
Briefing

Effecting Transactions:

The Importance of Being Authorised



INSTITUTE OF DIRECTORS
IN IRELAND

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The COVID-19 pandemic has severely interrupted corporate governance processes for companies as physical meetings may not be possible and key individuals may be unavailable.

Corporate authorisations and signing authorities have had to be reviewed and revised to meet the current challenges so that, for every company, the chain of authority is robust and will facilitate the correct decisions being taken at the appropriate level and the company being in a position to continue to negotiate and execute agreements. This factsheet looks at the importance of adequate and proper delegation of powers to act and, in particular, delegation of signing authorities.

Authority to bind

Generally, to be enforceable, a contract must be approved and signed by a person who has the appropriate authority and it is important for both the company and for the person exercising an authority to know that he or she has the relevant authority and is exercising it properly (otherwise that person might incur personal liability). Whether or not someone has the appropriate authority will depend on common law and on statutory and contractual provisions.

Authority to bind a company and sign contracts on its behalf is generally vested in its board of directors. The board may confer on one or more individuals actual authority to deal with specific matters on behalf of the company. In some instances authority can be ostensible, namely, the authority one would expect a particular person to have by reason of he or she holding a particular role, for example, a managing director or chief executive officer has authority to deal with day to day matters on behalf of the company. In circumstances in which the board cannot hold a directors' meeting, and where all of the directors agree about the proposed action, it may be possible for the directors to act by way of a written resolution instead of holding a meeting.

As it is usually impracticable for directors to deal with all matters on behalf of a company, the board will typically delegate some powers and aspects of its functions to individual directors, board committees, employees or agents. In addition, a company can grant a power of attorney to certain individuals to act on

behalf of the company. The board however will usually reserve key matters to itself and generally, in respect of delegated matters, exercise a high level supervisory role.

The Companies Act

The Companies Act 2014 (the “Act”) states that the board of directors of a company and a registered person (see further below) shall *“each be deemed to have authority to exercise any power of the company and to authorise others to do so”* which provision supersedes any limitations in the company’s constitution on the board’s authority or a registered person’s authority.

Section 43 of the Act requires every company to have a common seal or seals and in keeping with good corporate governance, a typical company constitution only allows the common seal of a company to be used with the authority of the directors or a committee of the directors.

Power of Attorney

The Act states that, notwithstanding anything in the constitution of a company, the company may empower any person, generally or for a specific purpose, as its attorney, to execute deeds or do any other matter on its behalf in any place whether inside or outside the State. The power of attorney need not be executed under the company seal. A deed signed by the attorney binds the company and has the same effect as if it were under its common seal.

The law relating to powers of attorney generally is governed by the Powers of Attorney Act 1996 and under that legislation an attorney may use his or her name when executing a document. Powers of attorney have helped greatly in practice to overcome difficulties in having documents sealed under the common seal of the company (as that usually requires two signatories).

Registered Person

A company may appoint an individual to act as a registered person and such a person is deemed to be *“entitled to bind the company (not being an entitlement to bind that is, expressly or impliedly, restricted to a particular transaction or class of transactions)”*. Such a registered person may exercise *“any power of the company”*, but must not execute any power conferred upon the board of directors, or powers which are stipulated in the Act to be exercised other than by the board of directors. In contrast to a power of attorney (in the case of which the instrument appointing the attorney circumscribes the scope of the power granted), a registered person possesses very wide authority (including power to authorise others to exercise powers of the company). Registered persons are not very common in practice.

Committees of the Board

Section 158 of the Act provides that the directors may delegate any of their powers to, inter alia, committees and any such committees must conform to any regulations that may be imposed by the directors. Detailed terms of reference for a committee ought to be put in place. A committee can consist in whole or part of directors. Default rules in the Act as to the calling and conduct of directors' meeting also apply to committees. However, the default rules (including those in section 158) are subject to the provisions of the constitution of the company so regard must be had to the constitution in determining whether the directors may delegate to committees, who can be on a committee and the procedures for a committee *etc.* Unless expressly permitted, a committee has no power to delegate its functions to a sub-committee.

Alternate Directors

A constitution of a company usually allows for the appointment of alternate directors. The Act allows for an alternate to be appointed if a majority of the board agree (and where notice of the appointment of an alternate is given in writing to the company). An alternate is a director and has all the duties of a director. Filings in respect of the appointment of an alternate with the companies registration office apply, as do rules applicable to directors on disclosure of interests. Although an alternate is not usually the agent of the director who appoints him or her, the alternate will cease to hold office if the relevant appointer ceases to be a director.

Conclusion

A company should only delegate those tasks that are reasonable to delegate and this will largely depend on the scale and the nature of the business and whether, for example, the company is engaged in a regulated activity. There should be a clear policy for designating the persons who are authorized to execute and approve contracts on behalf of the company, limits on the authority (for example, contracts over a certain financial threshold might require two signatories) and procedures for delegating signature and approval authority. Given the pandemic certain individuals may not be available so the authorities ought include sufficient flexibility to ensure that there will be signatories available.

While delegation of this directors' power is a valuable, efficient and sometimes essential way of permitting the board to take actions, it remains the case that directors must inform themselves fully and carefully when transacting all business on behalf of the company.

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.

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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