

# Part 50 – Corporations and Companies

## Table of Contents

General Law	
Purpose .....	[50-0000]
Nature.....	[50-0010]
Governing Legislation .....	[50-0020]
Corporate Constitution .....	[50-0030]
Classification.....	[50-0040]
Capacity.....	[50-0050]
Name and ACN.....	[50-0060]
Control.....	[50-0070]
Liquidation .....	[50-0090]
Administration.....	[50-0100]
Execution of Documents .....	[50-0110]
<i>Land Title Act 1994 and Land Act 1994</i> .....	[50-0120]
<i>Corporations Act 2001 (Cth)</i> .....	[50-0130]
<i>Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth)</i> .....	[50-0135]
Foreign Company .....	[50-0140]
Disclaiming Property .....	[50-0160]
Gift.....	[50-0170]
Deregistered Company .....	[50-0180]
<sup>1</sup> Company Deregistered Prior to 1 July 1962	
Company Deregistered under the Australian Securities and Investments Commission (ASIC)	
<sup>2</sup> Legislation .....	[50-1000]
Application of the <i>Land Title Act 1994</i> to the <i>Water Act 2000</i>	
Practice	
Execution of Documents .....	[50-2000]
Incorporated Associations under the <i>Associations Incorporation Act 1981 (Qld)</i> .....	[50-2005]
Execution under seal	
Execution by the secretary of the Incorporated Association	
Correction of Name.....	[50-2010]
Change of Name.....	[50-2020]
Instrument or Document by Receiver or Receiver and Manager.....	[50-2030]
Instrument or Document by Liquidator .....	[50-2040]
Instrument or Document by Administrator .....	[50-2050]
Disclaiming Property .....	[50-2060]
Deregistered Corporation.....	[50-2070]
<sup>1</sup> Company Deregistered Prior to the <i>Companies Act 1961</i>	
Company Deregistered under the Australian Securities and Investments Commission (ASIC)	
Financial Institution .....	[50-2090]
Case Law .....	[50-7000]
Fees.....	[50-8000]
Cross References and Further Reading .....	[50-9000]
Notes in text.....	[50-9050]

## Part 50 – Corporations and Companies

### General Law

#### Purpose

[50-0000]

The purpose of this part is to provide guidance in respect of dealings by corporations and, more particularly, companies. This part is supplementary to and should be read in conjunction with the rest of the Manual.

This part sets out certain background information in relation to corporations, certain aspects of the law relating to corporations which are relevant to this Manual and matters of practice specific to corporations.

#### Nature

[50-0010]

A corporation is a creature of the law. It is a separate legal entity created by persons registering the new entity with the appropriate government authority under appropriate legislation. The process of creating the new entity is called ‘incorporation’.

A company is one example of a corporation or body corporate and is distinguished by the method and place of its incorporation.

A body corporate includes a company, whether incorporated by charter, statute or common law.

A company is to be distinguished from a ‘corporation sole’, which refers to a particular public office held by a natural person. By virtue of holding the particular office, the natural person is vested with ownership of certain property used in conjunction with that office and with the capacity to do certain things. On a change in the person holding the office, the new holder is automatically vested with such property and has the same capacities. An example of a corporation sole is the Public Trustee of Queensland.

#### Governing Legislation

[50-0020]

A company is registered and governed by the *Corporations Act 2001* (Cth) which commenced from 12 July 2001. This Act was made applicable to Queensland by a combination of the *Corporations (Commonwealth Powers) Act 2001*, *Corporations (Administrative Actions) Act 2001* and the *Corporations (Ancillary Provisions) Act 2001*. Prior to the commencement of the Corporations Act companies were registered and governed by the Corporations Law.

#### Corporate Constitution

[50-0030]

Prior to the *Company Law Review Act 1998* on 29 June 1998 a company had a corporate constitution, which usually consisted of two documents, its memorandum of association and its articles of association. The memorandum of association defines the nature of the company. The articles of association contain regulations for the internal government of the company. The articles of a company will usually be found in a separate document specific to the company, but they may be deemed to be certain provisions set out in an attachment to the *Corporations Law*.

