

Electronic execution ready reckoner

Document	Party	Electronic	Issues and considerations	Options and additional steps
Agreement	Individual	Yes.	<ul style="list-style-type: none"> Any requirement for a witness is (usually) evidentiary only, and will not impact the validity of the document. 	<ul style="list-style-type: none"> Authentication (e.g. evidence that the individual expressly or implied consented to the affixing of their signature, such as an email and/or call confirming) should be obtained, to minimise the risk of fraud.
	Company	Caution. Seek advice to minimise risks.	<ul style="list-style-type: none"> Parties typically rely on assumptions under the <i>Corporations Act 2001</i> (Cth) as to due execution of a document by a company if it is signed by two directors, a director or secretary or a sole director who is also the sole secretary (commonly referred to as execution under section 127). However, where a document is signed by directors (or director and secretary), the assumptions do not apply, unless personal authentication (e.g. evidence that the signatories applied, or consent to the application of, their signature electronically) has been obtained. 	<ul style="list-style-type: none"> Preferably, consider having the document signed by: <ol style="list-style-type: none"> other directors (or alternate directors), if they are available to sign 'wet ink'; or an attorney (in which case treat the execution as being by an individual, however the power of attorney should be reviewed to ensure it is valid, that there is sufficient power to sign the relevant document and satisfies any other requirements for the relevant transaction e.g. registration). These options should be considered as early as possible, to ensure arrangements are implemented before the need for them arises. Alternatively, if a document is signed by directors (or director and secretary) electronically, the following additional steps should be taken: <ol style="list-style-type: none"> obtain a current company search to ensure the signatories are directors (or director and secretary); obtain personal authentication from the signatories (e.g. an email confirming that they applied or consented to the application of their signature electronically); obtain a resolution of the company authorising signing of the document electronically; and review the constitution of the company to ensure that the resolution and signing comply.
Deed	Individual	No. Do not proceed, seek advice on options.	<ul style="list-style-type: none"> A deed is required to be in paper ('parchment or vellum') form. A deed signed by an individual is required to be witnessed. 	<ul style="list-style-type: none"> There are arguments that printing a deed signed electronically satisfies the paper requirement, however this has not been tested. Generally speaking, it is not possible to witness a document electronically. There are increasingly operational 'exceptions' to this, however these have generally not been legislated or tested by the Courts and caution should be used if relying on this. If the <i>Conveyancing Act 1919</i> (NSW) applies, it may be possible to sign the deed electronically. However, these are recent provisions and their exact operation has not yet been tested, so advice on their use should be obtained. Consider converting the deed to an agreement (with consideration passing both ways), however this may not be possible.
	Company	No. Do not proceed, seek advice on options.	<ul style="list-style-type: none"> As above, a deed is required to be in paper ('parchment or vellum') form. As above for agreements signed by a company electronically, the Corporations Act assumptions cannot be relied upon. 	<ul style="list-style-type: none"> As above, there are arguments that printing a deed signed electronically satisfies the paper requirement, however this has not been tested. While the further steps outlined at signing agreements by companies above could be taken, given the other issues identified it is recommended that deeds not be signed electronically. As above, consider converting the deed to an agreement (with consideration passing both ways), however this may not be possible.
Other considerations	Particular requirements of Government agencies etc.		<ul style="list-style-type: none"> Land Registries, Courts, ASIC, ASX and other Government or external bodies may have specific requirements for 'wet ink' or original signatures, and may not accept counterparts. As such, if a document to be signed is a form required to be lodged with such an agency, it may be difficult to have this signed electronically (unless this can be done through an eConveyancing system such as PEXA or Sympli, or electronically lodged with ASIC). 	
	Consent to receiving information electronically		<ul style="list-style-type: none"> Where information is required by law to be given (for example, a disclosure statement or notice under an Act), consent must be obtained to that being given electronically. While consent can be inferred from conduct, to minimise any risks it is recommended that this consent be express and obtained prior to the information being given. 	
	Third party reliance		<ul style="list-style-type: none"> Where another party is reviewing and relying on signing of a document (for example, a financier reviewing an agreement for lease or sale contract), that party may have particular requirements in respect of electronic execution, and should be consulted before proceeding to ensure there are no subsequent issues. 	
	Use platforms with inbuilt identification		<ul style="list-style-type: none"> Whenever a document is signed electronically, look to use a platform with inbuilt identification verification (there are many on the market today, including DocuSign and Adobe Sign), rather than the insertion of a scanned signature or image, to minimise the risk of fraud. However, wherever possible, authentication from the signatory (e.g. an email or call confirming that they affixed their signature, or consented to it being affixed), should also be obtained. 	
	Consider options and issues early		<ul style="list-style-type: none"> Consider whether electronic execution may need to be relied upon as early as possible, and discuss that with all parties (as well as any third party who may be reviewing or relying on the document, such as a financier), to ensure that issues are identified and managed appropriately. In some circumstances, it may be possible to appoint an attorney or alternate signatories ahead of time, to minimise the chances that electronic execution will need to be relied upon. 	