

# Execution of documents

## Checklists

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## Execution of documents – companies

### Introduction

Sports organisations may also need to ensure they have formal procedures, including clear signatories and regulations, for the execution of documents such as deeds. These checklists provide information on compliance with these requirements for both companies and charities.

### Overview

A CLG or any other company (for example the trading subsidiary of a charity) is subject to company law rules and requirements when it executes formal documents.

The individual company's articles are also important for some aspects, such as the number of countersignatories required when the company seal is used and who can be authorised to be a countersignatory for that purpose.

### Checklist

- Is the document being executed under the law of England and Wales?
- Is any other territorial law relevant to the particular document and/or the transaction to which it relates?
- Do legal procedures, regulatory requirements or local expectations in any other territory need to be considered (e.g. if the document will be used overseas or a relevant party to it is an organisation constituted under the law of another territory)?
- Does the company have a seal?
- If so, is it appropriate to use the seal in the execution of this document or will an alternative method of execution be acceptable and appropriate?
- If the seal is to be used, what do the articles provide with regard to authorising its use and the countersignatories?
- If the company does not have a seal, or it does but the seal is not to be used for executing this document, which of the alternative execution methods can or must be used?

### Companies Act provisions

- Companies Act provisions state that a company can execute a document under the law of England and Wales by:
  - fixing the company seal on the document; or
  - executing without use of a seal, in accordance with the Companies Act procedures.

# Execution of documents

## Execution of documents by companies without a seal under the law of England and Wales

- The Companies Act permits execution of a document by a company, without a seal, if it is signed on behalf of the company by:
  - two directors;
  - one director and the secretary; or
  - one director in the presence of a witness, who attests the director's signature.
- Note that non-directors (i.e. non-trustees) may not be authorised for this purpose. These decisions should be carefully recorded in the minutes of the relevant board meeting. The company may also choose to keep a non-statutory register of executions.

## Execution of deeds – companies

- For certain legal transactions and arrangements under the law of England and Wales it is appropriate or necessary to enter into a deed. A document is validly executed as a deed by a company, for the purposes of section 1(2)(b) of the Law of Property (Miscellaneous Provisions) Act 1989, and for the purposes of the law of Northern Ireland, if it is:
  - duly executed; and
  - delivered as a deed.
- Delivery is presumed on execution unless the contrary is proved. A deed must contain appropriate wording, including in its execution clause.

## Execution of documents under the law of Scotland

- The law of Scotland makes different provision for the execution of documents. The key provisions are in the Requirements of Writing (Scotland) Act 1995 and, in the context of companies, section 48 of the Companies Act 2006. Specific legal advice should be taken where appropriate.

# Procedure

## Execution using the company seal

- Check the provisions of the particular company's articles with regard to procedures, in particular the number of countersignatories required and who can be authorised as a countersignatory for the use of the seal.
- Use of the seal should be formally authorised by the board.
- The countersignatories for the sealing also need to be authorised by the board.
- These decisions should be recorded in the minutes of the relevant board meeting.
- The minutes should also clearly identify the relevant document that is to be sealed.
- Records should be kept of all items sealed. A register of sealings is useful (though not a statutory requirement).
- The seal itself should be kept in safe custody.

# Execution of documents

## Execution without the seal

- The decision to execute is a matter for the whole board, as is the authorisation of the chosen signatories.
- These decisions should be recorded in the minutes of the relevant board meeting.
- The minutes should also clearly identify the relevant document that is to be sealed.
- If the document is a deed, ensure the wording of the minutes describes it as a deed and refers to execution of the document as a deed.
- Records should be kept of all items formally executed by a company. A register of executions of documents is useful (though not a statutory requirement).

## Filing requirements

- Execution of certain documents may be part of a transaction that causes the company to have a filing obligation at Companies House (e.g. execution of a charge) or elsewhere (e.g. a land transaction that has to be filed with HM Land Registry or the Land Registers of Scotland).