Under the *Company Law Review Act* a company’s corporate constitution may be made up of replaceable rules, a constitution or a combination of both. The replaceable rules and/or constitution contain regulations for the internal government of the company.

In relation to certain matters, the provisions of the *Corporations Law* override any provisions to the contrary found in a company's constitution. The *Corporations Law* was repealed from 12 July 2001 by the Corporations Act, however, the provisions of that Act override any provisions found in the company's constitution that are contrary to the Act.

## Classification

[50-0040]

Companies are classified on a number of different bases, including:

- (1) the nature of the liability of members; and
- (2) restrictions on changes of membership.

These classifications are not relevant for the purposes of this Manual.

## Capacity

[50-0050]

A company has the legal capacity of a natural person plus certain powers that relate specifically to companies, including the power to issue shares and debentures and to grant a floating charge over its property. Accordingly, a company has the power to hold and deal with land under the *Land Title Act 1994* a State tenure under the *Land Act 1994* where authorised or a water allocation under the *Water Act 2000*.

A company's constitution may restrict or prohibit the exercise by the company of a power. However generally, an act in breach of such restriction or prohibition will not be invalid merely because of such breach so far as it relates to parties dealing with the company.

Thus in the ordinary course, any agreement entered into by a company cannot be set aside on the grounds that the company lacked the power to enter into it.

## Name and ACN

[50-0060]

On registration, a company is given an Australian Company Number ('ACN'). The ACN may be adopted as the name of the company.

A company must set out its name and the words 'Australian Company Number' or 'ACN' followed by its ACN on every public document it signs or issues (s. 153 of the *Corporations Act 2001* (Cth)). A power of attorney given by or to a company should also include the name and ACN of the company.

Foreign companies registered under the Corporations Act must similarly display their Australian Registered Body Number ('ARBN') (see [50-0140]).

From 29 May 2000 a company issued with an ACN or ARBN is permitted to use the company's Australian Business Number (ABN) on any document provided that the last nine digits of the ABN are the same as the company's ACN or ARBN.

Financial institutions not registered under the Corporations Act are not required to display any identifying number on documentation.

When describing a company, certain abbreviations of words in its name are acceptable:

- (1) 'Aust' for 'Australian';
- (2) 'A.C.N' for 'Australian Company Number';

- (3) 'Co.' or 'Coy' for 'Company';
- (4) 'Ltd.' for 'Limited';
- (5) 'N.L.' for 'No Liability';
- (6) 'No.' for 'Number';
- (7) 'Pty' for 'Proprietary'; and
- (8) '&' for 'and'.

Where these abbreviations are part of a company's name, it is also acceptable to use the corresponding words in place of such abbreviations. The omission of full stops from these abbreviations is also acceptable (s. 149 of the Corporations Act).

In certain circumstances, a limited company may be licensed to omit the word 'Limited' from its name. This is where it is formed for certain charitable or community purposes (s. 150 of the Corporations Act).

A change of name by a company does not create a new legal entity and does not affect the identity, property, rights or obligations of the company or its continuity as a body corporate or render defective any legal proceedings by or against the company (s. 161 of the Corporations Act).

## Control

[50-0070]

The constitution of a corporation invariably delegates to the directors all the powers of management. Thus, the directors alone are specifically responsible for the management of a corporation, except in matters specifically reserved to the corporation in general meeting.

Directors of a corporation stand in a fiduciary position in relation to the company.

Directors must act collectively as a board. Certain basic rules in relation to directors' meetings exist at law, such as requirements for proper notice, quorum and a requirement to keep minutes. Further regulations are found in the company's articles.

In certain circumstances, the power of directors to manage a company are suspended or curtailed. These circumstances are set out below.

[50-0080] deleted

## Liquidation

[50-0090]

Where a company is being wound up as a result of the insolvency of the company or by an order of the court, or where a provisional liquidator is acting, the powers of the directors to manage the affairs of the company and to deal with the assets of the company are effectively suspended. This generally does not affect the powers of a privately appointed receiver and manager of the property of the company.

On appointment, a liquidator or provisional liquidator is required to take into his/her custody or control all the property to which the company is entitled.

