

As the business world deals with COVID-19, directors on company boards play a vital role in navigating through this crisis.

Key Things for Directors:

Be Proactive and Engaged

Now is the time for directors, including non-executive directors, to be proactive and keep in close contact with your CEO and senior management to fully understand the challenges posed to the business by COVID-19. There should be emphasis on ensuring the safety and well-being of company employees, other stakeholders and the public at large who engage with the company, but also to understand the main risks to the business. This will likely necessitate more frequent board meetings to be held by conference or video call. This proactive approach is necessary to support the business, bring independent commercial thinking and to discharge your duties as a director which include:

- to act responsibly in the conduct of company's affairs;
- to exercise the care, skill and diligence that would be exercised by a reasonable person with your expertise; and
- to have regard to the interests of the company's employees and creditors.

Most importantly directors must maintain a calm and constructive environment at board level and with senior management to promote effective decision-making in these challenging and stressful times.

Business Continuity & Employee Welfare

All businesses have had to hurriedly implement business continuity plans to keep all critical functions operational. Directors should receive details of these plans and consider whether they need strengthening.

Directors of businesses that remain open throughout this period (e.g. food retail or manufacturing businesses) should review the measures that are in place to ensure the safety of employees and customers and other persons coming on site.

Directors should ensure that World Health Organisation and government guidance on social distancing are followed, and that there are clear procedures seeking to exclude, from company premises, employees who are symptomatic or that have been exposed to actual or potential COVID-19 sufferers. Directors should also consider whether any further measures are needed in the circumstances of their own business such as protective screens or barriers to ensure appropriate distancing.

Directors should also seek assurance that the company is focused on the health and mental wellbeing of employees working remotely or employees who are unwell or self-isolating. There should be regular communication with staff working remotely to ensure continued productivity and to maintain staff morale and alleviate stress. For further guidance in relation to employers adopting home working practices see our briefing [here](#).

Understand the Business Risks

It is important that the directors obtain all necessary information to assess and understand the risks posed by the COVID-19 emergency and to discuss and test management's strategies for mitigating these risks. This includes steps being taken to protect cashflows and ensure viability throughout this period. In order to make these assessments it will be necessary to consider:

- **Finance Arrangements** - Directors should arrange for a board level briefing on the company's indebtedness and existing finance arrangements, including:
 - levels of credit already drawn, and credit available for drawing, under their financing arrangements;
 - key covenant terms (including financial covenants), continuing representations and default triggers such as material adverse effect provisions;
 - the company's near and medium-term liquidity needs and the availability of further credit, either from its existing funders or from alternative sources, including Government income support schemes such as the Employer COVID-19 Refund Scheme and the possibly availing of Revenue Commissioner initiatives to alleviate short term cash flow difficulties in the period. Click [here](#) for a summary of Irish Tax Measures announced in response to the spread of COVID-19.

Many companies are or will soon be facing liquidity issues and/or default, and we advise them to engage with their funders without delay to discuss available solutions. Those who do so early are more likely to get a favourable response from lenders.

- **Solvency** - If a company runs into financial difficulty and is unable to pay its debts in full as they fall due, directors must act to protect the interests of company creditors. Directors must not allow the company to continue to trade and incur further credit where there is no reasonable prospect of those creditors being paid. They can expose themselves to personal liability if they do so.
- **Review Material Contracts** - Directors should ensure that the company reviews its material contracts, particularly key customer/supplier arrangements, to check how the company's or counterparties' performance might be affected by COVID-19. The terms to focus on include events of default, termination, force majeure, frustrating events, indemnities and guarantees.

Force majeure clauses are particularly relevant in the current crisis and, depending on their wording, may allow a party that cannot meet its obligations due to unforeseen events to suspend those obligations or be excused from performing them. Click [here](#) for our briefing on force majeure and COVID-19.

- **Insurance** - Insurance policies should be reviewed to determine whether losses caused by COVID-19 are recoverable, when and how claims must be made to the insurer, and if additional cover is necessary/available. Also, D&O insurance should be checked to make sure this is in place.

Cyber Security and Confidentiality

With large numbers of employees working from home and increased use of online communication platforms, directors should ensure that appropriate cyber security policies are in place and that employees are regularly updated and reminded to be vigilant. There is evidence of cyber criminals trying to exploit the COVID-19 outbreak by increasing phishing and fraud attacks. Also, employees should be reminded of the need to keep business information and personal data confidential with appropriate security applied.

Evaluating Opportunities

For some companies there may be opportunities; consider the potential for transactions that may now be available due to changed circumstances.

Internal and External Communications

Check that HR and management have clear and continuous channels of communication with all employees. This is particularly important where large numbers of employees are working remotely to ensure proper engagement, compliance with company policies and good work practices as well as ensuring employee commitment and wellbeing throughout this stressful time.

The directors should help management to formulate the company's business continuity message to clients, customers, suppliers, regulators, shareholders and other stakeholders.

For public company announcements see below under *Publicly Listed Companies*.

Regulated Business

If the business is subject to specific or demanding regulation, consider whether procedures should be established for communicating with and seeking guidance from the applicable regulator.

Publicly Listed Companies

Listed Companies should disclose as soon as possible any relevant significant information concerning the impacts of COVID-19 on their fundamentals, prospects or financial situation in accordance with their transparency obligations under the Market Abuse Regulation.

Directors should ensure that the company provides transparency on the actual and potential impacts of COVID-19 in their financial reporting disclosures.

Corporate Governance

- **Board meetings** – The inability of directors to meet in person should not impede normal corporate governance. Indeed, the rapid pace of events and the need for timely decision making should increase the frequency of dialogue between directors. Irish law accommodates this by allowing for board meetings to be held by teleconference, video conference or by other electronic communication. In the rare cases where this provision has been disapplied in the

company's constitution, companies should consider changing their constitution to allow it.

Irish law also allows for a resolution signed by all the directors of a company instead of a physical board meeting (provided this hasn't been disapplied in the company's constitution). These written board resolutions can be circulated electronically, which provides a real time means of documenting key board decisions.

- **General Meetings** – Many companies are due to hold their AGM in the coming weeks and months. Those who are yet to send out their AGM notice should consider including text encouraging members to vote by proxy to avoid them having to attend in person and allowing for the AGM to be deferred if this becomes necessary.

Companies should check their constitutions to confirm the quorum requirements so that large-scale attendance by proxy will not result in the AGM being inquorate. They should also check if the company can hold a virtual or hybrid AGM, to allow members to fully participate in the AGM without physically attending. If the constitution does not allow the holding of a virtual AGM, the company might have to consider postponing its AGM or holding the AGM in two or more locations with each location linked by technology. Alternatively, if the AGM notice has already been sent, it may be appropriate to open the AGM as scheduled and (without proceeding to the formal business) immediately adjourn it to a later date.

- **Shareholders' Agreements' and Constitutions** – Shareholders' agreements and company constitutions often require a company's directors to keep key or institutional shareholders informed of key developments or actions proposed by its board. Directors should keep themselves informed of these requirements, particularly at a time where decisions may need to be made and implemented quickly.

Annual Return Filings

While companies still need to comply with their filing obligations, the Registrar of Companies has recently announced a minor relaxation of annual return filing deadlines to enable businesses and their financial advisers to focus on the more pressing and immediate financial challenges. All annual returns due to be filed between 20 March 2020 and 30 June 2020 will be deemed to have been filed on time if they are completed and filed by 30 June 2020. This is being kept under review and the 30 June deadline may be extended depending on the situation nearer that time.

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