

ELECTRONIC EXECUTION PERMISSIBLE AGAIN

On 10 August 2021, 175 days after it was first introduced to Parliament, the *Treasury Laws Amendment (2021 Measures No. 1) Bill 2021* (Cth) (**TLA1 Bill**) was passed by both Houses of Parliament. From the day after the TLA1 Bill receives Royal Assent, electronic execution of documents by companies, in accordance with section 127 of the *Corporations Act 2001* (Cth) (**Corporations Act**), will again be permissible, until at least 31 March 2022 (**Transitional Period**).

Among other things, the laws to be introduced by the TLA1 Bill make it clear that:

- deeds can be executed by companies under section 127 of the Corporations Act during the Transitional Period using a signing platform such as DocuSign (**Signing Platform**);
- agreements may be executed by companies under section 127 of the Corporations Act during the Transitional Period using a Signing Platform; and
- split executions under section 127 of the Corporations Act will be permitted during the Transitional Period.

The passage of the TLA1 Bill, as it relates to electronic execution of documents, has provided welcomed regulatory relief, especially following the 21 March 2021 expiry of the [temporary measures contained in the Corporations \(Coronavirus Economic Response\) Determination \(No. 3\) 2020](#) and the ongoing disruption caused by the Delta variant of COVID-19.

It is, however, important to note that the law contained in the TLA1 Bill does not provide signatories with “free rein” when signing documents electronically. In order to ensure compliance (and in order to ensure [the statutory assumptions in section 129 of the Corporations Act](#) are able to be relied upon), we recommend that the following formalities are met:

- the document should contain an appropriate counterparts clause and an appropriate clause which permits the use of Signing Platforms and split executions;
- the document should contain a clause confirming how the parties have agreed the identification and reliability requirements set out in the TLA1 Bill have been satisfied (**Identification and Reliability Requirements**). The Identification and Reliability Requirements require a method to be used to identify the signatory and indicate their intention in respect of the information communicated, which is “as reliable as appropriate for the purpose for which the company is executing the document, in light of all the circumstances, including any relevant agreement...”; and
- the whole document which is to be signed by each company officer (i.e. not just the signature pages) needs to be uploaded onto the Signing Platform and circulated to the other party/parties by inserting their email addresses into the Signing Platform.

It is also important to note that the law to be introduced by the TLA1 Bill applies to execution of documents by companies in accordance with section 127 of the Corporations Act only; it does not extend to the signing of documents by companies [other than in accordance with section 127](#) of the Corporations Act, nor does it extend to the signing of documents by other entities (such as [natural persons](#)).

From 1 April 2022, once the Transitional Period has lapsed, it is contemplated that permanent changes to the laws regarding execution of documents will be implemented; indeed, an exposure draft of the *Treasury Laws Amendment (Measures for Consultation) Bill 2021* (**MFC Bill**) has been circulated for consultation. The MFC Bill does not, in its present form, contemplate electronic document execution. It is uncertain as to when the MFC Bill will be introduced to Parliament. However, the exposure draft materials which accompanied the MFC Bill indicated that work was being undertaken to ensure that these amendments can be progressed in Parliament’s spring sitting period. We will be watching these developments closely.

This Alert is intended as general information only. It does not purport to be comprehensive advice or legal advice. Readers must seek professional advice before acting in relation to these matters.

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