

## Very Crisp Notes: Electronic Execution of documents Amendments

September 2021

In this edition of *Very Crisp Notes*, we look at recent changes to section 127 of the *Corporations Act 2001* (Cth)<sup>1</sup> – the law surrounding electronic execution of documents – introduced by the *Treasury Laws Amendment (2021 Measures No.1) Bill 2021*.<sup>2</sup> These amendments were passed in response to the ongoing COVID-19 pandemic and have several effects:

- Execution under section 127(1) may now be done electronically. In order to be effective, the method of electronic execution must:
  - identify the person and indicate their intention to sign the document;
  - be on a copy or counterpart of the document that includes the entire contents of that document; and
  - be reliable and appropriate for the purposes (or be proven in fact to have fulfilled that purpose).
    - NB: ‘reliable and appropriate’ means that the method used for the electronic signature must be objectively reliable in light of all relevant circumstances and the purpose for which the signature is required
    - For example, it should be sufficiently reliable and appropriate that the software used for digital execution requires a password or authentication prior to the signatures insertion.
- Where a company executes a document with a common seal under section 127(2), remote witnessing of the fixing of the seal is permitted. To be effective:
  - the witness must, by electronic means, observe the fixing of the common seal;
  - the witness must sign the document (which may be a copy of the document without the common seal affixed); and
  - the document must contain a statement that the witness observed the fixing of the seal by electronic means.

When signing electronically, the signature must be affixed to the entire document, but does not need to include the signature of any other person who has/will be signing the document in counterpart or

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<sup>1</sup> *Corporations Act 2001* (Cth) s 127.

<sup>2</sup> *Treasury Laws Amendment (2021 Measures No.1) Bill 2021* (Cth).

by split execution. That is, the practice of signing an execution page that has been separated from the remainder of the document will not meet the requirements of section 127.

NB: these amendments are temporary and are due to expire on 31 March 2022.<sup>3</sup>

### Implications

These measures permit a much wider range of methods to be used to sign documents under section 127, and are set to make document execution much easier for businesses operating in lockdowns across Australia. Importantly, the use of electronic signature platforms and even copying and pasting a signature into a document are now valid methods of execution.

However, companies still need to retain a copy of entire executed documents (not just the signature pages), and where 'split execution' occurs, copies of each executed document should be retained.

Regarding remote witnessing, the Amendments do not place limits on the remoteness of the witness. As such, remote witnessing should follow traditional witnessing as closely as possible. This can be ensured by:

- having the remote witnessing occur in real-time over an audio-visual link;
- having the face and hands of the person affixing the common seal visible;
- having the witness check that the document they sign is identical to the one that is sealed;
- having the witness sign a copy of the document immediately after witnessing occurs; and
- the company retaining a copy of the document that is sealed as well as the document signed by the witness.

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<sup>3</sup> Corporations Act 2001 (cth) s 1267F.