

COVID-19: Business Continuity Guide for Governance Professionals

April 2020



Using this guide

Given these unprecedented times and the challenges we are all facing with COVID-19, we have prepared this practical guide to support you on all governance and company secretarial issues

We have been talking to many of our clients about the challenges of the continually evolving COVID-19 situation on their governance, transaction and compliance commitments as well as resourcing the increased burden of contingency planning/execution and crisis-management

With this in mind we have prepared this guide which contains the latest regulatory guidance and PwC insights. If you would like further advice or support on any of the governance and company secretarial issues, or with resourcing/contingency planning, then please contact Jonathan, Kate or any other member of the PwC team.



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While we are doing our best to update the information regularly, some information may not be 100% up to date and you should get in touch with any member of the PwC team to validate the latest status.

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Governance: supporting PLC Boards



Activity	Issue	Recommendation	Considerations
AGM	Physical AGMs are not an option	<ul style="list-style-type: none"> The Governance Institute have published guidance on the impact of COVID-19 on AGMs, which recommends that, whilst the “Stay at Home” provisions are in force AGMs are held with the minimum quorum necessary (in most cases 2 shareholders present in person or by proxy) See below regarding dividend payments Monitor the position of institutional shareholder voting guidelines, e.g. the Pre-emption Group has relaxed it’s guidance around share issuances to help capital raising, if required 	<ul style="list-style-type: none"> Focus on alternative methods of engagement with shareholders and other stakeholders, in so far as you are able, via alternative methods, e.g. social media, electronic communications and websites (see MAR considerations below) Further legislation is expected to allow greater flexibility around AGMs, but detailed provisions are not yet available
Market Abuse Regulations, Listing Rules, Disclosure Guidance and Transparency Rules	The challenge of meeting MAR requirements, both in relation to the impact of COVID-19 on the Company, as well as financial reporting, in a fast moving environment	<ul style="list-style-type: none"> Please see our COVID-19: implications for narrative reporting guidance Allocate responsibility for monitoring the impact of COVID-19 in light of MAR requirements to the Covid Committee (or equivalent) Revisit reporting timetables following the joint FCA, FRC and PRA statement which granted an extra 2 months to publish audited financial reports, if needed (3 months for AIM companies) Revisit dividend timetables now that dividend payments may be deferred for 30 days 	<ul style="list-style-type: none"> Consider and agree principles/materiality limits for what may constitute inside information at this time and keep those under constant review Ensure you are still able to access RIS systems remotely Hold regular conversations with adviser, brokers, lawyers etc about when MAR announcements may be required The FRC has also issued guidance around financial results and forward looking statements
Executive Committees	Executive Committees are meet daily in response to COVID-19, with governance teams being asked to support them	<ul style="list-style-type: none"> Allocate governance support for the meetings on a rota basis in order to spread the additional workload amongst the team evenly If the governance team is not minuting meetings, ensure the decisions taken at those meetings are recorded, in particular any discussion regarding the impact of decisions on stakeholder groups Ensure Executive Committee updates to the board clearly articulate where board approval is also required (see board meetings below) 	<ul style="list-style-type: none"> It will be critical to capture the s172 considerations and discussions There must be clear communication flows between ExCo and the board in order for the directors to discharge their duties Decisions impacting subsidiaries should be confirmed and ratified (if necessary) by subsidiary boards to demonstrate application and execution of s172 duty at subsidiary director level

