

## **Execution of deeds and other documents by attorney under s47 Companies Act 2006**

The new section 47 which came into force on 1st October 2009 replaces section 38 of the 1985 Act. Section 47 clarifies the position on attorneys appointed by companies.

Under the old section 38 of the Companies Act 1985 a company was able to empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place elsewhere than in the United Kingdom provided this was in writing and under its common seal. A deed executed by such an attorney on behalf of the company had the same effect as if it were executed under the company's common seal. The 1985 Act did not specify that any such appointment had to be made by deed (although this was always considered best practice in the light of an old common law rule that authority to execute a deed on another's behalf must be given by deed). In addition, although the 1985 Act provided that deeds executed by an attorney outside the UK would bind the company, it was silent on the position within the UK.

Section 47 puts it beyond doubt that a company may appoint an attorney to execute deeds or other documents on its behalf and any documents executed in this way, whether in the UK or abroad, take effect as if executed by the company itself. The section also makes clear that a company appointing an attorney must do so by an instrument executed as a deed, which is the same method as an individual making such an appointment must use pursuant to section 1(1) of the Powers of Attorney Act 1971.

For any deed to be effective, it is important that it should be delivered. Under the previous section 36A if it was clear from the document that it was intended to be a deed, it was presumed to be delivered upon execution unless a contrary intention was proved. However under Section 46(1) of the 2006 Act "valid execution" by a company will occur only where the document has been "duly executed" by that company (i.e. by correctly affixing the seal; by two authorised signatories; or by a director with an attesting witness) and the document has been delivered. The meaning of "delivery" for these purposes remains the same – namely any act which



signifies an intention to be bound, rather than the physical handing over of the document. Section 46(2) confirms that delivery is presumed to occur on execution unless a contrary intention is shown – in other words, the presumption is rebuttable. Section 46 also came into force on 1st October 2009.

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