

The evolution of streamlining deed execution for companies

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The execution of documents as deeds in Ireland, as in many common law jurisdictions, has a history informed by both legal tradition and the evolving needs of commerce and property law. Historically, a deed, known as an "indenture" in earlier times, is a formal legal document that is executed (signed, sealed, and delivered) with a certain solemnity and formality.

Deeds are distinct from simple contracts by the requirement of a formal execution protocol and, traditionally, the presence of a seal. The use of seals dates back to medieval times when literacy was not widespread, and seals served as a unique identifier for the individual executing the document. This practice endowed the document with a greater sense of authenticity and solemnity.

Deeds in Ireland

In Ireland, the significance of executing a document as a deed lies in its legal implications. The formalities associated with deeds serve to provide evidence that the parties intend the document to have immediate legal effect and to be binding. Deeds are a legal requirement for certain documents, including the conveyance of real property, the granting of certain types of leases, and the assignment of intangible rights where consideration may not be present. Irrespective of whether a deed is a legal requirement for validity, the strategic advantage of executing legal agreements as deeds is underscored by certain legal advantages. These include an extended statute of limitations and the absence of the requirement of consideration, rendering the cumbersome nature of deed execution worthwhile for businesses wishing to strengthen their contracts.

Evolving requirements for deed execution

The specific requirements for executing deeds have evolved over time, influenced by legislation

and legal practices. In Ireland, this evolution has been marked by a shift from the use of wax seals to a more modern understanding of what constitutes a deed. The Property Law Act 2009 was a significant piece of legislation in this area, as it modernised the law relating to the execution of deeds by companies, making it clearer and more flexible. For example, this Act allowed for execution in counterpart, meaning each party could execute (sign, seal and deliver) separately so that identical copies of the document taken together would constitute a single binding agreement.

Challenges in electronic execution of deeds

Another milestone in the development of executing deeds in Ireland is the recognition and increasing acceptance of electronic execution of documents, including deeds. The Electronic Commerce Act 2000, as amended, laid down the legal framework for electronic signatures and transactions. However, the application of electronic signatures to deeds is mired in difficulty, making it challenging to establish whether a deed has been validly executed. If a deed is not executed properly according to the legal requirements in Ireland, it can have significant legal consequences. Failure to adhere to the formalities can affect the enforceability and validity of the deed, leading to various legal and practical implications. The most immediate and significant effect of failing to properly execute a deed is that the deed may be considered invalid. This means that the legal document and the transactions or agreements it was intended to formalize might not be legally binding. This can have serious implications for all parties involved, particularly in transactions involving the transfer of property, where a failure to execute a deed properly can result in the transfer not being legally recognized.

A need for change

The development of executing documents as deeds in Ireland reflects a balance between maintaining the solemnity and certainty associated with traditional legal formalities and adapting to technological advancements and changing commercial practices. In a digital and global age, traditional deed execution requirements—specifically, that a company seal be affixed in the physical presence of two directors or a director and the company secretary—emerge as logistical hurdles. This challenge is particularly felt in scenarios that require operational flexibility, such as when a company's sole director, for whatever reason, is not in the office.

Legislative changes on the horizon

For companies, the enactment of Section 43A of the Companies Act 2014 in Ireland during the COVID-19 pandemic temporarily eased the logistical burdens associated with deed execution by permitting a corporate party to a deed to execute the deed in three separate parts, including the application of the company seal separately on a deed. This provision facilitated the signing, sealing, and delivery of separate copies of the same document from afar. However, the "interim

period" during which this provision applied was not extended (while other interim measures have been extended until 31 December 2024), signalling a reversion to the more rigorous traditional requirements.

But legislative changes are set to bridge this disconnect. A proposal within a forthcoming bill, contained in the General Scheme of the Companies (Corporate Governance, Enforcement and Regulatory Provisions) Bill 2024, which is scheduled for presentation to the Oireachtas this summer, is the reincorporation of provisions the same as those contained in Section 43A, which would have the effect of making the changes it brought during COVID-19 permanent.

Conclusion

The proposed legislative change, aimed at permanently incorporating more flexible execution methods by companies of deeds, represents a step forward in aligning legal practices with the practical realities of modern business. By addressing the logistical difficulties of traditional execution requirements, these changes will streamline processes for companies and make the process of executing a deed easier, while retaining the requisite formalities. For more information about deed execution and other related matters please contact a member of our Corporate team via their contact details below.

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