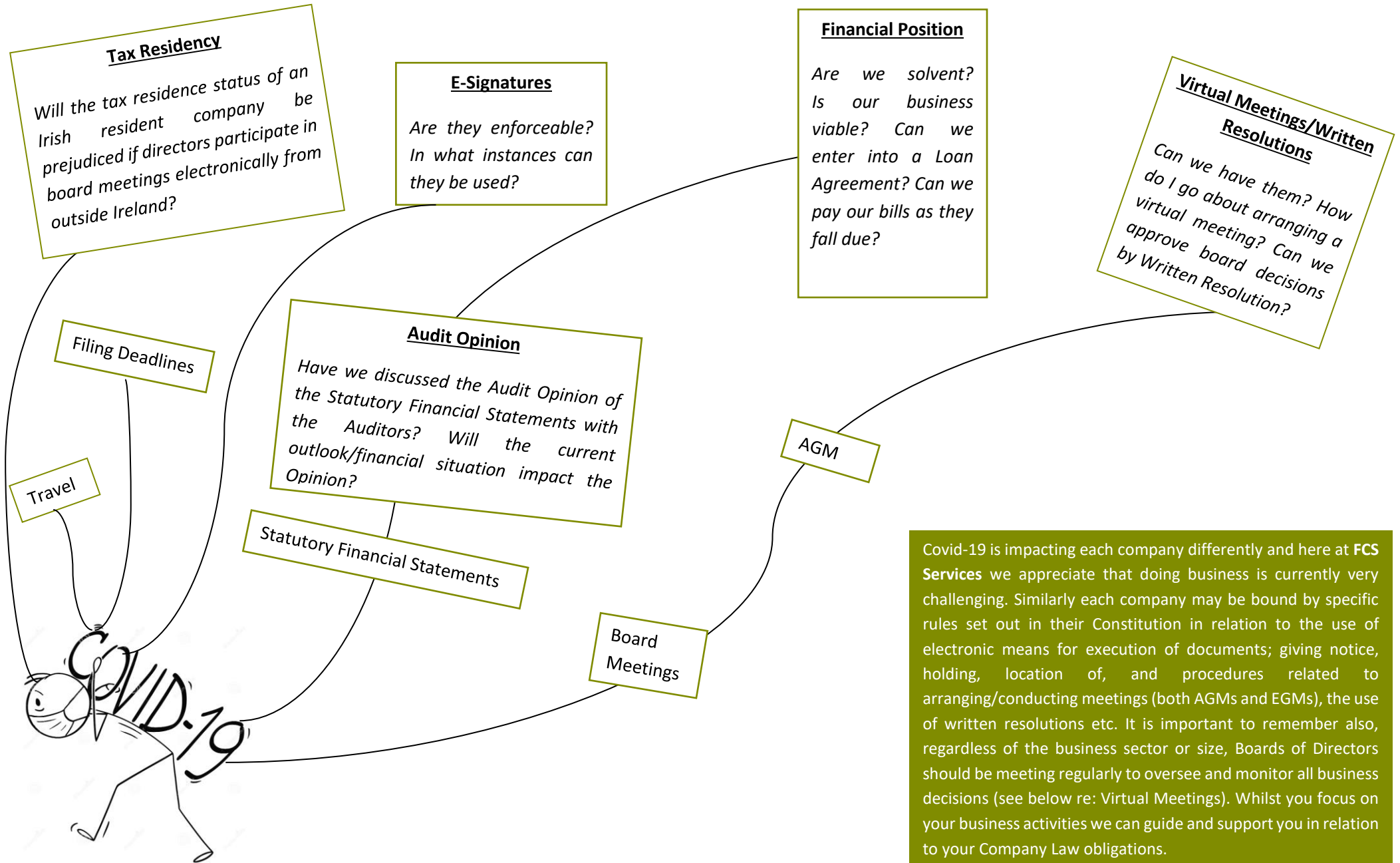


Topics on the mind of Directors, Company Secretaries and Governance Professionals



Covid-19 is impacting each company differently and here at FCS Services we appreciate that doing business is currently very challenging. Similarly each company may be bound by specific rules set out in their Constitution in relation to the use of electronic means for execution of documents; giving notice, holding, location of, and procedures related to arranging/conducting meetings (both AGMs and EGMs), the use of written resolutions etc. It is important to remember also, regardless of the business sector or size, Boards of Directors should be meeting regularly to oversee and monitor all business decisions (see below re: Virtual Meetings). Whilst you focus on your business activities we can guide and support you in relation to your Company Law obligations.

