

**THE FACULTY OF NOTARIES PUBLIC IN IRELAND**

**COMPANY LAW & PRACTICE FOR NOTARIES**

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12<sup>th</sup> March, 2010

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### **COMPANY LAW & PRACTICE FOR NOTARIES**

#### **Introduction**

This paper primarily addresses the notarisation of corporate documents of companies under Irish law.

The Companies Acts currently in force in Ireland are the Companies Acts 1963 to 2009 and are read together with the various Statutory Instruments that have been brought into force relating to companies.

In addition, it is also very necessary to refer to the Memorandum and Articles of Association of a company and appropriate resolutions of the Board of Directors and/or General Meetings, authorising a particular act to be done.

The Companies Registration Office (“CRO”) is the central repository of public statutory information on Irish companies and business names. The CRO operates under the aegis of the Department of Enterprise, Trade & Employment.

The CRO is located at the following addresses:-

Parnell House,  
14, Parnell Square,  
Dublin 1.

And

O’Brien Road,  
Carlow.

As part of the decentralisation programmed, it is intended that the CRO will move to the town of Carlow. Some of the functions of the CRO have already been transferred to the Carlow Office. As a consequence, certain documents (such as Annual Returns and copy Financial Statements) are filed at this office. For a full list of documents that are filed in the CRO in Carlow, may I refer you to the CRO website. Please note that there is no public office in Carlow.

The Department of Finance announced in December 2009 that the decentralisation of the CRO to Carlow will be deferred pending, an overall review in 2011.

## **Registration**

It is straight forward enough to check if a company is registered under the Acts, by visiting the website of the Companies Registration Office [www.cro.ie](http://www.cro.ie).

This will usually provide the following information for a company:-

- Company Number;
- Name of the Company;
- Address of the Registered Office;
- Date of Registration;
- Status e.g. normal, dissolved;
- Last Annual Return Date;
- Next Annual Return Date; and
- Last Accounts to Date.

The above information is free to the public. It is possible to click on the List Company Submissions and obtain a copy of the relevant document that has been filed and scanned into the Register Documents for all live companies registered with the CRO are scanned all the way back to the company's incorporation date. For instance, Pembrey Investments Limited was incorporated on 26<sup>th</sup> November, 1935, and the incorporation document, as well as subsequent documents, are all scanned on the CRO system. The costs of obtaining a copy of the relevant document is €2.50 per document. This can be paid for from an account maintained with the CRO or by way of credit card, if there is no account.

Please note that in the case of certain unlimited companies, where there is at least one member who has unlimited liability, it is not necessary for such a company to file a set of Financial Statements, but instead, such a company will file a Special Auditors Report and a copy of the Auditors Report attached to the Company's Financial Statements.

The CRO website is a very important resource in establishing the existence of a company and obtaining via the web, copies of documents that have been filed in the CRO.

## **Companies Act 1963**

The Companies Act 1963 deals with Contracts, Deeds and Powers of Attorney, executed by Companies.

*Section 37* - allows for the ratification of contracts and other transactions which are purportedly entered by a company, in its own name or which are purportedly entered into on its behalf before the company is incorporated. This will usually occur where a promoter of a company enters into a contract prior to the incorporation of a company. Upon incorporation and once the contract is ratified by the company, it is then bound by the contract.

*Section 38* - deals with the Form of Contracts. It states as follows:-

- (1) Contracts on behalf of a company may be made as follows:-

- (a) A contract which if made between private persons would be by law required to be in writing and to be under seal, may be made on behalf of the company in writing under the common seal of the company;
  - (b) A contract which if made between private persons would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the company in writing, signed by any person acting under its authority, express or implied;
  - (c) A contract which if made between private persons would be by law be valid although made by parol only, and not reduced into writing may be made by parol on behalf of the company by any person acting under its authority, express or implied.
- (2) A contract made according to this section shall bind the company and its successors and all other parties thereto;
- (3) A contract made according to this section may be varied or discharged in the same manner in which it is authorised in this section to be made.

