



COMPANY SECRETARIAL AND CORPORATE GOVERNANCE

Compliance Agenda — March 2020

by **Colm Hanley**

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1st April 2020 | by Colm Hanley

We are delighted to publish the latest edition of our newsletter, Compliance Agenda. It contains a round-up of all the latest legal updates of interest to Company Secretaries, Company Directors and Compliance Officers.

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LK Shields Welcomes Senior Company Secretary Colm Hanley

We are delighted to welcome Colm Hanley to the firm.

Colm is a senior Company Secretary with expertise in company law, corporate governance, company secretarial matters, due diligence and client relationships.

He joins our [Company Secretarial and Compliance team](#) and is based in our Galway office, where he will provide company secretarial, compliance, and corporate governance support services to local businesses in Galway and the western regions. He is native of Mayo and will be a great addition to the firm as LK Shields continues to expand its team in Galway.

Colm is a qualified company secretary and trusts and estate practitioner with full membership of The Governance Institute and the Society of Trust and Estate Practitioners. Prior to joining LK Shields, Colm managed the overseas office of an Irish-owned trust and corporate service provider for over 8 years. He has 16 years' experience in the provision of company secretarial, company formation and compliance services both domestically and internationally.

LK Shields Establishes Crisis Advisory Team

To respond to the most pressing concerns faced by our clients, LK Shields has established a crisis advisory team spanning all affected disciplines. Furthermore, we have established a dedicated [COVID-19 and Business Continuity](#) special insights page to share all of our publications in relation to the myriad of issues and challenges that arise on a daily basis.

We welcome you to visit the COVID-19 and Business Continuity section of our website and [subscribe to our publications](#) to ensure you receive relevant, practical and actionable legal insights.

[Colm Hanley](#), Senior Company Secretary, have joined the crisis advisory team and are available to provide practical advice and legal insights to employers, business owners, directors, insurance providers, compliance officers, HR professionals and decision-makers faced with a crisis.

If you would like to discuss this further, please contact crisis-advisory@lkshields.ie.

COVID-19: Planning For Your AGM

As the situation with COVID-19 continues to evolve, Irish companies are advised to implement and test their business continuity plans in relation to their upcoming AGM with full regard to public health guidelines and restrictions.

This article will look at some of the precautionary measures that companies can take in the lead up to their AGM with a view to safeguarding the health and safety of their shareholders and employees.

Responding to COVID-19

Companies should make every effort to ensure that shareholders are informed of the Company's response to COVID-19 and make them aware of any decisions made regarding the AGM.

It is important that companies keep up-to-date with the latest public health guidelines and communicate with shareholders, as appropriate. The health and safety of shareholders and employees should be a priority.

AGM Notice

Irish companies must provide at least 21 clear days' notice for their AGM. Companies should consider the method of issuing notices and avoid sending notices from affected areas by post or other means that require "at-risk" physical handling at any stage of the delivery.

The AGM notice should be accompanied by an additional information leaflet such as the latest HSE leaflet outlining the steps to protect attendees and others from the transmission of COVID-19 at the AGM. This should include the company's response to COVID-19 with regard to the AGM such as availability of hand sanitiser, seating arrangements and other prescribed precautionary measures being implemented by the Company.

Minimise Attendance

In order to minimise the number of persons in physical attendance, the AGM notice should encourage shareholders to appoint a proxy or attend via telecommunications. In addition, the rules and procedures for electronic voting should be communicated clearly to shareholders within the notice.

Where an AGM notice has already been issued, an electronic follow-up communication should be sent to shareholders with the latest public health information and any related decisions by the Board of the Directors. Given the rapidly evolving nature of the situation, the notice should also set out how the company will communicate further updates.

Proxies

Subject to the constitution of a company, shareholders are entitled to appoint a proxy to attend and vote at the AGM. The shareholders may grant proxies to a small number of persons such as independent directors who may attend in person and vote on their behalf at the meeting. Shareholders may also be able to vote by proxy in advance of the meeting.

A form of proxy should be included in the AGM notice which includes contingency provisions should the appointed proxy not be able to attend at short notice due to travel restrictions, illness or as a precautionary measure.

The appointment of proxies should minimise the number of persons physically in attendance at the meeting.

In this scenario, shareholders may be invited to submit their questions in advance of the meeting. Companies should be aware that the meeting must still satisfy the quorum requirement and be held at a physical location.

Electronic Participation

Where a company's constitution so provides, shareholders may participate in the AGM by electronic means such as videoconferencing or via a web portal. This enables shareholders to participate in the meeting without attending in person and to cast their own vote without using a proxy.

As part of their business continuity planning, companies should be testing their telecommunications systems to ensure that they are reliable and can facilitate an AGM as well as remote working.

It is worth noting that the meeting quorum must still be satisfied, and the meeting must be convened at a physical location.

Dispense with AGM

Irish companies must hold an Annual General Meeting (AGM) once in each year, and not more than 15 months may elapse between AGMs. However, single-member companies and private limited companies may elect to dispense with holding a "physical" AGM while the spread of the COVID-19 pandemic continues. All shareholders entitled to attend and vote at such AGM may sign a written resolution dispensing with the requirement to hold the AGM.