Tax Residency

The Irish Revenue has advised that if an individual is present in another jurisdiction as a result of COVID-19 related travel restrictions, and would otherwise have been present in Ireland for Board Meetings and AGMs, the Irish Revenue will be prepared to disregard such presence outside of Ireland for corporation tax. For companies tax resident in Ireland it is important to demonstrate central management and control of the company is taking place in the State. It is, therefore, necessary to ensure that a written record (i.e. Minutes) detailing the circumstances regarding the inability of an individual to travel to, or from, Ireland is maintained as this may be requested by Revenue in the future. (The Revenue Guidance note can be found [here](#))

E-signatures

Irish law has provided for the use and enforceability of electronic signatures since the introduction of the Electronic Commerce Act 2000. While electronic signatures cannot be used in certain instances e.g. wills, trusts, powers of attorney, affidavits, statutory or sworn declarations, interests in real property and certain documents required by the rules, practices or procedures of a court or tribunal, they can be validly used in many circumstances. Take a read of the briefing issued by ICSA: The Chartered Governance Institute on the matter [here](#). As a result of Covid-19, businesses are beginning to realise the potential savings in cost and time by using e-signatures and we can expect to see an increase in the use of e-signatures in the future.

Virtual Meetings

Currently, without an amendment to the CA2014, fully “virtual” **AGMs (or EGMs)** are not possible. A number of larger companies are holding their AGMs by ensuring a quorum is present at the venue with members advised not to attend in person. Where possible technology is being used to give members the opportunity to hear proceedings and submit questions. Some larger companies are also proposing a formal event be held later in the year to enable members to raise questions. Further information on convening and holding AGMs and dealing with required AGM business is covered in our AGM briefing paper available [here](#). The majority of companies should be able to convene “virtual” **Board Meetings**, however, a number of actions should be taken before doing so as also identified in our “[Quick Guide to Secure and Effective Virtual Board Meetings](#)”.

Financial Position

Every business should be monitoring its financial position on a regular (and in some instances daily) basis. Under the CA2014 day to day management of a company is delegated to the Directors who have fiduciary duties under the CA2014 to act with due care and skill in the interests of the company as a whole. Directors need to meet regularly to monitor and review the solvency position of the company keeping record of actions taken and ensuring financial commitments being entered into can be met. The **ODCE** has issued guidance on its treatment of Directors of companies made insolvent (temporarily or otherwise) by Covid-19 providing some comfort for Directors who are attempting to recover their businesses from financial difficulty. The ODCE will examine each case on its facts together with steps taken by the Directors. A copy of the ODCE guidance can be found [here](#).

Financial Statements

Companies currently preparing Financial Statements should be mindful that the CA2014 requires a Directors' Report to include a description of the principal risks and uncertainties of a company. Disclosure of the COVID-19 risks and related effects is likely to be necessary in the Directors Report, as well as in other relevant sections of the Financial Statements. The Auditors Opinion will state whether they believe the information given in the Director’s Report for the financial year to be consistent with the Financial Statements and following their Audit will decide whether to issue an unmodified or qualified Opinion, include a material uncertainty paragraph or, potentially, a disclaimer of Opinion. Auditors may request more evidence to assist with the Audit and require additional time to complete the audit so companies should consider preparing their Financial Statements in good time to allow for such delays.

If you have any queries in relation to the topics covered above please contact us on info@fcscorporateservices.com or 00353 (0)91 704818.