



MEMO

To: Board of Directors
From: Company Secretary
Subject: **COMPANY DOCUMENTS – SIGNING BY ONE DIRECTOR**

You have asked if the director/s of various of the group companies may sign company documents on their own with or without another director or the Company Secretary. By the way, I note that some companies have only 1 director and some have more than 1 director.

Corporations Act

Section 127 of the Corporations Act describes how a company may execute company documents.

Pursuant to this section a company may execute a document (eg, agreement, deed, share certificate) – with or without using a common seal (which is no longer required and hardly ever used these days) – if signed by:

- (a) 2 directors
- (b) 1 director and Company Secretary
- (c) 1 director (if he is the sole director).

The benefit of a company document being signed as per s.127 is that if executed this way people will be able to rely on the assumptions in s.129(5) – that the document has been duly/properly executed – when dealing with the company. Execution in any other way may negate this provision.

However, s.127(4) clearly states that this section (i.e., s.127) “does not limit the way in which a company may execute a document”.

Therefore, generally speaking, a company can execute documents as per any provisions in the constitution or as the directors decide.

Constitution

I have looked at the various companies’ constitutions (which are basically the same) and they say in Rule 38 (or similar):

38. Execution of Documentation



- a) *No document, writing or other material shall be executed by the Company except pursuant to the authority of the directors or of a committee of the directors authorised in that behalf.*
- b) *Without limiting the manner in which the Company may execute any agreement, deed, share certificate (if any) or other document, the Company may execute any such document either with or without the use of a common seal.*
- c) *Every document which is executed shall be signed (whether with or without the common seal):*
 - (i) *(where the Company has a sole director and secretary) by that person;*
or
 - (ii) *(where the Company has more than one director) by at least one director, a director and secretary or a director and another person specifically authorised by the directors for that purpose.*

So, by my reading of the constitution/s, Rule 38(c) allows the director/s to do what you wish to do, that is:

- (i) where there is only 1 director – he can sign on his own
- (ii) where there is more than 1 director – 1 may sign on his own

without including the Company Secretary and provided the director/s pass and sign a resolution to that effect.

Governance

Notwithstanding the directors' apparent ability to resolve to sign documents on their own, I would suggest that it is not good corporate governance and that ideally in all situations it would be prudent for either another director or the Company Secretary to be joint signatory on all company documents.

Amongst other things this should provide a check to ensure appropriate resolutions are recorded to authorise transactions/documents and to assist in understanding and implementing actions/matters required/contemplated by those documents.

DISCLAIMER

The comments in this memo reflect some commercial aspects and observations on the matter experienced or observed by the writer in practice as he understands them. The information is given as a guide only and does not represent a definitive or legal view of any of the issues raised, covered or referred to and the reader is urged to seek his own professional advice on all aspects of, or pertaining to, this and any related matter.