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CHAMBERS

THE INSTRUMENTS (FORMALITIES) BILL 2001

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INSTRUMENTS (FORMALITIES) BILL 2001

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**REPORT ON THE PROPOSED
INSTRUMENTS (FORMALITIES) BILL 2001**

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EXECUTIVE SUMMARY

INSTRUMENTS (FORMALITIES) BILL

1. **Background** The Legislation Division of the Attorney-General's Chambers began work on a Bill to give effect to the recommendations of the UK Law Commission in its 1987 Report on "Deeds and Escrows" (Law Com No. 143) in mid-1998. However work on the Bill was deferred pending the imminent publication of the UK Law Commission Report on "The Execution of Deeds and Documents By or On Behalf of Bodies Corporate" (Law Com No.253, 1998). The draft Bill was referred to the Law Reform Committee of the Singapore Academy of Law, the Registrar of Titles and Deeds and the Registrar of Companies. With the inauguration of the Law Reform and Revision Division (LRRD) of the Attorney-General's Chambers on 1st April 2000, LRRD took over work on the Bill assisted by the Legislation Division. The draft Bill annexed to this Report is largely in the terms approved by the parties consulted.

2. **General** The draft Bill seeks to reform the law on the formalities relating to instruments, especially deeds. It gives effect to recommendations of the UK Law Commission in the two Reports mentioned above by adopting provisions from the following UK laws: Law of Property Act 1925, Law of Property (Miscellaneous Provisions) Act 1989, Powers of Attorney Act 1971, Companies Act 1985 and the draft Instruments (Formalities) Bill (which has not as yet been enacted).

3. The proposed Act will simplify the execution of instruments, especially deeds, by individuals and corporations by abolishing certain archaic formalities, while preserving a level of security adequate for the purposes for which such instruments are used. It will also promote certainty by clarifying the law relating to execution of instruments by agents e.g. under a power of attorney.

4. **Execution of deeds** The draft Bill changes the law on the execution of deeds as follows:

- a) A deed no longer has to be made on paper or parchment but it must be a document in writing.
- b) A deed no longer has to be sealed in the case of individuals, and corporations under the Companies Act. (See paras 5 to 7 below for the new methods of execution.)
- c) There is a new requirement that the document must be clear on its face that it is intended to be a deed (the "face value requirement").
- d) A deed must still be delivered but a deed is no longer necessary to authorise an agent to deliver a deed.

- e) There is a new conclusive presumption in favour of a purchaser in good faith that a solicitor is authorised to deliver a deed on behalf of a party to it.

5. **Individuals** Individuals can now execute a deed simply by signing (or making his mark on) the document with a witness to attest the signature. Alternatively, the document may be signed by another for the maker, at his direction and in the presence of two witnesses.

6. **Corporations** Companies (incorporated under the Companies Act) no longer require a common seal. Execution of instruments by a company can now, for the first time, be effected by the signature of its officers alone. Corporations as defined in the Companies Act (Cap.50) (e.g. most statutory corporations) are governed by the same provisions.

7. **Other bodies corporate** (e.g. corporations sole, registered co-operative societies, and “public authorities” declared under section 4 of the Companies Act) No general provision has been made in the draft Bill to enable bodies corporate which are not corporations within the meaning of the Companies Act to execute instruments by signing. We do not propose a uniform provision at this time as the requirements for execution of instruments by such bodies corporate differ and no exhaustive survey of the requirements has been done. (The UK Law Commission similarly decided against making any uniform provision for execution without seal by corporations which are not companies.) In any case, the Corporate Bodies’ Contracts Act (Cap.385) already enables such bodies corporate to execute contracts by having a person sign under its authority, express or implied.

8. **Execution by agents** The draft Bill clarifies the law relating to execution by agents by making it clear that the formalities which apply are those applicable to the agent, rather than the party on whose behalf the agent is acting. It also specifically provides the manner in which agents may execute deeds on behalf of a party e.g. by signing his own name with attestation or by signing at the direction and in the presence of the party with attestation by two witnesses (clause 5(1)(a), read with clause 8(2)) or, if the party is a corporation aggregate or corporation sole, by signing the name of the corporation with attestation (clause 6(4)). Where the agent is a corporation aggregate (i.e. excludes corporations within the meaning of the Companies Act), an authorised officer of the corporation can sign the deed in the name of the party with attestation (clause 6(5)). The existing provisions on execution by agents on behalf of corporations have mostly been re-enacted in the amendments to the Companies Act (Cap.50) in the draft Bill.

9. We have not however adopted the following recommendations of the UK Law Commission:

- a) the statutory provision of a rebuttable presumption of due delivery upon execution by the body corporate. The UK provisions

effectively restate an existing common law presumption of due delivery upon execution applicable to corporations which applies in Singapore by virtue of section 3 of the Application of English Law Act (Cap.7A);

- b) the deeming of due execution and delivery upon execution by a body corporate in favour of a purchaser in good faith for valuable consideration.

10. **Transitional provisions** We propose that the provisions of the proposed Act should apply only to deeds and instruments executed after its commencement. The proposed Act will not apply to deeds executed before the commencement even though the delivery is delayed till after the commencement.

GLOSSARY OF TERMS

This glossary sets out simple explanations of the main terms used in this report. Most, though not all, have a technical legal meaning.

Attestation – the witnessing of an act or event, for example witnessing the signature or sealing of a document.

Body corporate – see Corporation. A body which is recognised by law as having a separate legal personality, distinct from those of its members. A corporation may, for example, generally hold property, and may sue and be sued, in its own name.

Common seal – the seal adopted by a corporation aggregate and used for executing documents.

Company – In this report the term is used exclusively to refer to a body incorporated by registration under the Companies Act (Cap.50). See also Registered Company.

Corporation – see Body corporate. In this report we use the term “corporation” in the meaning defined in section 4 of the Companies Act (Cap.50) i.e. a company or any body corporate formed, incorporated or existing in Singapore or outside Singapore, including a foreign company, but excluding gazetted public authorities, corporations sole, co-operative societies and registered trade unions.

Corporation aggregate – a corporation consisting of a body of persons (although it is technically possible to have a corporation aggregate with a single member). Examples include registered companies (both public and private), registered co-operatives and statutory corporations. In this report, the term is used on the sense as defined in the draft Bill i.e. “corporation aggregate” excludes corporations as defined in the Companies Act (Cap.50).

Corporation sole – a corporation consisting of one person and his or her successors in a particular office or station. Examples include the Public Trustee, the Minister for Finance and other corporations sole under Private Acts e.g. the Bishop of Singapore. (See Annex F)

Deed- a written document which is executed with the necessary formality, and by which an interest, right or property passes or is confirmed, or an obligation binding on some person is created or confirmed. A common example is a conveyance or transfer of land.

Delivery – the final formality required for the execution of a deed, by which the maker demonstrates in some way that they intend the deed to take effect and to be binding on them.

Escrow – an instrument which has been delivered so that it will only take effect as a deed when certain conditions are fulfilled. It is common, however, to refer to such an instrument as being a deed which is executed in escrow.

Execution – the way in which a person enters into a document by sealing or signing it (or in the case of corporations, by the signature of its directors or other officers or agents) and gives it legal effect. In relation to a deed, the term is sometimes used simply to mean sealing/signature, and sometimes to mean sealing/signature and delivery. A person enters into a deed by executing it, but the term is sometimes used in relation to any contract or document, whether or not a deed.

Foreign companies – companies incorporated outside Singapore.

Instrument – a formal legal document in writing.

Internal management rule – the rule that a person dealing with a corporation in good faith is not obliged to enquire into the regularity of its internal proceedings.

Liquidator – a person appointed to carry out the winding up of a company.

Power of attorney – a document by which one person (the donor) gives another person (the attorney) the power to act on the donor's behalf and in the donor's name. For example, a person may grant a power of attorney to enable an attorney to execute a document to which the person is a party on his behalf.

Presumption – a conclusion or inference as to the truth of some fact in question, for example as to whether a solicitor is authorised to deliver a deed. The presumption may be conclusive or rebuttable by evidence to the contrary.