A liquidator may apply for a court order directing that some or all of the property be vested in the liquidator. Upon such order being made, the property vests in the liquidator in his/her office as an official liquidator, not personally.

## Administration

[50-0100]

On appointment, an administrator assumes control of the business, property and affairs of a company, may sell any property of the company and can exercise any power that the company or any of its officers could exercise if the company were not under administration (s. 437A(1) of the *Corporations Act 2001* (Cth)).

The powers of other officers, including directors, a liquidator, a provisional liquidator and a receiver or receiver and manager are suspended during the course of the administration of a company, unless the administrator otherwise approves in writing (s. 437C of the *Corporations Act*).

A purported transaction or dealing affecting property of a company under administration is void unless it was entered into by the administrator on the company's behalf, the administrator consented to it in writing before it was entered into or it was entered into under an order of the court (s. 437D(2) of the *Corporations Act*).

An administrator of a company may be appointed:

- (a) by the company itself in writing if the board of directors has resolved that the company is or is likely to become insolvent and that an administrator should be appointed (s. 436A(1) of the *Corporations Act*);
- (b) by a liquidator in writing (s. 436B of the *Corporations Act*); and
- (c) in writing by a person entitled to enforce a charge of the whole or substantially the whole of the company's property if the charge is enforceable (s. 436C of the *Corporations Act*).

If a deed of company arrangement commences, the original administrator's powers effectively cease and the terms of the deed of company arrangement will determine the respective powers of the company and the administrator of the deed in terms of dealing with property. The company's powers to deal with its property will be unfettered except as provided by the deed (s. 444A of the *Corporations Act*).

## Execution of Documents

[50-0110]

A company has the power to enter into contracts and execute deeds itself and through a validly appointed agent.

In entering into a contract itself, a company must necessarily act through a person. Where a contract is entered into on behalf of a company by those charged with the conduct of the company's affairs, the contract will be regarded at law as having been entered into by the company itself, rather than through an agent.

In entering into a contract a company may, but is not required to, use its common seal. If a company chooses to execute a document under seal, the manner in which the seal is to be affixed will be governed by the company's constitution.

The *Land Title Act 1994*, the *Land Act 1994* and the *Corporations Act 2001* (Cth) contain provisions which limit the necessity for a person to enquire into the validity of the use of a common seal by a company.

### ***Land Title Act 1994 and Land Act 1994***

[50-0120]

In relation to a corporation, an instrument is validly executed if it is:

- (a) executed in a way permitted by law; or
- (b) sealed in accordance with s. 46 of the *Property Law Act 1974* (s. 161(1) of the Land Title Act or s. 310(1) of the Land Act).

Section 46 of the Property Law Act provides that where a seal purporting to be the seal of a company has been affixed to a deed and attested to by persons who purport to be the secretary, clerk or other permanent officer and a director of the company, the deed shall be deemed to have been executed under the requirements of that section and to have taken effect accordingly.

### ***Corporations Act 2001 (Cth)***

[50-0130]

In the absence of knowledge to the contrary, a person is entitled to assume that a document has been validly executed by a corporation in circumstances specified in the Corporations Act.

Examples of valid assumptions would occur if the persons executing or attesting the affixing of a common seal:

- (a) appear from returns lodged with the Australian Securities and Investments Commission to hold the positions of director and/or secretary (s. 129(2) of the Corporations Act); or
- (b) if they are held out by the company as holding such positions (s. 129(3) of the Corporations Act).

Instruments or documents lodged for registration in the registry will be accepted as validly executed by a corporation if they are executed:

- (a) in keeping with s. 46 of the *Property Law Act 1974*;
- (b) with a common seal and signed by two persons, both of whom are authorised officers of the corporation and their designations appear adjacent to their signature;
- (c) with a common seal and signed by one person who is the sole director and the sole secretary (or other authorised officer) of the corporation and that designation appears adjacent to the signature;
- (d) without a common seal and signed by two persons, both of whom are authorised officers of the corporation and their designations appear adjacent to their signature. The name and ACN or ARBN of the corporation must be shown in the execution;
- (e) without a common seal and signed by one person who is the sole director and the sole secretary (or other authorised officer) of the corporation and that designation appears adjacent to the signature. The name and ACN or ARBN of the corporation must be shown in the execution;
- (f) an attorney if the power of attorney is registered in the registry;
- (g) by its solicitor for transfers only if the company is transferee and for some requests (s. 11(1) of the *Land Title Act 1994* or s. 288(1) of the *Land Act 1994*).