Adjourning your AGM

A company's constitution will usually allow the company to change the date and location of its AGM if required. Many companies have already decided to adjourn their AGM until a later in the year and have communicated this to shareholders.

However, Irish companies which cannot dispense with their AGM must be mindful that no more than 15 months should elapse between AGMs. As there is still great uncertainty as to how long the COVID-19 crisis will last, companies should continue to monitor the situation closely with a view to adapting policies and procedures to allow the AGM to take place rather than to adjourn it. Ideally, the AGM will take place with the minimum number attending in person.

Companies should also be ready to adapt their conference policies according to the latest public health guidance and restrictions. For example, a small window of opportunity to hold meetings may arise and companies should be familiar with the provisions of the Companies Act 2014 that may allow for a shorter notice period of 7 days, subject to shareholder approval. In any event, all decisions that affect the AGM should be communicated to shareholders.

Understanding and communication are of fundamental importance. Many companies are faced with the predicament of a statutory obligation to hold an AGM within a specified time period and public health guidance avoidance of large gatherings.

Directors and company secretaries should work closely to ensure that they are aware of all statutory AGM requirements and the options contained within the legislation that may be utilised to hold the AGM.

The LK Shields Company Secretarial & Compliance team are available to provide practical advice and legal insights to business owners, directors, compliance officers, and decision-makers faced with a crisis.

For further coverage about business continuity during the COVID-19 outbreak, please visit our designated [special insights page](#).

COVID-19 and Corporate Governance

Since December 2019, the coronavirus (COVID-19) outbreak has affected every aspect of business for many companies and in doing so, has raised immediate corporate governance risks for many companies

globally.

Recognising the immediate and short term risks is front and centre for Boards. In addition, there are now medium and long term corporate governance concerns that Boards need to plan for.

The Board of Directors needs to anticipate and deal with queries and concerns from investors, employees, suppliers and other stakeholders who will now look to for guidance and assurance in such turbulent times.

We outline some key areas that the Board of Directors should consider.

The Board and Risk

How the Board is structured to address the crisis will be evident quite quickly. For example, is the current Risk Policy completely effective in this situation? If not, the Board should review, enhance and enforce the policy immediately.

Decision Making

Whilst Strategy is always a Board decision, immediate decisions may need to be made so as not to hinder the business. Should a committee of the Board be given authority to make decisions in time-sensitive situations?

Information flow to the Board

How will the Board ensure that the information they receive is correct, timely and not biased? Is the expertise available inhouse or should an external expert be engaged?

Communication

Communication will be key and the Board will need to ensure that communication to employees, investors, customers, supply chains and other stakeholders is clear and concise. Directors need to consider the impact on the performance of their company's business and the disclosures that may be required.

Financial considerations

Whilst last on the list, financial considerations are certainly not least. The Board of Directors has a duty to protect the financial position of the Company for those who have entrusted them with this responsibility, namely the shareholders. Directors need to ensure they are aware of these duties in full and ensure to abide by the relevant legislation especially in such fragile times.

The above is by no means a comprehensive list of the many responsibilities of the Board in a crisis situation and relevant factors change on a case by case basis.

The LK Shields cross-disciplinary business crisis advisory team are available to provide practical advice and legal insights to employers, business owners, directors, insurance providers, compliance officers, HR professionals and decision-makers faced with a crisis.

If you would like to discuss this further, please contact crisis-advisory@lkshields.ie or any member of our business crisis advisory team.

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Irish Companies Take Note: Annual Return Deadlines Extended Due To COVID-19

The Companies Registration Office ("CRO") have advised Irish companies that all annual returns due to be filed by any Company between now and 30 June 2020 will be deemed to have been filed on time if all elements of the annual return are completed and filed by that date.

The CRO have requested that all companies who are in a position to file annual returns as normal during this difficult period continue to do so.

At LK Shields, we have a cross-disciplinary business crisis advisory team who provides expert legal guidance on managing business interruptions such as COVID-19. To subscribe to their regular news and insights, please [click here](#).

Importance Notice Regarding Apostilling and Legalising Documents in Ireland

The Department of Foreign Affairs (“DFA”) has advised that, as a result of the COVID-19 pandemic, the authentications and apostilling Public Office in Dublin and Cork will close at 16:00 on Friday 27 March and will remain closed until further notice.

From Monday 30 March, all documents must be submitted by post to:

Authentication Section,

Consular Division,

Department of Foreign Affairs and Trade,

80 St. Stephen's Green,

Dublin 2,

D02 VY53.

Please do contact a member of our [Company Secretarial team](#) should you require assistance with legalising documents during this uncertain time.

Business Continuity: The Benefits of Outsourcing your Company Secretary

The company secretary plays a crucial role in any organisation, particularly during times of crisis and business disruption. A company secretary has statutory duties and their role is a key component of any business continuity plan.

