

16 September 2021

To Market Conduct Division
The Treasury
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Submission on the document execution provisions of Treasury Laws Amendment (Measures for Consultation) Bill 2021 (Cth)

We are a large law firm with a significant corporate and financing practice.

We appreciate the opportunity to make this submission on the proposed amendments to the *Corporations Act 2001* (Cth) relating to the execution of documents under the *Treasury Laws Amendment (2021 Measures for Consultation) Bill 2021* (Cth) ("**Bill**").

We support the Bill and welcome the introduction of permanent reforms which make it clear that company officers and agents can electronically execute documents and that parties dealing with them may rely on that execution under s129.

We have the following comments on the Bill.

- Deeds in electronic form.** The Bill should expressly state that deeds executed under s126 and s127 can be in electronic form. While we consider that the Bill permits electronic execution of deeds, and this is stated in the Explanatory Memorandum, we are concerned that some law firms may consider that the common law requirement that deeds be on paper, vellum or parchment still continues to apply. We are aware that such views have been expressed in relation the temporary reforms made to s127 under the *Treasury Laws Amendment (2021 Measures No. 1) Act 2021* (Cth) ("**TLA**"). It is critical that the Bill makes it beyond doubt that the common law paper rule does not apply where a deed is executed under s126 and s127.
- Witnessing.** The Bill should state that if an agent signs a document (including a deed) on behalf of a company under s126, the signature need not be witnessed. Deeds signed by an individual must be witnessed and attested in all jurisdictions in Australia except Victoria (and in Queensland while temporary COVID-19 relief measures apply). This approach would be consistent with the overall approach of s127 which does not require the signatures of company officers to be witnessed.

- 3 **Identification and reliability requirements applying to physical signatures.** It is not clear to us why the requirements for identification and reliability of signatures in s110A(2) apply to physical documents signed by hand: see s110A(1)(b). The Explanatory Memorandum notes that these requirements mirror the *Electronic Transactions Act 1999* (Cth) to ensure documents can be signed in technology neutral manners. The Explanatory Memorandum states that s110A(2) is not intended to change existing practices for physical signatures. If this is the intention, we query the need to apply additional requirements to physical signatures.
- 4 **Examples of electronic signing.** It would be helpful if the Explanatory Memorandum included examples of electronic execution methods which would satisfy s110A(2). We are often asked to advise on which methods will meet these requirements under the TLA. We note that the Explanatory Memorandum to the TLA states that a person could use various methods to indicate the person's identity and intention to sign including using a stylus tool to sign a PDF document and then emailing the document back to the company or using a platform such as DocuSign.
- 5 **Delivery of deeds by agents.** It would be helpful if agents appointed under s126 were also authorised to deliver deeds.
- 6 **Appointing corporate agents.** It would be beneficial if s126 allowed for the appointment of a corporation as an agent. In financing transactions involving large corporate groups, one corporation is often appointed as agent for the other corporations in the group. However, the appointment may not be made in a deed and as a result, the agent cannot enter into deeds on behalf of the other group members. If s126 applied to corporate agents, this would address this issue and provide valuable flexibility to parties.
- 7 **Foreign and statutory corporations.** The Bill should extend the ability to execute documents under s126 and s127 (including electronically) to foreign corporations and statutory corporations. Major corporate players in the Australian economy include foreign and statutory corporations that are not companies and so s126 and s127 do not apply. There is widespread uncertainty in the legal and business communities about how foreign and statutory corporations execute a deed so as to be valid and enforceable as a deed under Australian law. We note that the *Justice Legislation (COVID-19 Emergency Response— Documents and Oaths) Regulation 2020* (Qld) allows foreign corporations to sign documents in a way authorised by the law of the place in which the corporation is incorporated and allows statutory corporations to sign in a way authorised by their constituent documents.

We are happy to discuss any of the above.

Yours sincerely

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