

REQUIREMENTS IN RELATION TO STATUTORY DECLARATIONS MADE FOR THE PURPOSES OF THE COMPANIES ACT 2014

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Certain provisions of the Companies Act 2014 require statutory declarations to be completed and filed with the CRO.

1. Statutory Declarations made in the State

Pursuant to the Statutory Declarations Act 1938, a statutory declaration made in the State is required to be made before either a:

- (a) notary public,
- (b) commissioner for oaths,
- (c) peace commissioner, or
- (d) a person authorised by law to take and receive statutory declarations, such as a practising solicitor (a solicitor entitled to practise in the State).

2. Statutory Declarations made outside the State

The relevant law is found in section 886 of the Companies Act 2014.

Section 886(1) provides that a statutory declaration made in a place outside the State in pursuance of or for the purposes of the Companies Act is regarded as having been validly made if it is made in such a place before -

- a person entitled under the Solicitors Act 1954 to practice as a solicitor in the State², or
- a person authorised, under the law of that place, to administer oaths in that place, subject to appropriate legalisation or authentication, the requirements as to which vary according to the jurisdiction where the declaration was made, or
- a diplomatic or consular official of Ireland pursuant to the Diplomatic and Consular Officers (Provisions of Services) Act 1993.³

“Legalisation” (or “Authentication”) means the formality by which the authenticity of a signature on a document, the capacity in which the person signing the document has acted, and where appropriate, the seal or stamp of a person which a document bears, are certified. In practice, this involves the authorities of the jurisdiction where the document was executed certifying these matters to the satisfaction of diplomatic or consular officials of Ireland, which officials in turn certify that the relevant authorities have provided the certification to them.

(a) Statutory declarations made for the purposes of the Companies Act in any of the EC Convention Countries

This refers to countries which are party to the *Convention Abolishing the Legalisation of Documents in the Member States of the European Communities of 25 May 1987*. Ireland is a signatory to this Convention. The other signatories to the EC Convention are Belgium, Denmark, Estonia, France, Italy and Latvia. Where a statutory declaration is made in any of those jurisdictions for the purposes of the Companies Act 2014 before a person entitled to administer oaths in the jurisdiction in question, no legalisation is required. The single limitation on this is found in Article 4 of the Convention which provides:

“If the authorities of the State in whose territory the document is produced have serious doubts, with good reason, as to the authenticity of the signature, the capacity in which the person signing the document has acted or the identity of the seal or stamp, they may request information directly from the relevant central authority, designated in accordance with Article 5, of the State from which the .. document emanated.”

Such requests for information ought to be made in exceptional cases only and must set out the grounds on which they are based.

¹ Act No. 38 of 2014. The legislation may be downloaded from www.irishstatutebook.ie

² Pursuant to section 54 of the Solicitors Act 1954, this means a solicitor whose name is on the roll of solicitors, who is not suspended from practice and either he or she is a solicitor in the full-time service of the State or a practising certificate in respect of him or her is in force.

³ See 2(d) below.

(b) Statutory declarations made for the purposes of the Companies Act in any of the Hague Convention Countries

This refers to countries which are party to the *Convention Abolishing the Requirement of Legalisation for Foreign Public Documents done at the Hague on 5 October 1961*. If the jurisdiction where the declaration was made is not party to the EC Convention but is a party to the Hague Convention, then provided that the declaration is signed in the foreign jurisdiction before a person entitled to administer oaths in that jurisdiction, such as a notary public, the only form of legalisation that is required is by way of single certificate, called an “apostille”, stamped on or attached to the declaration, which is obtainable from the designated competent authority for the jurisdiction in question. It is a matter for the person submitting the declaration to the CRO to obtain the necessary apostille.

The apostille, when fully completed by the relevant designated competent authority, will certify the authenticity of the signature, the capacity in which the person signing the declaration has acted, and where appropriate, the identity of the seal or stamp which the declaration bears. The apostille itself is exempt from all certification.

A statutory declaration made in a Hague Convention country (not also being a party to the EC Convention) must be submitted to the CRO with the apostille in order to be accepted for registration.

For example, if a statutory declaration for the purposes of the Companies Act 2014 is made within the United Kingdom, say London, before a person empowered to administer oaths in that jurisdiction (for instance, an English practising solicitor), such execution must be authenticated. This means that an apostille must be obtained from the Legalisation Office, Foreign and Commonwealth Office (see <https://www.gov.uk/get-document-legalised>)(the designated competent authority for the UK) and submitted to the CRO with the declaration in question.

For an up to date list of Hague Convention countries and the designated competent authority for each jurisdiction, see <http://www.hcch.net/> and the convention is number 12.

