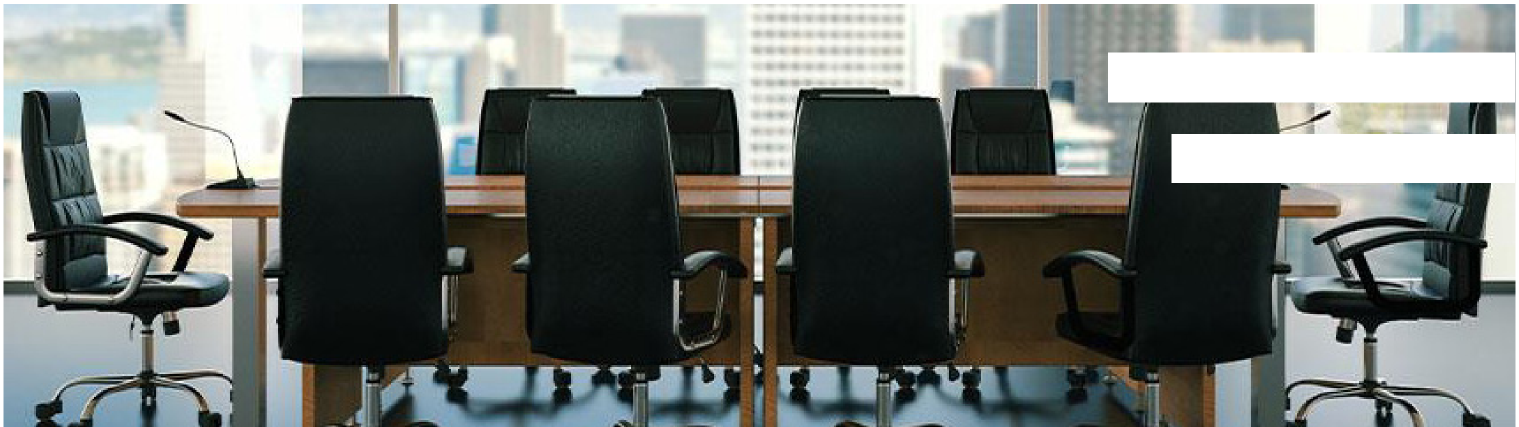


Board and Management Considerations in the face of COVID-19

Considerations

1. Focus on the 'S' but don't forget the 'E' and 'G'
2. Communicate Long-Term Vision
3. Review Impact on Audited Results
4. Consider Impact on Upcoming AGM
5. Specific Considerations for Boards
6. Management Team Contracting COVID-19

As global stocks remain at their lowest levels in years, deals are put on hold, dividends are postponed or cancelled and countries around the globe remain in lockdown amid the COVID-19 pandemic, what should Boards and management teams be thinking about in this unprecedented social and economic crisis?

At a time when routine investor relations events are cancelled and analysts and investors are scrambling to come to terms with the impact, we look at some of the key things that Boards and management should be thinking about over the coming weeks and months.

Focus on the 'S' but don't forget the 'E' and 'G'

As uncertainty is sure to linger for some time, and as companies implement business continuity plans; the welfare of all stakeholders must be a priority. No stakeholder is immune from the impact of this crisis, and management teams should take time to consider how the crisis is likely to affect each individual stakeholder group, and what action is necessary over the coming weeks to best balance the interests of – at times – those with competing interests.

During 2019, Environmental, Social and Governance ("ESG") issues came to the fore across capital markets, with investors viewing strong ESG as an effective means to mitigate risks while increasingly being capable of uncovering opportunities for companies. Due to their 'measurability', significant focus has been placed on both the 'E' and the 'G', with evaluations of the 'S' or 'Social' element presenting difficulties for investors and companies alike. In part due to these difficulties, some companies have been slower to embrace the 'S'; however, the current COVID-19 crisis has accelerated the importance (and perceived importance) of dealing with social issues and effective interaction with all stakeholders.

