



Electronic execution in the time of Coronavirus

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New legislation allows the continuation of electronic execution of company documents

There is some welcome news for companies executing documents whilst lockdown persists.

The *Treasury Laws Amendment (2021 Measures No. 1) Act 2021 (Cth)* came into operation on and from 14 August 2021.

The legislation gives certainty as to whether companies can execute documents – including deeds - under s127(1) of the *Corporations Act 2001 (Cth)* (the "**Act**") by electronic means and/or by way of split execution (being where each of two directors or a director and secretary of a company executes separate counterparts of the same document). It also allows companies to use electronic means or alternative technologies to meet the Act's requirements relating to holding meetings, providing notices relating to meetings and keeping minutes.

A Determination in place from 5 May 2020 – the Corporations (Coronavirus Economic Response) Determination (No. 1) 2020 - made similar allowances for companies. However, that Determination expired on 21 March 2021.

Summary

- Companies can again execute documents – including deeds – electronically under s127(1) of the Act. In so doing, the counterparty to the document will be entitled to rely on the statutory assumptions in sections 128, 129(5) and 129(6) of the Act.
- The copy or counterpart must include the entire contents of the document. This does not mean that the person needs to physically print or sign every page. Rather, a person must not sign an execution page that has been separated from the remainder of the document.
- Split execution is allowed. The director, secretary or witness may sign a copy or counterpart of the document and the copy or counterpart does not need to include the signature of any other person (in the case of a document executed by two directors or a director and a secretary).
- A witness does not need to sign the same document as the one to which the seal was affixed and therefore there can be a delay between the witnessing occurring and the document being signed.

Requirements

There are some important requirements that must be followed for companies to execute documents by electronic means in accordance with this legislation. In particular, the method of electronic execution must:

- identify the person and indicate their intention to sign the document;
- be on a copy or counterpart of the document that includes the entire contents of that document; and
- be reliable and appropriate for the purposes (or be proven to have in fact fulfilled that purpose).

These requirements were not included in previous iterations of this legislation. If parties are using electronic methods of execution like Docusign, they should always take additional steps (such as making a phone call to the signing party) to ensure that the document is being sent to the legitimate email address of the signing party and to verify that the signing party intends to sign the document.

Keep in mind that there are no transitional provisions in place and the legislation does not operate retrospectively. This means that documents executed by a company between 21 March 2021 and 14 August 2021 (inclusive) do not have the benefit of this legislation or the previous electronic execution legislation.

If you would like any further information or would like to discuss your legal requirements, please contact [Alison Rees](#) on 02 8235 1211 or your usual ClarkeKann contact.