### ***Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth)*** [50-0135]

The Corporations (Aboriginal and Torres Strait Islander) Act commenced on 1 July 2007 and provides for the incorporation and regulation of Aboriginal and Torres Strait Islander corporations.

Once an application for registration as a corporation has been granted, a certificate of registration is issued by the Office of the Registrar of Indigenous Corporations. The certificate of registration must be deposited with any instrument or document that will record a corporation as a registered owner or holder of an interest. For information about options for the deposit of supporting documentation see part [60-1030].

The corporation's Indigenous Corporation Number (ICN) must be inserted as part of the corporation's name on a lodged instrument or document.

An Aboriginal and Torres Strait Islander corporation with a common seal may execute a document if the seal is fixed to the document and the fixing of the seal is witnessed by:

- a) 2 directors of the corporation; or
- b) a director and a corporation secretary of the corporation; or
- c) if the corporation only has one director – the sole director.

The seal must be a clear legible imprint (includes self-adhesive seals) and must include the corporation's name and ICN. The designations of the relevant officers must be included.

An Aboriginal and Torres Strait Islander corporation may execute a document without using a common seal if the document is signed by:

- a) 2 directors of the corporation; or
- b) a director and a corporation secretary (if any); or
- c) if the corporation only has one director – the sole director.

The execution must include the corporation's name and ICN and the designations of the relevant officers must be included.

## Foreign Company

[50-0140]

A company or other body incorporated outside Australia must not carry on business in Queensland unless it has been registered under the *Corporations Act 2001* (Cth). A foreign company is not deemed to carry on business in Queensland if it conducts an isolated transaction, creates evidence of a debt or creates a charge on property.

On registration, the foreign company is given an Australian Registered Body Number ('ARBN') (s. 601CE of the Corporations Act). There is no requirement for the ARBN to be included in the company seal.

The ARBN must appear after the name of the foreign company on every public document that the foreign company publishes, issues or signs (s. 601DE of the Corporations Act).

If a foreign company acquires an interest in land in Queensland without carrying on business and is therefore not registered and does not have an ARBN, evidence of Incorporation must be produced. Translation to English of any evidence deposited is required where applicable. If that evidence has been produced for the registration of a prior dealing, reference may be made to that dealing after the company name (eg 'evidence of incorporation deposited with Instrument No [number]').

In many instances, the execution by a foreign company under the law of the country in which it is incorporated does not conform to the requirements of s. 46(1) of the *Property Law Act 1974*. Section 127 of the Corporations Act defines the requirements for execution of documents by a

registered foreign company and s. 46(6) of the Property Law Act defines alternate acceptable modes of execution. If the mode of execution by a foreign company does not conform, then substantive evidence must be submitted in support of the mode of execution by the corporation.

For example, if the legislation of a State or country provides that the execution by the president of a corporation binds the corporation with no requirement for a seal or a sealing clause in its articles, then evidence to this effect would be required.

[50-0150] deleted

## Disclaiming Property

[50-0160]

For information about disclaiming property see [14-2260].

## Gift

[50-0170]

Because a company is deemed to have the rights, powers and privileges of a natural person, a company would not lack the power to make a gift. However, the board of directors may not have authority to make a gift.

As regards gifts to directors, it should be noted that directors of a company stand in a special position of trust (a 'fiduciary position') in relation to the company and, in general, any benefit given by the company to a director requires the approval of the company in general meeting. If a transfer to a director is in registrable form, it is accepted that the appropriate procedures have been adhered to and it will be registered.

## Deregistered Company

[50-0180]

### <sup>1</sup>Company Deregistered Prior to 1 July 1962

When a company was dissolved under s. 300 of the *Companies Act 1931*, all property and rights whatsoever vested in the Crown. See [50-2070] and part 14 – General Request, esp [14-2300].