Registered company – a company incorporated under the Companies Act (Cap.50).

REPORT ON THE PROPOSED INSTRUMENTS (FORMALITIES) BILL 2001

1. INTRODUCTION AND BACKGROUND: DRAFTING AND CONSULTATION PROCESS

1.1 The Legislation Division of the Attorney-General's Chambers began work in mid-1998 on a Bill¹ to implement the recommendations of the UK Law Commission in their Report on "Deeds and Escrows"² to abolish the common law rule which requires a seal for valid execution of an instrument as a deed by an individual. The UK Law Commission had issued a consultation paper on "The Execution of Deeds and Documents By or On Behalf of Bodies Corporate"^{2a} in November 1996. In order to allow the proposed amendments to be considered with similar proposed amendments to the execution of instruments by bodies corporate, work on the Bill was deferred pending the imminent publication of the UK Law Commission Report on "The Execution of Deeds and Documents By or On Behalf of Bodies Corporate"³.

1.2 The draft Bill was referred to the Law Reform Committee of the Singapore Academy of Law (LRC) for consideration on 3 occasions between September 1999 and April 2000. These meetings were attended by the then Registrar of Titles and Deeds (Ms Foo Tuat Yien) and the Registrar of Companies (Ms Juthika Ramanathan), on the invitation of the Chairman of LRC, the Honourable Justice of Appeal L.P. Thean.

1.3 With the inauguration of the Law Reform and Revision Division (LRRD) of the Attorney-General's Chambers on 1st April 2000, LRRD took over work on the Bill assisted by the Legislation Division. The draft Bill¹ annexed to this Report is largely in the terms approved by the parties consulted except for certain consequential and drafting amendments subsequently made by LRRD.

[Afternote: Subsequent to the publication of this Report in October 2001, the Law Society was consulted on the proposed Bill at the request of the Ministry of Law. As at 1 March 2003, a Supplementary Report proposing a number of amendments to the draft Bill is being finalised in consultation with the Ministry of Law, the Registrar of Companies and the Registrar of Titles and Deeds.]

¹ Attached at Annex A

² Law Com. No. 143, 1987

^{2a} Law Com. No. 163, 1996

³ Law Com No 253, 1998

2. PURPOSE OF THE BILL

2.1 The draft Bill¹ seeks to reform the law on the formalities relating to instruments. It gives effect to most of the recommendations of the UK Law Commission in its Reports on “Deeds and Escrows”² and “The Execution of Deeds and Documents By or On Behalf of Bodies Corporate”³ by adopting provisions from the following UK laws⁴: Law of Property Act 1925, Law of Property (Miscellaneous Provisions) Act 1989, Powers of Attorney Act 1971, Companies Act 1985 and the draft Instruments (Formalities) Bill (which amends the earlier Acts).

2.2 The proposed Act will give individuals and corporations a simpler method of executing instruments including deeds. It abolishes certain archaic formalities relating to the execution of deeds, while preserving a level of security adequate for the purposes for which such instruments are used. On the abolition of the rule requiring a seal for valid execution of a deed, the UK Law Commission stated that “the process of sealing is no longer a meaningful formality to individuals”⁵. The proposed Act will abolish the requirement for a seal for valid execution of a deed by allowing individuals simply to sign the document with a witness to attest the signature. In the case of companies, execution may for the first time be effected by the signature of its officers alone.

2.3 The proposed Act also clarifies the law relating to execution of instruments by agents e.g. under a power of attorney. It makes it clear that the formalities which apply to the execution of an instrument by an agent are those applicable to the agent and provides specifically for the manner of execution by agents in certain circumstances. It also provides a conclusive presumption in favour of a purchaser in good faith that a solicitor is authorised to deliver a deed on behalf of a party to it. These provisions will facilitate business transactions by providing certainty in the law relating to such transactions.

⁴ The relevant UK provisions are set out at Annex G and the draft UK Instruments (Formalities) Bill is appended at Annex H.

⁵ Report on “Deeds and Escrows” (Law Com No 163, 1987) para 2.4 .

3. SUMMARY OF PROPOSED PROVISIONS

3.1 The common law rule which requires a seal³⁷ for valid execution of a deed by an individual applies by virtue of section 3 of the Application of English Law Act (Cap.7A). The draft Bill seeks to abolish this common law rule.⁶

3.2 The draft Bill adopts other recommendations of the UK Law Commission on the new formalities for deeds executed by individuals. These recommendations are:

- (i) the deed may be on any substance but must still be a document in writing⁷;
- (ii) it should be clear on the face of the document that it is intended to be a deed (the “face-value requirement”)⁸;
- (iii) the document must be signed by each maker unless executed in the manner described below at (ix)⁹;
- (iv) instead of signing, each maker may place his mark on the document¹⁰;
- (v) the signature(s) or mark(s) must be witnessed and attested to by at least one witness¹¹;
- (vi) the document must be delivered by each maker or by his agent¹²;
- (vii) it should be possible to authorise an agent to deliver a document as a deed without the authority being by deed¹³;
- (viii) there is a conclusive presumption in favour of a purchaser in good faith that a solicitor is authorised to deliver a deed on behalf of a party to it¹⁴;
- (ix) the document may be signed by another for the maker, at his direction and in the presence of two witnesses¹⁵.

Recommendations (i), (ii), (vii) and (viii) apply also to bodies corporate.

In the UK, the above recommendations have been implemented - see section 1 of the Law of Property (Miscellaneous Provisions) Act 1989.⁴

⁶ clause 4(1)(b)

⁷ clause 4(1)(a)

⁸ clause 4(2)(a) read with clause 4(3)

⁹ clause 5(1)

¹⁰ clause 2, definition of “sign”

¹¹ clause 5(1)(a)

¹² clause 5(1)(b)

¹³ clause 4(1)(c)

¹⁴ clause 4(4) and (5)

¹⁵ clause 5(1)(a)(ii)

3.3 The draft Bill also adopts the following recommendations of the UK Law Commission in respect of bodies corporate :

- (i) the requirement that every company must keep a common seal is abolished¹⁶;
- (ii) companies may, for the first time, execute deeds by the signature of their officers alone¹⁷;
- (iii) it is made clear that the face value requirement for deeds is not satisfied merely because an instrument is executed under seal¹⁸;
- (iv) it is made clear that the formalities governing execution of deeds by an attorney are those applicable to the attorney¹⁹;
- (v) it is made clear that the powers of a liquidator to execute deeds and documents in the name of a company and on its behalf is separate from the power to affix the company's seal²⁰.

In the UK, these provisions are provided in the draft Instruments (Formalities) Bill which seeks to amend the following UK Acts: Law of Property Act 1925, Powers of Attorney Act 1971, Companies Act 1985 and Law of Property (Miscellaneous Provisions) Act 1989.⁴ The UK Bill has not as yet been enacted.

3.4 We however recommend that the following proposals of the UK Law Commission should not be adopted:

- (i) the statutory provision of a rebuttable presumption of due delivery upon execution by the corporation (see proposed section 36AA(2) of the UK Companies Act 1985⁴ applicable to companies and proposed section 74A(2) of the UK Law of Property Act 1925⁴ applicable to corporations aggregate). The UK provisions effectively restate an existing common law presumption of due delivery upon execution applicable to corporations (see *Mayor, Constables and Company of the Merchants of the Staple v The Governor and Company of the Bank of England [1887] 21 QBB 160, 165-166*), which applies in Singapore by virtue of section 3 of the Application of English Law Act (Cap.7A)²¹;

¹⁶ clause 9, inserting new section 41B(3) of Companies Act (Cap.50)

¹⁷ clause 9, inserting new section 41B(4) of Companies Act (Cap.50)

¹⁸ clause 4(3)

¹⁹ clause 5(2) and 6(2), and Companies Act (Cap.50) section 41B(7) inserted by clause 9

²⁰ clause 9(b), amending Companies Act (Cap.50) s.272(2)

²¹ In the UK, s.130 of the UK Companies Act 1989 provides for a conclusive presumption of delivery upon execution by a company. The new provisions are intended to replace this with a rebuttable presumption applicable to both companies and corporations aggregate. There is no need to legislate on this in Singapore since we have never adopted a provision similar to s.130.

