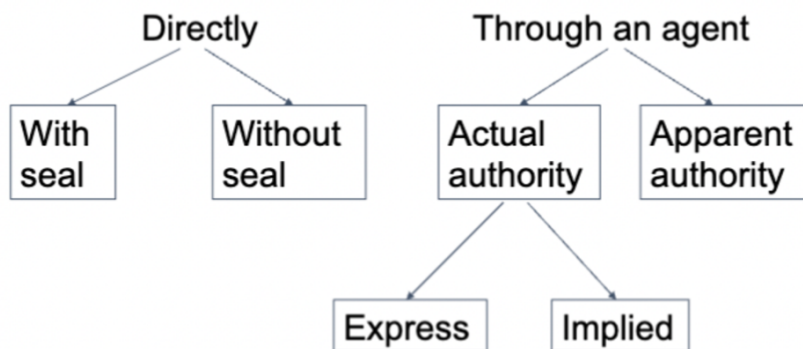


3B: Corporate Contracting (Ch 6)

[s124](#) company has legal capacity and powers of an individual. From registration, a company can enter contracts in its own right.



Direct contracting

- The common seal of a company must be used and the contract signed in accordance with the requirements of [s127\(2\)](#), or the contract must be signed by two directors and a company secretary in accordance with [s127\(1\)](#).
- Prior to 1988, companies were required to have a common seal. Now, under [s123](#), a company may choose whether to have a seal or not.

Contracting through an agent

- Many company contracts are entered into by persons who work for or manage the company. These contracts can still be binding on the company under general law of agency.
- This recognises that one party, a third party, where the contract is negotiated and concluded by an agent acting on behalf of and for the benefit of the principal.
- The principal is the company, and the agent is usually a manager or employee who has authority to act on the company's behalf.

Actual and implied authority

- Under [s126](#), a company is bound by a contract entered into by an agent with actual authority. E.g. an employee may be given express power to negotiate a contract with a particular supplier. The existence and extent of the agent's actual authority is determined by looking at the terms of the agreement between the company and the agent.

- Implied authority can be harder to determine as it involves looking at the circumstances to see if any authority arises by implication from the agreement between the company and the agent.

Implied authority of a managing director

- A managing director is taken to have authority to enter into all contracts that a manager in such a company would be able to enter. This will include contracts necessary for the day-to-day running of the company.

Implied authority of a company secretary

- The role of a company secretary can vary depending upon the size and nature of a company. Although under [s204A\(1\)](#), a proprietary company does not need to have a company secretary, if it does that person will be an officer of the company.

Implied authority of a single director

- The role of director does not include authority to bind the company.
- As stated in *Northside Developments Pty Ltd v Registrar General*: 'The position of director does not carry with it an apparent authority to act on behalf of the company. Directors can act only collectively as a board and the function of an individual director is to participate in decisions of the board'.

Apparent authority

- Arises where there has been a holding out by the company that a person is its agent or has authority to enter into a particular contract
- Where a company allows (by act or omission) a person to appear as if that person is an agent, it will later be estopped from arguing otherwise

Actual authority

- Involves looking for an agreement between the parties that gives rise to an actual or implied grant of authority.
- **Acquiescence**: failure to object by board or any person with authority to a person acting as an agent

Statutory assumptions

- [s 128\(1\)](#) - person who has dealings with a company is entitled to make assumptions set out in [s129](#) about validity of those dealings and the company is unable to assert assumptions are incorrect

- [s 128\(3\)](#) - assumptions can be made even when fraud by the person acting on behalf of a company is involved
- [s 129](#) - seven assumptions that operate to the benefit of third parties to prevent a company asserting in proceedings that any of the issues dealt within the section are incorrect
- [s 129\(1\)](#) - person can assume a company's constitution and any replaceable rules that apply have been complied with
- [s 129\(2\)](#) - third party may assume that a person who appears on info provided to ASIC to be a director or secretary of a company has been duly appointed and is authorised to exercise the powers and perform duties customarily
- [s 129\(4\)](#) - any person with dealings with a company assume that its officers and agents properly perform the duties they owe to the company
- [s 129\(5\)](#) and [\(6\)](#) - allow third party to assume that a doc that appears to have been signed in accordance with [s 127\(1\)](#) has been duly executed
- [s 129\(7\)](#) - doc is genuine or that it's a true copy

4A: Internal Rules of a company (Ch 5)

- Companies have to act through their directors, officers and members and there needs to be rules to govern how the internal processes of the company operate
 - **Memorandum of Association**: contained basic information about the company
 - **Articles of Association**: contained company's internal rules.
- In 1998, the requirement of a Memorandum and Association was removed, and companies can now choose to have a corporate constitution and/or adopt some/all of the replaceable rules in the Corporations Act

Objects and ultra vires

- Under [s136\(2\)](#) of the Corporations Act, a corporate constitution can only be altered if the members pass a special resolution approving the alteration
- There may be additional requirements stated in a company's constitution that must be complied with before an alteration is passed e.g. unanimous consent of all members to any alteration
- A constitution cannot be made unalterable – [s136\(5\)](#)