*Section 39* - deals with Bills of Exchange and Promissory Notes and states as follows:-

“A bill of exchange or promissory note shall be deemed to have been made, accepted or endorsed on behalf of the company, if made, accepted or endorsed in the name or by or on behalf or on account of, the company by any person acting under its authority.”

An officer of a company should always be able to point to the source of his or her authority to bind the company.

*Section 40* - deals with the Execution of Deeds outside the State.

- (1) A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place outside the State;
- (2) A deed signed by such attorney on behalf of the company and under its seal, shall bind the company and have the same effect as if it were under his common seal.

*Section 18 (2)* - requires every company to have a common seal. In Ireland, the common seal is an embossed seal.

*Section 41* – Power for Company to have an Official Seal for use Abroad. This must be authorised by the Articles of Association and in this regard, see Regulation 82 of Table A Part 1. In such circumstances, the territory, district or place should be added to the face of such common seal

*Section 42* – Authentication of Documents. The Section which is self explanatory states as follows:-

“A document or proceeding requiring authentication by a company may be signed by a director, secretary or other authorised officer of the company, and need not be under its common seal.”

*Section 113* – The registered office of a company must be within the State.

*Section 378* – Forms of Registers, Minute Books and Books of Account. However, Section 4 of the Companies (Amendment) Act 1977, introduced provisions to allow the statutory records of a company, other than minute books of directors and general meetings, to be kept on a computer. Such records must be able to be reproduced in a legible written form.

## **Memorandum of Association**

The Memorandum of Association sets out the objects and the powers of a company. Unless you are specifically asked to comment on the objects of a company, one can assume that what is being done is in accordance with the company's objects, unless there is a glaring omission.

A Notary may be concerned to establish if a company has the power to carry a particular object(s) or proposal into effect e.g. to open a particular type of business or a branch abroad.

If there is no power to do a particular matter, such as to acquire land, then it may be necessary for the company to amend the Memorandum to allow this to happen (as distinct from the Notary).

In the context of the objects of the company, if a company does not have an objects clause allowing to do a particular matter, it may be necessary to have the Memorandum of Association amended as otherwise the transaction might be ultra vires. The ultra vires doctrine has been relaxed and modified over the years and essentially, as a result of these modifications, an outsider who enters into a transaction unaware of the contents of the Memorandum and Articles of Association is now able to enforce the transaction against the company even though it was ultra vires.

## **Articles of Association**

The Articles refer to the manner in which the company is governed. It will set out such matters as the quorum for meetings, both of the members in General Meetings and the Board of Directors, the maintenance of minutes of such meetings and the manner in which the company seal can be affixed, to mention some of the more important matters.

Be aware of particular provisions, such as the case that a Directors meeting might require a specific period of notice to be a valid meeting.

## **Minutes of Directors/General Meetings**

*Section 145* of the Companies Act, 1963 requires:-

- (1) Every company shall cause as soon as may be minutes of all proceedings of general meetings and all proceedings at meeting of its directors or committees of directors to be entered in books kept for that purpose;
- (2) Any such minute if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings;
- (3) Where minutes have been made in accordance with this section of the proceedings at any general meeting of the company or meeting of directors or committee of directors, then, until the contrary is proved, the meeting shall be deemed to have been duly held and convened, and all proceedings had thereat to have been duly had, and all appointments of directors or liquidators shall be deemed to be valid;
- (4) If a company fails to comply with subsection (1), the company and every officer of the company who is in default shall be liable to a fine not exceeding £100.00.

Original minutes of a company are therefore part of the company's records and should be maintained in the appropriate minute book. As minutes of General Meetings can be inspected by members of the company and must be kept in Ireland, as a rule it is better practice that minutes of Directors meetings be kept in a separate minute book, as these are only open to inspection by members of the Board of Directors and do not necessarily have to be kept in Ireland, but will usually be kept at the offices where the company is managed and controlled.

Many times I have been asked to notarise original minutes of meetings of the Board of Directors and General Meetings. It is necessary to explain to your client that such original minutes are part of the Company's records and therefore, it is only appropriate to notarise copies of them or to notarise the authentication of copies of them.