- (ii) the deeming of due execution and delivery in favour of a purchaser in good faith for valuable consideration upon execution by a body corporate (see proposed section 36A(6) of the UK Companies Act 1985⁴ applicable to companies and proposed section 74(1) of the UK Law of Property Act 1925⁴ applicable to corporations aggregate). Clause 6(1) of the draft Bill is instead couched as a statement of law that an instrument is validly executed by a corporation aggregate if the corporation's seal is affixed to the instrument in the presence of and attested by certain persons. In the case of companies, the presumption in section 36A(6) of the UK Companies Act 1985 has been completely omitted from the draft Bill.

3.5 Other bodies corporate No general provision has been made in the draft Bill to enable bodies corporate which are not corporations as defined in the Companies Act (Cap.50) to execute instruments by signing. We do not propose a uniform provision at this time as the requirements for execution of instruments by such bodies corporate differ and no exhaustive survey of the requirements has been done. (The UK Law Commission decided against making any uniform provision for execution without seal by bodies corporate which are not companies for those reasons.²²) In any case, the Corporate Bodies' Contracts Act (Cap.385)²³ already enables such bodies corporate to execute contracts by having a person sign under its authority, express or implied.

3.6 A copy of the Draft Instruments (Formalities) Bill 2001 is attached at **Annex A**. **Annex B** contains **Table A**, a Derivation Table indicating the legislative sources of each clause of the draft Bill. **Annex C** consists of Tables B, C and D which explain the application of the proposed Bill in relation to individuals, companies, corporations aggregate and corporations sole respectively. **Table B** details which sections in the proposed Bill, including proposed amendments to the Companies Act (Cap.50), and the Corporate Bodies' Contract Act (Cap.385), apply to such entities. **Tables C and D** compare the modes of execution of instruments and appointment of agents applicable to such entities in UK and Singapore. **Annex D** sets out portions of Singapore legislation amended by consequential amendments in the draft Bill. **Annex E** sets out the relevant sections of the Corporate Bodies'

²² Law Com. No. 253 (1998) para 4.3-4.8, 4.14.

²³ Annex E

Contract Act (Cap.385). **Annex F** lists corporations sole established by Act in Singapore and the provisions in their respective Acts relating to the use of the common seal. **Annex G** sets out UK and Australian legislation referred to in the Report; the UK legislation is set out with prospective amendments made by the UK Instruments (Formalities) Bill. **Annex H** contains a copy of the UK draft Instruments (Formalities) Bill proposed by the UK Law Commission. The Bill has not to date been introduced in the UK Parliament.

4. TRANSITIONAL PROVISIONS

4.1 The draft Bill adopts a patchwork of provisions from a number of different UK Acts²⁴. Some of these UK provisions were enacted as parts of new Acts whilst others were amendments to existing Acts, and their introduction spans a period of some 75 years. Each of the UK provisions has its own transitional provisions, reflecting the legislative circumstances under which it was introduced.²⁵

4.2 For the sake of simplicity and consistency, we propose to adopt a single transitional provision for the whole Bill (see clause 11 of the draft Bill). As the provisions of the Bill relate to deeds as well as other instruments, we adopt “execution” as the operative event to determine the application of the new provisions rather than “delivery” since delivery is a legal requirement only in the case of deeds.²⁶ We have set out a similar transitional provision in the

²⁴ Law of Property Act 1925, Law of Property (Miscellaneous Provisions) Act 1989, Powers of Attorney Act 1971, Companies Act 1985 and the draft Instruments (Formalities) Bill. See Annexes G & H.

²⁵ Transitional provisions from the relevant UK provisions are set below out with comments.

Instruments (Formalities) Bill , clause11(4): “The provisions of this Act shall not apply to any instrument executed before the commencement.”

In some cases, the Instruments (Formalities) Bill will amend existing provisions or insert new subsections in the other 3 Acts. In such a case, the existing provisions of those Acts will continue to apply (i.e. without the amendments in the Bill) to instruments executed before the commencement and those Acts will apply with the amendments in the Bill to instruments executed on or after the commencement.

Law of Property (Miscellaneous Provisions) Act 1989, section 1(11) : “Nothing in this section applies in relation to instruments delivered as deeds before this section comes into force.”

The UK Law Commission noted (at para 4.2 of its Report on “Deeds and Escrows” (Law Com. No. 143)): “As our proposals will not significantly alter the present practice, even where they alter present law, we see no reason to recommend elaborate transitional provisions. Accordingly we recommend that our reforms will apply to all deeds delivered after the commencement of the Act. They would not apply to deeds delivered in escrow before that commencement even though the conditions are fulfilled afterwards, because such deeds would still have been delivered and would operate from a date before the commencement of the Act”.

Powers of Attorney Act 1971, section 7(4) : “This section applies whenever the power of attorney was created.”

Law of Property Act 1925, section 74(5): “The foregoing provisions of this section apply to transactions wherever effected, but only to deeds and instruments executed after the commencement of this Act, except that, in the case of powers or appointments of an agent or officer, they apply whether the power was conferred or the appointment was made before or after the commencement of this Act or by this Act.”

The words “wherever effected” are intended to allow for the situation where a power of attorney or appointment of an agent is given or made in the UK for the carrying out of a transaction abroad, or where a power is conferred abroad to execute a deed in the UK (3 Halsbury’s Statutes (4th edition) p.177)

²⁶ “Execution” was used in the transitional provisions of both the UK Instruments (Formalities) Bill and Law of Property Act 1925, whereas “delivery” was used in

proposed new section 41A (3) of the Companies Act (Cap.50) (see clause 9 of the draft Bill).

4.3 The provisions of the proposed Act will not apply to instruments executed before the commencement of the proposed Act i.e. they will only apply to instruments executed on or after its commencement. Deeds and instruments executed before the commencement will not benefit from the reforms in the proposed Act. The proposed Act will not apply to deeds executed and delivered as an escrow²⁷ before that commencement even though the conditions are fulfilled after the commencement of the Act; such deeds operate from a date before the commencement. It will also not apply to deeds executed before the commencement even though the delivery is delayed till after the commencement.

4.4 Clause 6(6) of the draft Bill provides that that section applies whenever the power of an agent or officer was conferred or the appointment of an agent or officer was made. Clause 8(4) similarly provides that that provision applies whenever the power of attorney was created. After the commencement of the proposed Act, the donee of a power of attorney (or other power or appointment) can therefore execute any instrument in the manner provided in those clauses whether the power of attorney was created (or the power was conferred or the appointment was made) before or after the commencement of the Act.

4.5 We decided not to adopt the wording of the final limb of the transitional provision in section 74(5) of the UK Law of Property Act 1925²⁸. Its wording is somewhat complicated and the meaning somewhat obscure. It appears to be intended to validate the conferment of powers and appointments made before the commencement of that Act, e.g. appointments made by resolution as provided by subsections (2) and (4)²⁹, or by that Act. There is no

s.74(5) of the Law of Property (Miscellaneous Provisions) Act 1989, section 1(11), which is limited in its operation to deeds.

²⁷ The operation of a deed may be suspended by its delivery as an escrow (i.e. subject to a condition that it shall not take effect until some event happens), and the intention that a deed shall so operate is provable by parol evidence: *Gugden v Besset* (1856) E & B 986, 26 LJQB 36; *Pattle v Hornibrook* [1897] 1 Ch 25, 60. Delivery in escrow is usually effected by the delivery of the deed to a third person: *London Freehold & Leasehold Property Co v Baron Suffield* [1897] 2 Ch 608. A deed executed as an escrow cannot be recalled: *Beesly v Hallwood Estates Ltd* [1961] Ch 105. 37 Halsbury's Statutes (4th edition) p.175.

²⁸ Which was otherwise adopted in clause 6 of the draft Bill.

