

COVID-19

COVID-19: Business Continuity Guide for Governance Professionals

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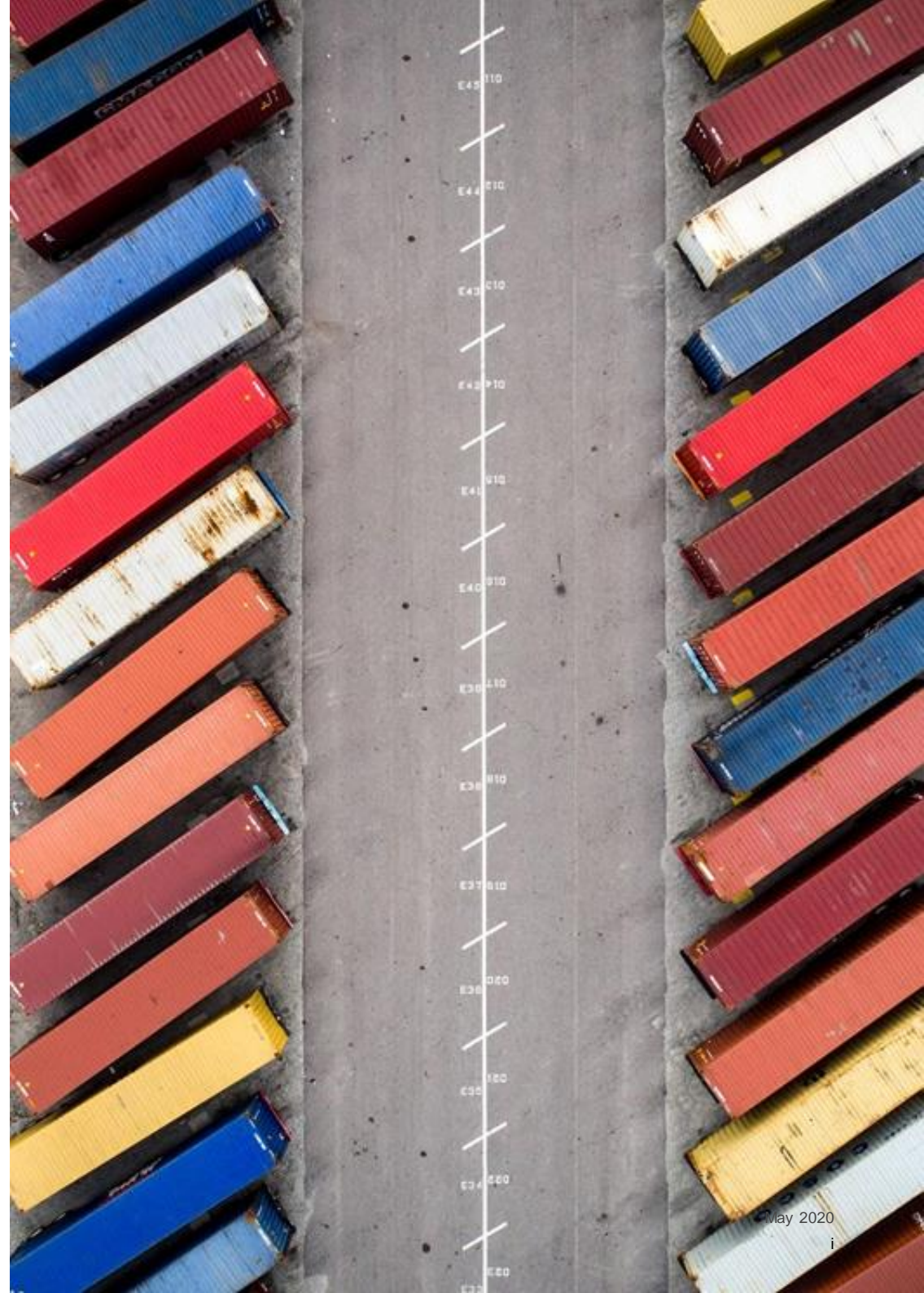
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While we are doing our best to update the information regularly, some information may not be 100% up to date and you should get in touch with any member of the PwC team to validate the latest status.



