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Execution requirements

Rehabilitation Security Deposit Bond Deed Poll

Overview

This document provides guidance on the requirements of NSW Resources in ensuring proper execution of the *Security Deposit Bond Deed Poll (Deed)* by financial institutions providing security for an authorisation under the *Mining Act 1992* or a petroleum title under the *Petroleum (Onshore) Act 1991*.

Where a particular execution method is proposed that is not considered in this document, this should be discussed with NSW Resources before execution of the Deed.

Steps in the execution of the Deed

Method of execution and NSW Resources' requirements

A financial institution's legal status or the way it executes the Deed will affect the requirements that apply.

Common execution methods and example execution blocks which are accepted by NSW Resources are included in the relevant sections below. These sections also set out additional supporting information that may be required by NSW Resources, depending on the method of execution used.

Physical or electronic signing

The person executing the Deed should date and sign where indicated on the relevant execution block of the signing page of the Deed. If the signature is required to be witnessed (discussed further below) the person should sign the document in the presence of the witness.

The Deed can be signed by applying a handwritten (wet ink) signature to a physical copy of the Deed or electronically. Electronic signing may involve:

- signing the Deed using a recognised electronic signing platform, or
- applying an electronic version of a signature to the Deed (for example, by inserting a scanned or image-based signature), also known as a non-digital electronic execution.

Where a recognised electronic signing platform is used, the signatory should follow the procedure in their digital execution platform, and the witness (if required), should do the same.

Where the Deed is signed by non-digital electronic execution and the document is required to be witnessed, then the signatory must insert their e-signature in the presence of a witness and the witness must then insert their e-signature.

Where signing with non-digital electronic execution, every signatory who signs with a non-digital electronic signature must provide a confirmatory email stating that the signatory affixed their electronic signature to the document and did so intending for the financial institution to be bound by it. An example statement is provided below:

I, [name], as an attorney appointed under a power of attorney dated [date] granted by [entity], confirm that:

- I have received the execution version of the Security Deposit Bond Deed Poll emailed by [sender's name] to [me or name of other recipient] on [date]; and*
- I have [personally affixed or authorised [name] to affix] my electronic signature to that document, and I did so intending that my signature would bind [entity] in the manner contemplated by that document.*

Witnessing

Whether witnessing of the Deed is required depends on the financial institution's legal status and the method by which it proposes to execute the Deed.

A witness must:

- be over 18 years of age
- know the person whose signature they are witnessing
- not be under the influence of drugs
- be of sound mind, and
- not be a party to the document or have any financial interest in it.

In NSW a witness can witness execution remotely by audio visual link. This applies to both wet ink and electronic signature. After witnessing the signature, the witness must sign the witness panel on the same electronic document or a scanned copy containing the signatory's signature, and must include the following statement beside the witness' execution panel:

This document was signed and witnessed over audio visual link in accordance with section 14G of the Electronic Transactions Act 2000 (NSW).

Common execution methods

Common execution methods that are accepted by NSW Resources are described in the table below, as well as additional supporting information which may be required by NSW Resources, depending on the execution method used:

Table 1: Execution methods.

Execution method	Details
Execution under power of attorney	A deed may be executed by an attorney for the financial institution under a power of attorney.

Execution method	Details
	Where the Deed is signed by an attorney: - the attorney must have authority under a valid power of attorney to execute deeds - the execution block must clearly state that the Deed is executed by the attorney for the company, and - NSW Resources requires a copy of the relevant power of attorney to be provided.
Execution by a Company under s 126 of the Corporations Act	In accordance with s126 of the <i>Corporations Act 2001</i> (Cth), a company can execute a deed through an individual acting with the company's authority, without a common seal. This individual can be an agent, authorised signatory or authorised representative. If executing the Deed under s126 of the Corporations Act, NSW Resources requires the following to be provided: - that the signature be witnessed - a company extract obtained from the Australian Securities & Investments Commission (ASIC) register be provided, and - evidence of the authority (certified by a company secretary or director, who is not the proposed signatory) be provided. This may include: - a certified extract of minutes of a directors' meeting - a certified extract of directors' resolutions - a certified copy of the company's delegation manual containing the authorisation to the individual, and - a certified copy of the company's constitution which grants relevant powers to the individual.
Execution by a Company under s127 of the Corporations Act	Under s127 of the Corporations Act, a company may execute a deed by: - affixation of the Company's common seal in the presence of a director - signatures of 2 directors - signatures of a director and the company secretary, or - where a company only has a sole director who is also the sole secretary, the signature of that individual. If executing the Deed under s127 of the Corporations Act, NSW Resources requires a company extract obtained from the ASIC register to be provided. Witnessing is not required.

Example execution blocks

Set out below are examples of execution blocks accepted by NSW Resources. If execution by a different method is proposed, this should be discussed with NSW Resources first.

Execution on behalf of a company under power of attorney

Note that NSW Resources requires a copy of the relevant power of attorney to be provided.

Signed sealed and delivered as a deed for ##name of)
party ACN ##number by its attorney under a power of)
attorney dated)
)
.....)
(insert date of power of attorney))
(who has no notice of revocation of that power of attorney)
as at the date of signature) in the presence of:)

.....	
Signature of witness	Signature of attorney
.....	
Print full name of witness	Print full name of attorney
	
	Title of attorney

Execution by a company under s 126 of the Corporations Act

Note that NSW Resources requires a signature to be witnessed, a company extract obtained from ASIC register, and evidence of authority to be provided when executing under s 126 of the Corporations Act.

Signed sealed and delivered for and on behalf of)
 ##insert company name ACN ##number by its agent in)
 accordance with s 126(1) and s 126(5) of the *Corporations*)
Act 2001 by)
)
) Signature of signatory

 (print full name of signatory))
)

 (print title of signatory))
)
)

 (print details of authority of signatory))

in the presence of:

.....
 Signature of witness

.....
 Print full name of witness

Execution by a company under s 127 of the Corporations Act

Note that NSW Resources requires a company extract obtained from ASIC register when executing under s 127 of the Corporations Act.

There are 3 examples of execution blocks under s 127 of the Corporations Act:

1. When being signed by two directors or one director and the company secretary:

Executed as a deed by ##insert company name)
 ACN ##number in accordance with s 127(1) and s 127(3) of)
 the *Corporations Act 2001*:)
)

.....
 Signature of Director Signature of Director/Company Secretary

.....
 Print full name Print full name

2. When there is only a sole director and no company secretary or the same person is both the sole director and company secretary:

Executed as a deed by ##insert company name)
ACN ##number in accordance with s 127(1) and s 127(3) of)
the *Corporations Act 2001*:)
)

.....
Signature of Sole Director ##optional [and Sole Company Secretary]

.....
Print full name

3. When affixing the common seal and being signed by two directors or one director and the company secretary:

Executed as a deed by the affixing of the Common Seal)
of ##insert company name ACN ##number in accordance)
with s 127(2) and s 127(3) of the *Corporations Act 2001* in)
the presence of:)
)

.....
Signature of Director

.....
Signature of Director/Company Secretary

.....
Print full name

.....
Print full name

4. When affixing the common seal and there is only a sole director and no company secretary or the same person is both the sole director and company secretary.

Executed as a deed by the affixing of the Common Seal)
of ##insert company name ACN ##number in)
accordance with s 127(2) and s 127(3) of the *Corporations*)
Act 2001 in the presence of:)
)

.....
Signature of Sole Director ##optional [and Sole Company Secretary]

.....
Print full name

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