

6 Corporate Contracting and Agency

A. How does a company enter into transactions?

1. A company has the powers of a **natural person (s 124(1))**, including the power to enter binding contracts.
 - a. CC might **limit** power – i.e. contain an **express restriction on or prohibition** of the exercise of the company's powers (**s 125(1)**).
 - b. BUT, an act of the company is not invalid merely because its contrary to an express restriction or prohibition of the CC (**s 125(2)**).
2. 2 ways for a company to enter into contracts – **Direct contract (s 127)** or **Agency contract (s 126)**.

[Starting Point] **To determine whether the contract is binding upon [third party], an analysis must be conducted as to whether it was validly entered into either directly or indirectly by [company]. [Company Pty Ltd] is a **proprietary company limited by shares (s 112)**. It adopts the replaceable rules (RR) listed under s 141, and has certain modifications to RRs in its constitution (s 135(2)).**

As a corporation, it functions as a separate legal entity from its corporate organs per s 124 and the principle in Salomon (reinforced in Lee v Lee's Air Farming). As such, it can enter into contracts either directly, or indirectly through an agent with actual or ostensible authority.

B. Direct Contract

Entering into contracts directly requires a contractual document be signed with or without the company seal per s 127, being either witnessed or signed by [2 directors OR 1 director + 1 secretary] depending on whether the seal was used or not respectively.

Given the agreement with X was only signed by Y and no other directors, the agreement between the two parties is not directly entered by [company]. This is despite the signing being 'witnessed' by Z, as no company seal was affixed.

1. A company can execute a document **without a common seal** if the document is **signed** by (s 127(1)): (a) 2 directors; (b) 1 director + company secretary; or (c) for **proprietary** companies with a sole director who is also the sole company secretary – that director.

OR

A company can execute a document **with a common seal** if the **affixing of the seal** to the document is witnessed by the same in (1) (**s 127(2)**).

C. Agency Contract

1. **Per s 126(1), a company's power to make, vary, ratify or discharge a contract may be exercised by an individual acting with the company's express or implied authority and on behalf of the company. The power may be exercised without using a common seal.**

At issue is whether [company] is bound by the acts of X.

2. Under general law; OR

- a. Actual authority – express or implied (real);

i. Express actual authority is evidence of the granting of authority by the principal to the agent such that the agent can act on its behalf (i.e. principal-agent r/s).

1. **On the facts, X is not a [managing director], merely a regular director. There is no evidence of the granting of such express authority (e.g. board resolution, express provision) for the [agent] to enter into contracts of this type.**

• E.g. –

2. From a provision in the Act or the CC, e.g. **s 198A power to manage business/company**;
3. By board of directors **delegating** its power (**s 198C(1)**);
4. By the board of directors passing a **resolution** authorising an agent;