SIG-04 Signing by a Liquidator, Administrator, Official Manager or Receiver

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1 Signing/Execution by a Liquidator

A liquidator may be appointed by a company in Voluntary Liquidation or by a Court. Notice of such a resolution or decision must be registered in the Australian Securities & Investments Commission. In general terms, the role of a liquidator is to collect and convert all the assets of a corporation and pay all the debts or an equal share of all the debts due to creditors.

A liquidator does not have an interest or role in continuing the business of a corporation. Appointments made before introduction of the Corporations Law 1989 on 1 January 1991 continue under the new legislation.

The legal estate of real property owned by the company in liquidation remains with the company during the liquidation process on most occasions. A Court may, when making the appointment, also vest the assets (including real property) in the liquidator. Where this is done, the liquidator must become the registered proprietor of the real property, either by transfer or application, before dealing with it. A transfer or application vesting land in a liquidator, not followed by a further dealing, would be followed by a Registrar’s Caveat.

As property usually remains vested in the company, although the liquidator has the power to sell the land as the agent of the company, the transfer must be made in the name of the company as transferee (in liquidation). The company directors can sign the transfer in the normal manner but the consent of the liquidator must be endorsed on the transfer form.

Any document involving a corporation which is in liquidation should be drawn in the name of the corporation. The words ‘in liquidation’ should not appear on the seal, but should be shown in the document following the company name.
The liquidator can sign documents on behalf of the corporation by affixing the common seal, but may also execute without using the seal.

In every instance where a liquidator is executing a document to be lodged for registration, proof of appointment of the liquidator should be supplied in the form of a statutory declaration by the liquidator:

- identifying the land and current registered proprietor;

- identifying to whom and when the appointment was granted;

- setting out details of the transaction; and

- declaring that the appointment has not been terminated.

A certified copy of the appointment as registered with the Australian Securities Investment Commission must be provided.

1.1 Examples of Signing/Execution Clauses

Where documents are executed by a liquidator using a common seal, the following form of execution is suggested:

The Common Seal of Waal & Co Pty Ltd
A.C.N. 123 456 789

was hereto affixed by (Name of Liquidator)  ) (Signature of Liquidator)
its duly appointed liquidator

Where documents are executed by a liquidator without a common seal, the following form of execution is suggested:

Executed by Waal & Co Pty Ltd A.C.N. 123 456 789
by its duly appointed liquidator (Name of Liquidator)

(Signature of Liquidator)

2 Signing/Execution by an Administrator

An Administrator may be appointed to take control of the affairs of a company that is unable to or may become unable to pay its debts, with the view to entering into a Deed of Company Arrangement, under which the Company may be revived.

The Administrator must consent to the appointment and must be a Registered Liquidator. The Administrator may be appointed by:

- the Company by a resolution of its Directors (s.436A of the Corporations Act 2001)
- the Company's liquidator (s.436B)

or

- a person entitled to enforce a charge on substantially, the whole of the Company’s property (s.436C).

Once the Administrator is appointed, their appointment cannot be revoked, but may be terminated by an order of the Court (s.447A and 449A). The Court has power to appoint an Administrator under s.449B of the Corporations Act 2001.

Notice of the appointment of the Administrator is required to be given under the Corporations Law and this Notice of Appointment must be lodged with the Australian Securities Investments Commission. The appointment of an Administrator has no effect upon the Company’s legal personality, its legal persona remains intact and there is no change in its legal status.

However, as a general rule, dealings by an Administrator affecting real property of the Company are void unless entered into:

- by the Administrator on behalf of the Company, or

- with the written consent of the Administrator, or

- under a Court Order.

A moratorium is placed upon the rights of the proprietor of property (including real property) during the period of administration of a Company that is in possession of property. Consent of the Administrator or a Court Order is required before the proprietor of the property can retake possession.

The Administrator can perform any function and exercise any power that the Company and any of its officers could perform or exercise if the Company were not under administration, including the execution of documents (s.437A and 442A of the Corporations Act 2001). The Administrator has power to sell the real estate of the Company.

Any document involving a corporation which is under administration should be drawn in the name of the corporation. The words ‘Administrator appointed’ should not appear on the seal, but should be shown in the document following the company name.

In every instance where an Administrator is executing a document to be lodged for registration, proof of Appointment of the Administrator should be supplied in the form of a Statutory Declaration by the Administrator:

- identifying the land and current registered proprietor;

- identifying to whom and when the appointment was granted;

- setting out details of the transaction; and

- declaring that the appointment has not been terminated. A certified copy of the Notice of Appointment lodged with the Australian Securities Investments Commission must be provided.

