



# The Changed and Changing Landscape for Directors - The New Reality

with Ken Casey, Partner and Head of Corporate  
Hayes solicitors

Morning and Evening Briefings Series: Kindly Sponsored by Mazars



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**The changed and changing  
landscape for Directors – the  
new reality**

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17 September 2020

# Overview

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## Introduction

1. Recent Company law changes and CRO Guidance
2. Directors' duties to stakeholders and ODCE Guidance
3. Holding effective Board meetings remotely
4. Data Protection and cybersecurity
5. Effective corporate governance and current trends
6. Brexit – recent developments

## Concluding comments

# 1. Recent Company law changes and CRO Guidance



- Company Law Act 2020 – effective from 21 August 2020



- Covers interim period to 31 December 2020



- Shareholders Meetings – standards for virtual meetings



- AGMs for 2020 may be postponed up to 31 December 2020



- Execution of documents – counterparts allowed where company seal needed




- Insolvency – Winding up and Examinership

# 1. Recent Company law changes and CRO Guidance

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Filing date extended to 31 October 2020 for Annual Returns  
due from 18 March - 30 June

Usual CRO services working well



CRO  
Guidance



Practical  
tips

- Virtual Meetings
- Changes to company Constitution
- Early Filings

## 2. Directors' duties to stakeholders and ODCE Guidance

Background common law duty



- Duties owed to the Company
- Where insolvency threat duties owed to creditors



2014 Companies Act

- Broader interests to be considered

2020 Companies Bill



- Express requirement in 2020 Bill to have regard to creditors

## 2. Directors' duties to Stakeholders and ODCE Guidance



- Duties owed primarily to the company
- Insolvency threat requires consideration of creditor and employee interests

Common law fiduciary duties



- Codifies 8 fiduciary duties
- Reiterates that duties are owed to the company alone
- Confirms that directors need to have regard to the interests of shareholders and employees
- Duties to company and creditors during insolvency threat remain

Companies Act 2014



- Concern as to the unexpected impact of Covid-19 and restrictions on companies' financial position
- Draft 2020 Bill extended duty for insolvent companies to have regard to creditors
- Duty left out of 2020 Act but under continuing review

Company Law Bill 2020

## 2. Directors' duties to stakeholders and ODCE Guidance

No particular legislative change required for Covid-19 impact  
– standard review of directors conduct on insolvency sufficiently flexible

Directors' genuine efforts and honest and responsible decisions and actions taken into account

Factors to be considered



ODCE Guidance



Practical  
tips

- Up to date information particularly on financial position
- Regular meetings
- Detailed review of risks
- Detailed minutes
- Take advice immediately if insolvency threat emerges



### 3. Holding effective Board meetings remotely



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Board  
engagement

Chairperson's central role



Remote oversight



Engagement



### 3. Holding effective Board meetings remotely



Sufficient Board packs –  
securely delivered



Opportunity to discuss with  
key executives in advance



Circulation in good time in  
advance of meetings



Opportunity for non-executive  
directors to meet remotely in  
advance



Clear notice and agenda



Communications technology  
and conduct/etiquette

## 4. Data protection and cybersecurity



### Data protection

- EU position
- GDPR
- Schrems II
- Data transfers - Data Protection Commission
  - Facebook
- Practical tips



### Cybersecurity considerations

- Identification of risks
- Risk oversight & management
- Ongoing review



### Implications for directors

- Need to ensure compliance
- Oversight – regular updates
- Board agenda item

## 5. Effective corporate governance in 2020



Chairperson



Non-executive directors



Nominee directors



Fresh  
engagement



Information flow



Risk oversight,  
management and control



Data and  
technology



Stakeholder  
engagement

## 5. Effective corporate governance in 2020



### Diversity

- Not just gender
- The reasons to do something
  - Better performance
  - Risk reduction
  - Investor requirement
- Do what you promise

### Trends

- UK / EU trends
  - Equality/equal pay
  - Diversity
  - ESG
- US Trends
  - Diversity
  - EESG
  - Stakeholders
  - Shareholder activism



### Practical tips

- Policies
- Regular Board review
- Broader engagement with Stakeholders

## 6. Brexit - recent developments



Key Dates

Status at  
September  
2020



Key  
Considerations



## Concluding comments

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- Company law changes and CRO Guidance
- Directors' duties to stakeholders and ODCE Guidance
- Holding effective Board meetings remotely
- Data Protection and cybersecurity
- Effective corporate governance and current trends
- Brexit





## **Ken Casey**

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“Ken Casey is a very experienced corporate lawyer across M&A and capital markets who gives clear, frank advice; His professionalism, experience, ability to take a holistic and balanced view of any situation, and clarity stand out.”

*The Legal 500, 2020*



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