



COVID-19 Toolkit: Given the current government restrictions affecting my movements, how do I go about signing documents?

With public health orders and physical distancing requirements in place, many businesses have directed that most, if not all, staff are to work from home indefinitely, which has complicated the process of signing documents. Many of our clients are now wondering whether they can validly enter into an agreement by signing the document electronically.

Generally, it is sufficient for commercial agreements to be signed electronically, as long as:

- both parties have negotiated and agreed to the terms (including terms as to the manner in which the parties execute the agreement, that the agreement may be executed in any number of counterparts, and that the exchanging of the contracts may be done by email);
- all parties are of sound mind; and
- all parties intend to enter into a binding, legal relationship with one another.

Companies are required to execute documents pursuant to section 127 of the Corporations Act, which is silent as to whether electronic signatures are enough. If wet ink signatures are difficult to provide, then electronic signatures may be given (subject to agreement by the parties, in writing for avoidance of doubt), though third parties may need to conduct their due diligence to ensure that:

- the signatory is, in fact, a person authorised to sign on behalf of the company under section 127; and
- the electronic signature was applied by the authorised signatory themselves, and not an agent or employee of the authorised signatory.

The issue gets more complicated when:

- agents are contracted to negotiate and enter agreements on behalf of companies or individuals;
- if signatories are required to sign a document before a witness, such as deed of personal guarantee; or
- particular types of documents, such as sale of land contracts and leases, have statutory requirements as to execution and which vary between states.

If you have any questions, our Corporate team can help you make sense of your execution requirements. Contact **Gaurav de Fontgalland** or **Carolyn Ledinh** if you would like to chat.

Please contact



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