2.1 Examples of Signing/Execution Clauses

Where documents are executed by an Administrator liquidator using a common seal, the following
form of execution is suggested:

The Common Seal of ABC Company Pty Ltd

A.C.N. 001 234 789 was ) Common Seal
here to affixed by (Name of Administrator)
) (Signature of Administrator)
its duly appointed Administrator

Where documents are executed by an Administrator without a common seal, the following form of execution is suggested:

Executed by ABC Company Pty Ltd A.C.N. 001 234 789
by its duly appointed Administrator (Name of Administrator)
(Signature of Administrator)

3 Execution by an Official Manager

In general terms, an official manager is a person appointed by a creditor or creditors to manage the affairs of a corporation, usually with the view of having it trade out of its debt. Most appointments are as receiver and manager. Appointments made before the introduction of the Corporations Law 1989 on 1 January 1991 continue under the new legislation.

Most financial agreements, whether intended for registration in the Torrens System, in a strict sequence of priorities or as a floating charge or debenture, empower the lender to appoint a person to be the (mortgagor) company’s receiver and manager at any time after the principal monies secured become payable.

The appointment can be made either privately (out of the Courts) or by order of the Court. In each case, notice of the appointment must be filed within a designated time in the Australian Securities & Investments Commission (ASIC). The primary powers of the appointed receiver/manager are those set out in the loan agreement (for private appointments) or those set out in the Court Order (for Court appointments). Supplementary powers are created in the legislation.

Any document involving a corporation which is in receivership should be drawn in the name of the corporation. The words ‘Manager appointed’ should not appear on the seal, but should be shown in the document following the company name.

In every instance where an Official Manager is executing a document to be lodged for registration, proof of appointment should be supplied in the form of a statutory declaration by the official manager:

- identifying the land and current registered proprietor;
- stating the facts of the appointment, identifying to whom and when the appointment was granted;
- setting out details of the transaction; and
- that such appointment is still current, and the authority for the action taken by the registration of
the instrument.

Also to be produced (where applicable) is:

- a certified copy issued by the Australian Securities and Investment Commission of the notice of appointment

- a certified copy of the Debenture or Court Order that was the basis of the appointment

and

- such written consents as may be necessary to give effect to the sale.

3.1 Examples of Signing/Execution Clauses

Where documents are executed by an Official Manager using a common seal, the following form of execution is suggested:

The Common Seal of Cole & Co Pty Ltd
A.C.N. 123 456 789 ) Common Seal
was here affixed by (Name of Official Manager) ) (Signature of Official Manager)
its duly appointed Official Manager

Where documents are executed by an Official Manager without using a common seal, the following form of execution is suggested:

Executed by Cole & Co Pty Ltd A.C.N. 123 456 789
by its duly appointed Official Manager (Name of Official Manager)
(Signature of Official Manager)

4 Signing/Execution by a Receiver

In general terms, a receiver is a person appointed by a particular creditor to collect and convert the assets of a company to pay the debt due to that creditor. The appointment of a receiver does not necessarily result in the liquidation of the company. Appointments made before the introduction of the Corporations Law 1989 on 1 January 1991 continue under the new legislation.

Section 420(2) of the Corporations Act 2001 gives a receiver a wide range of powers to deal in the land of the corporation, subject to the terms of the Debenture or Court Order by which the appointment was made. The property owned by the corporation does not vest in the receiver but he or she becomes an Agent of the corporation with power to sell, mortgage, etc. (subject to the conditions of appointment).

The Corporations Act 2001 also gives the receiver the power to use the common seal of the corporation.

Any document involving a corporation which is in liquidation should be drawn in the name of the
corporation. The words ‘Receiver appointed’ should not appear on the seal, but should be shown in the document following the company name.

If the receiver cannot obtain the cooperation of the Directors to attest the common seal or prefers to complete the transaction personally, a signed copy of the Debenture (or a copy of the Debenture certified correct by the Australian Securities & Investments Commission) may be lodged at Landgate as a power of attorney.

In every instance where the receiver is executing a document to be lodged for registration, proof of appointment of the receiver should be supplied in the form of a statutory declaration by the receiver:

- identifying the land and current registered proprietor;
- stating the facts of the appointment, identifying to whom and when the appointment was granted;
- setting out details of the transaction; and
- that such appointment is still current, and the authority for the action taken by the registration of the instrument.

A certified copy of the certificate of appointment as receiver issued by the Australian Securities and Investment Commission must be annexed to the statutory declaration.

4.1 Examples of Signing/Execution Clauses

Where documents are executed by a receiver using a common seal, the following form of execution is suggested:

The Common Seal of XYZ Co Pty Ltd
A.C.N. 123 456 789

was hereto affixed by (Name of Receiver) (Signature of Receiver)
its duly appointed Receiver

Where documents are executed by a receiver without using a common seal, the following form of execution is suggested:

Signed by XYZ Co Pty Ltd
A.C.N. 123 456 789 by (Name of Receiver)

as Receiver

) Signature of Receiver

5 Also see

- SIG-01 Signing of Documents