Governance: supporting Subsidiary Boards



Activity	Issue	Recommendation	Considerations
Board meetings	Printed board papers are not an option	<ul style="list-style-type: none"> Distribute board papers electronically 	<ul style="list-style-type: none"> Either email board papers; or use an online Board Portal such as Diligent Boards (either licensed through Diligent or operated through PwC)
	Physical board meetings are not an option	<ul style="list-style-type: none"> Hold board meetings virtually e.g. Zoom, Google Hangouts Meet, Skype 	<ul style="list-style-type: none"> Ratification of decisions may be required if Articles do not permit virtual board meetings Circulate “ground rules” to directors and attendees ahead of the meeting. Ask attendees not to dial in until prompted on the day, in case agenda items are over-running. Ask Directors to feed any comments on the pre-reads to the Chair in advance so the discussion can be prompted, minimising the risk of “overtalking”
	Wet signatures on minutes are not an option	<ul style="list-style-type: none"> Sign board minutes electronically 	<ul style="list-style-type: none"> Use DocuSign or other electronic signature platform See electronic signing summary below
	Director is unwell and not able to attend board meetings	<ul style="list-style-type: none"> Appoint additional or alternate Director to the board to satisfy quorum or board composition requirements 	<ul style="list-style-type: none"> Consider the expertise required for agenda items and use deputy/alternate as appropriate
	Director unable to travel to the country of company’s tax residency to make decisions	<ul style="list-style-type: none"> Alternate or in-country Director to chair the board meeting Have an “in-country” Director lead the call where possible 	<ul style="list-style-type: none"> Ensure minutes accurately reflect the decision making process Consider local legal requirements in relation to residency of Directors Engage with Tax to ensure the tax position is also considered
Directors' Duties	Newly appointed Director may not have received training	<ul style="list-style-type: none"> Company Secretary to highlight key directors’ duties and key considerations to support decision-making 	<ul style="list-style-type: none"> It will be critical to evidence s172 considerations and discussions. The long term economic viability of the business may be a critical feature for Directors to consider New Directors should be made aware of what constitutes a principal decision. Management information should reflect these additional considerations as these will be reportable in the financial statements The government has announced temporary amendments to insolvency laws; close attention must still be paid to trading conditions when making decisions

Transactions: supporting deal execution



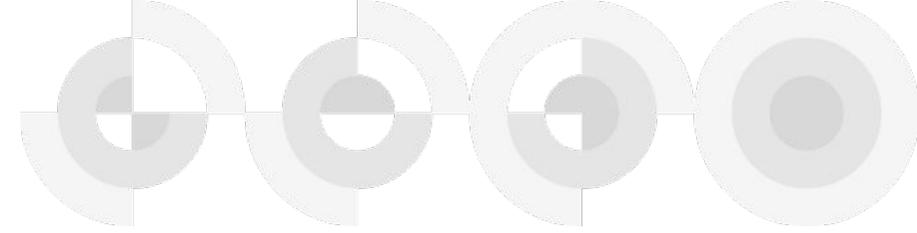
Activity	Issue	Recommendation	Considerations
Resolutions and other documents (e.g. Agreements, Stock Transfer Forms)	Wet signatures on resolutions and other documents (e.g. shareholder resolutions, POAs, Agreements/Contracts, Deeds) are not an option	<ul style="list-style-type: none"> Use email approval or electronic signatures for written resolutions where permitted by your Articles or convene a board meeting (see above) Use electronic signatures for all other documents 	<ul style="list-style-type: none"> Use DocuSign or other electronic signature platform Allocate responsibility for collating and filing the email signatures in the minute books See electronic signing summary below
	Ability to effect share transfers as HMRC Stamp Office is no longer accepting hard copy documents or cheques	<ul style="list-style-type: none"> For payment of stamp duty, stock transfer forms can be emailed (see below) and payments made via online bank account Stamp duty group relief applications can be emailed to HMRC at: stampdutymailbox@hmrc.gov.uk 	<ul style="list-style-type: none"> Please see further PwC guidance Companies House is accepting unstamped SH03 forms, if accompanied by an HMRC letter confirming the email application process has been used
	Ability to file documents with Companies House	<ul style="list-style-type: none"> File documents through a legal entity management system Register for WebFiling to file certain documents online Consider impact on timetables (e.g. same day filings are currently not available) 	<ul style="list-style-type: none"> Legal entity management systems such as Diligent Entities can be used (either licensed through Diligent or operated through PwC) Only Companies House Cardiff is still open, all branches are closed Same day filings are not being accepted so transaction timetables may need to be adjusted accordingly
	Director is unwell and not able to approve a written resolution	<ul style="list-style-type: none"> Convene a board meeting rather than using written resolution Appoint an alternate Director to authorise the written resolution Otherwise, ratify any decision taken by the remainder of the directors by written resolution, at a later date. 	<ul style="list-style-type: none"> Shareholder approval can be sought in lieu of board approval if required See electronic signing summary below for written resolutions