### **Company Seal**

The affixation of the common seal or company seal which is an embossed seal, can only be done in accordance with the relevant article and by authorisation of the Board of Directors. The standard provision is contained in Regulation 115 of Table A Part 1 (which will be incorporated into Part II in the case of a private company) and provides that the common seal can only be affixed in the following manner:-

- By two Directors;
- By a Director and the Company Secretary; or
- By a Director and a person authorised by the Board of Directors.

It is important to check that this Article is contained in the relevant company's Articles and that it has not been changed or modified in any respect.

As noted above, the common seal of a company can only be used in accordance with the Articles and a resolution of the Board of Directors.

Sometimes, a common seal will be affixed to a document, when not absolutely required under Irish law (e.g. acquisition of land or an interest in land). Often, this is done at the request of foreign parties, who are not familiar with the Irish Companies Acts and merely wish to see a company stamp on the document and the use of a company stamp is the norm in their jurisdiction. I have therefore included in my Notarial Certificate words to the effect that "the common seal of the company has been affixed for the purposes of providing added formality as a company stamp and for no other purpose whatsoever".

A Public Limited Company may have an official seal for sealing Share Certificates (Section 3 Companies (Amendment) Act, 1977).

### **Statutory Books**

The following are the statutory books which are required to be maintained by a company:-

- Register of Members;
- Register of Director and Secretaries;
- Register of Directors and Secretaries Interests in Share and/or Debentures;

- Register of Charges.

In addition, whilst they are not required to be maintained by a company under the Acts, nevertheless, it is very common and are maintained by most companies and are as follows:-

- Register of Allotments;
- Register of Transfers; and
- Register of Sealings (rarely kept to-day).

Not all of the Statutory Books are open to inspection by members of the public. In this context, a Notary would only be entitled to inspect the same books as a member of the public. The relevant Statutory Books are as follows:-

- Register of Members;
- Register of Directors and Company Secretaries;
- Register of Directors and Company Secretaries Interests in Shares and/or Debentures.

As indicated above, the minutes of General Meetings are also available for inspection by members of the company but not necessarily, therefore, by a Notary.

It is important to remember, that if you are requested to confirm if a person is a Director or Company Secretary for example, that the original source of the information are the Statutory Records and not the CRO. The CRO is a central repository, which may not necessarily be up to date, particularly if changes are made but not yet recorded in the CRO. Section 195 (5) of the Companies Act 1963 requires that changes to Directors and Company Secretaries be filed in the CRO on the appropriate form (currently a Companies Office Form B10), within 14 days from the date of the change.

Therefore, if you are requested to confirm if a person is a Director and / or the Company Secretary, it will be necessary to inspect the Statutory Books of the Company. Furthermore, it is also possible that a meeting of the Board of Directors has taken place but the Statutory Books have not been written up to date. It may therefore be best to qualify your certificate by words to the effect that "according to the Register of Directors of X Limited, Mr. Y is a Director of the Company". If in doubt, you could record the date and time of the inspection, just in case the Statutory Records were written up after you have inspected them. It would also be important to keep a copy of the Register of Directors and Secretaries as inspected, for your own records. (It may be possible to take a declaration from an officer who identifies himself and confirms his standing and the facts or status of the company information).

Be aware that a Director may be Disqualified or Restricted from acting as a Director of a company pursuant to Part VII of the Companies Act 1990. If in doubt, it is possible to do a Disqualified/Restricted Person search on the CRO website ([www.cro.ie](http://www.cro.ie)).

Similarly, it is also possible to check to see if a firm or individual is a Registered Auditor.

Do bear in mind, that it is becoming increasingly common for the Statutory Records of a company to be maintained in electronic form. There are available many Company Secretary Software Packages which are commercially available, such as Monicord and Blueprint.

There is a trend that is going to grow in pace, for the filing of all documents with the CRO, in an electronic format.

### **Powers of Attorney**

Another important Article is the model in Regulation 81 of Table A Part 1, which will be incorporated into the Articles and which deals with the granting of Powers of Attorney by a company. Section 40 of the Companies Act 1963 allows a company to grant Powers of Attorney, provided it is authorised by its Articles. In some instances, this Regulation may be expressly deleted or modified and a similar Article is expressly set out in the Articles themselves.

