



Alert

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Commercial & Dispute Resolution



Companies Act 2006: Changes to the rules on execution of documents

What you need to know

Introduction

On 6 April 2008, changes were made to the way in which companies may execute documents, (including deeds), with the coming into force of section 44 of the Companies Act 2006 (the Act).

There are three ways in which a company may validly execute a document:

- (1) by affixing its common seal, (the rules for using the seal are contained in the company's Articles of Association),
- (2) by having the document signed on behalf of the company either:
 - (a) by two authorised signatories; or
 - (b) by a director of the company in the presence of a witness who attests the signature. This is a new provision.

A document signed in accordance with (a) or (b) and expressed to be executed by the company has the same effect as a document executed under the seal of the company. Options (a) and (b) are available to any company, whether or not it has a company seal.

Does the change effect all documents?

The change applies in respect of documents executed on or after 6 April 2008. A document signed by one authorised signatory before that date and by another on or after 6 April 2008 is treated as executed on or after 6 April 2008.

Why has the change been made?

The change is to reflect the fact that since 6 April 2008 private companies are no longer required to appoint company secretaries. Company secretaries who remain in office will retain their powers to execute and authorise documents.

Who are the "authorised signatories" referred to in section 44?

Authorised signatories are every director of the company and, in the case of a private company with a secretary or a public company, the secretary (or any joint secretary) of the company.

What if there are a number of companies who are parties to a document and one signatory is director or secretary of some or all of them?

That person must sign the document separately on behalf of each company for it to be duly executed by each company.

Is execution by a single director always an option?

Yes. It is not limited to use by companies with only one director.

What are the requirements for witnessing the director's signature in these circumstances?

The signature of a director alone must be witnessed, and the witness must also sign the document. There is no provision in the Act as to who may act as a witness.

Do we have to accept this form of execution in every transaction?

No. This form of execution may not be acceptable to you in every transaction. You could insist that, where a company does have more than one authorised signatory, documents which are to be executed as deeds must still be signed by two authorised signatories (to provide more comfort that they have been duly approved for signature).

What if a director or secretary executing is also a company, what happens then?

The document must be executed by the act of a real person duly authorised. If the office of director or secretary is held by a "firm" then the document must be signed by an individual authorised by the firm to sign on its behalf. A firm includes a body corporate or partnership.

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Do you have any sample execution clauses?

Yes. As mentioned, the additional form of execution clause introduced by section 44 of the Act is optional. There is no need to change the form of the execution clauses you are currently using. However, for ease, examples of each execution clause are listed below. Please note that contracts which do not have to be executed as

deeds will be properly executed when signed by a single director, or other person duly authorised on behalf of the company, as before. However, contracts may often be executed as deeds if there is any doubt as to whether valuable consideration is being received by the company; or to benefit from the longer enforceability period; or in some cases because it is a legal requirement (eg transfers of land).

Simple contract

Signed by [NAME OF DIRECTOR] for
and on behalf of [NAME OF COMPANY]

.....
[signature of director]

Director

Deeds

1. By Common Seal

Executed as a deed by affixing the Common
Seal of [NAME OF COMPANY] in the presence of:

[COMMON SEAL]

.....
[signature of director]
Director

.....
[signature of director OR secretary]
[Director OR Secretary]

OR

2. By two authorised signatories

Signed as a deed by [NAME OF COMPANY]
acting by [NAME OF DIRECTOR], a director and
[NAME OF SECOND DIRECTOR / SECRETARY],
[a director OR secretary]

.....
[signature of director]
Director

.....
[signature of second director/secretary]
Director OR Secretary

OR

3. By single director in the presence of a witness

Signed as a deed by [NAME OF COMPANY]
acting by [NAME OF DIRECTOR], a director
in the presence of:

.....
[signature of director]
Director

.....
[signature of witness]
[NAME, ADDRESS [AND OCCUPATION] OF WITNESS]

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Where can I find further guidance on this topic?

- The Land Registry has revised its guide on the execution of deeds setting out its requirements for the execution of dispositions of land. Please refer to Practice Guide 08 for further information.
- It is anticipated that guidance will shortly be published by the Department of Business, Enterprise and Regulatory Reform on the execution of documents by foreign companies.

How can Hammonds help?

We would be pleased to discuss with you in more detail any of the issues raised in this Alert or to help with any questions you may have on other aspects of the Act.

If you would like any further information whatsoever, please contact your usual contact at Hammonds or alternatively:

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