



CONSTRUCTION | AUGUST 2021

ELECTRONIC EXECUTION AND SPLIT EXECUTION PERMITTED BY CHANGES TO CORPORATIONS ACT

Electronic execution and split execution of documents by companies is once again permitted following temporary changes to section 127 of the *Corporations Act 2001* (Cth). The changes took effect on 14 August 2021 and provide relief to companies needing to sign documents while company officers are subject to stay at home restrictions. The amendments will automatically expire on 31 March 2022.

The key reforms, which were introduced by the *Treasury Laws Amendment (2021 Measures No. 1) Act 2021* (Cth) (**Amendment Act**), allow execution by a company under section 127 of the Corporations Act to be completed electronically on separate paper or electronic copies or counterparts of a document.

Electronic execution

To be effective, the method of electronic execution must:

- identify the person and indicate the person's intention to sign the document;
- be on a copy or counterpart that includes the entire contents of the document (meaning it is not sufficient to only send the execution page to the signatory); and
- be as reliable as appropriate for the purpose for which the document was generated.

The Amendment Act does not specify the form of electronic execution that must be used. However, the Explanatory Memorandum to the Bill does refer to various methods of electronic execution, including using a digital signing platform (such as DocuSign) or a stylus tool to sign a PDF document.

Split execution

The amendments also allow what is commonly referred to as split execution, meaning company officers can sign two separate counterparts of a document. This reverses the previous common law position that required company officers signing documents under section 127 to sign a single physical copy of the document.

The amendments apply to both wet ink and electronic execution. For execution to be valid each copy or counterpart of the document must include the entire contents of the document being signed.

Common seal

Where execution is carried out under common seal, directors and company secretaries can now witness the fixing of a company seal by electronic means (e.g. by videoconferencing). The executed document must include a statement that the person observed the fixing of the seal by electronic means.

Deeds

In NSW, Victoria and Queensland the amendments apply to all documents, including deeds, executed by companies under section 127. In other jurisdiction, where state specific legislation does not permit electronic execution of deeds, deeds can be executed using split execution but must still be wet ink signed.

Impact of changes

The positive impact of these amendments is undeniable in addressing the challenges faced by companies needing to execute documents during COVID-19 restrictions. However, the solution remains temporary and does not address

execution which took place between 31 March 2021 (when the *Corporations (Coronavirus Economic Response) Determination (No.3) 2020* (Cth) expired) and 14 August 2021 when the changes commenced.

Caution is still needed to ensure the requirements for effective electronic execution are met.

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