### Company Deregistered under the Australian Securities and Investments Commission (ASIC)

When a corporation is deregistered under ss. 601AA, 601AB or 601AC of the *Corporations Act 2001* (Cth) and there remains outstanding property in the name of the corporation, such property vests in the ASIC (s. 601AD of the *Corporations Act*). See [50-2070] and part 14 – General Request, esp [14-2300].

## <sup>2</sup>Legislation

[50-1000]

### Application of the *Land Title Act 1994* to the *Water Act 2000*

Under the provisions of the Water Act, the Land Title Act applies to the registration of an interest or dealings for a water allocation on the water allocations register subject to some exceptions.

A relevant interest or dealing may be registered in a way mentioned in the Land Title Act and the Registrar of Water Allocations may exercise a power or perform an obligation of the Registrar of Titles under the Land Title Act:

- (a) as if a reference to the Registrar of Titles were a reference to the Registrar of Water Allocations; and

- (b) as if a reference to the freehold land register were a reference to the water allocations register; and
- (c) as if a reference to freehold land or land were a reference to a water allocation; and
- (d) as if a reference to a lot were a reference to a water allocation; and
- (e) with any other necessary changes.

## Practice

### Execution of Documents

[50-2000]

An instrument or document is validly executed by a corporation if it is executed in a way permitted by law or if it is sealed with the corporation's seal in accordance with s. 46 of the *Property Law Act 1974* (s. 161(1) of the *Land Title Act 1994* or s. 310(1) of the *Land Act 1994*).

Section 127 of the *Corporations Act 2001* (Cth) authorises a corporation to execute a document, including a deed, with or without affixing a common seal.

The Registrar assumes that the execution of a corporation is valid without requiring evidence in the following situations:

- 1 Execution under common seal:
  - (a) the seal must be a clear legible imprint (includes self-adhesive seals); and
  - (b) the seal must include the corporation's name and ACN; and
  - (c) be signed by two persons, both of whom are authorised officers of the corporation; or
  - (d) be signed by one person who is the sole director and the sole secretary (or other authorised officer) of the corporation; and
  - (e) the signatory(s) must show their designation(s) typed or printed legibly adjacent to the/their signature(s).
- 2 Execution not under common seal:
  - (a) the name of the corporation and the ACN\* must be included as part of the execution; and
  - (b) be signed by two persons, both of whom are authorised officers of the corporation; or
  - (c) be signed by one person who is the sole director and the sole secretary (or other authorised officer) of the corporation; and
  - (d) the signatories must show their designation(s) typed or printed legibly adjacent to the/their signature(s).

\*For the *National Mortgage Form* and *Priority Notice Form*, a company does not need to include its ACN/ARBN as part of its name in the relevant execution panel if the ACN/ARBN has already been included in the Mortgagor Panel, Mortgagee Panel or Applicant Panel.

An example of an execution by a corporation without a common seal and by a sole director who is also the sole secretary of the corporation could be:

**A B PTY. LTD. ACN 987 123 654**

*A Signature*

-----  
Sole director and secretary

An execution by a corporation (with or without a common seal) does not require a witness in accordance with Schedule 1 of the Land Title Act or s. 73 of the Land Regulation.

A corporation or an authorised officer of the corporation may appoint an attorney. An execution by an attorney for a corporation as transferor, mortgagor, lessor, etc must be witnessed (s. 46(3) of the Property Law Act). Generally all instruments to be registered in the registry must be witnessed by a person with a qualification stated in Schedule 1 of the Land Title Act or s. 73 of the Land Regulation (e.g. justice of the peace, barrister, solicitor etc). However in exceptional circumstances, when an attorney is executing on behalf of a corporation, the Registrar will consider a submission that seeks relaxation of this requirement (s. 161(3) of the Land Title Act or s. 310(3) of the Land Act).

Where specific provision is made in the constitution, s. 46(6) of the Property Law Act validates execution by an attorney without a witness. If a document is executed in this manner, a copy of the constitution, certified by the solicitor or an authorised officer of the corporation, must be produced to the Registrar with the document to be registered. However, a conveyance executed by a corporation as attorney (with or without a common seal) is not required to be witnessed (s. 161 of the Land Title Act or s. 310 of the Land Act).