Regarding the drawing up or notarisation of a Power of Attorney which is intended for use in a foreign country, I would draw your attention to "The Irish Notary" by E. Rory O'Connor, the current Dean of The Faculty of Notaries Public in Ireland. The Dean refers in Chapter 8 page 97 to the following:-

"Before proceeding to draw up or authenticate the instrument he should ascertain, either from the notary or a lawyer practising in the foreign country or from the embassy of such foreign country, the precise requirements under local laws in relation to such instruments. In particular, he should enquire as respects the following:

- (a) The language in which the power of attorney is to be prepared;
- (b) The number of witnesses required to the execution of the donor;
- (c) The number of copies required to be executed;
- (d) Whether legalisation is required and, if so, in what form.

Where a power of attorney must be drawn up in a foreign language, a draft of a suitable text may have to be obtained from a notary or lawyer in the foreign country. In addition, the notary will require a verified translation in the English language in order that he can himself understand the document and have it compared for accuracy. Unless the notary is himself proficient in the foreign language the services of a recognised language translator will have to be engaged for this purpose. "

The above extract is equally applicable to the preparation of a Power of Attorney for a company as for an individual. However, in addition in the case of a company, the Notary Public will also have to check that:-

- That the company is incorporated and that the status of the company is in good standing;
- The company number and the address of the registered office;
- Obtain an up-to-date copy of the Memorandum and Articles of Association to confirm by inspection that the company has power to grant Powers of Attorney. Do be aware that a Memorandum and Articles of Association may have been changed and the amended text has not yet been filed in the CRO.;
- That the granting of the Power of Attorney has been authorised by the Board of Directors of the company pursuant to a resolution of the Board of Directors;
- That the persons who are listed as Directors of the Company on the Board Minute, are in fact Directors of the company. This can be done by inspecting the Register of Directors and Secretaries, to ascertain the position. I have accepted a letter from a firm of Solicitors who

in turn confirm that certain persons are Directors of a company on the basis, that a solicitor is an officer of the court;

- That the affixing of the common seal of the company to the Power of Attorney has been properly authorised by the Board and affixed in accordance with the Articles of Association.

I would refer you to the The Irish Notary and Appendix [41] which deals with a Power of Attorney (with Notarial Certificate of due Execution annexed) authorising Appointee to establish and manage a Foreign or Overseas Branch of a Financial Services Company.

Do remember, an instrument creating a Power of Attorney may be deposited in the Central Office of the High Court.

### **Bills of Exchange**

Regarding the execution of Bills of Exchange, this will be required to be duly authorised by the Board of Directors and appointing an authorised signatory. It may also be covered by the Bank Account mandate for bank transactions. In the case of pure commercial transactions, merchant to supplier, an authorising resolution should be sought. As the matter is complex and as time is short, I would refer you to the texts in regard to same.

### **Authentication of Documents/Role of the Company Secretary or Director**

As noted above, Section 42 allows for the authentication of documents by a Director, Company Secretary or other authorised officer of the company.

Authentication will usually arise in respect of certification of corporate documents such as the Certificates of Incorporation, Certificates of Change of Name, Memorandum and Articles of Association, minutes of meetings of the Board of Directors and General Meetings to mention the principal types of documents that are most commonly required to be certified. (certain of these documents may also issue from the CRO on their headed/watermarked paper which can be Apostil led directly by the Dept. of Foreign Affairs without the need for a Notary's intervention. However, I have found that foreign parties still require a notarial certificate even in such circumstances).

In most cases, this will be done by a Director or the Company Secretary. Again, it will be necessary to make checks to ensure that all is being properly done. The following is a suggested list:-

- That the company is incorporated and the status of the company;
- The registered number of the company and the address of the registered office;
- Establishing that the person who is purporting to authenticate the documents, is a Director or Company Secretary as the case may be. This can be done by either inspecting the Register of Directors and Company Secretary or obtaining a letter from the company's solicitors confirming that the person is purporting to sign the appropriate certificate, is in fact a Director or Company Secretary of the company in question. If due to time constraints it is not possible to do so, you then may only be in a position to witness the signing of the certificate by the person in his individual capacity and without reference to the company details of the fact that he is a Director or Company Secretary.

