

Webinar for directors with responsibility for organisational effectiveness ("OE Directors") – advice on Covid19 related issues.

15/04/20 4pm

Moderator:

Alison Manley (Goodbody Fund Management)

Panellists:

Declan O'Sullivan (Dechert)

Dr Margaret Cullen (CIFDI)

Eimear Cowhey (Independent Director)

This webinar was designed to be an informal discussion and to encourage collaboration amongst the panellists and viewers.

1. From a regulatory perspective, what is the CBI thinking about at the moment?**Declan:**

- The effectiveness of organisational arrangements of the management company or fund must be kept under ongoing review. It is a subject of debate whether this competence sits at board level, chairman level or director level. What is not up for debate is that the organisational effectiveness of most management companies and funds is being challenged. As this was also challenged during the financial crisis and regulatory initiatives such as the CP86 process resulted, most management companies and funds were in a pretty good position coming into lockdown.
- The CBI hasn't issued direct and explicit guidance but has asked funds and fund boards to look at their own constitutional framework for answers. ESMA also recently issued guidance encouraging regulators to take a more relaxed approach re issuing financial statements. This suggests there will be some leeway given and the CBI may take a similar approach.
- There has been an FAQ re attendance at board meetings. The Irish Funds corporate governance code requires that a director physically attend at least one board meeting a year. The issue in respect of the tax residency of a fund however, may prove to be more problematic. HMRC has said they will be more lenient with this requirement. However, in absence of such guidance in Ireland, if travel restrictions are prolonged the restructuring of boards may need to be considered. Board meeting minutes should record covid-19 as the rationale for virtual attendance where applicable and should also try and note the dynamic of the meeting.
- From a CBI perspective, constructive challenge was the linchpin of CP86 but is much more difficult to achieve when done remotely. For that reason, we would encourage board meetings via video rather than telephone call.

Eimear Cowhey: (Re Virtual Board Meetings, Eimear is OE for 4 different companies)

- Have been pleasantly surprised in practice that board meetings via Zoom, etc. have been so much more communicative and dynamic than a conference call. It is interesting to discover how much better it is to see other board members and to use chat features to communicate during meeting.

- Board meetings have been much better when they're kept short. The OE must ensure board and delegates are acting effectively. It is imperative to work with the management company and asset manager to hone the agenda and note what can be taken as read, etc.
- There has been an increase in the frequency of meetings covering liquidity matters, property fund specific issues etc.
- CP86 has been shown to deliver good results and has improved robustness of policies and terms of reference of committees. Therefore, most organisations are well set up for this crisis.

2. What role should the OE be playing?

Margaret

- Believe in collective responsibility. Boards should be engaging together. The role of chairperson is critical. The OE plays a pivotal role ensuring the board is operating in an effective way. During the crisis it is important to look at how outsourced activities are being overseen and to echo Eimear's point, the Board must ensure they are focussing on the right things and not getting crowded out by regulatory material. Investor protection is paramount.

3. How should the OE director and DPs interact?

Eimear

- The chairperson and OE should be interacting. Ideally the OE should be the chairperson where possible. The CBI has mandated that the OE should be independent. The OE should have good contact with the CEO of the management company. Where there isn't a CEO there is usually a good point of contact within the management company who is effectively the leader and the OE should check in with that person. Through Covid 19 it is extremely important to consider the welfare of staff and DPs and to ensure in advance that there are people who can step in if a DP or CEO gets sick during the pandemic. Pre-planning is key and it is very important to have good lines of communication.

Margaret

- CP86 and the Manco model have created a variety of management companies in Ireland. All DPs are not equal, directors should ensure they are getting the right assurances from the right place. Right now, a lot of issues are impacting day to day management. Questions need to be asked such as: what are the operational risks, cyber risks, etc?; are there liquidity issues or valuation issues; do gates or swing pricing have to be activated? Directors need to ensure they are talking to the right people. Directors need to determine within their own model who they need to communicate with. It could be a DP, but this is not always the case.

4. Has the Covid crisis highlighted that asset managers are in fact the real risk managers rather than the ManCos?

Margaret

- It is beyond the scope of this webinar to call out these issues but in reality, it is the people on the day to day management that are engaging with the risks and not necessarily those who are subject to regulatory rules etc. This crisis should be an eye opener for regulators.

Eimear

- do not disagree, but some larger proprietary management companies with a depth of staff, have very competent people doing the day to day risk management. But where a group has invested in a staffed management company turning to the DP for Fund Risk Management and the Head of Risk for sources of information is satisfactory.

5. Is Zoom secure enough for board meetings?**Alison**

- Our IT view is that all platforms are as easily hackable as each other so it is all about how each they are used. It is good practice to set up parties with passwords, URLs, host admittance and removal etc.

Declan

- As a law firm we don't use Zoom, we use WebEx and are in process of developing our own platform for optimum security.

6. Advice for fund board INEDs who are taking on these roles for first time?**Eimear**

- As an INED of a large UK management company Eimear's advice is to be very conscious of what it is to be a fund board director in the asset management space. Understand the extent of the commitment involved and principles such as conflict of interest and have a good robust background in asset management. Do proper DD on the asset manager. Many UK INEDs and aspiring INEDs have had an interest in this area and there is crossover of communication and sharing of expertise. There has been different INEDs of different nationalities serving on boards not domiciled where they're living. This is helpful and encourages diversity and this "passporting" of INEDs should be welcomed.