Albania	Andorra	Antigua & Barbuda	Argentina
Armenia	Australia	Austria	Azerbaijan
Bahamas	Barbados	Belarus	Belgium
Belize	Bosnia & Herzegovina	Botswana	Brunei Darussalam
Bulgaria	Cape Verde	China (Hong Kong)	China (Macao)
Colombia	Cook Islands	Croatia	Cyprus
Czech Republic	Denmark	Dominica	Dominican Republic
Ecuador	El Salvador	Estonia	Fiji
Finland	France	FYR of Macedonia	Georgia
Germany	Greece	Grenada	Honduras
Hungary	Iceland	India	Ireland
Israel	Italy	Japan	Kahakhstan
Korea, Republic of	Latvia	Lesotho	Liberia
Liechtenstein	Lithuania	Luxembourg	Malawi
Malta	Marshall Islands	Mauritius	Mexico
Moldova	Monaco	Mongolia	Montenegro
Namibia	Netherlands	New Zealand	Niue
Norway	Panama	Peru	Poland
Portugal	Romania	Russian Federation	Saint Kitts and Nevis
Saint Lucia	St. Vincent & the Grenadines	Samoa	San Marino
Sao Tome e Principe	Serbia	Seychelles	Slovakia
Slovenia	South Africa	Spain	Suriname
Swaziland	Sweden	Switzerland	Tonga
Trinidad & Tobago	Turkey	Ukraine	United Kingdom
United States	Vanuatu	Venezuela	

Note that for the purposes of the Hague Convention, the United Kingdom includes certain foreign territories, including the Cayman Islands, Gibraltar, Turks and Caicos Islands, and Bermuda. The full

list of foreign territories concerned and the contact details of their individual designated competent authorities, may be accessed using the above web link.

(c) Statutory declarations made for the purposes of the Companies Act in a jurisdiction that is neither party to the EC Convention nor the Hague Convention

If the jurisdiction where the declaration is made is not a party to either the EC Convention or the Hague Convention, section 886(6) of the Companies Act 2014 provides that the Registrar of Companies may, before receiving any statutory declaration purporting to be made in pursuance of, or for the purposes of, the Companies Act, being a declaration to which neither the provisions of the EC Convention nor the Hague Convention apply as regards the authentication of it, require such proof, as he or she considers appropriate of the authenticity of the signature, the capacity in which the person making the declaration has acted, and where appropriate, the seal or stamp of the person taking the declaration.

The Registrar's requirement in this regard is that the identity of the person taking the statutory declaration be authenticated, in order that CRO staff can be satisfied that the person who has taken the declaration is a person authorised under the law of the foreign jurisdiction where that declaration was made to administer oaths in that place.

What this means in practice is that if a company or presenter submits a statutory declaration which has been made in a country that is not a party to either the EC or Hague Conventions, authentication is required as follows: the CRO requires certification by successive authorities of the authenticity of the signature and/or seal on the document concerned of the person before whom the declaration was made (the witness to the declaration). For instance, the signature, seal and/or stamp of the person who has witnessed the making of the declaration should be firstly authenticated by the authorities of the jurisdiction where the declaration was made, including confirmation from the authorities such person is authorised under its laws to administer oaths in that jurisdiction. This certification should be in turn be stamped as "SEEN" at the Irish Embassy or by the Honorary Consul for the country concerned.

With one exception, therefore, it is not possible to make a valid declaration for the purposes of the Companies Act 2014 in a jurisdiction where there is no Irish Embassy or Honorary Consul as it will not be possible for the company or the presenter to furnish to the CRO the requisite authentication as to the seal or stamp of the person who has witnessed the making of the declaration. The exception is as follows: in the case of a Commonwealth country, where there is no Irish Embassy or Honorary Consul in the country concerned, the seal or signature of the person who has witnessed the making of the declaration should be authenticated by the Governor of the country in question, then stamped at the Foreign Office in London and finally stamped as "SEEN" at the Irish Embassy in London.

(d) Statutory declarations made for the purposes of the Companies Act outside the State but before a diplomatic or consular official of Ireland.

A statutory declaration under the Statutory Declarations Act 1938 may be made outside the State before a diplomatic or consular official of Ireland pursuant to the Diplomatic and Consular Officers (Provisions of Services) Act 1993.

The relevant Irish embassy/consulate for the jurisdiction in question should be contacted in the first instance if further information in this regard is required. A list of Irish embassies/consulates is available from the Department of Foreign Affairs website – www.foreignaffairs.gov.ie.

You can also contact Department of Foreign Affairs, 80 St. Stephen's Green, Dublin 2, if further information is required about this manner of making a statutory declaration abroad for the purposes of the Companies Act.

Caution: These notes are in general form. In specific cases, it is advisable to consult with your own professional adviser, such as your solicitor, accountant or chartered secretary. CRO is not in a position to advise on the specifics of any case. CRO cannot accept for registration a statutory declaration made in a place outside the State that has not been made in compliance with the provisions of section 886 of the Companies Act 2014. A professional ought to be consulted if you are in any way unsure as to how a statutory declaration to be lodged with the CRO has to be completed and/or executed.

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