

ELECTRONIC EXECUTION OF DOCUMENTS – COVID-19

Execution of documents (including deeds) **by a company**:

- Our general recommendation
 - o Valid execution pursuant to S127 of the Corporations Act 2001 (Cth) (“the Corp Act”)
Most commonly used for proprietary companies and readily accepted by third parties due to protections afforded by s129 of the Corporations Act – indoor management rule.
Treasury Laws Amendment (2021 Measures No.1) Bill 2021 received Royal Assent on 13 August 2021 and temporarily permits electronic signing of company documents until 31 March 2022 (including a deed under s127 and written resolutions of members or directors under Chapter 2G of the Corp Act)
- Pre-COVID 19
 - o There was sufficient doubt in validity of documents electronically signed by companies under s127 of the Corp Act across different jurisdictions in Australia and consequently there were significant number of parties (including many government bodies) that would not accept electronic signing by companies.
- Post-COVID 19
 - In May 2020, the *Corporations (Coronavirus Economic Response) Determination (No. 1) 2020* temporarily modified the Corp Act for 6 months to provide for electronic execution of documents by companies
 - In September 2020, the *Corporations (Coronavirus Economic Response) Determination (No. 3) 2020* effectively extended the expiry date of this temporary modification to 21 March 2021
 - In February 2021, Treasury Laws Amendment (2021 Measures No.1) Bill 2021 was introduced to provide for electronic signing by companies until 15 September 2021. This Federal Bill was not passed by the Senate and the next debate is adjourned until August 2021.
 - *Treasury Laws Amendment (2021 Measures No.1) Bill 2021* received Royal Assent on 13 August 2021 and temporarily permits electronic signing of company documents until 31 March 2022 (including a deed under s127 and written resolutions of members or directors under Chapter 2G of the Corp Act)

Execution of documents (including deeds) **by an individual party**:

- Validity of electronic execution of documents by individuals depends on the applicable legislation of the State in which the document is created, executed and used.
- Various temporary and permanent measures in relation to electronic signing of documents were introduced by different State governments since COVID-19 in an attempt to support continuation of transactions despite the restrictions due to COVID-19.
- Please refer to the table below which has been prepared to provide you with general guidance on determining whether you can electronically sign a document in your State.

Electronic Execution of Deeds in the relevant jurisdiction

ISSUE	CTH	NSW	VIC	QLD	WA	SA	TAS	ACT	NT
By a company under s.127 of the Corporations Act?	Yes, the temporary amendment of the Corporations Act, which provides for electronic execution of documents by (and in relation to) companies under s127 of the Corporations Act, is effective for the period between 14 August 2021 and 31 March 2022 (including the start and the end dates).								
Written resolutions of members or directors under Chapter 2G of the Corporations Act?	Yes, the temporary amendment of the Corporations Act, which provides for electronic execution of documents by (and in relation to) companies under s127 of the Corporations Act, is effective for the period between 14 August 2021 and 31 March 2022 (including the start and the end dates).								
By a company pursuant to the company's current constitution?	N/A	Yes (until 31 December 2021) but must be signed and witnessed pursuant to NSW laws on valid execution of deeds ¹ . The constitution of the company should have express provisions permitting electronic execution of a deed	Yes but must be signed, sealed and delivered pursuant to VIC laws on valid execution of deeds ² . Witnessing is not mandatory but recommended. The constitution of the company should have express provisions permitting electronic execution of a deed	Yes (until 30 September 2021) but must be signed, sealed and delivered pursuant to QLD laws on valid execution of deeds ³ . Witnessing is not mandatory but recommended.	No	No	No	No	No
By an individual	N/A	Yes (until 31 December 2021) but must be signed and witnessed pursuant to NSW laws on valid execution of deeds ⁴ .	Yes but must be signed and expressed to be sealed pursuant to VIC laws on valid execution of deeds by individuals ⁵ . Witnessing is not mandatory but recommended.	Yes (until 30 September 2021) but must be signed, sealed and delivered pursuant to QLD laws on valid execution of deeds ⁶ . Witnessing is not mandatory but recommended.	No	No	No	No	No

Caution – As can be seen from this table, the law relating to electronic signing and witnessing varies in the Commonwealth and the various States and Territories. By offering the process for electronic signing and witnessing of documents SUPERCentral and Townsends Business & Corporate Lawyers give no warranty that electronic signing or witnessing of this document is effective under the law of the Commonwealth or your particular State or Territory. For further assistance or information please call us on 02 8296 6266

¹ S38A of the Conveyancing Act 1919 (NSW) and Part 2B of the Electronic Transactions Act 2000 (NSW) (to be repealed on 1 January 2022)

² S12A of the Electronic Transactions (Victoria) Act 2000

³ Part 3D of the Justice Legislation (COVID-19 Emergency Response – Documents and Oaths) Regulation 2020 and s47 of the Property Law Act 1974 (QLD)

⁴ S38A of the Conveyancing Act 1919 (NSW) and Part 2B of the Electronic Transactions Act 2000 (NSW) (to be repealed on 1 January 2022)

⁵ S73A of the Property Law Act 1958 (VIC) and S12A of the Electronic Transactions (Victoria) Act 2000

⁶ Part 3D of the Justice Legislation (COVID-19 Emergency Response – Documents and Oaths) Regulation 2020 and s47 of the Property Law Act 1974 (QLD)