



## HERE TO STAY: ELECTRONIC EXECUTION BY COMPANIES, BUT BEWARE THE RULES IN WA

On 14 August 2021, in the midst of COVID-19, isolation and lockdown, the Commonwealth Government passed legislation to temporarily amend the *Corporations Act 2001* (Cth) (**Corporations Act**) to allow companies to electronically execute and documents (including deeds) pursuant to sections 126 and 127 of the Corporations Act (i.e., by DocuSign or other e-signing service).

These measures were originally intended to be temporary and were due to expire on 31 March 2022.

On 10 February 2022, the *Corporations Amendment (Meetings and Documents) Bill 2021* (Cth) ("**Bill**") was passed and came into effect on 1 April 2022 as the *Corporations Amendment (Meetings and Documents) Act 2021* (Cth) (**Act**), formalising the temporary reforms brought in during COVID-19.

As a result of the Act, from 1 April 2022, companies are able to execute documents (including deeds) by way of electronic signatures, pursuant to section 126 and 127 of the Corporations Act. Further, the Act confirms that companies can execute documents and deeds by split execution (where different officers or authorised persons of the company execute the document or deed separately), and by a combination of electronic and wet-ink signatures.

Before executing documents electronically, company directors should take steps to be sure that they are authorised to take advantage of the new provisions authorising electronic execution. Company directors should check the company's incorporation documents to ensure that they have the authority to sign electronically. Further, the provisions of the document to be signed, including the execution blocks, should also be reviewed, and amended if necessary to indicate that the parties contemplate and intend to be bound if the document is executed electronically.

*Wet-Ink Execution of Deeds still required by individuals in Western Australia*

It is important to note that in Western Australia, these new measures do not apply to individuals executing deeds governed by the laws of Western Australia when being signed in their personal capacity.

If an individual is a party to a deed that is governed by the laws of Western Australia, and they are signing in their personal capacity, the individual must physically execute the deed by hand using a pen, so that the deed bears a wet-ink signature.

This is because in Western Australia, formalities of deeds are set out in section 9 of the *Property Law Act 1969 (WA) (PLA)*. Under section 9 of the PLA, the formal requirements are that:

- The deed must be signed by the party;
- Must be attested by at least one witness not being a party to the deed.

Further, the provisions of the *Electronic Transactions Regulations 2012 (WA) (ET Regulations)* which applies in Western Australia, provides that if document requires verification or authentication, or needs to be attested or witnessed, then it cannot be executed electronically, and must be executed in person, in the presence of the witness or authorised person.

As such, it is important to take care when signing important documents to ensure they are validly signed within the relevant jurisdiction.

If you wish to obtain more information on what measures your company should take to ensure that they can validly execute documents electronically, please do not hesitate to contact us on [+61 8 9388 3100](tel:+61893883100).

Note: The above is a summary for general information purposes only. It is not intended to be comprehensive or constitute legal advice. You should seek formal legal or other professional advice in relation to your particular circumstances before relying on the content of this article.

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