



CAN ONE DIRECTOR'S SIGNATURE ON A COMPANY DOCUMENT BIND THE COMPANY?

INTRODUCTION

When you are signing documents on behalf of a company, in order for the document to be enforceable, the document must be signed correctly and the person who signs the document must have authority to sign on behalf of the company.

In Australia, the *Corporations Act 2001* ('the Act') sets out the rules for a company to correctly sign documents. However, some companies can sign documents based on the rules set out in the company's Constitution.

WHO CAN SIGN?

Section 127 of the Act requires the document to be signed either by:

1. 2 directors of the company; or
2. a director of a company and a company secretary of the company; or
3. one director only (if the company has a sole director who is also the sole company secretary).

If you sign a document in that way, third parties can assume that the document is signed correctly.

Similarly, a company can also sign a document under the rules set out in the company's Constitution and third parties can assume the document has been properly signed.

AUTHORITY IS A REQUIREMENT

Where a company has more than one director, a single director alone does not have the authority to bind the company without the resolution of the entire board.

However, in certain circumstances, courts have found contracts entered into by directors without the board's approval to be binding and enforceable against the company.

Section 126 of the Act separately requires that contracts can be signed by an individual with the company's express or implied authority.

HOW IS AUTHORITY OBTAINED?

To ensure documents entered into by the company are enforceable and binding, directors must have authority to sign the document on the company's behalf.

A company can give authority to an agent/director by way of an:

1. **Express actual authority** whereby authority is given by express words, such as a board of directors passing a resolution to do so;
2. **Implied actual authority** whereby authority is inferred by the conduct of the parties, such as when a board of directors appoints a managing director. They provide an implied authority to the managing director to sign anything that falls within the usual scope of the office of a managing director; or
3. **Apparent or ostensibly authority**, where the company holds out a person as having the necessary authority, even though the Board has never resolved to delegate any such authority. A common example is where a purchasing manager has signed a purchase order for many years.

HOW CAN YOU PROTECT YOUR COMPANY?

Companies through their boards should ensure that every signatory acts within the scope of their authority.

The Act and the general law allows third parties to assume that persons signing documents on behalf of the company have actual or apparent authority.

Therefore, to protect the company and to avoid unnecessary legal disputes about whether or not a contract is binding and enforceable on the company, directors should take steps to ensure that:

1. the document is correctly signed in accordance with the rules under the Act and/or the company's Constitution; and
2. the Board should document the extent of all employees' authority to enter into contracts on the company's behalf.

KEY TAKE AWAYS

- If you are a director signing documents on behalf of the company, make sure the document is signed strictly in accordance with the rules set out in the Corporations Act and/or the company's Constitution.
- A record of the register of transactions signed pursuant to delegated authorities should be kept.
- If you are entering into a contract with a company, check to confirm the person signing on the company's behalf has authority. You can ask for a resolution of the board or conduct an ASIC search of the company to confirm that the person signing the document is a director and has been authorised by the company.

CONTACT US

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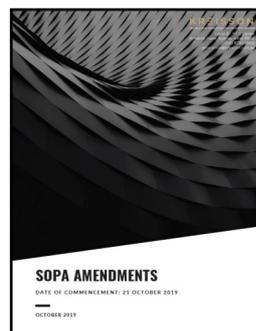
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Across Australia various state governments have introduced a series of measures to address community concerns about public safety and to identify the extent of the issues posed by combustible cladding.



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