Health and Safety is a critical part of any company's social responsibility and as we face the most significant health challenge of our lifetime, Boards and management teams must ensure health and safety is a priority for all stakeholders. Not only does this mitigate risk for a business but also supports long-term success and protects from lasting reputational damage.

Over the coming weeks and months, emphasising the 'S' in ESG as a priority is something that all stakeholders, including investors, will be supportive of. In a recent article in the Financial Times, Peter Harrison, Chief Executive of Schroders echoed this thinking when he said:

"As representatives of asset owners, it is incumbent on us to ensure, for example, that well-intentioned help secures the future of employees rather than executives. Companies receiving support must demonstrate the strength of their social contract with stakeholders. If investors are demonstrating flexibility, company executives should do the same in how they treat employees, suppliers and customers alike. We will be watching closely and actively engaging where necessary."[1]

That said, the crisis will not absolve companies from failing to invest in the 'E' and the 'G'. If crises teach us anything, it is the importance of oversight and risk management. Blackrock, the world's largest asset manager, said recently that it would continue to target companies on governance despite coronavirus. Michelle Edkins, global head of BlackRock's investment stewardship team, said that Blackrock wanted to see continued progress on ESG issues despite the coronavirus and that demonstrating effective leadership in a time of crisis becomes ever more important.[2]

In what was a prescient update to the UK Corporate Governance Code, the Financial Reporting Council stated the following in 2018:

"Companies do not exist in isolation. Successful and sustainable businesses underpin our economy and society by providing employment and creating prosperity.
To succeed in the long-term, directors and the companies they lead need to build and maintain successful relationships with a wide range of stakeholders.
These relationships will be successful and enduring if they are based on respect, trust and mutual benefit."[3]

With certain businesses still recovering from trust deficits following the 2008 financial crisis, the COVID-19 pandemic arguably presents a far greater risk to companies' social license to operate, as economic upheaval is accompanied by a direct to threat to human life. How Boards and management react, and the role they play in turning society's fortunes around for the better is likely to be etched in memory.

Communicate Long-Term Vision

In a market bulletin issued recently titled 'Market Plunge: This is not 2008', Blackrock said: *"The virus shock's impact will likely be large and sharp, but we believe investors should be level-headed, take a long-term perspective and stay invested."*[4]

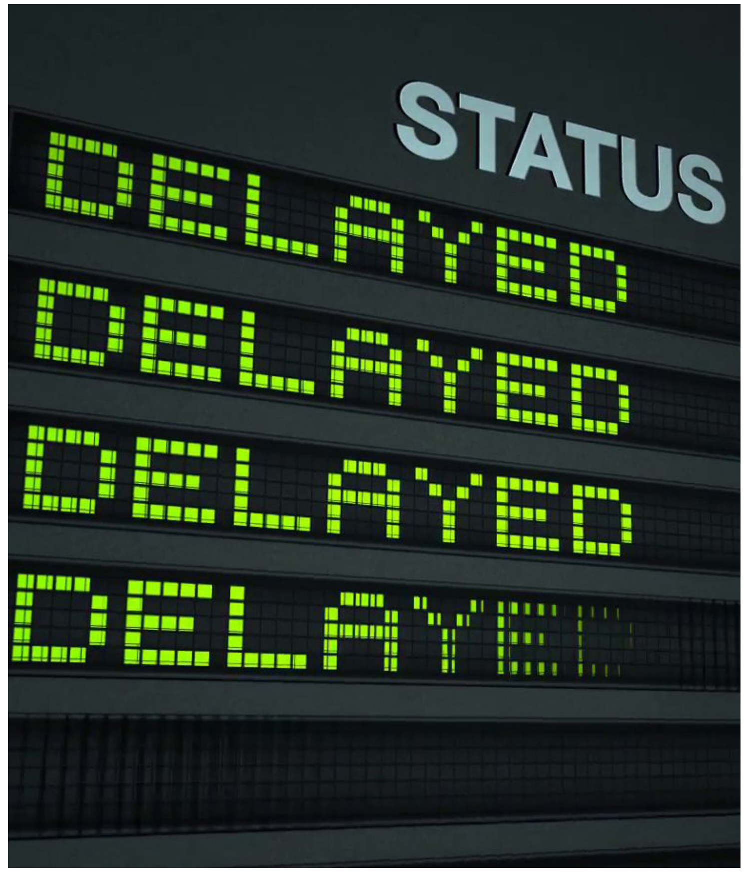
In the period ahead, it will be important for management teams to reassure investors that, notwithstanding near-term challenges, long-term goals have not changed.