## **Documents requiring the Company Seal**

A company is on a par with an individual and where the law requires an individual's contract to be under seal, so too must a corporate contract be under seal. In addition, a company may also use its seal, such as for authenticating a share warrant.

See Section 38, Companies Act, 1963 supra. The principal contracts are conveyances in land or leases.

## **Execution of Document for use Abroad**

As noted above, Section 41 of the Companies Act 1963 permits a company to have an official seal for use abroad.

The affixing of such a seal would be done (subject to the regulation under which it is adopted or the resolution governing its use) in the same manner as the affixing of a seal in the State and will require a minute of the Board of Directors authorising its use abroad and to be witnessed by in accordance with the Articles of Association. However, it might be more appropriate to, in addition to a Director witnessing the affixing of the company seal, to authorise a specific individual to also witness such act, which person would not be a Director or Company Secretary. Do remember that where the Company Seal is used abroad, the availability of directors may not be so easily available.

## **Certification of Documents obtained from the CRO website.**

As noted above, the CRO in Ireland, maintains a website [www.cro.ie](http://www.cro.ie). It is therefore possible to carry out a search of a company and to download information about a company. To this end you go to the section regarding Company Searches and input the name or a key part of the name and it will bring up the name of the company or a list of companies with similar names. When you enter the front page regarding the company, you will get the information referred to at the beginning of this paper. It is possible also to download copies of documents which have been filed in the CRO relating to live companies.

As a Notary, you may be asked to certify a copy of a document which has been filed in the CRO, such as a copy of a Certificate of Incorporation, Certificate of Change of Name or Memorandum and Articles of Association.

The form of a Certificate which I have used on many occasions would be along the following lines:-

".....AND I DO HEREBY CERTIFY that X Limited is a company incorporated under the Companies Act(s) 1963 [to [ ]] (No.12345) on the [ ] day of [ ] [19[ ]/20[ ]] and has its registered office situate at [insert address] and that the attached [insert description of the document] was reproduced in the form attached by electronic means from the website of the Companies Registration Office, Parnell House, 14, Parnell Square in the City of Dublin in Ireland ([www.cro.ie](http://www.cro.ie)).

IN FAITH AND TESTIMONY....."

Alternatively, the relevant documents can be certified by a Director or the Company Secretary and which you can refer to in your notarial certificate, provided that you have satisfied yourself that the person who so certified, has satisfied you (or swears to you) that he holds such office.

### **Certified copies obtained from the CRO and verification of signature**

It is also possible to obtain a document certified by an authorised officer in the CRO. To do so, it will be necessary to obtain a list of such officers from the CRO and issue a Certificate along the lines that the document purports to have been issued by the CRO and that you have compared the signature of the signatory with that maintained with your records and that it appears to be the signatory of the person who has purported to sign as an authorised officer of the CRO.

It is important to ensure that the list of authorised signatories is maintained up to date, as the official signatories may change from time to time.

### **Certificate of Good Standing issued by the Companies Registration Office**

If requested, the Companies Registration Office will issue such a Certificate and which will be authenticated by a registrar, assistant registrar or an official authorised pursuant to Section 52 (2) of the Companies (Amendment) (No.2) Act 1999.

As a Notary Public, you may be asked to notarise such a Certificate. To do so, you will need to obtain from the Companies Registration Office a list of authorised signatories and to check to see if the signatory is on the list, as you will be verifying such signature.

### **Legal Opinion as to Compliance**

A Notary may be asked to give such an opinion. If this should arise, you should ensure that an inspection of the CRO website is undertaken, so that it is possible to state what the position is as of a certain date. The Notary will need to state what the legal position is requiring compliance for example and if necessary to insert any caveats that are necessary. Do remember that you should only include in your certificate information which has been made available to you, either from the CRO website, the statutory books and other records of the company. The officer of the company also swear that this information is correct.