²⁹ Companies incorporated pursuant to the Companies Act (Cap.50) may make contracts in like manner as private persons: section 41(3) of that Act, or new section 41A(1) inserted by the draft Bill. By the Corporate Bodies' Contracts Act (Cap.385), other corporations may contract through its officers either in writing or orally, and the authority to an agent to enter into such contracts may be conferred informally; this

need to adopt a provision to validate powers conferred and appointments made before the commencement of the proposed Act since there has been no suggestion that there is any significant problem in this area.

power is generally wider than the general statutory power to appoint an agent by resolution or otherwise given in clause 6(3). See 37 Halsbury's Statutes 4th edition, p.176 and 1(2) Halsbury's Laws, 4th Edition, para 25.

5. EXPLANATORY NOTES ON DRAFT BILL

5.1 Clause 1 relates to the short title and commencement.

Interpretation

5.2 Clause 2 relates to the interpretation of the terms used in the Bill.

The word “corporation aggregate” includes a registered co-operative society but excludes a corporation as defined in the Companies Act (Cap.50). A corporation is a body of persons having in law an existence and rights and duties distinct from those of the individual persons who from time to time form it. It has perpetual succession, a name and a common seal.³⁰ A corporation aggregate is a corporation which consists of a number of persons. A co-operative society becomes a body corporate upon registration under the Co-operative Societies Act (Cap.62). Clauses 6 and 7 govern the execution of instruments by a corporation aggregate. Clauses 6(4) and (7) also apply to corporations sole. A corporation sole is a corporation that consists of only one member at a time in succession.³¹ Corporations as defined by the Companies Act (Cap.50)³² are excluded from the definition as such corporations are governed by the provisions of that Act, as amended by clause 9.

³⁰ Osborn’s Concise Law Dictionary, Seventh Edition, Sweet and Maxwell, 1983

³¹ The Public Trustee is a corporation sole by virtue of section 3 of the Public Trustee Act (Cap.260). The Minister for Finance (Incorporation) Act (Cap.183) establishes a corporation sole. Other corporations sole have been established by Private Acts. A list of relevant provisions from Private Acts is set out at Annex F.

³² The Companies Act (Cap50) defines “corporation” as follows:

“corporation” means any body corporate formed or incorporated or existing in Singapore or outside Singapore and includes any foreign company but does not include —

- (a) any body corporate that is incorporated in Singapore and is by notification of the Minister in the *Gazette* declared to be a public authority or an instrumentality or agency of the Government or to be a body corporate which is not incorporated for commercial purposes;
- (b) any corporation sole;
- (c) any co-operative society; or
- (d) any registered trade union.

To date, the following bodies corporate have been declared as public authorities: Port of Singapore Authority, Tourist Promotion Board, Economic Development Board, Board of Commissioners of Currency, Singapore, Public Utilities Board, Singapore Telephone Board, Central Provident Fund Board, Land Transport Authority: Declarations – Public Authorities – Consolidation (Cap.50, Decl 4); Declaration on LTA published in Government Gazette dated 1 Apr 1999.

Registration of trade unions under the Trade Unions Act (Cap.333) confers a hybrid form of corporate status, akin to a registered society, but it is our view that trade unions would not be a “corporation aggregate” for the purposes of the draft Bill, cp In the UK, a trade union other than a special register body is not a body corporate, and is not to be treated as if it were a body corporate (47 Halsbury’s Laws (4th edition), para

5.3 The word “individual” is defined to make it clear that it does not include a corporation sole. The UK Law of Property (Miscellaneous Provisions) Act 1989 section 1(10) contains a provision that certain references to acts by an individual do not include corporations sole. We adopt provisions from section 1 of that Act in clauses 4 and 5 of our draft Bill. The word “individual” is, however, also used in clause 8 of the draft Bill (adopted from section 7 of the UK Powers of Attorney Act 1971). In view of this, it was felt that a general definition applicable to the whole Bill would be simpler and clearer.³³

5.4 The word “sign” includes an individual making his mark³⁴ on the document. We adopt only paragraph (b) of the definition of “sign” in section 1(4) of the UK Law of Property (Miscellaneous Provisions) Act 1989, as amended by clause 4(2) of the Instruments (Formalities) Bill. The UK Law Commission considered that section 1(4) of the Law of Property (Miscellaneous Provisions) Act 1989 should be amended to provide expressly that “sign” includes an individual signing the name of the person or party on whose behalf he executes the instrument to make it clear that “signed by” the attorney would include signing the corporate donor’s name rather than the attorney’s. (See the Law Commission’s recommendation at para 7.44(iii) of their Report.) However, the Law Reform Committee of the Singapore Academy of Law was of the view that the definition of “sign” should be limited to defining what amounts to the act of signing and not deal with the capacity in which the signing took place. It was also pointed out that such inclusion, read with clause 5(1)(a), could be taken to mean that an agent can sign by way of his own agent.

1005, referring to the Trade Union and Labour Relations (Consolidation) Act 1992 s10(2)).

³³ The word “individual” ordinarily refers to a single human person, as opposed to a corporate person. This appears to be the meaning of “individual” intended in section 7 of the UK Powers of Attorney Act 1971, s.7. The word has however been held in some other UK Acts to include corporations, see *Stroud’s Judicial Dictionary*, Fifth Edition, p.1282 and *ibid*, 14th Supplement, p.173. In contrast, “person” includes any company or association or body of persons, corporate or unincorporate”: Interpretation Act (Cap.1), section 2(1).

³⁴ “mark’ e.g. blind or illiterate persons who can make a mark may continue to do so, providing the correct attestation is used. A signature adequate to execute the deed may be added by another in his presence and at his request, and the deed need not be read over to him unless he request it to be: *R v Longnor (Inhabitants)* (1833) 4 B & Ad, 1 Nev & MKB 576. See 37 Halsbury’s Statutes (4th Edition)175. See also footnote 47.

Application

5.5 Clause 3(1) makes it clear that the provisions of the Act will apply to transactions wherever effected. This provision is necessary because a power of attorney or appointment of an agent may be given or made in this country for the carrying out of a transaction abroad, or a power may be conferred abroad to execute a deed in this country.³⁵

5.6 Clause 3(2) relates to the application of the requirements of attestation under the Registration of Deeds Act (Cap.269) and the Land Titles Act (Cap.157). The requirement that the witness should not be a party to the instrument is implied in the Registration of Deeds Act (Cap.269) and expressly provided in section 57 of the Land Titles Act (Cap.157). As such requirements are necessary to safeguard against fraudulent transactions, it is provided that the Bill shall not affect them.

Deeds and their execution

5.7 Clause 4 makes changes to the formalities required for the execution of deeds³⁶. It abolishes the rule of law that requires a seal³⁷ for the valid execution of an instrument as a deed by an individual³⁸ (clause 4(1)(b)) and that a deed must be in writing on paper or parchment³⁹ (clause 4(1)(a)). The deed may be on any

³⁵ Note in 37 Halsbury's Statutes (4th Edition) 177 on the term "Wherever effected" in Law of Property Act 1925 section 1(5).

³⁶ "We should like to emphasise that for the vast majority of deeds, these amendments will not require any departure from present practice. Most deeds are signed, attested, sealed and delivered, and are quite clear on their face that they are intended to be deeds. Although a seal will no longer be necessary, its presence will not invalidate the deed." UK Law Commission Report, Law Com. No.163, para 2.18.

³⁷ At common law, sealing has always been necessary for a deed, but any impression on the parchment made with intent to seal suffices and neither wax nor wafer is essential: *R v St Paul, Covent Garden (Inhabitants)* (1845) 7 QB 232 at 238, 1 New Mag Cas 617. One piece of wax might serve as a seal for several partes: *Cooch v Goodman* (1842) 2 QB 580. A parties' signature may estop him from denying sealing: *Strandale and Ball v Burden* [1952] Ch 223. 37 Halsbury's Statutes (4th Edition) 175

³⁸ The UK Law Commission recognised that the process of sealing was no longer a meaningful formality to individuals, and that the case law had shown that there could be doubt as to what constitutes sealing (para 2.4 of Law Com. No.163, 1987). As to the requirement of sealing in the case of bodies corporate and companies under the Companies Act, see clauses 6 and 9 of the draft Bill respectively.