Where possible, point to the depth and experience of management and robust fundamentals such as strength of your balance sheet, access to cashflow and available liquidity.

While we are in unchartered waters, there are some encouraging signs from China, indicating a slowdown in the rate of contraction of the COVID-19 virus. Businesses need to demonstrate to investors that while they are focused on mitigating the crisis at hand, their long-term vision, mission and purpose have not changed.

In the same bulletin, Blackrock also said: *"This is a time for investors to keep a long-term perspective. The ultimate depth and duration of the coronavirus' economic impact are highly uncertain, but we still believe the shock should be temporary as the outbreak will eventually dissipate and economic activity will normalize – assuming the needed policy response is delivered."*[4]

In a similar vein, Peter Harrison, CEO of Schroders commented in the same Financial Times article: *"Despite the intensity of events in the here and now, this is the time for long-termism. Schroders has survived many market crises over its 216-year history by following that philosophy. Our responsibility today is to ensure industries are supported, that they aren't engulfed by short-term turbulence. Long-termism must win out."*[1]



Review Impact on Audited Results

On 26th March, the UK's Financial Conduct Authority ("FCA") announced a series of measures for public companies to ease the burden in preparing the publication of Annual Reports and audited full year results.

Most notably, the FCA announced that due to the challenges faced by public companies and auditors, they are permitting a delay in the publication of audited annual financial reports from four to six months from the end of the financial year, and that the policy will remain under review as the situation evolves.

This follows a similar correspondence from the FCA on 21st March when they contacted companies who were due to publish preliminary financial statements in the subsequent 14 days and requested that they delay the publication for a period of at least two weeks.

Although this means companies have more time to prepare and consider the impact of COVID-19, it does not change disclosure obligations and investors must still receive timely information as appropriate.

The FCA are encouraging listed companies to review all elements of their timetable for publication: *"In order to make appropriate use of the time available within regulatory deadlines to ensure accurate and carefully prepared disclosures".*[5]

Consider Impact on Upcoming AGM

The latest guidelines implemented across Ireland and the UK in relation to social distancing are already having a significant impact on the 2020 AGM season. In what is arguably the most important meeting of the year for companies, and one which provides shareholders the opportunity to engage publicly with the Board and management team, the impact of COVID-19 means that companies now have to re-think the traditional format.

The following are the options available to companies:

- Delay convening the AGM, if notice has not yet been issued
- Postpone the AGM, if permitted under the articles of association (Articles)
- Convene and immediately adjourn the AGM to a later date
- Conduct a hybrid AGM

Some companies have already made the decision to postpone the AGM until a later, more suitable date. On 25th March for example, Irish Continental Group made the following statement:

IRISH CONTINENTAL GROUP

“Irish Continental Group plc announces that its Board has decided to postpone its AGM, originally scheduled to take place on 12th May 2020. All business normally conducted at the AGM, including the approval of the final dividend, will be deferred to the later date which will be advised to shareholders in due course.

This decision has been taken in light of the current and developing situation surrounding Covid-19, recommendations from public authorities, and consideration of the health and safety of shareholders, attendees and staff.”

glanbia

Glanbia, which is due to host its AGM on 22 April, provides another example. They plan to proceed with the AGM but issued the following advice to encourage shareholders to vote in advance by proxy and avoid attending in line Government and Health Authority restrictions.

