



**DIRECTORS
DEALING WITH
COMPANY**

**SECTION 29
COMPANIES ACT,
1990**

Section 29 of the Companies Act, 1990 came into operation on 1st February 1991. As a result a company may not enter into an arrangement with:-

- (a) a director of the company; or
- (b) a director of its holding company, or
- (c) a person connected with such director

without the arrangement having been first approved by resolution of the company in general meeting.

An arrangement for the purpose of the section is one whereby one or more non-cash assets are acquired by:-

- (a) the company from a director;
- (b) the company from a person connected with its director or a director of its holding company,
- (c) a director or a person connected with him from the company or its holding company

Connected persons are defined in Section 26 of the Act as:-

- (a) the director's spouse, parent, brother, sister or child;
- (b) a person acting in his capacity as the trustee of a trust the principal beneficiaries of which are the director, his spouse or any of his children or any body corporate which he controls, or
- (c) a partner of that director.

A body corporate is connected with a director if it is controlled by the director. Section 26 (3) contains detailed provisions defining control. It should also be noted that the definition of a director includes a shadow director as defined in section 27.

Transaction falling below the thresholds specified in section 29 (2) are not affected. The transaction must not exceed IR£1,000 in value. If it does, it will only be exempt from the provisions of the section where it is less than IR£50,000 in value and that value does not exceed 10% of the relevant assets of the company as defined in the subsection.

The Conveyancing Committee has considered the implication of Section 29 for conveyancing practice and has taken the opinion of Professor Wylie on the matter. As a result it has decided to issue the following practice note. In transactions between natural persons and bodies corporate and in transactions between bodies corporate a certificate should be included to show either that the parties are not connected with one another for the purposes of Section 29 or that they are connected with one another and the requisite resolution has been passed by one or more companies involved.



The Committee considers that the detail of the matter should not be one of title and that the certificates should do no more than certify the position. Accordingly, it is not sought to produce either the formal resolution of the company or other detail in the certificates which would put an investigator on notice of additional facts.

These certificates are not required in a transaction between two natural persons.

In these certificates the expression “A” should be replaced by a reference to either the vendor or the purchaser as appropriate. The expression “B” should be replaced by the name of the holding company of either the vendor or the purchaser as appropriate.

The first certificate deals with a transaction where the parties are connected.

The second certificate deals with a transaction where the vendor or the purchaser is a natural person dealing with a body corporate with which he/she is not connected.

The third certificate deals with a transaction where both the vendor and the purchaser are unconnected corporate bodies.

These certificates do not exhaust the situations which may arise and should be varied as appropriate.

The following points arising under the Companies Acts should be borne in mind:-

1. Where the Articles of Association of the company permit, the company may pass a resolution under section 141 (8) of the Companies Act, 1963. Such a resolution in writing, signed by all the members for the time being entitled to attend and vote on such resolution at a general meeting is as valid and effective for all purposes as if the resolution had been passed at a general meeting of the company duly convened and held.
2. “Holding company” is defined in Section 155 (4) of the Companies Act, 1963 as:- “a company shall be deemed to be another company’s holding company if, but only if, that other is its subsidiary”. The full definition of subsidiary is set out in Section 155 (1) of the Companies Act, 1963.
3. “Director” under provisions of Section 27 of the Companies Act, 1990 includes a shadow director. A shadow director is a person in accordance with whose direction or instructions the directors of a company are accustomed to act. The only exclusion is a person whose directions or instructions are given as advice in a professional capacity.

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(Contd.)



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Certificates

1. [IT IS HEREBY CERTIFIED for the purposes of Section 29 of the Companies Act, 1990 that the transaction hereby effected has been approved by a resolution passed (at an Extraordinary General Meeting of the members of [A/B being the holding company of A]) or (as a written resolution of the members of [A/B being the holding company of A])]
OR
2. [IT IS HEREBY CERTIFIED for the purposes of Section 29 of the Companies Act, 1990 that the [vendor/purchaser] is not a director or a person connected with a director of A or its holding company]
OR
3. [IT IS HEREBY CERTIFIED for the purposes of section 29 of the Companies Act, 1990 that the vendor and the purchaser are not bodies corporate connected with one another in a manner which would require this transaction to be ratified by resolution of either]

**AUTOMATIC
RENEWAL OF
INTOXICATING
LIQUOR LICENCE**

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It is the view of this Committee that if you had been in the habit of attending to the renewal of your client's publicans' licences prior to the introduction of Section 41 (2) of the Courts (No. 2) Act, 1986 it would be prudent, even at this late stage, to write and advise your client of the consequences of failing to renew his licences. It should be pointed out to the client that he must renew his licence on an annual basis, otherwise he runs the risk of incurring the expense of applying to the Circuit Court for a new licence if he adverts to the fact that he has actually lost his licence through non-renewal provided that he does so within a period of five years. If he fails to apply to the Circuit Court for a new licence within a period of five years after the date when he last renewed it then he forfeits the right to a new licence absolutely.