



SIGN ON THE DOTTED LINE – FORMALITIES OF SIGNING CONTRACTS

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Business owners often ask us about the technical requirements for signing and dating contracts. Litigation & Insolvency Partner Sarah Davies, points out a number of matters you should keep in mind:

1. A company can sign documents by having them signed by two directors, or a director and a secretary. Both signatories should sign the same document.
2. Fixing the company seal to the documents is not necessary. In fact a company does not need a company seal.
3. If the company has only one director who is also the company secretary, then that director can sign documents on behalf of the company.
4. If execution is in accordance with the above, then the other party is entitled to assume the document has been properly executed by the company. In either case, no witness is required.
5. A company can also sign a contract through an individual if the individual:
 - (a) is an authorised representative, meaning the company has passed a board resolution authorizing them to sign documents (and generally the resolution will set out the limitations on the person's ability to sign on behalf of the company), or
 - (b) has been granted a power of attorney and the details of that appointment should be contained in the execution clause of the contract.
6. If an individual is signing, then a witness will be required, and they must actually be present when the document is signed by the individual and they must sign the same document, rather than a counterpart.
7. The contract should be dated on the date that the last party to the contract signs it. Parties often forget to date the contract and this can cause problems down the track.
8. It is open to the parties to a contract to agree upon the date (including a past date) from which their legal relationship commenced. They can state expressly in the contract that it has retrospective operation and takes effect from an earlier date or it can be inferred from the other terms of the contract.
9. Giving a contract retrospective action is not the same as backdating the contract, which should be avoided. The retrospective effect of the contract is unlikely to affect the parties' obligations to third parties, such as the Australian Taxation Office. Third parties will normally be entitled to look at the actual date the contract was entered into. Contracts should only be given retrospective effect if it is clear that there is no intention to deceive or harm any third parties.

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