"Glanbia considers the well-being of shareholders, attendees and employees as a top priority and we are closely monitoring the Coronavirus (COVID-19) situation.

Based on latest available guidance from the Irish Health Services Executive (“HSE”), we expect the Annual General Meeting (“AGM”) to proceed on 22 April 2020, but under very constrained circumstances, given the current restrictions on large public gatherings.

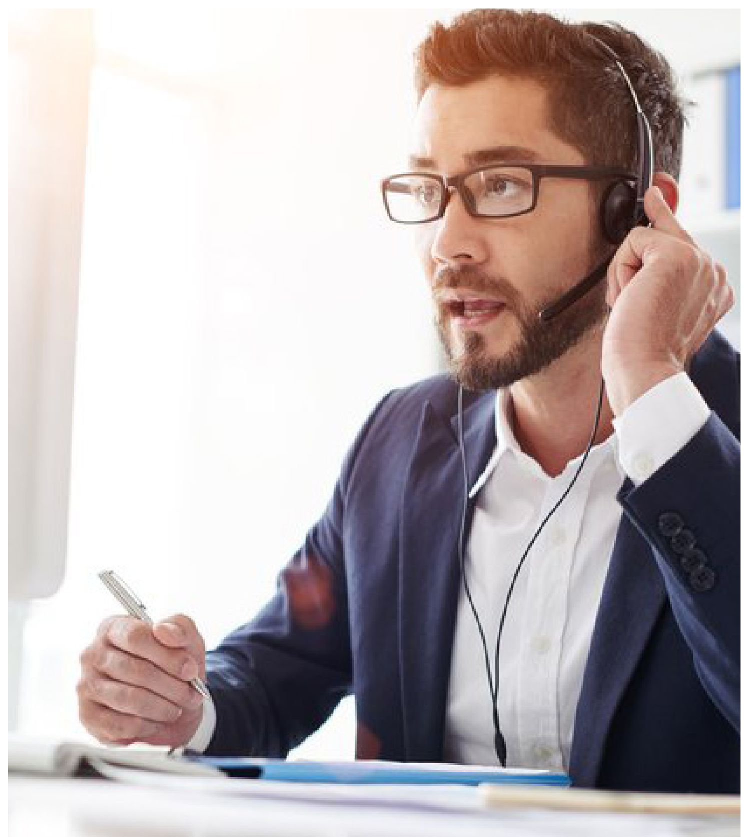
Given the health risks and the limit on the number of persons who may attend, we strongly encourage all shareholders on this occasion to submit their proxy forms remotely to ensure their vote counts at the AGM and minimise the need to attend in these unprecedented circumstances."

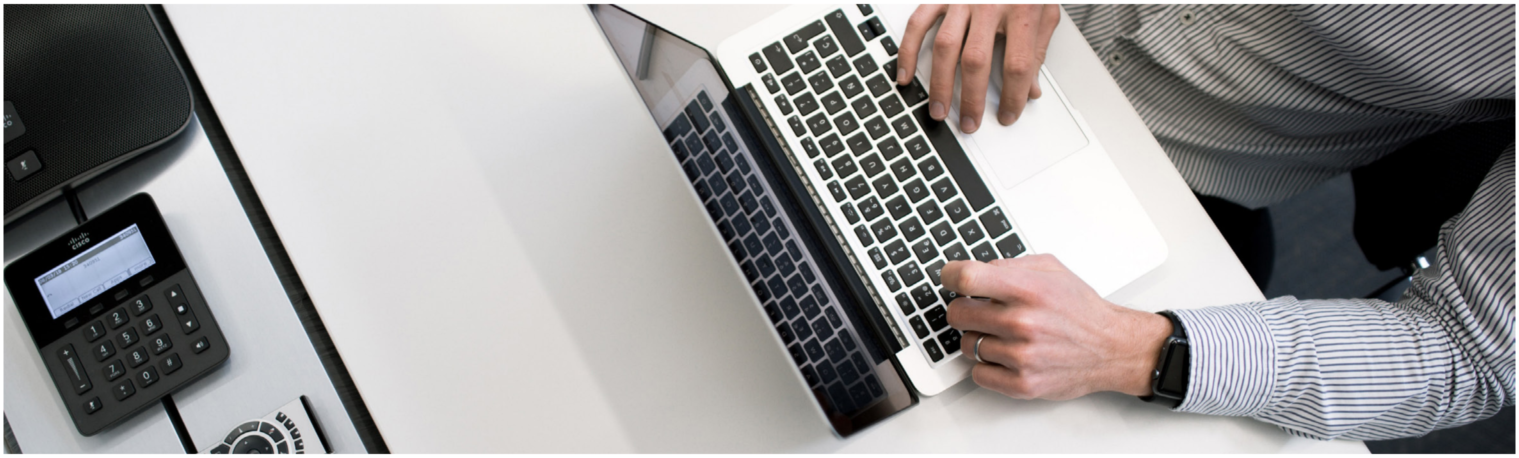
The course of action that companies decide to take will depend on a number of factors. If the Notice of Meeting has not yet been issued; companies can simply make the choice to delay convening the AGM. However, if the Notice of Meeting has been issued the AGM can be postponed once it is allowed for under the Company’s Articles of Association.

