

Commercial Insights

Use of electronic signatures – a cautionary note

In recent times the use of electronic signatures has become common place. The use of electronic signatures during the COVID-19 pandemic has often been a necessity.

On 5 May 2020, the Treasurer made the [Corporations \(Coronavirus Economic Response\) Determination \(No. 1\) 2020](#) which provided that documents could be executed on behalf of a company under section 127 of the Corporations Act by electronic means and also that "split execution" was permitted. That Determination was repealed and replaced by the [Corporations \(Coronavirus Economic Response\) Determination \(No. 3\) 2020](#) which expired on 21 March 2021.

With the repeal of the Determinations, section 127 of the Act is to be read in the same way that it was before 5 May 2020 (that is, before Determination (No. 1) was made). Before the Determination, there was uncertainty as to whether electronic execution or split execution could be effective under section 127. This uncertainty meant that in practice, when companies executed under section 127, it was regarded as prudent practice to do so by wet ink signature only.

Section 127 does not limit the ways in which a company may execute a document. Section 126 provides that a company may execute a document pursuant to its constitution or by an agent or attorney given authority to do so. Depending on a company's constitution, a company may be able to validly execute documents electronically by other means – that is in accordance with laws other than section 127.

While the use of electronic signatures is now firmly part of the modern way for individuals to do business, there is a cautionary tale worth sharing. For those seeking to rely on an electronic signature to enforce a document, it is prudent to make enquiries to ensure that the person whose electronic signature is contained on the document did put the electronic signature on the document him or herself or authorised the electronic signature to be included on the document.

In circumstances where the signatory does not need to "put pen to paper" in the traditional sense, there have been disputes arising where the person whose electronic signature has been placed on a document has denied that they either placed the signature on the document themselves or authorised their signature to be placed on the document. These disputes can be disruptive and costly and most importantly, raise questions as to the enforceability of the document purportedly signed. A simple phone call to the person purporting to sign the document can ensure that they did intend to sign the document.

The issues which are starting to arise also highlight the importance of keeping your electronic signature safe.

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