

COVID19

The International Business Group has been helping companies navigate through the many unprecedented challenges brought about by the pandemic over the last few months. We have compiled a list of frequently asked questions to provide insight and guidance on the Irish corporate side in respect of the common themes that have been emerging since the crisis broke: from convening virtual board meetings to navigating the practical day-to-day requests that arise for companies operating in multiple jurisdictions.



Board Meetings

Are Irish companies able to hold 'virtual' board meetings?

Yes, the Companies Act 2014 (the "Act") permits some or all of the directors of an Irish company to attend a board meeting by telephone or video conference. A company's constitution should be reviewed in advance of convening the board meeting to confirm whether the company has adopted, varied or dis-applied the relevant provisions of the Act. The shareholders of a company may amend the constitution to provide for greater flexibility if the default provisions of the Act have not been adopted.

How is the location of a virtual board meeting determined?

It will depend on the provisions of the constitution but more often than not, where all of the directors attend a board meeting by telephone or video conference, the meeting will be held where the chairperson is located.

The majority of companies adopt the default position under the Act which provides that the location of the board meeting will be: (i) where the largest group of directors attending the meeting is assembled; or (ii) if (i) is not applicable, where the chairperson is located, or if neither (i) or (ii) are applicable, where the directors attending the meeting decide. Therefore, where all directors dial into a meeting from different locations and one of them is appointed to chair the meeting, the meeting will be held where that chairperson is located.

How can a board meeting be held in a particular jurisdiction if the directors cannot travel to that jurisdiction?

There are a couple of different options available to a company wishing to hold a board meeting in a particular location. The preferred approach should always be confirmed with the company's tax advisors.

Where the current directors are not located in the preferred jurisdiction and cannot travel there for the board meeting, the board of directors or the shareholders of the company may appoint an additional director who is resident in that jurisdiction and capable of chairing the board meeting in that jurisdiction. Alternatively, an existing director may appoint an individual resident in that jurisdiction to act as his/her alternate and attend the board meeting in his/her place and chair the meeting from that jurisdiction. The provisions of the constitution should always be reviewed to determine the manner in which the appointment of an additional director or alternate director should be made.

It is important to note that any new director or alternate director will be subject to the same duties and obligations as the current directors. Details of the appointment (including the appointee's residential address) will be required to be publicly filed at the Irish Companies Registration Office (the "CRO").

Can boards take decisions by way of written resolution?

Yes, provided there are no restrictions in the company's constitution, the board of directors of an Irish company can approve the vast majority of decisions which would ordinarily be dealt with at a board meeting by way of unanimous written resolution. A unanimous written resolution must be executed by all of the directors of the company. It should be confirmed that the company's tax advisors are comfortable with approval by way of written resolution (particularly where the directors are based in multiple locations).



Document Execution

Which documents can be electronically signed by an Irish company?

Generally speaking, the majority of documents, including board minutes / resolutions, shareholder resolutions, powers of attorney and simple commercial agreements, may be electronically signed (using a simple electronic signature) by an Irish company provided that the governing law of a particular document / agreement allows for execution by electronic means. Where a company intends to sign an agreement electronically, it should be confirmed that there are no restrictions in the company's constitution.

It should be noted that there are exceptions to this rule under Irish law and certain documents such as wills, trusts, enduring powers of attorney, conveyances of property (although electronic signatures may be used to execute contracts for the sale of land), affidavits, statutory declarations and CRO forms may not be executed electronically and must be wet-ink signed.

How can a company execute a deed?

An Irish company is required to execute a deed 'under seal'. This typically requires two directors, or one director and the company secretary, to manually affix the common seal of the company and wet-ink sign the deed (on the same original signature page). Where the company's constitution permits it, the board may authorise one director (or other individual) to affix the company seal and solely execute the deed. It is not possible to apply an ink stamp or imprint in place of the common seal.

The Electronic Commerce Act 2000 provides a mechanism for the execution of documents 'under seal', using an advance electronic signature based on a qualified certificate. In our experience, it is often difficult to obtain confirmation from the relevant service provider that an electronic signature constitutes a qualified electronic signature. As a result, we are not aware of this provision being relied on in practice.

Alternatively, the company may grant a power of attorney to one or more named individuals to execute a deed on the company's behalf. The power of attorney does not need to be executed as a deed and therefore may be electronically signed. The attorney may then execute the deed on behalf of the company without affixing the common seal provided that the attorney signs the document in the presence of an attesting witness (the witness must also sign the same original). This may be a practical solution where a company is presented with a situation where a document needs to be executed as a deed but the signatories and the company seals are not necessarily in the same location (as we expect to be the case for many companies at the moment).

Can a document be witnessed remotely?

No, where a document must be signed in the presence of an attesting witness (eg, a deed to be executed by an attorney on behalf of the company) then such witness must be in the same physical location as the signatory. We are conscious that in the present circumstances, it may not be possible for documents to be executed in front of an independent witness. As a result of this, several clients have queried whether it would be possible for a signature to be witnessed remotely by way of video conference but unfortunately this would not suffice. While it is regarded as best practice for a witness to be unconnected with the signatory (eg, not a spouse or family member), that may not be practical in the current environment. As such, it is generally sufficient for a spouse or family member to act as an attesting witness in the present circumstances.



Notarising / Legalising Documents

Is it possible for documents be notarised and apostilled/legalised?

Yes, we are continuing to provide notarisation services through our in-house notary service. The Department of Foreign Affairs (which authenticates documents executed in Ireland for use in countries which have acceded to the Hague Convention) are accepting documents for apostilling by ordinary post only and therefore there is a significant delay in the apostilling of documents. Documents to be legalised for use in countries which have not acceded to the Hague Convention will need to be authenticated by the relevant embassy in Ireland. All of the embassies are accepting requests for legalisation by post, except for the Chinese embassy which is currently closed.



Obtaining Closing Searches / Letters of Status

Can Letters of Status be obtained?

Yes, the CRO are continuing to issue letters of status by ordinary post only. To avoid any unnecessary delays, we can arrange for a letter of status to be delivered directly to the client's address.

Can closing searches be obtained?

Yes, many legal searchers are continuing to carry out full closing searches. Please be advised that there may be delays in obtaining particular searches (eg, sheriff searches) as a number of county offices are operating on reduced hours.



CRO Filings

Is it possible to incorporate Irish companies?

Yes, it is still possible to incorporate Irish companies. The registration process for such incorporation applications may take longer than usual as the CRO's offices are closed and they are accepting applications by post only; however, our experience is that the CRO is processing applications relatively quickly.

Are filing deadlines for CRO forms being strictly enforced?

All Summary Approval Procedure declarations must be delivered to the CRO on time (ie, within 21 days of the restricted activity taking place). The CRO have set up a dedicated email address to facilitate delivery of the declarations on time. The originals should follow by ordinary post.

Other forms must be delivered to the CRO by ordinary post or online (where permitted). The CRO are processing the forms in chronological order and have advised that they will be processed without issue.

What should you do if your company's annual return is due but you cannot obtain the required signatures for your accounts or other related documents?

The CRO has confirmed that all annual returns that were or are due to be filed by any company between 18 March 2020 and 31 October 2020 will be deemed to have been filed on time if all elements of the annual return are completed and filed by 31 October 2020. This allows a company an additional grace period to submit its signed annual return and financial statements to the CRO.

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