



CORPORATE AND COMMERCIAL

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# COVID-19: Delegation of Authority by Directors through Written Resolutions

by **Richard Curran, Paul Dineen**

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The board of directors of a company or the sole director in the case of some private limited companies may need to delegate authority during the COVID-19 pandemic due to illness or for other reasons.

This article discusses the relevant provisions of Companies Act 2014 (CA14) that provide for the authorisation of the delegation of corporate authority to persons other than directors to act on behalf of the company and sets out the circumstances in which that can happen.

In order to implement this change, written resolutions must be adopted by all of the directors. We have provided a sample template at the end of this article.

## Background

Sections 40(1) and 40(2) of the CA 2014 provide that the board of directors of a company shall be deemed to have authority to exercise any power of the company and to 'authorise others to do so' and subject to some limited restrictions contained in sections 40(5)-(8), these powers apply regardless of any limitations in the company's constitution on the board's authority.

Section 43(2) of the CA 2014 further provides that except as otherwise provided by the 2014 Act or by the constitution of the company, the company seal can be used by the authority of the company's directors and an instrument or document to which the company seal is to be affixed can be signed by a director, or an 'authorised person', and countersigned by the secretary, a second director, or an 'authorised person'.

Therefore, these written resolutions can be used by the directors of a company to delegate general authority to certain individuals to act on behalf of the company where, for example, due to COVID-19, the company is:

1. logistically hampered in signing documents and/or validly executing deeds; or
2. where the company is encountering operational difficulties due to the lack of a decision-maker; or
3. for any other COVID-19 related reasons.

## A Temporary Measure

These resolutions are only intended to be adopted as a short-term measure during emergency situations like COVID-19 or in respect of specified matters or transactions. Appointments of new directors or the appointment of an attorney under a lasting power of attorney (see Section 41 of the CA 2014) should be considered if the identified difficulties in signing documents or decision making are likely to be more permanent in nature.

## Director's Duties

Importantly, Section 40(4)(a) of the CA 2014 provides that the appointment of an 'authorised person' by the

directors does not affect a director's obligations in relation to director's duties, which includes a director's duty to observe any limitations in the company's constitution on the board's authority or liability in respect of any breach of those duties. Accordingly, before appointing any 'authorised person' under the written resolutions the directors should ensure that they exercise caution in making such an appointment(s) and to put appropriate oversights in place to monitor the use of such authority as they will be liable if the 'authorised person' uses their authority in a way that results in a breach of director's duties. A senior manager or trusted family member in smaller companies might be the most appropriate candidates.

**Please [click here to view or download](#) a sample template of the Directors' Written Resolutions.**

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For further information, please contact Richard Curran or Paul Dineen from the LK Shields Corporate and Commercial team. To view our cross-disciplinary coverage of business continuity during the COVID-19 outbreak, please [visit our dedicated special insights page](#) and sign up to our mailing list by [clicking here](#).

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