If your company secretary is not functioning as normal due to COVID-19 or you are worried about any of the following on an ongoing basis, this article will discuss how you would benefit from outsourcing your company secretary:

- Meeting statutory filing deadlines
- Avoiding fines or other penalties
- Holding board and shareholder meetings
- Communicating with shareholders and other stakeholders
- Maintaining statutory records
- Cost-saving
- Winding up your business in a compliant manner

Do you need a Company Secretary?

Every Irish company incorporated under Companies Act, 2014 is required to have a Company Secretary.

Who can act as Company Secretary?

A company secretary may be an individual or a body corporate. Minors and undischarged bankrupts are

prohibited from act as company secretary.

Can a Director act as Company Secretary?

A director of a company that has more than one director may act as company secretary.

There are many small businesses across Ireland which have two directors, one of whom tries to fill the role of the company secretary. However, it is more than a clerical role and directors often find that trying to balance the role of director and company secretary has broader negative impacts on the business. It stretches resources, directors become distracted from strategic focus and commercial decision-making, and breaches of statutory duties inevitably occur as directors try to “wear every hat”. Statutory filing deadlines are not met, monetary fines are imposed and the business as a whole suffers.

I am the only director of my company. Can I act as Company Secretary?

Where a company has only one director, that person may not also hold the office of secretary of the company. In these circumstances, the director can engage a company secretarial services provider to fulfil the role of company secretary.

Duty to appoint a qualified Company Secretary

The directors of a company have a statutory duty to ensure that the person or entity appointed as company secretary has the skills or resources necessary to discharge their statutory and other duties.

Public limited companies (PLCs) must have a company secretary who has been a secretary for 3 of the last 5 years, is a member of a recognised body or appears to be capable of discharging their duties.

What does a Company Secretary do?

Duties are delegated by the Board. The company secretary is typically responsible for maintaining the constitution of the company and statutory records in accordance with the Companies Act, arranging and recording all meeting of the directors and shareholders, filing statutory notices, communicating with shareholders and other stakeholders, and any other responsibilities delegated by the Board.

Trying to sell your business?

A company's records may come under scrutiny as part of the due diligence process during a sale or purchase of the business or other transaction. Shareholders or government agencies may also inspect a company's records, so it is very important that they are maintained correctly by a qualified company secretary.

Why should you outsource your Company Secretary?

Business Continuity

An individual acting as Company Secretary may become ill, be affected by travel restrictions, remote working requirements or other unforeseeable circumstances. If you engage a company secretarial services provider such as LK Shields, you will have a team of company secretaries across different office locations looking after your compliance on a continuing basis.

A fully qualified company secretary will also be able to advise you on the best approach to holding board meetings and your AGM during the COVID-19 crisis.

Requirement to have a skilled Company Secretary

If you are a director of a company and you fail to appoint a suitably qualified or capable company secretary, you are in breach of your statutory duty to do so. By outsourcing this role to a specialist company secretarial provider, you can take comfort that you have fulfilled this duty as a director.

Corporate Secretary

Company secretarial providers often appoint a limited company to act as company secretary for their client. This provides limited liability in the case of breach of duty but also the company will have more than one director so documents can still be signed and services provided on behalf of the company secretary in the case where one individual is unavailable.

Cost-Saving

Many businesses in Ireland are already closed and there is great financial strain across the business sector. You might be considering cost-saving options for your business. Rather than employing a full-time company secretary, you can outsource to a company secretarial provider for a fraction of the annual salary cost.

Time Management

Outsourcing enables directors to focus on a company's key strategic goals and business growth.

Compliance

Having a specialist team of outsourced company secretaries ensures that you are aware of all filing deadlines, your company avails of the optimum filing timeframe, deadlines are met, penalties are avoided and statutory records are kept in good order in the event of inspection or should you decide to sell your business.

Specialist Advice & Support

It is important for the effective functioning of a Board that the directors receive comprehensive legal and administrative support. This can be provided by company secretarial specialists such as LK Shields. Directors are advised of their statutory duties and procedures are properly carried out.

Communication

Never has communication been so important to businesses than during COVID-19. Experienced company secretaries can assist you with timely and effective communication with shareholders, the board of directors, customers, suppliers, government agencies or other stakeholders. This includes disseminating the company's annual financial statements to shareholders and arranging the AGM.

Documentation

There are numerous statutory forms and declarations that are typically prepared, and often executed, by the company secretary. Having the skills and experience to prepare this important documentation is something that businesses often struggle with and it commonly outsourced for cost and time saving.

Closing your Business

Unfortunately, it is likely that many businesses will close permanently as a result of COVID-19. An experienced company secretary can advise you on the best approach to winding up your company and liaise with the relevant government agencies to complete the relevant formalities so that your company is closed in a compliant manner.

Outsourcing your company secretary is a cost-effective solution that businesses should consider adding to their business continuity plan. It provides for continuity in the role of your company secretary and enables your business to focus on its core strategic direction and commercial decisions while avoiding breaches of duty and statutory penalties.

The Company Secretarial & Compliance Team at LK Shields comprises of experienced qualified company secretaries in our offices in Dublin and Galway. We offer a comprehensive suite of company secretarial services which are provided in a solution-focused manner designed to save time and money for the client.

For further information, please contact Colm Hanley at chanley@lkshields.ie.

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