Execution by an attorney for a corporation of an instrument or document in which the company is a transferee, mortgagee, lessee, grantee, chargee, etc need not be witnessed as there is no conveyance by the company involved. This does not apply to the execution of Releases of Mortgage, Surrenders of Lease, Surrenders of Easement, Releases of Charge, etc. In those instances the corporation is the party releasing or surrendering and a conveyance is involved.

Instruments or documents that transfer to or create an interest in favour of a corporation must be executed by the corporation or a solicitor authorised by the corporation (s. 11(1) of the Land Title Act or s. 288(1) of the Land Act). If signed by a solicitor, the full name of the solicitor must be shown.

## **Incorporated Associations under the *Associations Incorporation Act 1981* (Qld)**

[50-2005]

### **Execution under seal**

An instrument is validly executed by an incorporated association if it is executed in a way permitted by law or if it is sealed with the incorporated association's seal in accordance with s. 46 of the *Property Law Act 1974* (s. 161(1) of the *Land Title Act 1994* or s. 310(1) of the *Land Act 1994*).

For incorporated associations incorporated under the Associations Incorporation Act, the Registrar will accept an execution under seal for all Titles Registry forms. The incorporated association must affix the seal in accordance with its rules or in accordance with s. 46 of the Property Law Act.

The Registrar assumes that an execution by an incorporated association under seal is valid without requiring further evidence where the execution is carried out as follows:

1. a clear legible imprint of the common seal of the incorporated association which includes the registered name (with "incorporated" or "inc") is affixed; and
2. the document or instrument is:

- a. signed by two members of the management committee and their designations appear printed legibly with their signatures; OR
- b. signed by a member of the management committee and the secretary and their designations appear printed legibly with their signatures.

The execution does not need to be witnessed.

The registrar will also assume that an execution by an incorporated association under seal is valid if:

1. a clear legible imprint of the common seal of the incorporated association which includes the registered name (with “incorporated” or “inc”) is affixed; and
2. the document or instrument is signed by a member of the management committee and someone authorised by the management committee and suitable designations appear printed legibly with their signatures; and
3. suitable evidence is provided to show that the person is authorised by the management committee (e.g. a copy of the minutes of the management committee meeting certified by the association’s legal representative or secretary that details the resolution providing the person with the authority).

The execution does not need to be witnessed.

Where an incorporated association has adopted rules providing for a different procedure for affixing the common seal which is not detailed above – a copy of the adopted rules certified by the secretary or a legal representative of the association must be deposited to show that the particular method of affixing the common seal is authorised by the adopted rules.

#### **Execution by the secretary of the Incorporated Association**

The Registrar will accept an execution by the secretary of an incorporated association for Form 14 – General Requests which are only lodged to record the occurrence of another legal process such as:

- recording a vesting in an Incorporated Association (see [14-2360]); or
- the change of the name of an Incorporated Association (see [14-2030]).

The execution must include the name of the association (with “incorporated” or “inc”) and the designation “secretary”. The execution does not need to be witnessed.

## **Correction of Name**

[50-2010]

Where a company is a registered owner or holder dealing with land or an interest, the name in the instrument or document should coincide with that under which it is registered. In a transfer by the company, minor discrepancies which raise no doubt as to identity can be corrected as a patent error (s. 155(3) of the *Land Title Act 1994* or s. 304(2) of the *Land Act 1994*).

These corrections may only be made if the error is:

- (a) obvious; and
- (b) will not prejudice the rights of any person.

## Change of Name

[50-2020]

Where a company changes its name, the interest registered in the former name can be amended by a lodgement of a Form 14 – Request to Change Name. For the requirements for a request to change name see part 14 – General Request, esp [14-2020] and [14-2040].

Where a company, which has changed its name, is disposing of an interest that is registered on the title in the former name the instrument or document must recite the name in the following manner:

[Current name and ACN (or ABN)] formerly [name registered on the title and ACN (or ABN)].

Evidence of the change of name must also be deposited with the instrument or document. In cases where the company name has been changed more than once, evidence that verifies each change of name must be deposited. For further information for the requirements or the deposit of supporting information see part 60 – Miscellaneous, esp [60-1030].

