
Briefing

Companies Act 2014: Board Meetings



INSTITUTE OF DIRECTORS
IN IRELAND

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The Companies Act 2014 (the “Act”) came into effect on 1 June 2015. The Act has introduced significant reforms in company law in Ireland.

While much of the law relating to meetings of directors of a company is unchanged by the Act, some reforms are worth noting. The law relating to directors' meetings of a private company limited by shares (“LTD”) is set out in Chapter 4 of Part 4 of the Act. Many of the provisions also apply to meetings of a committee of a board of directors.

Key Features

- An LTD may have one director (in which case it must have a separate secretary) but other company types require at least two directors (if a company of any type has at least two directors, one of them may also be the secretary).
- Flexibility is retained as to the convening and conducting of meetings of directors.
- Default rules that apply provide for telephonic meetings of directors as well as a written resolution procedure.

As was previously the case under the Companies Acts 1963 to 2013, it is largely a matter for each company to prescribe the internal regulations that apply to the convening and conducting of meetings of the board with legislation providing some default rules. Under the Act the default rules are in parts more comprehensive than was previously the case and reflect provisions that companies typically adopted to supplement the existing default provisions.

Other than the requirement to keep minutes of a meeting, the default rules discussed in this update apply save to the extent that the constitution of the particular company provides otherwise, ie the members of the company may, by amending the constitution, adjust any of the following default provisions.

Convening directors' meetings

A director may, and the secretary on the requisition of a director must, at any time summon a meeting of the directors.

The Act does not state how often directors should meet; therefore it is a matter for directors to decide themselves. Good corporate governance practice is for a company to schedule a number of board meetings over a forthcoming year whilst having the flexibility to meet urgently if circumstances require.

Notice of directors' meetings

The Act is silent on the length of notice required to be given for a directors' meeting. Rather the Act states that all directors are entitled to reasonable notice of any meeting of the directors.

If the directors so resolve, it is not necessary to give notice of a meeting of directors to any director who, being resident in the State, is for the time being absent from the State. The ability for directors to participate in meetings by telephone may make it rare for the directors to need to pass such a resolution.

Importantly, only a director of the company concerned can object to the notice given for any meeting of the directors.

Quorum for directors' meetings

The *quorum* necessary for the transaction of the business of the directors may be fixed by the directors and unless so fixed will be two. However, as mentioned above, under the Act an LTD is allowed to have a sole director and in that instance the quorum is one. It is important to note that a separate company secretary must be appointed for an LTD.

Subject to the other provisions of the Act, a director with a disclosable interest in a particular contract or arrangement is allowed to be counted in the quorum of a board meeting to consider that contract or arrangement.

If the number of directors is reduced below the number fixed as the necessary quorum of directors, the continuing directors or director can act only for the purpose of increasing the number of directors to that number or for summoning a general meeting of the company.

Who chairs a meeting of the directors?

The directors may elect a chairperson of their meetings and determine the period for which he or she is to hold office, but if no such chairperson is elected, or, if at any meeting the chairperson is not present within 15 minutes after the time appointed for holding it, the directors present may choose one of their number to be chairperson of that meeting. In practice most companies appoint a chairperson for a particular period of time so it is clear who chairs such meetings.

Voting at directors' meetings

Questions arising at any such meeting are to be decided by a majority of votes. Where there is an equality of votes, the chairperson has a second or casting vote.

The Act clarifies that, subject to the other provisions of the Act, a director may vote in respect of any contract, appointment or arrangement in which the director is interested.

Some corporate governance codes advise that a director who is interested in a matter is not to be given the relevant papers or to be allowed participate in the discussion or vote on that matter.

Written resolution of directors

In circumstances in which it is inconvenient for the directors to hold a directors' meeting, and where all of the directors are in agreement about the proposed action, it is possible for the directors to act by way of a written resolution in lieu of holding a meeting.

The written resolution procedure can be used even if one or more of the directors (but not in aggregate being a majority of all directors) is not permitted to vote on a director's resolution (by reason of a conflict, for example). In this instance the remaining directors sign the resolution and note the names of the directors who are not entitled to vote and the reason.

The chairman does not have a second or casting vote on any such written resolution; in practice such written resolutions are unanimous.

Committees

The directors may establish one or more committees consisting in whole or in part of members of the board of directors. The previous default rules provided only for the creation of committees composed exclusively of directors (and these were usually supplemented to allow for non- directors on committees). Under the Act, a committee may exercise any powers of the directors which the board as a whole wishes to delegate to the committee.

The provisions dealing with the holding and conducting of meetings of directors also apply to meetings of committees.

Participation in meetings by telephone

The Act provides for the participation of directors in meetings by telephone, video or other electronic means. Each director must be able to hear other directors and to speak at such a meeting.

The Act states that, in such a case, the meeting occurs at the place where the largest group of those participating is assembled or, if there is no such group, where the chairperson is situated. If neither such situation applies, the meeting may determine the location for itself.

Alternate directors

Any director may appoint any other director to be an alternate director as respects him or her. Where the alternate is not already a director the consent of the other directors is required for the appointment. A director may only have one alternate appointed at any particular time.

Records of directors' meetings

A company must keep minutes in books kept for this purpose in respect of the following:

- all appointments of officers made by its directors;
- the names of the directors present at each meeting of its directors and of any committee of the directors; and
- all resolutions and proceedings at all meetings of its directors and of committees of directors.

The minutes should be signed by the chairperson of the meeting to which the minutes relate or by the chairperson of the next succeeding meeting. These obligations under the Act apply equally to an LTD with a sole director.

The Director of Corporate Enforcement has a legal right to inspect the minute books.

Variations of these provisions

Designated activity companies (“DAC”)

The law of directors’ meetings as it applies to a DAC is that set out above as applying to an LTD except that a DAC is required to have at least two directors.

Guarantee companies (“CLG”)

The law of directors’ meetings as it applies to a CLG is that set out above as applying to an LTD except for the following:

- a CLG is required to have at least two directors; and
- unless expressly permitted by the constitution a director of a CLG who is interested in a contract or arrangement cannot be counted in the quorum or vote in the meeting at which that contract or arrangement is discussed.

Unlimited companies (“UC”)

The law of meetings as it applies to a UC is that set out above as applying to an LTD except that a UC is required to have at least two directors.

Public Limited companies (“PLC”)

The law of directors’ meetings as it applies to a PLC is that set out above as applying to an LTD except for the following:

- a PLC is required to have at least two directors; and
- unless expressly permitted by the constitution, and with some limited exceptions, a director of a PLC who is interested in a contract or arrangement cannot be counted in the quorum or vote in the meeting at which that contract or arrangement is discussed.

Action Required

Company secretaries, directors and others involved in the administration of companies need to become familiar with the provisions in the Act concerning directors’ meetings. The provisions may be useful where the existing constitution of a company is silent on a particular matter. Existing template documentation may need to be amended.

Further information is available from



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