If going ahead with an AGM over the coming weeks, and in order to follow guidelines set out by the relevant authorities in Ireland and the UK, companies may decide to hold a hybrid AGM, if permitted under the Articles of Association.

A hybrid AGM is a combination of a physical and electronic meeting. This will involve hosting the meeting but the company would encourage shareholders to solely vote by proxy and organise for shareholders to participate electronically.

As the situation continues to evolve, companies will need to consult their legal counsel as they navigate the changing landscape.





Specific Considerations for Boards

While the above considerations are relevant to Boards as well as management teams, there are a number of additional specific items that Board's should be thinking about as the pandemic evolves, which may impact over the long term.

Over the last two weeks, we have already seen a number of approaches taken by companies across Ireland and the UK with regard to executive and Board remuneration packages, as companies look at ways to preserve cash flow. The scrutiny on Boards and Remuneration will begin during the 2020 AGM season and will ramp up significantly ahead of voting for the 2021 AGM season. As the pandemic develops, however, Boards and Remuneration Committees must already be considering whether action is required in light of current remuneration packages, targets and metrics potentially becoming obsolete due to extent of shocks to the economy and all businesses, with some sectors hit even harder than others.

What is feasible in terms of executive remuneration is likely to be hugely impacted by how other stakeholders, most significantly employees, are treated when Boards are determining their approach to protecting the business over the turbulent period ahead. For those looking to adjust targets downwards or employ discretion to make awards despite targets being missed, the challenge will be higher due to the number of companies implementing pay cuts. Just last week, the Prudential Regulation Authority in the UK communicated their expectation that no bonuses be paid.

One area that is likely to interest all stakeholders is the impact Provision 5 will have on Board decision-making over the next year. That provision provides that companies should use one of the following methods to ensure the employee voice is considered in Board decision-making:

— a director appointed from the workforce;

— a formal workforce advisory panel; and,

— a designated non-executive director

With job security at the lowest level in generations, the implementation of this provision executive pay decisions and the approach to employees and cost-cutting all have the potential to damage Board reputation.

Board succession and effectiveness are two other key considerations to take into account in the current climate. If one, or indeed a number of Director's fall ill, can the Board continue to discharge effective oversight? This is something that the Nomination Committee will have to think about seriously from an early stage and will be an important test of succession planning and Board renewal. Nomination Committees will also have to conduct a review of the external commitments of individual Non-Executive Directors in light of the significant increase in time commitments for each mandate over the past month. Investors and proxy advisors have consistently raised the issue of 'overboarding' as a substantial governance risk as, in times of crisis, one mandate may demand around the clock attention for Board members, particularly Chairs. Given that most businesses now find themselves in that situation, it may be hard to convince investors that those with full time jobs have also been able to discharge their responsibilities on the Board of another company during the pandemic.