³⁹ The existing rule is that a deed must be written on paper, parchment or vellum and not on any other substance. See 12 Halsbury's Laws (4th Edition) para.1302. The UK Law Commission (in its Working Paper No.93, 1985) had raised the question of whether technological advances has rendered these requirements outdated. The responses to the Working Paper suggested that the restriction to paper or parchment should be removed but that deeds should still be in writing on some permanent substance. In its Report the Law Commission said that they did not see the need to stipulate that the deed should be particularly durable. They therefore recommended simply the removal of the rule

substance, but must still be a document in writing. Clause 4(1)(c) removes the need for authority to deliver an instrument as a deed to be given by deed.⁴⁰

5.8 It should be clear on the face of the document that it is intended to be a deed (the “face-value requirement”)⁴¹. The “face-value requirement”, however, is not satisfied merely because a deed is executed under seal⁴².

5.9 Clause 4(2)(b) confirms that an instrument may be executed as a deed *on behalf* of the “maker” or “party” to the deed. The amendment is worded to make it clear that a deed is regarded as executed *by* the person (e.g. the attorney) even if it is on behalf of another. Usually these will be the same person, but where for example an attorney is appointed, they will not. Combined with clauses 5(2) and 6(2) and proposed section 41B(7) of the Companies Act (inserted by clause 9), this confirms that the formalities for execution which must be complied with are those of the person doing the executing, e.g. an attorney, and not those of the person on whose behalf the instrument is executed.

5.10 Delivery remains a legal requirement for execution of a deed.⁴³ But sub-clause (4) provides a conclusive presumption that

requiring paper or parchment (para 2.3 of Law. Com. No.163, 1987). 37 Halsbury’s Statutes (4th Edition) 659.

⁴⁰ Under the existing law, authority to deliver a deed can only be given to an agent by deed. This requirement is removed by sub-clause 4(1)(c) of the draft Bill but the agent must still have proper authority from his principal. It implements the UK Law Commission’s recommendations in para 2.11 of their Report (Law Com. No.163, 1987). Note also the presumption that a solicitor is authorised to deliver a deed in clause 4(4) of the draft Bill.

⁴¹ Clause 4(2)(a) implements UK Law Commission recommendations at para 2.16 of their Report (Law Com. No.163, 1987). The Law Commission suggested that the words “signed as a deed” (or “executed as a deed” in the case of corporations) could be used to fulfil the requirement. See 37 Halsbury’s Statutes (4th Edition) 660.

⁴² Clause 4(3) of draft Bill. This implements the UK Law Commission’s recommendation at para 2.34 of their Report (Law Com. No.253).

⁴³ In their report on “Deeds and Escrows” (Law Com No. 143, 1987, para 2.10), the UK Law Commission concluded that although the present law of delivery (in the context of execution by individuals) is not entirely satisfactory, no changes that the Commission has been able to envisage as practicable would improve it sufficiently to warrant recommending them. The Commission explained at para 2.8 that delivery serves the purpose of fixing the date at which a deed takes effect. If delivery were not a requirement, a deed would become effective as soon as it was signed and sealed. This would be highly inconvenient as the grantor might wish to sign and seal in advance for convenience and still have the option of withdrawing from the transaction. Execution in escrow would not meet this need as it will not allow the grantor to withdraw as and when he wished. The Commission instead relaxed the requirements for delivery by an agent (para 2.11).

In the Commission’s later report on the “Execution of Deeds and Documents By or On behalf of Bodies Corporate” (Law Com No. 253, 1998) the Commission, explained at para 6.7 that the method of authorising a party’s solicitor to deliver a deed

solicitors are authorised to deliver a deed on behalf of a party to it. This presumption is limited in favour of a purchaser in good faith for valuable consideration.^{43a} The presumption is not limited to the disposition or creation of an interest in land but extends to all transactions. The term “purchaser” is defined in sub-clause (5).

5.11 It should be noted that the references to “person” in clause 4 would include bodies corporate⁴⁴. Clause 4 therefore applies generally to individuals as well as bodies corporate, except for clause 4(1)(b) which is limited to individuals. The definition of “individual” in clause 2 makes it clear that clause 4(1)(b) does not apply to a corporation sole.

Execution of instruments by or on behalf of individuals

5.12 For valid execution as a deed, clause 5 requires the instrument to be signed⁴⁵ by each maker in the presence of a witness who attests⁴⁶ the signature unless it is executed by another

on the party’s behalf appeared to meet the needs of current conveyancing practice. It also stated at para 6.1 that at common law, the sealing of a deed by a corporation raises a rebuttable presumption of delivery. [*Mayor, Constables and Company of the Merchants of the Staple v The Governor and Company of the Bank of England* (1887) 21 QBB 160. (Note: The ratio of this case appears to be confined to deeds executed by corporations.)] The Commission then discussed the presumptions in the UK inserted by s.130 of the UK Companies Act 1989 (para 6.10). The Commission explored the suggestion of applying a rebuttable statutory presumption that a deed which has been dated is deemed to have been delivered unconditionally upon the date inserted in the document. This presumption would apply to both corporations and individuals (para 6.24). The Commission rejected this suggestion (para 6.30). At the end of the day, the Commission only recommended the retention of the statutory rebuttable presumption of delivery upon execution in section 36A(5) of the UK Companies Act 1985 as there were no particular difficulties highlighted in practice. The Commission also recommended the extension of this presumption to all corporations aggregate (para 6.54), but stopped short of extending it to individuals. The Commission instead recommended that the presumption that a solicitor who purports to deliver a deed on behalf of his client has authority to do so be extended to transactions other than transactions for the disposal or transfer of interests in land.

^{43a} There seems no good reason why the law should lean in favour of a person who is not a purchaser in good faith especially where there is a remote possibility that the solicitor may have acted negligently or fraudulently. Purchasers in good faith are treated as a special case for the sake of ensuring that title in the relevant property passes to them.

⁴⁴ “person” includes any company or association or body of persons, corporate or unincorporate”: Interpretation Act (Cap.1), section 2(1).

⁴⁵ At common law, signature is unnecessary to a deed: *Aveline v Whisson* (1842) 4 Man & G 801, 12 LJP 58; *Cherry v Heming* (1849) 4 Exch 631, 19 LJ Ex 63; *Stromdale and Ball Ltd v Burden* [1952] Ch 223. The UK Law of Property Act 1925 (section 73, repealed by section 4 of the Law of Property (Miscellaneous Provisions) Act 1989) changed the law in England by requiring signing or marking by an individual in all cases. See 37 Halsbury’s Statutes (4th Edition) 660. Singapore does not have this provision.

⁴⁶ Attestation is not required under the existing law but it has always been carried out in any case. No restrictions are imposed on the persons who may attest and no form of attestation is prescribed. See 37 Halsbury’s Statutes (4th Edition) 660.

on his behalf. “Sign” is defined in clause 2. The instrument may be signed by another for the maker, at his direction, and in the presence of two witnesses who each attest the signature.⁴⁷ Delivery remains a requirement for valid execution as a deed.⁴⁸

5.13 The UK draft Instruments (Formalities) Bill deletes the words “by him or a person authorised to do so on his behalf” in section 1(3)(b) of the UK Law of Property (Miscellaneous Provisions) Act 1989, equivalent to our clause 5(1)(b). The UK Law Commission possibly thought that they are not necessary in the light of the conclusive presumption of authority to deliver in subsection (6) of the UK Act, which includes a solicitor, notary public or licensed conveyancer or an agent or employee of such persons. As the equivalent presumption in clause 4(4) of our draft Bill is confined to “solicitors”, it was decided that the words “by him or a person authorised to do so on his behalf” should be retained.

5.14 Clause 5(2) confirms that sub-clause (1) applies where an individual executes on behalf of another person. It confirms that the formalities which apply are those of the person who is actually *executing* the deed (e.g. the attorney) rather than the person on whose behalf the deed is being executed (see para 5.9).

5.15 The provisions of clause 5 apply only to individuals. The definition of “individual” in clause 2 makes it clear that they do not apply to a corporation sole.

