

## **Balancing Governance, Risk Management and Pragmatic Board Decision-Making in Challenging Times**

I don't imagine that any of us who are executive Directors or NEDs could have ever contemplated the business challenges we face today. Even those of us who were front and centre during the global financial crisis saw patterns then and had some warning as the magnitude of the financial implications of various financial institution failures rolled across the world over an extended timeframe.

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The situation is evolving so rapidly today that we hardly have time to absorb one set of government support measures before another one is announced. We have made rapid decisions about staff, suppliers, day to day operations and financial matters, in many cases driven by our respective government's decisions to lock down in varying forms, often on short notice and inconsistently across the world.

As Directors, our primary responsibility is to act in the best interests of the company and its stakeholders (shareholders, creditors/suppliers, debtors/customers and employees). In recent weeks, we have assessed the risks to our business of closing operations and furloughing staff or of maintaining operations to supply essential services. We have also created mitigation strategies to enable those decisions to run with the least amount of damage to our businesses and the wider stakeholder community within which we operate. We have guided and supported our wider community of stakeholders and in particular, our employees and management teams.

Now it is time to reflect on corporate governance and risk management from a Board perspective. As Directors and Boards, we have all made numerous rapid-fire decisions. Six months or a year from now, we may not remember the specific details of why we made those decisions. From a governance perspective, documenting in detail the rationale for those decisions, and the related risk mitigation strategies will be critical to ensure we can show that we have acted in the best interests of the company, and met our statutory duties as Directors.

Having taken advantage of the various government schemes available to support our business, we need to consider the short and long term financial health of the business. We may be concerned about whether the company is a "going concern" until we can get back to a more sustainable business model. We may even be worrying about whether we could be found personally liable for the business if, in the future, it is deemed to have traded fraudulently during the crisis.

If you haven't already, now is the time to look to your local government agencies, law and accounting societies, Institute of Directors, regulators and law firms, to see what guidance is available for you. Many regulators and tax authorities have redefined the definition of fraudulent trading during this crisis,

and offer detailed advice online to support you and your Board. You may also be concerned about residency issues, for Directors and for your companies, where you operate in multiple jurisdictions and can't be there to hold Directors meetings in person. Tax authorities have also set out detailed guidance in this area, and including this information in your decision-making documentation process is an ideal risk management step.

Having dealt with the immediate requirements and focused on specific governance and risk management documentation, we should now look strategically again. As Directors, we should be reassessing strategic plans for the business to determine how they need to evolve to meet the "new normal" of business operation. It may be that the business focus needs to pivot to meet the new requirements to do business, or that we need to embrace new or more technology to support the new business model. We may even require additional skills on the Board to support those strategic decisions.

In all of this, we need to remain pragmatic. This new reality is something no one in business has seen before, and as Directors, we need to balance the needs of our stakeholders with appropriate governance and risk management. We won't always make perfect decisions, but if we are considered in decision-making, take advantage of guidance available, and document how and why we made those decisions, we'll have done our job. In 20 years, people will be more interested in how we guided the business, not whether it took precisely the path we planned.