances and service delivery has been impacted, but they will also have had difficulty arranging their Annual General Meetings ("AGMs") in the usual way and if they are registered with Companies House. They may also be struggling to meet filing deadlines.
3. Broadly, the Act will introduce new corporate restructuring tools to the insolvency and restructuring regime in the UK to give charities the breathing space and tools required to maximise their chance of survival. The government have also temporarily suspended parts of insolvency law to support trustees/directors of companies limited by guarantee and charitable incorporated organisations ("CIOs") to continue operating a charity throughout the emergency without the threat of personal liability.
4. The government have also provided charities with temporary relief for company filing and annual general meeting deadlines. Hopefully this will provide charitable organisations with much-needed relief during this difficult period. Please see our other papers we have written to help your organisation during the Covid-19 pandemic. For example, our note outlining strategies that your charity may consider in order to bolster your financial resilience during the pandemic or on executing documents during the crisis. The documents are [linked from here](#).

PART A:

2. Insolvency Implications

1. The Act has introduced several measures to help charities avoid insolvency during this period of economic hardship and uncertainty. These provisions apply to charitable companies, and the majority of the provisions also apply to CIOs. The key insolvency provisions that will apply to charities are summarised below:
 1. Moratoriums, offering companies and CIOs breathing space from debt enforcement action so they have the chance to explore options for rescue or restructure;
 2. limiting termination clauses in supply contracts, to provide for continuity of supplies so companies and CIOs can carry on operating;
 3. preventing a landlord from exercising a right of forfeiture of a lease due to non-payment of rent during the moratorium period;
 4. temporary suspension of wrongful trading provisions from 26 March to 30 September 2020, allowing company directors and trustee directors of CIOs to continue operating a charity through the emergency without the threat of personal liability;
 5. temporary suspension of the use of statutory demands and a restriction on winding up petitions, where a company or CIO cannot pay its bills due to the coronavirus emergency;and
 6. support for viable companies struggling with debt to restructure under a new procedure - these provisions do not apply to CIOs.
2. The provision removing the threat of personal liability for wrongful trading faced by directors who try to keep a company afloat will only be relevant to charities established as companies under the Companies Act 2006, as the wrongful trading rules do not apply to other charitable structures in any case. It is also relevant to trading subsidiaries of charities.
3. Under the normal provisions, a trustee/director may be liable to contribute personally to the charity/trading company if at some point before the commencement of winding up they knew, or ought to have known, that there was no reasonable prospect of the company avoiding balance sheet insolvency. The Act has introduced the assumption that in the period between 1 March and 30 June a director, or trustee, is not responsible for worsening the financial position. Note however that the concept of a moratorium brings with it its own offences, as the company is under a greater degree of supervision by a "monitor" during the time that normal insolvency law is put on hold.

3. AGMs and other meetings

1. The Covid-19 pandemic has had a major impact on charity events and the government's public health advice has left many charities with no choice but to postpone or cancel their AGMs as well as other crucial meetings. The Act allows for some flexibility for CIOs and other charitable organisations, including provisions for the following:
 1. AGMs for CIOs, community benefit and friendly societies that were required to be held between 26 March 2020 and 21 August 2020 can be delayed until 30 September at the latest. This will

temporarily override the timing requirements in a charity's governing document.

2. The deadline of 30 September could be extended by the government if required.
3. AGMs for unincorporated charities are not covered by the Act but an alternative for trustees of these charities is to change the requirements in the governing document about their timing.
2. The Charity Commission (the "Commission") have stated that if neither of the options are available, trustees of any type of charity can decide it is necessary to cancel or postpone any meeting, but the decisions should be recorded to demonstrate good governance of the charity.
3. The Commission have also recognised the difficulty of face-to-face meetings during the pandemic and have asked charities to review their governing documents to see if there are clauses allowing meetings to be held virtually or by teleconference. Again, the Commission state that if there is no such clause, they "will understand but you should record this decision and that you have done this to demonstrate good governance of your charity".
4. The Act contains specific provisions in relation to members' meetings (not trustee / director meetings) of CIOs or charitable companies (as well as community benefit and friendly societies), held between 26 March 2020 and 30 September 2020 (pending a further extension if necessary):
 1. Members' meetings can be held by phone / video or other electronic means, even if the governing document requires them to be held physically face-to-face;
 2. Members still have the right to vote, but the charity can require this to be done electronically, or by other means (such as by post); and
 3. Members will not have the right to attend a meeting in person or participate in meetings other than to vote.
5. If planning to rely on these provisions, it will be essential to record the rationale for doing so in the minutes of the meeting as well as the actual decision. In addition, the normal requirements for the meeting such as quorum and any voting rights and record of votes must be met.

4. Filing Deadlines

1. If a charity is registered at Companies House, the government have introduced a temporary measure to extend deadlines for filing certain documents. This will help those charities that are registered with Companies House and that are currently struggling to meet these deadlines. The extensions include the following:
 1. Notifications to Companies House of changes to directors (or trustees) and secretaries and of the registered office (extended from 14 to 42 days);
 2. deadline for submission of accounts has been extended by three months (N.B. this may not apply if a company has already extended its accounts filing deadline. In addition, companies should also be aware that a deadline will not be extended next year if it falls on or after 6 April 2021);
 3. delivery of confirmation statements extended to 42 days; and

4. registration of charges extended from 21 to 31 days (except where the period has been extended by the court).
2. Companies House has produced further information and guidance on these provisions here. If in doubt, companies should contact Companies House rather than risk missing a deadline.

Part B:

5. The Act does not apply to all charities, unregistered trusts and educational bodies

1. The Act does not apply to all charities as certain charitable bodies have not been included in the provisions of the Act. For example, the provisions relating to temporary relaxations on AGMs and members' meetings do not apply to charities that are unincorporated such as charitable trusts, Royal Charter charities, charities incorporated under Part 12 of the Charities Act 2011, charities incorporated under statute (eg the National Trust) and unincorporated associations
2. The government's rationale for leaving out various charitable organisations is that the Act was an emergency piece of legislation that was fast tracked through Parliament. Therefore, in the interests of expediency, the government decided to cover the most common form of corporate charitable organisations (i.e. CIOs and companies limited by guarantee). They could therefore pass the Act without addressing the issue of the more complex charitable bodies that may have held up the passage of the Act.
3. Despite not being given the same direct assistance by the Act, other charitable bodies such as charities governed by statute or by Royal Charter should take some comfort from the words of the Commission. The Commission have released guidance in relation to Covid-19 stating that they will "take a pragmatic and proportionate approach where members' meetings need to be postponed or held virtually in order to comply with social distancing, even where this may appear to be contrary to the rules of the charity's governing document".

6. Final Thoughts

1. The Act provides some much-needed clarity to certain charitable organisations during this unprecedented period of uncertainty and financial difficulty. Companies House have provided extensions and clarified deadlines for filing certain documents.
 1. In addition, rules on how AGMs and other meetings may take place have been relaxed to allow for virtual meetings during the crisis. Clearly the Commission will also be acting in a proportionate manner towards those charities not covered by the Act if they make sure they can demonstrate in the minutes of their meetings why and how certain decisions have been made, along with a clear summary of the voting record. It is likely that the Charity Commission will be sympathetic towards these organisations.
2. Although the changes brought about by the Act will be helpful to a number of charitable organisations and provide relief and certainty, it is important to remember that many of these changes are currently temporary. It is difficult to tell whilst we are still in the midst of the crisis what the long-term

economic impact to the charity sector will be. Further government intervention may be required in the future if these temporary measures do not do enough to help struggling charitable organisations.

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