⁴⁷ Effect is given to the Law Commission’s recommendation that the alternative to signing personally should be that another person may sign on the appropriate party’s behalf at his direction and in the presence of two witnesses who attest the signature. Although this method of execution is primarily intended for those who cannot sign, it may be used by anyone. (See also footnote 34 above.) Hitherto it had been an open question whether the writing of the name of a party by another (not authorised by power of attorney) in the presence and by the direction of the party satisfied the requirement that an individual executing a deed must sign it, see Halsbury’s Laws (4th Edition) para 1328, text and note 7. 37 Halsbury’s Statutes (4th Edition) 660. But see 1(2) Halsbury’s Laws para 20 “The necessity for appointment by deed of an agent for the purpose of executing an instrument as a deed does not, however, exist where the execution of the instrument is in the presence of the principal, when, at his request, someone signs on his behalf and in his name: *Ball v Dunsterville* (1791) 4 Term Rep 313; *R v Longnor (Inhabitants)* (1833) 4 B & Ad, 1 Nev & MKB 576.

⁴⁸ The UK Law Commission “somewhat reluctantly” recommended that delivery should remain one of the required formalities for a deed. See paras 2.7-2.10 of their Report (Law Com No. 163, 1987). See also footnote 43. Delivery may be effected by any act which manifests intention to deliver: *Xenos v Wickham* (1866) LR 2 HL 296 at 312, 36 LJCP 313. A deed may be operative when delivered to a third person: *Macedo v Stroud* [1922] 2 AC 330, 91 LJCP 222. Where a deed is delivered on behalf of a third party by an unauthorised person and that person subsequently acknowledges it, the delivery is perfected: *Tupper v Foulkes* (1861) 9 CBNS 797, 2 F & F 166; *Re Seymour, Fielding v Seymour* [1913] 1 Ch 475. See 37 Halsbury’s Statutes (4th Edition) 175. As to delivery as an escrow, see footnote 27.

Execution of deeds by or on behalf of a corporation

5.16 Clause 6 deals with the execution of instruments by or on behalf of a corporation aggregate or a corporation sole but excluding corporations as defined in the Companies Act (Cap. 50). Only clauses 6(4) and (7) apply to corporations sole.

5.17 Clause 6(1) states that an instrument is validly executed by a corporation aggregate if the corporation's seal is affixed and attested by 2 members of the governing body, or one such member and the secretary or other officer of the corporation. It is not restricted to deeds because it is possible for a document to be executed under seal which is not a deed.

5.18 The Law Reform Committee of the Singapore Academy of Law was of the view that there should be no presumption of valid execution by a corporation aggregate, unlike in section 74(1) of the UK Law of Property Act 1925, as amended by the proposed UK Instruments (Formalities) Bill.⁴⁹ The common law presumption of due execution⁵⁰, the internal management rule⁵¹ and general agency principles (e.g. ostensible or implied authority)⁵² may assist a

⁴⁹ The proposed UK Instruments (Formalities) Bill implements the UK Law Commission recommendations at para 5.33 of their Report (Law Com. No 253, 1998) by replacing the wording of section 74(1) of the UK Law of Property Act 1925 which sets out when due execution by a corporation will be deemed in favour of a purchaser. It extends the application of subsection (1) in 2 respects: it applies to cases where the affixing of the corporation's seal purports to be attested (purported attestation includes actual attestation) by two directors or members of the governing body as well as by one such person and the secretary or other permanent officer; and it is no longer restricted to deeds. See Explanatory Notes on clause 1 of UK draft Instrument (Formalities) Bill

⁵⁰ The common law position is that it is necessary, in the absence of a special condition, to prove execution in accordance with the memorandum and articles of association or the charter of a corporation: *Cope v Thames Haven Dock and Rly Co* (1849) 3 Exch 841. (37 Halsbury's Statutes (4th edition) 176.) However where a person seeking to rely on a deed can show that the seal of a corporation has been affixed by those with legal custody of the seal, the onus of proving that it has not been affixed with necessary authority lies with the other party: *Clarke v The Imperial Gas Light and Coke Co* (1832) 4 B & Ad 315; 110 ER 43. (Law Com. No 253, 1998, para 5.22)

⁵¹ This is often referred to as the rule in *Turquand's* case i.e. *Royal British Bank v Turquand* (1856) 6 E&B 327; 119 ER 886. If on the face of it an instrument is regular (i.e. it appears to have been executed in accordance with its articles), a person dealing with the company in good faith is entitled to presume that the seal has been duly affixed and that the directors were duly appointed and their signatures were duly made. The rule is conclusive and it is not open to the company to challenge the deed's validity on the basis of any internal irregularity. (Law Com. No 253, 1998, paras 5.11 – 5.13, 5.23)

⁵² Where an officer has either not been appointed to the office he claims to hold, or purports to exercise wider powers than he has actually been granted, the company will only be bound by a contract which he purports to make on its behalf if he acted within his ostensible (or apparent) authority. Such authority may arise in 2 ways. First, a director may be appointed to an office which carries with it implied authority to make certain contracts and perform certain acts on behalf of a company. Third parties may

person seeking to rely on an instrument which appears on its face to be regular.

5.19 The reference to “clerk” or “permanent officer” has also been omitted from clause 6(1)(b) as these words do not serve any useful purpose in the Singapore context.

5.20 Clause 6(2) confirms that sub-clause (1) applies where the corporation aggregate executes on behalf of another person. The sub-clause draws a distinction between the *maker* or *party* to the deed, and the person who executes it. Usually these will be the same person, but where, for example an attorney is appointed they will not. It confirms that the formalities which apply are those of the person who is actually *executing* the deed (e.g. the attorney) rather than the person on whose behalf the deed is being executed.

5.21 Clause 6(3) provides that the board of directors, council or other governing body of a corporation aggregate may appoint an agent, either generally or in any particular case, to execute on its behalf instruments which are not deeds.⁵³

5.22 Clause 6(4) sets out how an individual may execute a conveyance of property on behalf of a corporation sole or a corporation aggregate. This is an alternative to execution by an attorney under clause 8. Clause 6(4) permits the individual to execute the conveyance by signing the name of the corporation in the presence of at least one witness who attests the signature. Such execution is as effective as if the corporation executed the conveyance. In order to ensure consistency between clause 6(4) and clause 5(1), this provision makes it clear that any person who witnesses the signature of the individual executing a conveyance on behalf of a corporation in accordance with clause 6(4) must attest the signature.

rely on this implied authority unless they have knowledge of a relevant restriction or lack of authority, or unless the circumstances are sufficiently suspicious to put them on enquiry, and no such enquiry was made. Secondly, the company may be bound on the basis of estoppel where a body with actual authority has held out an officer as having authority to act in a particular matter, and has induced a third party to contract with the company in reliance on this, subject to the question of notice of irregularity or suspicious circumstances. (Law Com. No 253, 1998, paras 5.16- 5.18)

⁵³ At common law, corporations aggregate could, as a general rule, contract only under their common seals; thus a corporation could only contract with an agent under seal: *Wright & Son Ltd v Romford Corpn* [1957] 1 QB 432. But the rule had many exceptions and was completely abolished by the Corporate Bodies' Contracts Act (Cap.385) (i.e. UK Act of 1960). In the case of a company incorporated pursuant to the Companies Act (Cap.50), contracts may be made in like manner as by private persons: section 41(3) of that Act, or new section 41A(1) inserted by the draft Bill. Accordingly, clause 6(3) may not be necessary. See 37 Halsbury's Statutes (4th edition) 176 and Bowstead & Reynolds on Agency, 16th Edition, para 2-037.

5.23 Clause 6(5) sets out how a corporation aggregate may execute a conveyance of property on behalf of another person. The clause permits the corporation to appoint an officer to sign the conveyance in the name of the person on whose behalf the conveyance is being executed. Where the conveyance is to be a deed, the officer must sign in the presence of a witness who attests the signature. This mirrors the formalities which apply where an individual executes a deed on behalf of another person (see clause 5(2)).⁵⁴

5.24 Clause 6(6) of the draft Bill provides that that section applies whenever the power of an agent or officer was conferred or the appointment of an agent or officer was made. Clause 8(4) similarly provides that that provision applies whenever the power of attorney was created. After the commencement of the proposed Act, the donee of a power of attorney (or other power or appointment) can therefore execute any instrument in the manner provided in those clauses whether the power of attorney was created (or the power was conferred or the appointment was made) before or after the commencement of the Act.