## Instrument or Document by Receiver or Receiver and Manager

[50-2030]

An instrument or document for execution by a corporation where a receiver has been appointed should be prepared in the name of the corporation and not in the name of the receiver. The words '(Receiver appointed)' must appear after the name of the corporation where it appears in the instrument or document. No reference to the receivership is made in the title.

Evidence of appointment of the receiver or receiver and manager must be deposited with any instrument or document executed by a receiver or receiver and manager by way of:

- a current copy of the notification of the appointment from the Australian Securities and Investments Commission (ASIC) or an approved ASIC information broker; or
- a copy of a court order making the appointment.

For more information about deposit of supporting documentation see [60-1030].

The receiver of a corporation may execute an instrument or document under the seal of the corporation (ss. 420(2)(k) and (n) of the *Corporations Act 2001* (Cth)).

Section 420(2)(q) of the Corporations Act authorises a receiver or receiver and manager to appoint an agent (attorney) to do business that he/she is unable to do or that is unreasonable to expect the receiver to do in person. Evidence of appointment of a receiver or receiver and manager must be deposited with the power of attorney. The director/s of the corporation or an attorney appointed by the corporation prior to the appointment of a receiver/manager may continue to execute instruments or documents on behalf of the corporation in relation to charged assets only with the consent of the receiver/manager. This consent may be given in a Form 18 – General Consent.

Under the Corporations Act, a liquidator or court may authorise a receiver of a corporation being wound up to carry on the corporation's business. The approval of a liquidator may be given in a *Form 18 – General Consent*.

Unless this approval by the liquidator is granted, a receiver's authority as agent of the corporation terminates. This does not, however, terminate the receiver's power to control and deal with the property in relation to which the receiver was appointed.

A receiver's authority is limited to exercising the rights of a security holder and only as agent to deal with the property that is charged by the security holder. If necessary, the receiver may use the name of the corporation to exercise these rights.

Where there are two or more receivers appointed, unless otherwise specified in the document evidencing appointment, any one of them may execute an instrument or document on behalf of the corporation.

The execution of an instrument or document by a receiver should be substantially as shown below.

SEAL (where applicable)	J N Jones
	RECEIVER/RECEIVER AND MANAGER
	John Neal Jones
	FULL NAME (TO BE PRINTED)

Where the seal of the company is not affixed the company name and ACN must be printed adjacent to the execution.

## Instrument or Document by Liquidator

[50-2040]

An instrument or document to be executed by the liquidator of a corporation in liquidation should be prepared in the name of the corporation and not in the name of the liquidator. The words '(in liquidation)' must appear after the name of the corporation where it appears in the instrument or document. No reference to the winding up is made in the title.

Evidence of appointment of the liquidator must be deposited with any instrument or document executed by a liquidator by way of:

- a current copy of the notification of the appointment issued by the Australian Securities and Investments Commission (ASIC); or
- a copy of a court order making the appointment.

For more information about the deposit of supporting documentation see [60-1030]. A general meeting of a corporation in liquidation may approve the retention by the directors of their powers with the consent of the liquidator. Evidence of this must be deposited with any instrument or document executed by a director.

A liquidator executes in the name of the corporation. Section 477(2)(k) of the *Corporations Act 2001* (Cth) authorises a liquidator to appoint an agent (attorney) to do business that he/she is unable to do or that is unreasonable to expect the liquidator to do in person. Evidence of appointment of the liquidator must be deposited with the power of attorney.

An attorney appointed by the corporation prior to the appointment of the liquidator may continue to execute instruments or documents on behalf of the corporation only with the consent of the liquidator. This consent may be given in a *Form 18 – General Consent*.

A liquidator appointed in another State may execute instruments or documents for registration in Queensland. Evidence of the liquidator's appointment must be deposited as above.

If more than one liquidator is appointed by the Court, the Court shall declare whether all or any one of the persons appointed is required to execute on behalf of the corporation (s. 473(8) of the *Corporations Act*).

Where several liquidators are appointed under a members' voluntary winding up any one of them may execute any instrument or document, unless evidence to the contrary is provided (s. 530 of the Corporations Act).