### **Counsel's Opinion**

If there is a question of law involved and the Notary does not have sufficient knowledge or time to research the point, an opinion from counsel can be obtained and furnished to the requesting party with an appropriate Notarial Certificate.

### **Execution of Foreign Documents by an Irish Company**

From time to time, an Irish company may be required to execute documents which are governed by the laws of a foreign jurisdiction. In many cases this will not be a problem and can be done under the hand of a Director or Company Secretary duly authorised by resolution of the Board of Directors.

If the documents relate to land, it may well be best to play safe and have them executed under the common seal of the company.

It may well be best to inquire from the company's foreign lawyers as to what the legal requirements are for that country, to ensure that it will be enforceable in that country.

The most common documents that are required are Powers of Attorney.

### **Official Languages of the European Union**

There are 23 official languages of the EU and which include Irish and English. On occasions, I have been informed that the Notarial Certificate has to be in a foreign language and I have responded that as Irish and English are official languages of the EU, that my Notarial Certificate will be in either of these Official Languages.

However, in many cases, there will be a foreign language with a translation which purports to be an English translation on the opposite side of the page. This occurs principally in relation to Spanish and German Documents. Provided that the notary is satisfied that the English version is accurate, then it will usually be in order to give the Notarial Certificate, but maybe with a proviso.

It is my practise that if a document is in a foreign language, that I seek an English translation, so that I understand what I am being asked to do, which may be warranting certain information.

### **Foreign Companies Registered as "Places of Business" or "Branches".**

Part X1 of the Companies Act 1963 provides for the registration of a company in Ireland, which has a Place of Business in Ireland. "Place of Business" is defined in Section 360 as "including a share transfer or share registration office".

A Branch is required to register under the European Communities (Branch Disclosures) Regulations 1993. The Regulations do not define what a branch is and as far as I am aware, this has not yet been interpreted by the European Court of Justice. However, the guidance notes issued by the CRO, would suggest that a branch has some characteristics of permanency, such as staff, offices, warehouses, vehicles and the like and the company is paying taxes in Ireland, such as Corporation Tax. I understand that this matter will be addressed and clarified in the forthcoming Companies Consolidation Bill.

If you are requested to notarise the execution of a document by such a company, you may require instructions and advices from the company's foreign lawyers, to ensure that the local law requirements are met.

I would also refer you to Section 388 of the Companies Act 1963, which reads as follows:-

"A copy of any Act by which a corporation is incorporated purporting to be published by the Government publishers of any country prescribed by the Minister for the purposes of this section, shall without further proof be prima facie evidence of the incorporation of that corporation."

Northern Ireland and Great Britain are recognised for the purposes of this section by the Companies (Recognition of Countries) Order 1964 (SI 1964/42 Regulation 2. (See partial revocation by Section 40 (2) of Investment Funds, Companies and Miscellaneous Provisions Act 2005.

## **Liquidators/Receivers/Examiners**

Where a company has gone into liquidation, receivership or examination, a foreign party may or may not be aware that this has happened and you will have to advise the foreign party and also of the implications of such event happening.

## **Affidavits/Statutory Declarations**

A Notary Public may be required to administer an oath or affirmation in respect of the taking of an affidavit. Usually, the Notary Public is only concerned with confirming the identity of the affiant, as the affiant will be stating in the body of the Affidavit, that he or she is a Director or whatever and the he or she is duly authorised to make the Affidavit on behalf of the company.

Under the Statutory Declarations Act, 1938 (as amended by the Civil Law (Miscellaneous Provisions) Act 2008), a Notary Public is one of the parties, who is authorised to witness the making of a Statutory Declaration. Again, the Notary Public is only primarily concerned with confirming the identity of the Declarant and this can be done by virtue of the different modes set out in the legislation e.g. passport and it is no longer necessary that the Notary Public knows the Declarant or the person who identifies the Declarant to the Notary Public.

## **Apostille**

There is no difference in the process regarding the legalisation by the Dept. of Foreign Affairs and the relevant embassy or the affixing of an Apostille pursuant to the Hague Convention to corporate documents, as in the case of non corporate documents.

