

Who needs a company Seal




Overview

As part of the Federal Governments initiative to simplify corporate law, certain amendments have been made to the Corporations Law which effectively abolish the requirement that a company have a common seal.

The effect of Section 123 of the Corporations Law is that a company is no longer required to sign under the company seal unless the constitution of the company requires the seal to be affixed. The majority of constitutions do not require that documents be signed under seal. A third party contracting with a company is not required to satisfy themselves of the requirements of the constitution in order to bind the company in any legal agreement.




The *Superannuation Industry (Supervision) Act 1993* creates one notable exception in that its Section 19 compulsorily requires any corporate trustee of a regulated superannuation fund to use a common seal when submitting a certain election under the Act.

If a company adopts a common seal, the common seal must have on its face the company's full name and its ACN. The presumptions relating to the execution of documents under seal have remained the same; ie a document will be taken to be duly executed under the company's common seal if the affixation of the seal is witnessed by

-  two directors of the company;
-  a director and secretary of the company; or
-  if the company is a proprietary company, a person who is the sole director and who is also the sole secretary of the company (sec 127(2)).

Today's Law

As companies are no longer required to have or use common seals, the Corporations Law allows third parties to assume that a document has been duly executed under hand if executed by:

-  two directors of the company;
-  a director and secretary of the company; or
-  if the company is a proprietary company, a person who is the sole director and also the sole secretary of the company.

Such an assumption may be made by any person who is unaware of a particular company's requirements for due execution of a document.

How to Execute a Document

Below is an example of how documents should be executed under this new regime:

Signing of Agreements and General Documents

(i) for a company that is not a sole director company

Executed for and on behalf of **XYZ PTY**)

LIMITED (ACN) by authority of the)

directors in the presence of:)

Name:

Director:

Name:

Director or Secretary

(ii) for a sole director company

Executed for and on behalf of **XYZ PTY**)

LIMITED (ACN 000 000 000) by its sole
director

Witness

Signing of Deeds

(i) for a company that is not a sole director company

SIGNED SEALED AND DELIVERED for)
and on behalf of the **XYZ PTY LIMITED**)
(ACN 000 000 000) by)
authority of the directors in the presence)
of:)

Name:

Director:

Name:

Director or Secretary:

(ii) for a sole director company

SIGNED SEALED AND DELIVERED for)
and on behalf of the **XYZ PTY LIMITED**)
(ACN 000 000 000) by its sole director)

Witness

And For Pre-July 1998 Companies?

Although the above is the case for companies incorporated after June 1998, companies formed before July 1, 1998 are still obliged to comply with the terms of the sealing clause in the their existing constitutions. Companies incorporated prior to July 1998 can change their constitutions, either to remove all reference to a common seal or, to make its application optional.

Example – A Transfer of Land

It is now possible for companies to execute transfers of property without affixing a common seal. A transfer will be registered if it is executed in accordance with s127 as follows:

- ✓ comprises a clear and legible imprint of the company's seal (includes self-adhesive labels) and
 - ✓ the seal includes the corporations name and ACN; and
 - ✓ the person(s) (at least one) who affixed the seal have/has signed adjacent to the seal; and
 - ✓ that/those person(s) has/have shown their designations(s) typed or printed legibly adjacent to the/their signature(s);
- or
- ✓ the name of the company and the ACN are shown; and
 - ✓ the person(s) (at least one) has signed adjacent to the company name and ACN; and
 - ✓ that/those person(s) has/have shown their designation(s) typed or printed legibly adjacent to the/their signature(s). An execution by a company (with or without a common seal) does not require separate witnessing by a person set out in Schedule 1 of the Land Title Act 1994.

Hence all instruments executed by directors of a company are acceptable, with or without a common seal, provided the designation of the officer is included in the signing clause. There is no need for that signature to be witnessed even where a seal has not been affixed.

There is no longer any need to affix a company seal to a legal document in order for that document to bind the parties entering into the transaction.

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