



COVID-19 - How Boards Can Still Meet Together While Keeping Apart

In the last edition of our **Directors' Guidance Series What You Need To Know When Organising Or Attending An Upcoming Meeting** we offered some practical recommendations to directors on the mechanics and usual practices of board meetings of Irish private limited companies. Who could have foreseen, that in such a short timeframe, the landscape would change to the extent that it has due to the COVID-19 pandemic? Who could have predicted that directors would have to navigate this uncharted territory where risk and business continuity decisions would need to be made carefully but quickly and together but physically apart?

In this note we re-visit the Guidance in light of the new challenges faced by directors during this pandemic crisis and focus in particular on how they can effectively deal with decision making when face to face meetings are not possible.

Directors may also need to think about alternative arrangements for their company's annual general meetings and this is considered separately in our guide to **COVID-19 Contingency Planning for AGMs**.

Here is a reminder of some of the board meeting considerations previously identified but which we now look at through a COVID-19 lens.

Notice

Directors should receive reasonable notice of upcoming board meetings. This notice can usually be sent by email.

Agenda

Similarly, the agenda, together with supporting documentation, can be sent by email. In setting its board agenda items, the board should, in the current environment, prioritise COVID-19 highlighting the main areas of impact and responses/actions. Although the COVID-19 crisis will be at the forefront of directors' considerations, they should still be mindful of the long term goals of the company and the interests of its shareholders.

How many directors must attend?

A quorum, being a minimum threshold of directors, is required to convene a board meeting. If the constitution of a company does not address board meeting quorums, then a quorum will be two directors (or one director in the case of a single-director company). It is important to note, however, that if the board of a company is making a declaration of solvency under the Summary Approval Procedure ("SAP") (provided for under the Companies Act 2014), then all or a majority of the directors of the company must attend the meeting at which the SAP is approved.

Different rules apply to the requisite number of directors in situations where the directors opt to make decisions by way of written board resolution instead of meeting (see paragraph on 'Written Board Resolutions – all directors on board?' below).

Dialling In

Travel restrictions and public health guidelines may now make it impossible for a quorum of directors to physically attend the meeting. Now, more than ever before, directors will wish to rely on meetings by phone or video link. The directors should however check in with their tax advisors in relation to any potential impact on the tax residence of the company holding meetings by electronic means. Absent any such issues and if the constitution of the company does not prohibit it (noting always that the constitution can be amended by shareholder resolution), modern technology will typically facilitate this means of meeting with ease. The requirement is that all persons participating can hear each other. From a practical perspective each director will typically confirm at the outset that he/she can hear and where applicable see, the others. A director participating in this way will be deemed to be physically present and count towards the quorum. Of course directors need to be mindful, when dialling in from an outside location, of confidentiality and take steps (if appropriate) to ensure that this is not compromised.

Deemed Location, Location, Location...

In a situation where directors are attending a board meeting remotely, it will be necessary to determine the location of the meeting. In the absence of any specific provisions in a company's constitution, board meetings are deemed to take place: (a) where the largest group of directors participating in the meeting is assembled; (b) if there is no such group, where the chairperson of the meeting is located; or (c) if neither (a) or (b) applies, in such location as the meeting itself decides. It should be noted however that although conducting directors' meetings electronically is a useful, flexible way to hold a board meeting, careful consideration will need to be given to the deemed location of the meeting. The actual location of board meetings can be important in determining tax residence for Irish tax resident companies wishing to maintain this status and for Irish incorporated non-Irish tax resident companies wishing to maintain non-Irish resident status. Recent [Revenue Guidance](#) on this in the context of COVID-19 is however also worth noting.

Written Board Resolutions – All Directors on Board?

Subject to the constitution of the company permitting written resolutions (and no other tax residency or other constraints), the directors of a company may opt to consider and approve items of business by way of a written board resolution instead of holding a board meeting. Given the absence of a meeting, each director should ensure that he or she is fully informed in relation to the business of the meeting and the decisions sought before signing the resolution. In the case of a written resolution, the signature of all directors (or their alternates) is required on the resolution. Counterpart written resolutions are usually acceptable. This is to accommodate situations where one or more directors is unable to sign the same piece of paper but it should be noted that the effective date of the resolution is the date on which the last director signs. The resolution can be circulated electronically but the document containing all the original signatures must be kept by the company in its minute book.

Do single-director companies need to hold board meetings?

In general, the director of a single-director company may approve items of business by way of written resolution.

Electronic Signatures

Board minutes and written resolutions can be signed electronically as opposed to by 'wet ink' signature but again the constitutional documents should be checked to confirm that there is no restriction on this. Similarly it should be possible for most of the documents to be approved by the board to be signed electronically but please see our note on the Use of Electronic Signatures for a more detailed analysis of this area.

Summary

In short, although some companies must hold physical board meetings due to specific requirements (legal, tax or otherwise) and in such cases must manage potential health risks by following up to date public health guidelines, there are alternatives available to directors of other companies wanting or needing to meet. Meetings via electronic means or the utilisation of written directors' resolutions can be helpful tools to assist directors in carrying out their duties, particularly in this very challenging environment.

Contacts

For more information and guidance on this topic or to discuss any particular governance issues you or your company are experiencing due to COVID-19, please contact [Pat English](#), or [Ursula McMahan](#) or your usual Matheson contact.