
Briefing

Legal Proceedings: The Importance of Company Authorisation and Representation



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A company incorporated under the Companies Act has its own legal personality and can institute legal proceedings in its own name. However, difficulties can arise where proceedings are commenced on behalf of a company where this has not been properly authorised by the company. In addition, where a company is a party to proceedings, in the absence of certain limited exceptions, it must retain legal representation to act on its behalf.

Authority to Institute Proceedings

Directors of the Company

In general, there is no express delegation to directors of the power to institute legal proceedings and instruct lawyers on behalf of a company. Rather, this power derives from the general delegation of powers of management by the company to the directors in the company's constitution, as derived from the Companies Act 2014 (the "Act").¹ The decision to institute legal proceedings should be taken at a properly convened and constituted meeting of the board, by the directors passing a resolution authorising such actions. In addition, under the Act, unless the company's constitution provides otherwise, a resolution signed by all the directors entitled to receive notice of a meeting of directors will be as valid as if it had been passed at a directors' meeting duly convened and held.

It is possible for the members of a company, by special resolution, to direct the directors to institute legal proceedings. This is because the general powers of delegation in the Act are, save where the constitution provides otherwise, subject to such directions, which are not inconsistent with the Act or the constitution, as the members may give by special resolution.

¹ Section 158(1) of the Act.

² *Re Aston Colour Print Ltd* [2005] 3 I.R. 609.

Liquidator of the Company

On the liquidation of a company, litigation proceedings must be instituted by the liquidator. Section 627 of the Act sets out the statutory powers of a liquidator to include the power to bring any action or other legal proceedings in the name and on behalf of the company. The liquidator is obliged under the Act to give notice of its exercise of this power to the committee of inspection or the creditors (in the case of a winding up by the court or a creditors' voluntary winding up) or to the members of the company (in the case of a members' voluntary winding up).

Lack of Authorisation

Where a company is a plaintiff in proceedings that have not been properly authorised, it is possible to retrospectively validate the proceedings with subsequent ratification. The plaintiff company can ratify the act of the solicitor who brought the action on behalf of the company and adopt the proceedings so the defendant cannot object.

Otherwise, where proceedings are brought without the proper authority from the board of directors of the company, the action can be dismissed and the solicitors can be held liable for the costs of the action.⁴

Representation of Companies before the Court

As an artificial person, the company cannot represent itself in legal proceedings. There is an established rule that a company can only be represented before the court by a solicitor or barrister and not by a member or director of the company or any other person. This is often referred to as the "rule in *Battle*"⁵ which is that "...a limited company cannot be represented in court proceedings by its managing director or other officer or servant." The court may deviate from this rule in "exceptional circumstances" where this is necessitated by the interests of justice. Notably, the lack of available funds in a company to procure legal representation will not in itself amount to exceptional circumstances.

An exception may also be made by legislation. For example, in criminal cases prosecuted on indictment, the Act allows a company charged on indictment to appear by a representative who may answer any question and plead on the company's behalf.

Further Information

Publications that address some of the areas referred to in this factsheet are available on the Institute of Directors [website](#) and include the Directors' Handbook.

³ Section 629(1) of the Act.

⁴ *Airways Ltd v Bowen* [1985] B.C.L.C. 355; *Jabaar Ltd v Townlink Construction Ltd* [2011] 1 I.R. 766.

⁵ *Battle v Irish Art Promotion Centre Ltd* [1968] 1 I.R. 252 as affirmed more recently by the Supreme Court in *Allied Irish Bank plc v Aqua Fresh Fish Ltd* [2018] IESC 49.

Further information is available from



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Alternatively, your usual contact in McCann FitzGerald will be happy to help you further.



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