

Article Information

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Sole Director Issue - Finally Resolved!

Prior to the passing of the Corporations Amendment (Meetings and Documents) Bill 2021 (Bill) there was a lot of confusion surrounding the signing and execution of company documents by proprietary companies with a sole director and no company secretary. Before this Bill, section 127 of the Corporations Act 2001 (Cth) (Act) did not allow single director proprietary companies to validly execute documents and deeds, or rely on the statutory assumptions set out in section 129 of the Act. This article provides an update to the sole director issue that was discussed in [Playing It Safe - Are your contracts binding and enforceable on all parties?](#) This article will explore the new amendments introduced by the Bill and how this will affect proprietary companies with only an appointed sole director.

The recent passing of the Bill has expanded the statutory document execution mechanisms in section 127 of the Act to include proprietary companies with a sole director and no company secretary. Prior to the introduction of the Bill, single director proprietary companies (i.e. sole director appointment and no company secretary appointment) could not validly execute documents on behalf of the company without appointing themselves as a sole company secretary as well.

The introduction of the Bill now clarifies that under section 127 of the Act:[\[1\]](#)

A company may execute a document without using a common seal if the document is signed by:

1. 2 directors of the company; or
2. a director and a company secretary of the company; or
3. for a proprietary company that has a sole director - that director, if:
 - (a) the director is also the sole company secretary; or
 - (b) the company does not have a company secretary.

These new provisions will come into effect on 1 April 2022. The amendments to the Act will introduce three main changes for single director proprietary companies:

1. **Valid execution of documents:** Pursuant to section 127(1) of the Act, a sole director can now validly execute documents on behalf of the company. Proprietary companies with only a sole director will *no longer* be required to appoint themselves as the sole director/ sole company secretary prior to signing and executing company documents.
2. **Reliance on section 129:** A person signing documents with a single director proprietary company will be able to rely on the statutory assumptions set out in section 129 of the Act. Some of the amended assumptions introduced by the Bill include:
 - A person may assume that a document has been duly executed by the company if the document appears to have been signed in accordance with subsection 127(1) of the Act. A person may assume that, if any person who signs the document states next to their signature that they are the director/ company secretary/ sole director/ sole director and sole company secretary, that is the case;[\[2\]](#) and
 - A person may assume that a document has been duly executed by the company if:
 - (a) the company's common seal appears to have been fixed to the document in accordance with subsection

127(2); and

(b) the fixing of the common seal appears to have been witnessed in accordance with that subsection and subsection 127(2A).

A person may assume that, if any person who signs the document states next to their signature that they are the director/ company secretary/ sole director/ sole director and sole company secretary, that is the case.^[3]

3. **Deeds:** Provided that documents are signed in accordance with section 127(1) of the Act, section 127(3) of the Act provides that sole directors will be able to execute a document as a deed if the document is expressed to be executed as a deed.

Key Takeaways

- The passing of the Bill allows proprietary companies with a sole director and no company secretary to validly sign and execute documents on behalf of the company under section 127 of the Act, without having to appoint themselves as the sole director and sole company secretary;
- A party signing a document with a single proprietary company can rely on the statutory assumptions set out in section 129 of the Act; and
- A single director proprietary company can validly execute a deed pursuant to section 127(3) of the Act.

This article provides an update to the sole director issue detailed in [Playing It Safe - Are your contracts binding and enforceable on all parties?](#)

^[1] *Corporations Act 2001* (Cth) s 127(1).

^[2] *Ibid* ss 129(5)(a)-(d).

^[3] *Ibid* ss 129(6)(a)-(f).