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Governance – Supporting PLC boards

Activity	Challenge	Recommendation	Considerations
Annual General Meetings (AGMs)	Physical meetings are not an option	<ul style="list-style-type: none"> See the Governance Institute's guidance on the impact of COVID-19 on AGMs, which recommends that AGMs are held with the minimum quorum necessary See below regarding dividend payments Monitor the position of institutional shareholder voting guidelines, e.g.: <ul style="list-style-type: none"> Pre-emption Group statement regarding share issuances to help capital raising Updated ISS Policy Guidance Investment Association Letter to FSTE350 and guidance on remuneration. 	<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 The FCA has announced modifications to the general meeting requirements under the Listing Rules.
Market Abuse Regulations, Listing Rules, Disclosure Guidance and Transparency Rules	The challenge of meeting Market Abuse Regulations (MAR) and Listing Rule requirements	<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 a reporting extension See FCA Policy statement on MAR requirements, general meetings and share issuances 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 Regulatory Information 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 s.172 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 s.172 duty at subsidiary director level.

Governance – Supporting subsidiary boards

Activity	Challenge	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
	Physical board meetings are not an option	<ul style="list-style-type: none"> Hold board meetings virtually. 	<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 digitally or electronically (see below). 	<ul style="list-style-type: none"> Either electronically sign the board minutes or use a digital signature platform See digital/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 directors 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 s.172 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	Challenge	Recommendation	Considerations
Resolutions and other documents (e.g. Agreements, Stock Transfer Forms)	Wet signatures on resolutions and other documents (e.g. shareholder resolutions, Powers of Attorney, Agreements/Contracts, Deeds) are not an option	<ul style="list-style-type: none"> Use either electronic or digital signatures for written resolutions where permitted by your Articles or convene a board meeting (see above) Use digital or electronic signatures for all other documents, as appropriate (see summary below). 	<ul style="list-style-type: none"> Either electronically sign the written resolutions or use a digital signature platform Allocate responsibility for collating and filing the email signatures in the minute books See digital/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 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 digital/electronic signing summary below for written resolutions.

Compliance – Keeping entities in good standing

Activity	Challenge	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"> Consider the use a legal entity management system.
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 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 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 (cont'd)

Activity	Challenge	Recommendation	Considerations
Notarisation	Notary unable to physically attend to notarise documents	<ul style="list-style-type: none">Some Notaries are willing to provide digital or 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 thisFrom 7 April 2020, the Foreign and Commonwealth Office have started offering a limited apostille service. Although documents may take slightly longer to process than normal, it is still going to be possibleCurrently 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.uk.Discuss document requirements with the party requesting legalisation/apostille.

Electronic and digital signing summary

Document type	Who can digitally or electronically sign	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 electronically or using a digital signing platform All Directors must sign the written resolution ²	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) ³	
Deeds	Any two Directors or a Director and Company Secretary ³	Any agreement/contract that explicitly states it is intended to take effect as a Deed (usually in the recitals and/or signature block).

An electronic signature is an electronic symbol attached to a contract or other record, used by a person with an intent to sign or alternatively a confirmation of approval (i.e. by way of an email). In contrast, digital signatures guarantee that an electronic document is authentic by using a digital signing platform. Both electronic and digital signatures are binding.

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 and digital signing summary (cont'd)

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.	