5.25 Clause 6(7) preserves the alternative modes of execution or attestation provided by written law or the instrument constituting or regulating the affairs of the corporation sole or corporation aggregate.

Execution of instrument as a deed by corporation aggregate

5.26 Clause 7 clarifies what is required for an instrument to be executed as a deed by a corporation aggregate for the purposes of clause 4(2)(b). The instrument must be duly executed by the corporation and delivered as a deed. Clause 7(1) emphasises the distinction between “due execution” for example under clause 6(1) which does not import delivery, and “execution as a deed” for the purposes of clause 4(2)(b), which requires delivery.

5.27 We have not adopted the proposed new section 74A(2) of the UK Law of Property Act 1925 which provides a rebuttable presumption of delivery upon execution by the corporation. The UK provision was necessitated by the decision to repeal the conclusive presumption in section 130 of the UK Companies Act

⁵⁴ Except through the agency of an officer appointed under clause 6(5), it would be impossible for a bank (or in UK, a trust corporation) to act as attorney as clause 6(1) applies only to deeds under its own seal. See 37 Halsbury’s Statutes (4th edition)177.

1989 and to replace it with a rebuttable presumption applicable to both companies and corporations aggregate. It effectively restates an existing common law presumption (see *Mayor, Constables and Company of the Merchants of the Staple v The Governor and Company of the Bank of England* [1887] 21 QBB 160, 165-166), which applies in Singapore by virtue of section 3 of the Application of English Law Act (Cap.7A). Since Singapore has never had such a conclusive presumption, it is not necessary to restate the common law position in the proposed Act.

5.28 This clause does not apply to corporations sole.^{54a}

Execution of instruments etc by donee of power of attorney

5.29 Clause 8⁵⁵ relates to the manner in which an individual who is a donee of a power of attorney may execute instruments.⁵⁶ The words in parenthesis, i.e. “(referred to in this section as the donee)”, are added to make it clear that this section applies only to donees who are individuals and not corporations. The clause makes it clear that an individual may validly execute as attorney on behalf of a

^{54a} The UK Law Commission recommended against having a statutory provision for execution by all corporations sole until the numerous provisions governing corporations sole could be thoroughly investigated to ensure consistency with the new provisions. In the light of the limited responses and the lack of evidence that it is causing significant problems in practice, the Commission recommended against legislative reform in this area. (See Law Com. No.253, para 423-428). This applies equally to Singapore as the formalities for execution by corporations sole in Singapore are also governed by legislation. See footnote 31 on corporations sole.

⁵⁵ This clause is adopted from section 7 of the UK Powers of Attorney Act 1971 (as amended by the proposed UK Instruments (Formalities) Bill, Schedule 1, paragraph 2), which replaces section 123 of the Law of Property Act 1925. (The UK Powers of Attorney Act 1971 was proposed by the UK Law Commission in their Report Law Com. No.30.) We have not adopted the provision in section 1 of the UK Act which requires a power of attorney in relation to an individual to be executed as a deed by the donee. To avoid inconsistency, we propose to repeal section 45 of the Conveyancing and Law of Property Act (Cap.61) relating to execution instruments by powers of attorney. The provisions relating to execution by powers of attorney in this clause and clause 6 will apply generally.

⁵⁶ **“in his own name”** Where an attorney executes in his own name, even though for and on behalf of his principal, he might be made personally liable: *Tanner v Christian* (1855) 4 E & B 591. The principal and not the attorney must in any case be named as the party to the deed (cf *Re Whitley Partners Ltd* (1886) 32 Ch D 337), and whichever form of signature is adopted, the execution will contain a reference to the power of attorney. The effect of this clause is procedural and does not allow a party to do by an attorney any act which he only is competent to do (e.g. swearing an affidavit): *Clauss v Pir* [1987] 2 All ER 752

“by the authority of the donor” A power of attorney must be exercised in strict accordance with the terms and conditions of the instrument creating it. *Jonmenjoy Coondoo v Watson* (1884) 9 App Cas 561, *Green v Whitehead* [1930] 1 Ch 38. Also *Midland Bank Ltd v Reckitt* [1933] AC 1, HL. See 1 Halsbury’s Statutes (4th Edition) 59.

corporate donor by signing his own name in the presence of a witness who attests the signature.⁵⁷

Amendments to Companies Act

5.30 Clause 9(a) amends the Companies Act (Cap.50) to deal with documents and contracts by corporations as defined in the Companies Act (Cap.50). The paragraph repeals section 41 of the Companies Act (Cap.50) and substitutes new sections 41 to 41F. Note that the word “corporation” in the new sections follows the definition in the Companies Act i.e. a body corporate formed, incorporated or existing in Singapore or elsewhere. It includes foreign companies and most statutory corporations, but not gazetted public authorities, registered co-operative societies, corporations sole and registered trade unions.⁵⁸

Ratification by company of contracts made before incorporation

5.31 Section 41 re-enacts the current section 41(1) and (2) of the Companies Act on pre-incorporation contracts.

Contracts by corporations

5.32 Section 41A deals with how a contract may be made by a corporation. Section 41A(1) replaces the current section 41(3) of the Companies Act by adopting section 36 of the UK Companies Act 1985 with modifications. The words “in writing” in section 36 of the UK Act have been omitted in sub-clause (1)(a) since a contract made under the common seal of the corporation, by necessary implication, has to be by writing. Further, if these words are retained, it may be argued that paragraph (b) applies only to contracts made orally.

5.33 Section 41A(2) adopts section 36 of the UK Companies Act, as modified by the UK Foreign Companies (Execution of Deeds) Regulations 1994, to deal with contracts made by a corporation

⁵⁷ See footnote 33 on the meaning of individual.

⁵⁸ See footnote 32 on the meaning of corporation under the Companies Act. This differs from the position in the UK. The UK Companies Act applies to companies and unregistered companies, but unregistered companies excludes any body incorporated under a public general Act of Parliament. The UK Law of Property Act 1925 s.74 (equivalent to clause 6 in our Bill) therefore applies to statutory corporations in UK. The UK Law Commission had decided not to extend the alternative method of execution without common seal to bodies corporate other than companies under the Companies Act because the requirements for execution of instruments by such bodies corporate differ and no exhaustive survey of the requirements had been done: Law. Com. No. 253 (1998) para 4.3-4.8, 4.14.

incorporated outside Singapore. The laws of the territory in which the corporation is incorporated will apply.

Execution of documents by corporations

5.34 Section 41B deals with the execution of documents by a corporation. It states that a corporation may execute a document by the affixing of its common seal or in any manner permitted by the laws of the territory in which the corporation is incorporated (s.41B(2)). It provides that a corporation need not have a common seal (s.41B(3)). Section 41B(4) and (5) set out how a document may be executed by a corporation by the signature of two officers.⁵⁹

5.35 Section 41B(6) prevents the same person from signing a document in 2 different capacities.⁶⁰

5.36 Section 41B(7) adopts section 36A(7) of the UK Companies Act 1985 (to be inserted by clause 5(2) of the UK Instruments (Formalities) Bill). It confirms that where a corporation executes a deed on behalf of another person, it may do so by affixing its common seal or by the signature of two officers in accordance with section 41B(4).

5.37 The presumption of due execution in favour of a purchaser in section 36A(6) of the UK Companies Act 1985 was not adopted. The Law Reform Committee of the Singapore Academy of Law was of the view that there should be no presumption of valid execution.⁶¹

Execution of deeds by companies

5.38 Section 41C deals with the execution of deeds by corporations.

5.39 Section 41C(1) clarifies what is required for a document to be executed as a deed by a corporation for the purposes of clause 4(2)(b). It mirrors the new clause 7(1) which applies to

⁵⁹ The reference to “director” in section 41B(4) can probably be equated with members of the board in the case of statutory corporations in view of the definition of “director” in section 4 of the Companies Act viz. “director” includes any person occupying the position of a director of a corporation by whatever name called and includes a person in accordance with whose directions or instructions the directors of a corporation are accustomed to act or an alternate director or substitute director. It is unclear how the reference to “secretary” can be interpreted in the context of a statutory corporation.

