

TRAINING & DEVELOPMENT PROGRAMME

Knowledge Network

Webinar Series

Corporate Authority

Wednesday, 18 November | 8.30 am to 9.30 am



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Introduction

- Enforceable contract usually requires an authorised signature
- Some third party protections are available (when dealing with companies)
- Liability of unauthorised persons
- Liability of professional advisers

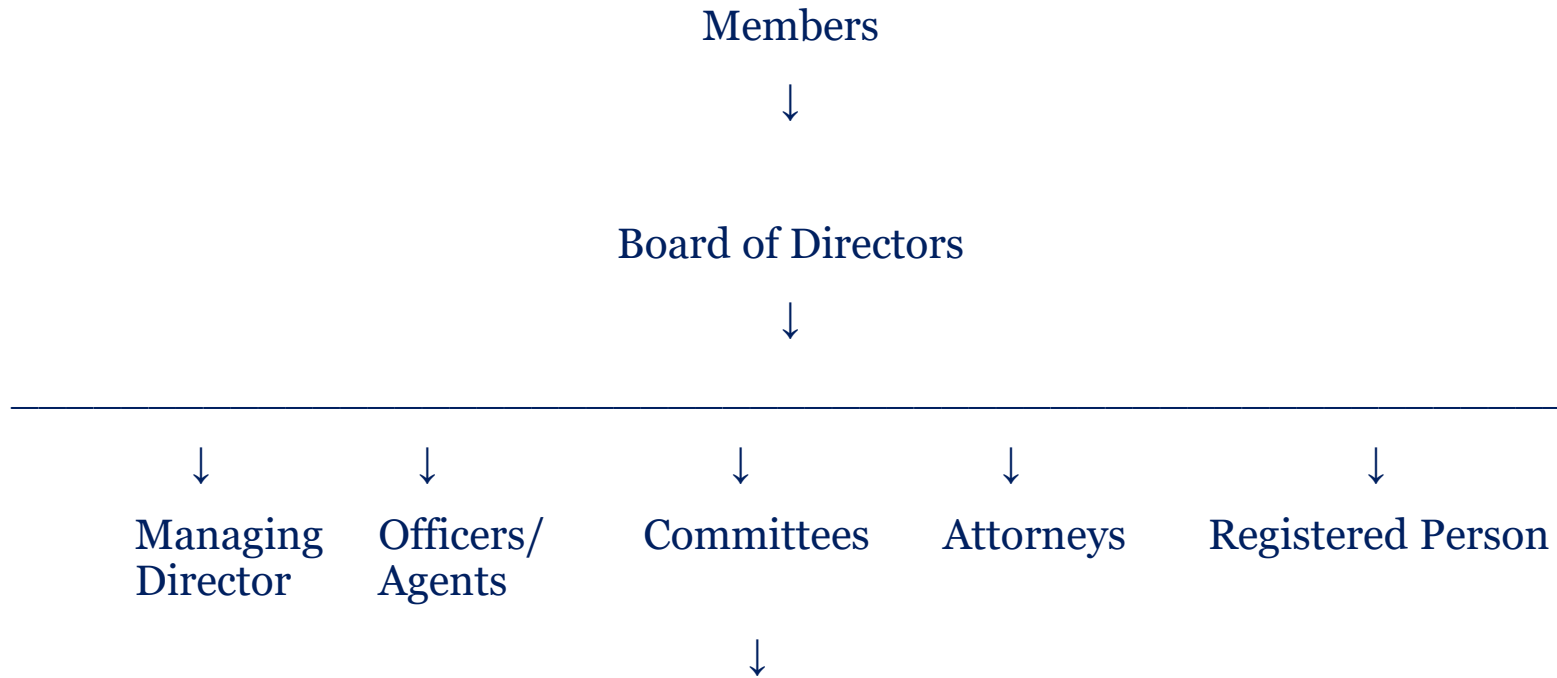
Authority within a Body Corporate

- Authority can be:
 - Actual
 - Ostensible
- For a company
 - Companies Act 2014 and the company constitution are primarily relevant
- For a statutory *corporation*
 - Legislation specific to the statutory corporation will create it, regulate its business and confer *vires*
- For a statutory *company* (*ie* formed under the Companies Act pursuant to legislation specific to the body)
 - Companies Act and the company constitution
 - The company-specific legislation

Agreement or Deed

- Differences
- When either is required
- Key implications:
 - Need for consideration
 - Statute of Limitations

Company: Typical Chain of Authority



Powers of Attorney

- Part III, Powers of Attorney Act 1996
- Section 41, Companies Act 2014

Common Seal

- Check:
 - Company constitution (+ default 2014 Act provisions)
 - Identity of witnesses
- Temporary measures
 - Section 43A, Companies Act 2014 (section 5, Companies (Miscellaneous Provisions) (Covid-19) Act 2020)

Alternate Directors

- Substitutes, can never act simultaneously
- Typically only applies to executive directors
- Check:
 - Company constitution
 - Terms of appointment
- All directors duties / obligations apply to an alternate

Board Minutes

- Usual form
- Content
 - No minimum level of detail is prescribed by law but should record every proposed resolution and whether adopted (if adopted with dissension, include reasons for dissension if the dissenter so wishes)
 - For regulated financial services providers, the Central Bank insists on detail (sections 7.4, 16.2, 16.3 and 20.1(b), *Corporate Governance Requirements for Credit Institutions*)

Use of Technology

- Electronic signatures
 - Law
 - Practice
- Virtual signings
 - Practice

When Drafting or Reviewing a Contract

Check:

- Is it in the correct legal form?
- Company capacity
- Authority of persons signing / executing
- Proper execution by all parties

Execution by a Company

Check:

- Company constitution
- Minutes of board / committees
- Identity of individuals
- Mode of execution

Seek evidence that authorities remain valid

Anticipate Contingencies

- Check position for each legal entity
- Have more than one person authorised
- Have power of attorney in place
- Have facility for telephone meetings
- Try have more than the minimum number of directors on a board
- Consider delegated authority to committees
- Consider having an official seal, for convenience

Questions?



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