



SIGNING CONTRACTS: WHEN THE FORMALITIES CAN'T BE FOLLOWED

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In the March edition of CK Momentum, we looked at the [formalities of signing contracts](#). However, in some commercial dealings following the formal rules of, for example, having two directors sign a document or asking for a copy of a board resolution to verify a representative is authorised to bind the company, is not always practical or possible. Senior associate Brad Vinning looks at the circumstances in which you may be able to assume the person you are dealing has authority to bind the company because of *implied or apparent authority*.

IMPLIED OR APPARENT AUTHORITY

An outsider may assume a person has implied or apparent authority where there is the appearance of authority conferred on that person. Where a person has such authority, as between the company and the outsider, the company is prevented from denying that the person lacked authority and a valid contract will exist.

However, to be able to assert the person you are dealing with has implied or apparent authority, the company or someone with actual authority must represent the person's authority, either by:

- Appointing the person to a particular position
For example, you could assume that a managing director has authority to bind the Company with respect to matters regarding the daily running of the company.
- Or
- Allowing the person to carry out particular tasks that are beyond their usual authority.
For example, a Company over time does not object to being bound by arrangements entered into by a senior

executive or single director. Although typically a single person would not have authority to bind the company, the Company's acquiescence creates the appearance of authority in that person.

However it is important to remember that a person who purports to act on behalf of the company must act within the limits of their actual or apparent authority. Whilst it is difficult for an outsider to know what the limit of a representative's authority is, you should always apply common sense and consider:

- the size of the company;
- the nature of its business; and
- the position held in the company by the person holding themselves out to have authority.

For example, the authority of a managing director probably does not extend to a decision to sell the entire business of the company.

If you are in any doubt as to the authority of the representative you are dealing with and their ability to bind the company, then you should always seek to have their authority verified by someone that you know has actual authority.

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