

Managing financial distress: *Theatres Trust*

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Today we want to provide an introduction to the following areas:

- Trustee duties and governance
- Commercial relationships, liability and contracts
- Trading and trading companies
- Funding issues and unlocking funds
- Insolvency and going concern
- Crisis decisions/options

And also do our best to answer your questions.

We are focussing on charitable theatres.

Governance in the current crisis

Good Governance and Good Decision Making will be vital in times of crisis

- **Trustee Duties:**
 - Advancing the charity's purposes
 - Public benefit (but what does that mean during a crisis?)
 - Protecting those to whom you owe a duty of care
 - Reasonable care and skill - not required to be perfect!
 - Acting in the interests of the charity (manage any conflicts)
 - Act in accordance with your governing document
- **Board Meetings**
 - Crisis team and subcommittees
 - Clear records and minutes
- **Charity Commission**
 - Note Serious Incident Reporting
 - Note its commitment to be flexible at this time

Commercial Relationships – liability and contracts

- Time to review contractual obligations (current and future) and what you want to achieve
- **STARTER CHECKLIST** of provisions:
 - Termination, suspension, postponement, delay, cancellation
 - Force Majeure
 - Description of Services, Obligations, Deliverables
 - Payments (how triggered?)
 - Change/amendment provisions
 - Liability, indemnity
 - General co-operation/goodwill
 - Frustration
- Speaking/writing to the other party – negotiations

Trading subsidiaries – quick reminder

- Why?
 - The profits of primary purpose trading are exempt from tax if they are applied solely for the purposes of the charity/non-charitable trading is not exempt
 - Subsidiary reduces tax bill/protects charitable assets
 - Tax efficient (gift up the profit/reduce corporation tax)
 - Ring-fences risk (contractual, liability, reputation)
 - Separate board with commercial focus
 - Creates unrestricted funding – jewel in the crown of mixed economy model
 - Greater freedom
- What?
 - Merchandise, ticket sales(?), shop, digital sales, catering, corporate sponsorship, corporate events, etc.

Trading subsidiaries during financial difficulty

- Seriously diminished trading income.. for now. Pivoting and creating new business
- No profit – leaving profit in the subsidiary?
- The role reversal: funding down from parent to subsidiary
 - Waiving payments
 - Loan/social investment/capital
 - (Grant for charitable purposes)
- Conflicts of interest?
- The duties of the subsidiary board in a crisis
- Preserving the subsidiary business model?
- Easier to shed part of the subsidiary business? (Funders, stakeholders, public presentation)

Funding Issues and Insolvency

- Time to review your income and expenditure
- Reviewing contractual obligations and speaking to counterparties and creditors
- Keeping in touch with funders
- Keep an eye out for Government announcements on financial rescue packages e.g. Government loan scheme
- Consider ways to reduce costs e.g. the Government's furlough scheme; asking for a rent/mortgage holiday
- Using your reserves
- Trustee Indemnity Insurance – important for trustees taking difficult decisions
- Examine unrestricted, designated and restricted funds (see later)

Designated and Restricted Funds

- Time to review and consider access to these funds
- Difference between designated and restricted funds
 - Designated funds can be undesignated and used for general purposes
 - Restricted – more complicated
- Power to change and release restrictions
 - Statutory powers under Charities Act 2011 – may need Charity Commission consent
 - Power in governing document (grant agreement/will)
 - Charity Commission Scheme

Insolvency

- Is the charity solvent?
 - Cash Flow Test
 - Balance Sheet Test
- Keeping on top of things and having the right information is vital
- Take appropriate professional advice
- Charitable Companies and CIOs must be aware of:
 - Wrongful Trading
 - Preferring Creditors
 - Transactions at an undervalue
- Covid-19 legislation
- Can consider other restructuring: mergers, collaboration

Going concern

“An entity is a going concern unless management either intends to liquidate the entity or to cease trading, or has no realistic alternative but to do so”.

Audit “going concern” situations when auditors sign off on accounts

- Going concern basis is appropriate: there are no material uncertainties
- Going concern basis is appropriate BUT: there are material uncertainties
- Going concern basis is not appropriate as the charity anticipates it will have to cease operating within twelve months

“If, at the date of approving the report and accounts, there are uncertainties about the charity’s ability to continue as a going concern, the nature of these uncertainties should be explained.” (SORP, paragraph 1.23)

Crisis decision-making

- <https://bateswells.co.uk/crisis-decision-tool/>

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