SIG-03 Signing by a Corporation

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1 Overview

Under s.127 of the Corporations Act 2001, a company may:

- execute documents under seal

or

- choose not to have a company seal and therefore execute documents without using a seal.

If a company has a seal, it is not obliged to use it for the execution of documents. Documents executed by a corporation do not require witnessing by a qualified witness.

2 Signing/Execution Requirements

2.1 Signing/Execution with a common seal in accordance with section 127(2), section 123 and section 148(1) of the Corporations Act 2001

A company with a common seal may execute a document if the seal is fixed to the document and the fixing of the seal is witnessed by:

- two directors of the company, or

- a director and director/secretary of the company, or

- for a proprietary company that has a sole director who is also the sole secretary - that sole director and sole secretary.

One person cannot attest the affixing of the common seal in two different capacities, i.e. as Director and as Director/Secretary unless that person is the sole Director and also the sole Secretary of the
company.

If a company executes a document in accordance with s.127(2), as outlined above, persons dealing with the company can rely on the assumptions of regularity in s.129(6).

Where a document is executed using a company’s common seal, the common seal must contain the company’s name and:

- the company’s Australian Company Number or the abbreviation ACN and the 9-digit Australian Company Number

or

- the company’s Australian Business Number or the abbreviation ABN and the 11-digit Australian Business Number. (This option is only available where the 9 digits of the company’s ACN are the same, and in the same order as the last 9 digits of the ABN, in accordance with s.123(b)(2) of the Corporations Act 2001.)

Alternately, where a company has as its name the expression ‘Australian Company Number’ followed by the 9-digit number, pursuant to s.148(1) of the Corporations Act 2001, the expression ‘Australian Company Number’ or the abbreviation ACN followed by the 9-digit number must be contained in the company’s common seal. Pursuant to s.153 of the Act, the company identifier set out in the common seal should be the same as the company identifier that first appears in the particular document.

2.2 Signing/Execution without a Common Seal in accordance with section 127(1) of the Corporations Act 2001

A company may execute a document without using a common seal of the document if signed by:

- two directors of the company, or

- a director and a director/secretary of the company, or

- for a proprietary company that has a sole director who is also the sole secretary - that sole director and sole secretary.

One person cannot execute a document in two different capacities, i.e.: as Director and as Director/Secretary unless that person is the sole Director and also the sole secretary of the company.

Where a company executes a document in accordance with s.127(1), as outlined above, persons dealing with the company can rely on the assumptions of regularity in s.129(5) of the Corporations Act 2001.

2.3 Variations to the requirements of section 127(1) and 127(2) of the Corporations Act 2001

Variations (as to who may execute documents) may be permitted by the Constitution of an individual company.

Where one Director or a Governing Director alone, or an authorised person in addition to a Director, either:
- attests the affixing of the corporate seal,

or

- executes a document without a common seal.

The person lodging the document for registration is required to provide a true or authentic copy of the Constitution of the corporation, to verify the right of that person to execute a document on behalf of the company. The authentic copy will be returned and must be produced with each subsequent dealing. Where the sealing of document has been altered in the constitution or where alternative signatories have been appointed a copy of minutes confirming the change or appointment should also accompany the constitution. In some instances, a full ASIC search setting out the registered Director(s), Secretary or Alternate Director(s) may also accompany the constitution.

In each instance the authentic copy of the company constitution should be produced with the subsequent dealing.

2.4 Signing/Execution as a Deed in accordance with section 127(3) of the Corporations Act 2001

A company may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with the requirements of s.127(1) or 127(2) as set above.

2.5 Other forms of Signing/Execution in accordance with section 127(4) of the Corporations Act 2001

A company may execute a document in a different form to that set out in sections 127(1) or 127(2) but persons dealing with the company would not have the benefit of the assumptions in either sections 129(5) or 129(6) of the Corporations Act 2001.

Executions under this section may require additional evidence to support the execution.

3 Examples of Signing/Execution Clauses

3.1 Signing/Execution with a common seal

Where documents are executed with a common seal, the following form of execution is suggested as applicable to most corporations. The persons signing should show the position they hold in the company and print their full name under their signature:

The Common Seal of XYZ Co Pty Ltd

was hereunto affixed in the presence of

Signature of Director

(Print Full Name)

Director
The following form of execution is applicable to proprietary companies that have only one Director who is also the only Secretary of the company:

The Common Seal of XYZ Co Pty Ltd
was hereunto affixed in the presence of
Signature
(Print Full Name)
Sole Director and Sole Secretary

3.2 Signing/Execution without a common seal

Where documents are executed without a common seal, the persons signing should show the position they hold in the company and print their name under their signature:

Executed by XYZ Co Pty Ltd ACN .................
Signature of Director
(Print Full Name)
Director
Signature of Director/Secretary
(Print Full Name)
Director/Secretary

The following form of execution is applicable to proprietary companies that have only one Director who is also the only Secretary of the company:

Executed by XYZ Co Pty Ltd ACN .................
Signature of Director
(Print Full Name)
Sole Director and Sole Secretary

4 Foreign Registered Corporations
A foreign registered body or Corporation is a Corporation/Company that is not registered in Australia. Documents executed by foreign registered bodies will need to include a letter from a lawyer stating that the company is an overseas company and that they have signed the document in accordance with the laws relating to the jurisdiction of the country in which it is registered.

Please be aware that if the execution of the document by authorised officers of the corporation requires a witness, then that witness must be an authorised witness under the provisions of Section 145 1(b) of the TLA.

If the document is one that is subject to the VOI Practice, then the witness should be an Australian Consular Officer, unless the Registrar of Titles has accepted an alternative witness due to exceptional circumstances.

Written requests to use an alternative witness overseas should be emailed to VOIPractice@landgate.wa.gov.au

Evidence may be required verifying that the document has been executed correctly.

Natural persons executing a real property document on behalf of a foreign registered corporation are required to be identified, if the document is subject to the VOI Practice. Please also refer to Verification of Identity requirements for applicable documents.

The VOI Statement that accompanies documents executed by a foreign registered corporation may be made by the lawyer representing that foreign registered corporation in the particular transaction. That lawyer may be the in-house lawyer in the foreign registered corporation.

5 Also see

- SIG-01 Signing of Documents
- Verification of Identity web page