## Notes

- A company may choose to have a company seal but is not obliged to do so. Initial adoption of a seal should be by formal resolution of the board. Subsequently, the company has a choice of executing documents with its seal or using the Companies Act alternative methods of execution for the particular item.
- Many items, including many contracts, do not need formal execution. Instead, an authorised person signs the relevant document 'for and on behalf of' the company.
- The Companies Act 2006 uses the term 'authenticated' widely in relation to documents and information sent to a person by a company or supplied by a person to a company. It does so for both hard copy and electronic formats. The legal rules specify:
  - A hard copy item is authenticated if it is signed by the person sending or supplying it.
  - An item in electronic form is authenticated if:
    - the identity of the sender is confirmed in a manner prescribed by the company; or
    - where no such manner has been specified, if the communication contains or is accompanied by a statement of the identity of the sender and the company has no reason to doubt the truth of that statement.

[See Companies Act 2006 s. 1146.]

# Execution of documents

## Execution of documents – other charities

### Overview

The general rules and procedures for execution of documents by charities that are not companies vary according to the alternative legal form of the particular charity, the terms of its constitution and, in some cases, applicable statutory provisions.

### Checklist

- Charities that are incorporated bodies but not companies, for example Royal Charter bodies, execute documents in accordance with relevant statutory provisions applicable to that type of corporate body and in accordance with the provisions of their own constitutions (e.g. provisions relating to the use of a seal).
- CIOs or SCIOs must follow the procedures required by their own constitutions to execute documents.
- Unincorporated charities execute documents (including deeds) in accordance with their own constitutions (usually by signature of all the trustees).
- There is a useful statutory power for the trustees of an unincorporated charity to authorise any two or more of the trustees to execute documents in the names of, and on behalf of, the trustees to give effect to a transaction to which all the trustees are a party. The authority conferred may be general or limited as specified in the relevant trustees' decision (e.g. authority to execute a specific document, rather than documents in general). A further advantage of this procedure is that it avoids having to join in new trustees to a deed previously signed by all the former trustees.

### CIOs – regulations

- CIOs may execute documents under their seal or by the alternative method specified in the CIO general regulations.

### CIOs – contracts

- CIOs may make contracts in writing under their seals or by a person acting for the CIO under express or implied authority.

### CIOs – execution using a seal

- If a CIO has a seal it may choose to execute documents using that seal.
- When using the seal, the relevant provisions of the specific CIO's constitution should be checked and observed.

# Execution of documents

## CIOs – execution without use of a seal

- Whether or not a CIO has a seal, it may execute documents in accordance with the relevant provisions of the General Regulations, which are:
  - a) a CIO that has more than one trustee can validly execute a document with the signatures of at least two of its trustees; or
  - b) a CIO with just one trustee can validly execute a document with the signature of that one trustee; and
  - c) the document is expressed as being executed by the CIO (in whatever form of words).

## CIOs – execution of deeds

- A CIO may execute a deed with signatures as stated in the immediately preceding section, with the document itself making it clear on its face that it is intended by the persons making it to be a deed.

## Procedure

- The detailed procedure will depend on the legal nature of the charity involved, the type of document and the relevant transaction to which it relates. The procedure may also be affected by particular provisions in the charity's constitution.
- CIOs are subject to the statutory provisions in the general regulations regarding execution of documents, including contracts.
- Usually, the trustee board will authorise execution of the most important documents on behalf of a charity.
- It is likely that at least two signatories will be required in relation to major transactions and certain important legal documents.

## Filing requirements

- Execution of certain documents may be part of a transaction that causes the charity to have a filing obligation (e.g. a land transaction that has to be filed with HM Land Registry or the Land Registers of Scotland).

## Notes

- A CIO may choose to have a seal (however this is not a legal obligation).
- If it does have a seal, the CIO's name must be engraved in legible characters on the seal.

## More information

- The detailed requirements relating to CIOs are set out in the Charitable Incorporated Organisations (General) Regulations 2012, SI 3012 of 2012.

