

# EXECUTIVE SUMMARY

1. This report recommends legislative changes to clarify the law relating to the execution of deeds and documents by and on behalf of companies and other corporations.
2. The Law of Property (Miscellaneous Provisions) Act 1989 removed the need for individuals to execute deeds under seal. At the same time, the Companies Act 1989 introduced a new section 36A into the Companies Act 1985 which abolished the requirement that every company must keep a common seal and, for the first time, permitted companies to execute deeds by the signature of their officers alone.
3. To replace the need to seal a deed, the Law of Property (Miscellaneous Provisions) Act 1989 introduced a new requirement that to be a deed, an instrument must make it clear on its face that the parties to it intend it to be a deed (“the face-value requirement”).
4. The Companies Act 1989 also introduced new presumptions of due execution and delivery in relation to documents executed by companies.
5. The 1989 reforms, although largely welcomed, left a number of points unresolved and gave rise to a number of difficulties and inconsistencies. In particular:
  - ◆ It is no longer clear what is required to create a “specialty” (essentially, a contract which prior to 1989 would have been executed under seal and which benefits from an extended limitation period) and it is not clear whether execution under seal continues to have any particular significance.
  - ◆ There are inconsistencies between the new presumption of due execution introduced for companies by the 1989 reforms and the existing presumption contained in section 74(1) of the Law of Property Act 1925 which means that the position of a person relying on the deed may vary depending on the manner of execution used.
  - ◆ The new irrebuttable presumption of delivery upon execution introduced for companies by the 1989 reforms appears to be at odds with the concept of “delayed” delivery, expressly recognised by other changes made in 1989, under which a third party (such as the maker’s solicitor) is authorised to deliver a deed on behalf of the maker at an appropriate time after execution of the instrument.
  - ◆ It is not entirely clear what formalities govern the execution of deeds by attorneys.
6. The Commission has also identified another problem, not arising out of the 1989 reforms. There is some doubt about the ability of a liquidator to execute documents other than by affixing the company’s seal.
7. The Commission’s main recommendations are as follows:
  - ◆ The relationship between deeds, contracts under seal and “specialties” should be clarified by the introduction of two new provisions: the first to make it clear that the face-value requirement is not satisfied merely because an instrument is

executed under seal; the second to provide that to be a specialty, an instrument must be a deed (or the obligation must be contained in a deed).

- ◆ The main inconsistencies between the presumptions of due execution contained in section 74(1) of the Law of Property Act 1925 and section 36A(6) of the Companies Act 1985 should be removed by providing, in particular, that under section 74(1) due execution will be deemed in favour of a purchaser in good faith when the seal has been attested by two directors or members of the council or governing body as well as by one such person and the secretary.
  - ◆ The irrebuttable presumption of delivery contained in section 36A(6) should be repealed.
  - ◆ The rules relating to execution of deeds by attorneys should be clarified by providing that the formalities governing execution are those applicable to the attorney.
  - ◆ The powers of a liquidator should be clarified by confirming that the power to execute deeds and documents in the company's name and on its behalf is separate from the power to affix the company's seal.
8. The Commission also recommends a number of other more minor changes to make the existing provisions clearer and more consistent with each other. The report contains a draft bill to implement all these recommendations.
  9. The Commission consulted on wider reforms to bring greater uniformity to the methods of execution by other types of corporation, but has decided not to make any recommendations for such reforms in this report.