However, the following is an extract from the recent Faculty Newsletter:-

“Next are documents where the *nexus* or connection to Ireland is not apparent from the document. Most common in this regard are corporate documents relating to foreign companies, often subsidiaries of Irish companies, and then Powers of Attorney by non-nationals. The Notary can fix the problem by establishing the Irish connection in the attestation, e.g. “Signed in my presence in Dublin, Ireland on this the 3<sup>rd</sup> March 2010 by Joe Bloggs holder of Irish passport number xxxxxxxxxxxx, who has satisfied me that he resides at 17 The Birches, Donnybrook, Dublin and who states that he is a director of the Polish company Zigniew Polski gmbh and signed this document in that capacity – David Walsh”. DFA are not phased by the document being in Polish, that is a matter for the Notary, but if they cannot discern the Irish connection, which is more common in foreign language documents than in English language documents, then the Notary must provide the *nexus*.

Documents with blanks. DFA showed us a document notarized very recently (the notarial act discreetly removed to spare notarial blushes) where a printed document was signed by an Irishman, with blanks galore. It was a one page bank mandate form, authorizing any one of up to four persons to sign cheques etc on behalf of a company. Left conveniently blank to be filled in later were the name of the company, its address, the branch of the bank and the four places for the signatories. DFA can and do refuse point blank (*sorry, I couldn't resist*) to Apostille documents which are clearly intended to be filled in or altered later. They often refuse USA documents in particular, those 75 page

sale and mortgage documents that need 20 signatures and 85 initials (with the colour coded stick-on arrows for where to sign or initial) with which Notaries will be familiar and ever so fond. This is of course in keeping with Notarial standards of practice, where notarising documents with blanks is absolutely forbidden.

In summary, unless there is very good reason, documents should be Notarised and Apostil led in the country of origin. What Irish Notary can easily check if an Argentinean passport or a degree from the University of Vancouver is genuine as easily as an Irish passport or a degree from UCG, where a phone call might sort things out? Why should Irish Notaries or the DFA get involved in an English company giving a Power of Attorney to someone in the Cayman Islands to do various things, just because he happens to be in Ireland on holidays at the time (which is actually the most naively benign interpretation imaginable of what is probably going down)? Why should the usual money-laundering and anti-terrorism checks and balances and records of transactions be defeated by facilitating the filling in “later” of what company is mandating who to sign for it in what bank somewhere foreign? There are lots of bad guys out there trying to cod good guys, and we are on the side of the good guys.”

### **Money Laundering**

My understanding is that at this moment notaries in Ireland are not *qua notary* legally obliged to meet the requirements of the money-laundering legislation/Directives. Solicitor/notaries cannot avoid the legal requirements because Solicitors are bound. I am informed that The Faculty has pledged itself as regards all notaries to honour the code ,but is not legally binding on all notaries -as yet. The draft regulation to give effect to the Third Directive has been temporarily withdrawn. The notary qua notary is in limbo.

### **Stamp Duty**

I came across the following in Brookes Notary, which is important.

“Notarial acts do not per se require to be stamped. However, if a notarial act is appended to or placed on a document which is liable to stamp duty, the notary should, where practicable, see that the document itself is stamped before releasing it to the parties. *A fortiori*, if a notarial act in a public form embodies a document which is subject to stamp duty, the notary should ensure that the proper stamps are affixed to the act.” (Brookes Notary Tenth Edition).

### **The Future.**

There are many changes to the way we will all be carrying on business in the future.

The CRO have been operating e-filing for many years using CORE ([www.core.ie](http://www.core.ie)) and it is the ultimate aim to do away with paper filings. Companies who efile, incur less filing fees than companies who file documents in a paper form. Similarly, the Revenue Commissioners have been operating ROS for tax filings.

I note from the Companies House website in the United Kingdom, that between 50 to 100 cases of Corporate Identity Fraud occur every month and their website refers to a 3 Point Plan to help companies combat Identity Fraud. Using their Web Filing online service, is regarded as being far safer and more secure in the sending of statutory information, than using paper forms sent by post.

I believe that the same can be said of CORE, which is operated by the CRO.