The seal of a corporation in liquidation may be affixed by the liquidator in execution of an instrument or document (s. 477(2)(d) of the Corporations Act).

The execution of an instrument or document by a liquidator should be substantially as shown below.

SEAL (where applicable)	<i>J N Jones</i> ----- LIQUIDATOR
	John Neal Jones ----- FULL NAME (TO BE PRINTED)

Where the seal of the company is not affixed the company name and ACN must be printed adjacent to the execution.

## Instrument or Document by Administrator

[50-2050]

Where an administrator has been appointed an instrument or document by a corporation must be prepared in the name of the corporation and not in the name of the administrator. The words '(Administrator appointed)' must appear after the name of the corporation where it appears in the instrument or document.

Evidence of appointment of the administrator must be deposited with any instrument or document executed by an administrator by way of:

- a current copy of the notification of the appointment issued by the Australian Securities and Investments Commission (ASIC); or
- a copy of a court order making the appointment.

Where a deed of company arrangement is in effect an instrument or document by a corporation must be prepared in the name of the corporation and the words '(Subject to deed of company arrangement)' must appear. No reference to appointment of an administrator or the operation of a deed of company arrangement is made in the title.

Where a deed of company arrangement has commenced, a copy of the deed must be deposited.

For more information about deposit of supporting documentation see [60-1030].

Where there are two or more administrators appointed, unless otherwise specified in the document evidencing the appointment, any one of them may execute an instrument or document on behalf of the corporation (s. 451B(2) of the *Corporations Act 2001* (Cth)).

The execution of an instrument or document by the administrator should be substantially as shown below.

SEAL (where applicable)	<i>S N Blue</i> ----- ADMINISTRATOR
	Stephen Norbert Blue ----- FULL NAME (TO BE PRINTED)

Where the seal of the company is not affixed the company name and ACN must be printed adjacent to the execution.

## Disclaiming Property

[50-2060]

For information about disclaiming property see [14-2260].

## Deregistered Corporation

[50-2070]

### <sup>1</sup>Company Deregistered Prior to the *Companies Act 1961*

Pursuant to s. 300 of the Companies Act, when a company was dissolved, all property and rights whatsoever vested in the company immediately before its dissolution shall be 'deemed to be *bona vacantia*, and shall accordingly belong to the Crown'.

When dealing with the property of a company that was deregistered prior to 1 July 1962, see part 14 – General Request, esp [14-2300].

### Company Deregistered under the Australian Securities and Investments Commission (ASIC)

When a corporation is deregistered, any assets, including real property, vest in the ASIC (s. 601AD(2) of the *Corporations Act 2001* (Cth)).

Section 601AE(2) provides that the ASIC may execute instruments or documents necessary to dispose of assets. An instrument or document that disposes of an asset of a deregistered corporation executed by the ASIC under the relevant legislation is registrable without first vesting the property in the ASIC.

If vesting of land in the ASIC is required, see part 14 – General Request, esp [14-2300].

[50-2080] deleted

## Financial Institution

[50-2090]

There is no requirement to display any ARBNs on registry forms executed by any of the following institutions:

- a society or association within the meaning of the *Cooperatives Act 1997*;
- an association within the meaning of the *Associations Incorporation Act 1981*;
- a society within the meaning of the *Financial Intermediaries Act 1996*.

[50-6000] deleted

## Case Law

[50-7000]

Nil.

## Fees

[50-8000]

No fees are payable under the Land Title Regulation, Land Regulation or Water Regulation relevant to this part.

# Cross References and Further Reading

[50-9000]

Part 1 – Transfer

Part 14 – General Request

Lipton, P and Herzberg, A, *Understanding Company Law*, 4th edn, The Law Book Company Limited, 1992

Ford, HAJ, *Principles of Company Law*, 6th edn, Butterworths, 1992

## Notes in text

[50-9050]

Note <sup>1</sup> – This numbered section, paragraph or statement does not apply to water allocations.

Note <sup>2</sup> – This numbered section, paragraph or statement does not apply to State land.

Note <sup>3</sup> – This numbered section, paragraph or statement does not apply to freehold land.