



LEGAL GUIDANCE NOTE FOR CONTROLLED ENTITIES

SIGNING DOCUMENTS

August 2021

Note: This document has been prepared to provide staff members of Macquarie University's controlled entities (**Controlled Entities**) with guidance on how to sign legal documents on behalf of a Controlled Entity.

If you have any issues or queries in implementing the below guidance, please contact [Legal Services](#).

SIMPLE AGREEMENTS

What is a simple agreement?

A simple agreement in this guidance refers to any document which the parties intend to be legally binding, that is not subject to specific signing requirements (such as deeds or property documents).

Examples of simple agreements include agreements to provide or acquire goods or services.

Who can sign a simple agreement on behalf of a Controlled Entity?

A simple agreement (which is not expressed to be a deed) may be signed on behalf of a Controlled Entity by one or more authorised representatives as follows:

- (a) as set out in the Controlled Entity's [Delegations of Authority](#);
- (b) as set out in the Controlled Entity's the Constitution;
- (c) as authorised by the Board of the Controlled Entity pursuant to a circular resolution of the Board; or
- (d) by two directors or a director and the Company secretary in accordance with s 127 of the *Corporations Act 2001* (Cth)*.

Can simple agreements be signed electronically?

Yes. Simple agreements (which are not expressed to be a deed) can be signed electronically by authorised representatives of the Controlled Entity. During the COVID-19 pandemic (until 31 March 2022), it is also possible for company directors and secretaries to sign an agreement under s 127 of the Corporations Act electronically, provided the requirements set out below are followed.

*Special requirements when signing under s 127 of the Corporations Act

Ordinarily, if a document is signed under s 127 of the Corporations Act, all officers signing on behalf of the Controlled Entity must **physically** sign the **same document**. However, the Federal Government has again issued a determination to allow directors and secretaries of companies to sign agreements under s 127 of the Corporations Act on separate paper or electronic copies during the COVID-19 pandemic (until 31 March 2022). To validly rely on this determination, the method of electronic execution must:

- (a) the agreement should include a clause stating that a party may sign the document in multiple counterparts;
- (b) the copy, counterpart or electronic communication must include the entire contents of the document; and
- (c) the method used for electronic signing should identify the person, indicate their intention to be bound and be as reliable as appropriate.

Please speak to [Legal Services](#) for further assistance with the above.

What if a simple agreement refers to s 127 of the Corporations Act in the signature

If a Controlled Entity intends for a simple agreement to be signed by an authorised representative and the signature block refers to s 127 of the Corporations Act, it is acceptable to cross out the reference to s 127 as shown in mark-up below.



block but the agreement is to be signed by an authorised representative?

Executed by **MQ Health Pty Ltd** by its authorised representatives in accordance with s 127 of the Corporations Act 2001 (Cth)

Name of ~~Director~~ Authorised Representative

Name of Authorised Representative ~~Director/Secretary~~

Signature

Signature

DEEDS

What is a deed?

A deed is a special type of binding commitment to carry out an act. To be valid, documents described as deeds must comply with specific requirements. A deed must be in writing and signed in wet ink by all parties.

Who can sign a deed on behalf of a Controlled Entity?

A deed can be signed on behalf of a Controlled Entity as follows:
(a) by an authorised representative under power of attorney; or
(b) by 2 directors or a director and a company secretary in accordance with s 127 of the Corporations Act (see below).

Can a deed be signed electronically?

No. Deeds must be signed in wet ink.

Is a witness required for deeds?

It depends. If a deed is signed under power of attorney, it must be signed in the presence of a witness. NSW has passed a pilot scheme that will run until 1 January 2022 permitting an individual to witness a signature via electronic means such as zoom or skype or to insert an electronic or digital signature. If a document is witnessed electronically, the execution block should be amended as indicated in mark-up below.

SIGNED, SEALED AND DELIVERED

by **[INSERT NAME]** in counterparts and witnessed over audio visual link in accordance with section 14G of the Electronic Transactions Act 2000 in the presence of:

What are my options during social distancing?

The requirements for signing deeds are strict. If you are unable to comply with the requirements set out above, please contact [Legal Services](#) for assistance.

PROPERTY DOCUMENTS

What is a property document?

Property documents are any documents dealing with land. This includes leases and other real estate documents. Property transactions are subject to specific signing requirements. These are generally imposed by statute and are required for the purpose of registration.

Who can sign property documents?

Property documents can be signed on behalf of a Controlled Entity as follows:



Can property documents be signed electronically?

- (a) by an authorised representative under a power of attorney; or
- (b) by 2 directors or a director and company secretary in accordance with s 127 of the Corporations Act.

No. Property documents must not be signed electronically.

What are my options during social distancing?

The requirements for signing property documents are strict. If you are unable to comply with the requirements set out above, please contact [Legal Services](#) for assistance.

OTHER

Are there special requirements for foreign entities?

Yes. Foreign entities must sign documents in accordance with the laws in which the company is incorporated. Please speak to [Legal Services](#) for further information.