I would briefly refer to The Electronic Commerce Act, 2000 and in particular to the The Irish Notary Public Supplement by Eamonn G. Hall and E. Rory O'Connor and the following is an extract from this publication:-

"The Electronic Commerce Act, 2000 ("the 2000 Act") was enacted to provide for the legal recognition of electronic contracts, electronic writing, electronic signatures and original information in electronic form in relation to commercial and non-commercial transactions. The 2000 Act also dealt with the admissibility of evidence in relation to such matters....., as well as the accreditation, supervision and liability of certification service providers and the registration of domain names. The 2000 Act was also based on certain provisions of the United Nations International Communication on Trade Law known as the UNICTRAL Model Law on E-Commerce 1996, revised in 1998."

You will already have heard the paper from Michael Lightowler on the global position on E-Notarising and I therefore do not intend to add anything further.

In addition, a new Consolidated Companies Bill is expected to be published later in the year, which will consolidate all existing legislation into one act. The Company Law Review Group have published papers explaining how the new bill will be structured. The good news is that, as noted, the existing legislation is being consolidated and therefore much of the new legislation will be already familiar to practitioners. We all indebted to the members of the Company Law Review Group, one of whom is a fellow member of the Faculty, Ralph MacDarby, for all their time and commitment over the years which they have given so generously in bringing about proposals for Company legislation suitable for the 21<sup>st</sup> Century.

By way of conclusion, I would also like to draw your attention to a Practice Note issued by the Law Society of England and Wales on the Execution of documents by virtual means. Whilst this Practice Note may or may not be relevant to the notarising of corporate documents, I believe that it warrants a mention.

The Practice Note refers to the ruling in R (on the application of Mercury Tax Group and another) v HMRC [2008] EWHC 2721 (Mercury) which has led to discussion about the effectiveness in English law of using pre-signed signature pages and virtual signings and closings where signature pages are exchanged by email. The practice note gives suggestions on good practice in light of the Mercury case and suggests different options for virtual signings/closings.

### **General**

WHAT EVER THE EMERGENCY - NEVER ALLOW YOURSELVES TO BE RUSHED OR PANICKED –THAT IS WHEN MISTAKES ARE MADE.

Thank you for your attention.

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#### **Precedents specifically referring to companies.**

See - The Irish Notary by E. Rory O'Connor and The Irish Notary Supplement by Eamonn G. Hall and E. Rory O'Connor.

Notarial Authentication of a Public Record – Appendix [22]

Authentication of a Copy Document by a Notary Public – Appendix [23]

Certificate authenticating an Extract from the Minutes of a Meeting of the Board of Directors of a Company containing the Text of a Resolution passed at the Meeting - Appendix [24]

Certificate by Company Secretary authenticating Resolution passed by The Board of Directors of a Company – Appendix [25]

Certificate by Company Secretary authenticating a Resolution passed by the Board of Directors of a Company – Appendix [26]

Notarial Act with Reference to the Authentication of a Board Resolution by the Company's Secretary – Appendix [27]

Notarial Certificate and Deposition verifying due execution of a Deed or other Document by a Company under its Common Seal – Appendix [30]

Power of Attorney (with Notarial Certificate of Due Execution Annexed) Authorising Appointee to Establish and Manage a Foreign or Overseas Branch of a Financial Services Company – Appendix [41]

Notarial Certificate (Short Form) of Due Execution by a Company in the Presence of a Notary Public of a Power of Attorney (or Other Deed) for Use Abroad – Appendix [47]

**See also the Supplement to The Irish Notary.**

Translator's Affidavit – Appendix [3]

Statutory Declaration of Translator – Appendix [3A]

Acknowledgement and Confirmation relating to the Execution and Notarising of a Foreign Power of Attorney – Appendix [4] and Appendix [5]

Short Form of Notarial Certificate of Due Execution of a Deed e.g. Power of Attorney by a Company – Appendix [7]

See Also

Brooke's Notary (various editions); and

Principles of Notarial Practice by Peter Zablud, Notary Public. This publication primarily deals with notarial acts under the laws of the Commonwealth of Australia, but can be a useful reference.