Compliance: keeping entities in good standing



Activity	Issue	Recommendation	Considerations
Confirmation statements and notifications	Ability to file confirmation statements and other notifications at Companies House within filing deadlines	<ul style="list-style-type: none"> File documents through a legal entity management system Register for WebFiling with Companies House 	<ul style="list-style-type: none"> Legal entity management systems such as Diligent Entities can be used (either licensed through Diligent or operated through PwC)
Statutory accounts	Ability to file statutory accounts at Companies House by filing deadline	<ul style="list-style-type: none"> Apply online to Companies House for a 3 month extension to the period allowed for filing accounts 	<ul style="list-style-type: none"> Engage with auditors early in order to avoid any further delay to the preparation of accounts. Hard copy accounts will need to be filed at Companies House Cardiff SAO filing deadlines, which are linked to Companies House deadlines, have also been extended
Registered office post	Ability to receive and action mail received	<ul style="list-style-type: none"> If a core team is present at the office, arrange for registered office post to be scanned and emailed to the Company Secretary 	<ul style="list-style-type: none"> Legal entity management systems such as Diligent Entities can be used to pre-empt any filing reminders by running a compliance report on subsidiaries
Minute books	Unable to insert hard copy minutes in the minute book	<ul style="list-style-type: none"> Keep your minute books in electronic form 	<ul style="list-style-type: none"> Legal entity management systems such as Diligent Entities can help with the storage of minutes that can be easily reproduced in electronic form
Company seal	Ability to apply the company seal to documents	<ul style="list-style-type: none"> Execute documents as a Deed where possible, using electronic signatures 	<ul style="list-style-type: none"> Some countries/embassies may still require the company seal to be applied See electronic signing summary below
Companies House Fees	Payment of fees	<ul style="list-style-type: none"> Use an online bank account to make payments to Companies House 	<ul style="list-style-type: none"> Contact Companies House to verify and confirm their sort code and account number and any specific reference you need to make against the payment.

Compliance: keeping entities in good standing



Activity	Issue	Recommendation	Considerations
Notarisation	Notary unable to physically attend to notarise documents	<ul style="list-style-type: none">Some Notaries are willing to provide electronic notarisation services if the Notary has met the person signing the documents previously.	<ul style="list-style-type: none">Contact your Notary first and you will need to agree the wording for the Notarial certificate in advance as this will differ from the usual wording you would expect
Legalisation / Apostille	Foreign embassies in the UK are now closed	<ul style="list-style-type: none">The Foreign and Commonwealth Office will verify the signature on any document if the signature is held on their database. You will need to send the document via email and they will issue an electronic letter confirming this.Currently there are no alternative arrangements in place to deal with Embassy closures	<ul style="list-style-type: none">Documents can be emailed to the Foreign and Commonwealth Office: FCO.SignatureCheck@fco.gov.ukDiscuss document requirements with the party requesting legalisation / apostille

Electronic signing summary



Document Type	Who Can eSign	Examples
In-person/telephone/video conference board meeting minutes	The chairman of the meeting	Meeting to effect: <ul style="list-style-type: none"> • board changes • approve statutory accounts • corporate delegations • corporate restructuring • business/asset transfer agreements, etc.
Written resolution(s) of the board	Written resolutions of directors can be signed by email approval, in addition to use of an electronic signing platform * All Directors must sign the written resolution **	Resolutions to effect: <ul style="list-style-type: none"> • board changes • approve statutory accounts • corporate delegations • corporate restructuring • business/asset transfer agreements, etc.
Written resolution(s) of the shareholder	Any Director of the shareholder	Resolutions to effect: <ul style="list-style-type: none"> • corporate restructuring • amendments to Articles, etc
Power of Attorney	Any two Directors or a Director and Company Secretary	
Corporate Agreements / Contracts	Any Director (subject to any restrictions on delegations / authorisations) ***	
Deeds	Any two Directors or a Director and Company Secretary ***	Any agreement/contract that explicitly states it is intended to take effect as a Deed (usually in the recitals and/or signature block)

We have also compiled an international summary of electronic signature requirements, please let us know if you would like to receive a copy of PwC's COVID-19 Practical Impact Assessment for Key Territories Guide

Electronic signing summary



Document Type	Who Can eSign	Examples
Confirmation statements and notifications to be filed at Companies House	Any Director or Company Secretary	Forms to register: <ul style="list-style-type: none">• director changes• changes to PSC• legal entity changes, etc.• confirmation statements
Statutory accounts	Any Director must sign the balance sheet and print their name, and any Director or Company Secretary must sign the Directors' report and print their name. The audit report must include the auditor's signature and their name must be printed	
International documents	Please let us know if you would like to receive a copy of PwC's COVID-19 Practical Impact Assessment for Key Territories Guide	

* Articles of Association can be amended to allow for approval of written board resolutions by email

** Special resolution could be adopted to dispense with unanimous consent requirement

*** The extent to which electronic signatures will satisfy the signature requirement in section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 is not explicitly dealt with in statute and the case law on the point has not been consistent. Therefore, property documents should continue to be signed in "wet-ink"

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