



The Changed and Changing Landscape for Directors - The New Reality

with Ken Casey, Partner and Head of Corporate
Hayes solicitors

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The changed and changing landscape for Directors – the new reality

17 September 2020

Overview

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

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

Usual CRO services working well





- Virtual Meetings
- Changes to company Constitution
- Early Filings

2. Directors' duties to stakeholders and ODCE Guidance





- 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



- 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

Common law fiduciary duties

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



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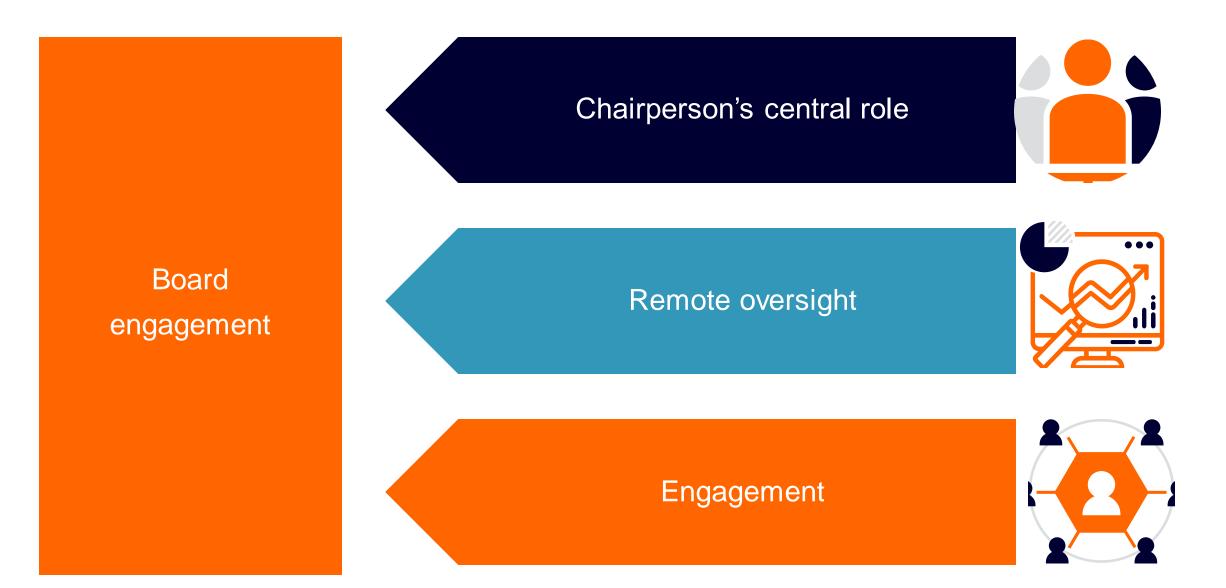
Practical tips

- 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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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



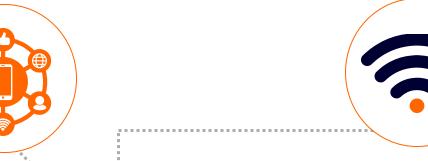


- **EU** position
- **GDPR**
- Schrems II
- Data transfers Data **Protection Commission**
 - Facebook
- Practical tips



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









Information flow







engagement

Risk oversight, management and control

Data and technology

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

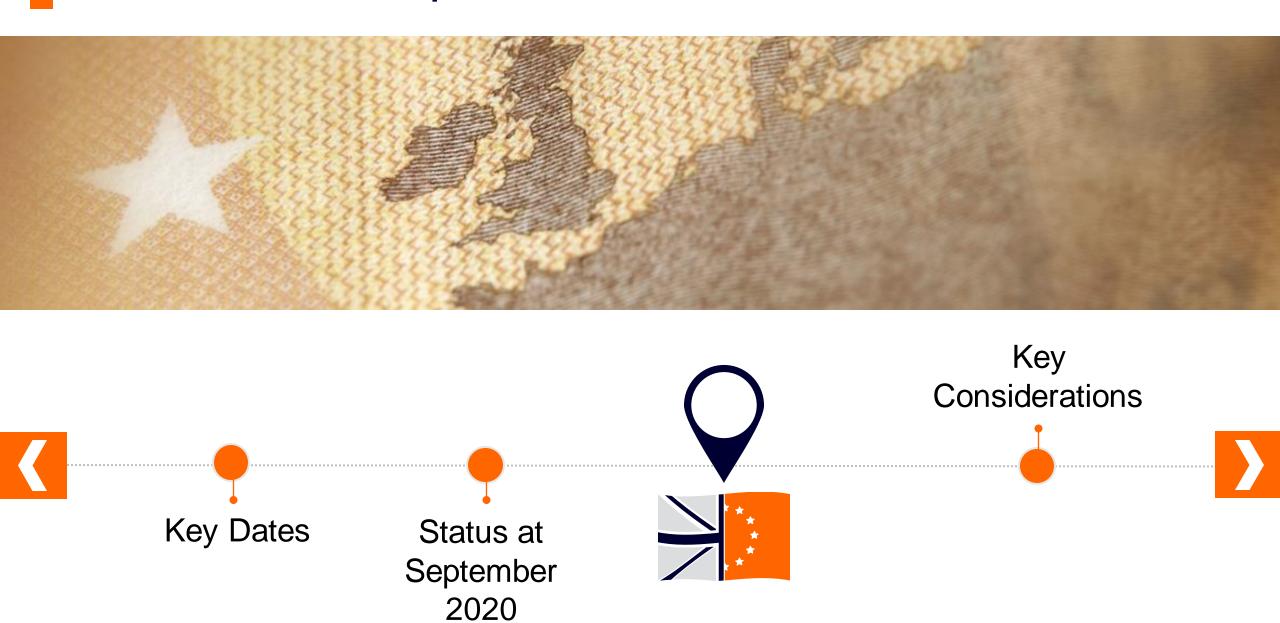
- **US Trends**
 - Diversity
 - EESG
 - Stakeholders
- Shareholder activism



Practical tips

- Policies
- Regular Board review
- Broader engagement with Stakeholders

6. Brexit - recent developments



Concluding comments

- 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 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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