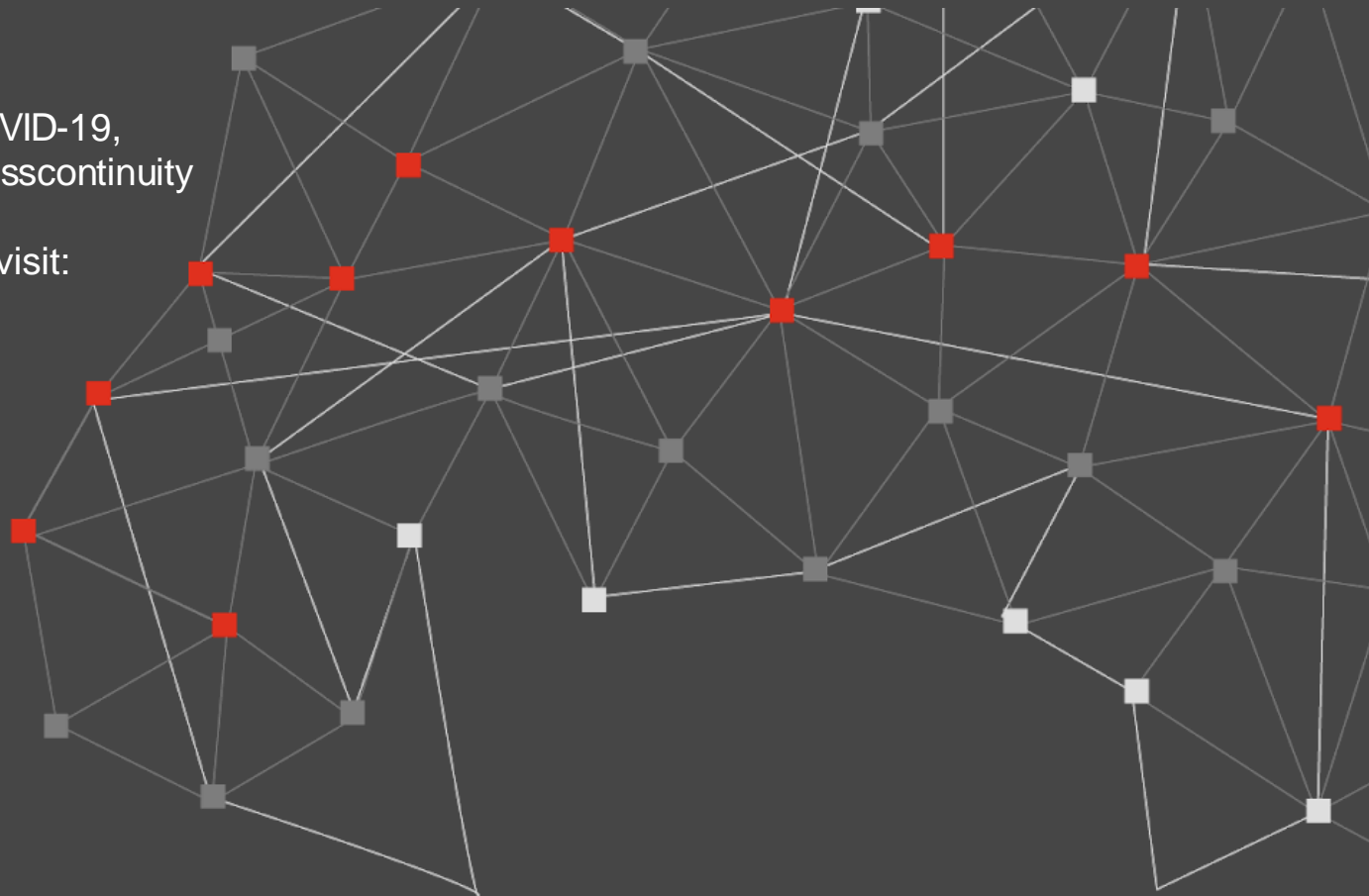
¹ Articles of Association can be amended to allow for approval of written board resolutions by email.

² Special resolution could be adopted to dispense with unanimous consent requirement.

³ 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'.

To find out how PwC UK is responding to COVID-19,
please visit: www.pwc.co.uk/COVID19businesscontinuity

For our latest insights and resources, please visit:
www.pwc.co.uk/COVID-19



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