Management Team Contracting COVID-19

If your CEO or another member of your senior management team tests positive for COVID-19, do you have an obligation to disclose this to the market? This is something that companies will need to consider over the coming weeks and months. On 12th March 2020, BT announced that Group CEO, Philip Jansen, tested positive for COVID-19, the company made the following statement:

"Philip Jansen, Chief Executive, BT Group has late this afternoon tested positive for COVID-19 and as a result has followed the Public Health England protocols to self-isolate. BT is now working closely with Public Health England to undertake a full deep clean of relevant parts of its Group headquarters and will ensure those employees who have had contact with Philip are appropriately advised.

Philip Jansen said: Having felt slightly unwell I decided as a precaution to be tested. As soon as the test results were known I isolated myself at home.

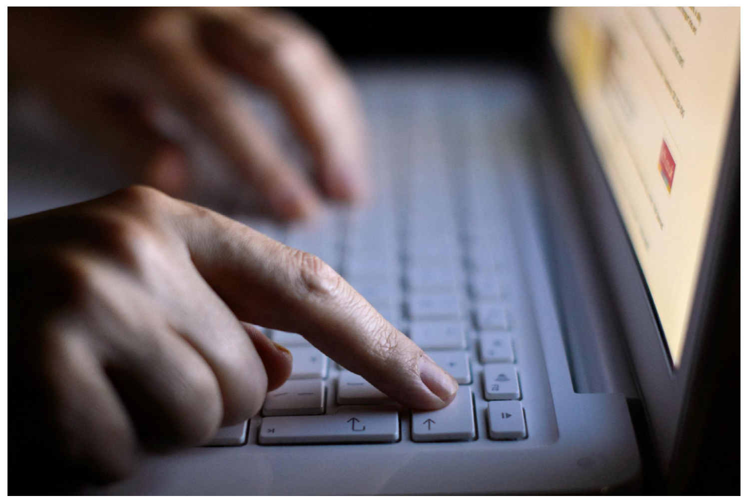
I've met several industry partners this week so felt it was the responsible thing to do to alert them to this fact as soon as I could. Given my symptoms seem relatively mild, I will continue to lead BT but work with my team remotely over the coming week. There will be no disruption to the business."

When BT made this announcement, the number of reported cases in both Ireland and the UK were at a relatively low level. Given that, as of now, the number of those becoming infected is accelerating across many countries, there may no longer be any need to disclose details of those affected unless it will have a material impact on the day-to-day operations of the business.

Announcing that a senior executive has contracted COVID-19 – in a circumstance where they are largely capable of discharging their day-to-day duties – may unnecessarily contribute to market concerns about a company's business continuity and prospects.

As history demonstrates, intense market shocks do subside, but it is likely that markets won't stabilise until the virus is contained and how long that will take is unknown.

A transparent, stakeholder focused, long-term approach will be critical as Boards and management teams look to weather the current storm.



[1] Harrison, P. (2020) 'Strong companies must be supported but not unconditionally' Financial Times, 24 March
[2] Attracta, M. (2020) 'BlackRock to target companies on governance despite coronavirus' Financial Times, 18 March
[3] The Financial Reporting Council, 2018 UK Corporate Governance Code, Preamble (page 1)
[4] Blackrock Investment Institute. (2020) Market Bulletin: This is not 2008, March 2020
[5] FCA. (2020) Statement of Policy: Delaying annual company accounts during the coronavirus crisis, 26 March

MELANIE FARRELL
Senior Director, Strategic Communications
FTI Consulting
M +353 86 401 5250
melanie.farrell@fticonsulting.com

PETER REILLY
Senior Director, Strategic Communications
FTI Consulting
M +353 87 316 8099
peter.reilly@fticonsulting.com

JONATHAN NEILAN
Managing Director, Strategic Communications
FTI Consulting
M +353 86 231 4135
Jonathan.Neilan@fticonsulting.com