⁶⁰ Compare Companies Act s.171(5)

⁶¹ See para 5.18 above

corporations aggregate. The document must be duly executed by the corporation and delivered as a deed.

5.40 Section 41C(2) and (3), which re-enacts the current section 41(5) and (6), provides for a corporation to empower agents and attorneys to execute deeds on its behalf. Section 41C(2) differs from the Australian Corporations Law in providing for the empowerment to be done by deed (i.e. under the provisions of the proposed Act, it need not be done under common seal) instead of under the common seal.⁶²

Official seal for use abroad

5.41 Section 41D re-enacts the current section 41(7) of the Companies Act on the official seal for use abroad.

Authority of agent

5.42 Section 41E re-enacts the current section 41(8) and (9) of the Companies Act on the requirements of seal by a foreign territory in relation to the authorisation of an agent.

Authentication of documents

5.43 Section 41F re-enacts the current section 41(4) on authentication of documents by a corporation. It allows authentication without the use of a common seal.

Related amendments to s272(2), Companies Act

5.44 Clause 9(b) makes a related amendment to section 272(2) of the Companies Act to clarify that the power of a liquidator to execute deeds and other documents in the name and on behalf of the company is quite separate from the power to use the company's seal.

Consequential amendments

5.45 Clause 10(1) provides for some general consequential amendments arising from the abolition of the requirement for sealing of deeds, which will apply to any written law or instrument made before the commencement of the Act.⁶³⁶⁴

⁶² Similarly section 41F allows authentication without the use of a common seal.

⁶³ The consequential amendment provision in section 1(7) of the UK Law of Property (Miscellaneous Provisions) Act 1989 (otherwise adopted in clause 6 of the draft Bill) has been omitted as its terms are adequately covered by Clause 10(1) of the draft Bill.

5.46 Clause 10(2), read with the First Schedule, makes consequential amendments to specific Acts.⁶⁵

Transitional Provisions

5.47 Clause 11 provides that the Act will only apply to instruments executed after the commencement of the Act. Therefore, in the case of deeds, the Act does not apply to a deed which was executed before the commencement of the Act even if its delivery is delayed until after the commencement of the Act. The Act also does not apply to deeds executed and delivered in escrow before the commencement of the Act even if the conditions are fulfilled after the commencement; such deeds will take effect from the date of its execution (i.e. before the commencement of the Act).⁶⁶

⁶⁴ The consequential amendments will not, in our view, affect the interpretation of typical common seal provisions applicable to statutory corporations (eg. Land Transport Authority Act (Cap.158A, s.4) because no change is necessary. Such provisions are intended merely to govern the use of the common seal. It is not intended to legislate on the way in which deeds must be executed. If the law allows an alternative method of execution of deeds without common seal (eg. Companies Act, new section 41B(4)), and the corporation chooses the alternative method, then the common seal provision does not apply.

⁶⁵ The provisions amended are set out at Annex D, with the amendments in italics. The repeal of section 45 of the **Conveyancing and Law of Property Act** (Cap.61) will allow the clauses of the draft Bill relating to execution by powers of attorney (eg. clauses 6 and 8) to apply instead. The UK Law Commission decided not to amend the **Corporate Bodies Contracts Act 1960** because they did not consider it feasible or desirable at that stage to undertake a wider reform which seeks to apply a more or less uniform approach to execution of instruments by corporations generally (see Law Com. No. 163, paras 1.12 and 8.11). We have accordingly left the **Corporate Bodies Contracts Act** (Cap.385) untouched.

⁶⁶ See paras 4.1 to 4.5 above

ANNEX A

THE INSTRUMENTS (FORMALITIES) BILL 2001 (NO. OF 2001)

ARRANGEMENT OF SECTIONS

Section

1. Short title and commencement
 2. Interpretation
 3. Application
 4. Deeds and their execution
 5. Execution of instruments by or on behalf of individuals
 6. Execution of instruments by or on behalf of corporations
 7. Execution of instrument as a deed by corporation aggregate
 8. Execution of instruments etc by donee of power of attorney
 9. Amendments to Companies Act
 10. Consequential amendments
 11. Transitional provisions and application
- The Schedule - Consequential Amendments

A BILL

intituled

An Act to reform the law relating to and to make provision on the formalities relating to instruments and to make consequential amendments to other written laws.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act may be cited as the Instruments (Formalities) Act 2001 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

Interpretation

2. In this Act, unless the context otherwise requires —

“corporation aggregate” includes a registered co-operative society but excludes a corporation as defined in the Companies Act (Cap. 50);

“individual” does not include a corporation sole;

“sign”, in relation to an instrument, includes making one’s mark on the instrument, and “signature” is to be construed accordingly.

Application

3.—(1) This Act shall apply to transactions wherever effected.

(2) Nothing in this Act shall affect the requirement under the Registration of Deeds Act (Cap.269) or the Land Titles Act (Cap.157), as the case may be —

(a) for a certificate of attestation or correctness by a solicitor, notary public or other consular officer in respect of a deed or instrument for conveyance of interest in land; or

(b) that a witness to the execution of such deed or instrument cannot be a party to the deed or instrument.

Deeds and their execution

4.—(1) Any rule of law which —

(a) restricts the substances on which a deed may be written;

(b) requires a seal for the valid execution of an instrument as a deed by an individual; or

- (c) requires authority by one person to another to deliver an instrument as a deed on his behalf to be given by deed,

is abolished.

(2) An instrument shall not be a deed unless —

- (a) it makes it clear on its face that it is intended to be a deed by the person making it or, as the case may be, by the parties to it (whether by describing itself as a deed or expressing itself to be executed or signed as a deed or otherwise); and

(b) it is validly executed as a deed —

- (i) by that person or a person authorised to execute it in the name or on behalf of that person; or
- (ii) by one or more of those parties or a person authorised to execute it in the name or on behalf of one or more of those parties.

(3) For the purposes of subsection (2)(a), an instrument shall not be taken to make it clear on its face that it is intended to be a deed merely because it is executed under seal.

(4) Where a solicitor, in the course of or in connection with a transaction, purports to deliver an instrument as a deed on behalf of a party to the instrument, it shall be conclusively presumed in favour of a purchaser that the solicitor is authorised so to deliver the instrument.

(5) In subsection (4), “purchaser” means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who in good faith and for valuable consideration acquires an interest in property.

Execution of instruments by or on behalf of individuals

5.—(1) An instrument is validly executed as a deed by an individual if, and only if —

(a) it is signed —

- (i) by him in the presence of a witness who attests the signature; or
- (ii) by another individual at his direction and in his presence and the presence of 2 witnesses who each attest the signature; and

(b) it is delivered as a deed by him or a person authorised to do so on his behalf.

(2) Subsection (1) shall apply in the case of an instrument executed by an individual in the name or on behalf of another person whether or not that person is also an individual.

Execution of instruments by or on behalf of corporations

6.—(1) An instrument is validly executed by a corporation aggregate if the corporation’s seal is affixed to the instrument in the presence of and attested by —

- (a) 2 members of the board of directors, council or other governing body of the corporation; or
- (b) one such member and the secretary or other officer of the corporation.

(2) Subsection (1) shall apply in the case of an instrument executed by a corporation aggregate in the name or on behalf of another person whether or not that person is also a corporation aggregate.

(3) The board of directors, council or other governing body of a corporation aggregate may, by resolution or otherwise, appoint an agent either generally or in any particular case, to execute on behalf of the corporation any agreement or other instrument which is not a deed in relation to any matter within the powers of the corporation.

(4) Where a person is authorised under a power of attorney or under any statutory or other power to convey any interest in property in the name or on behalf of a corporation sole or corporation aggregate, he may as attorney execute the conveyance by signing the name of the corporation in the presence of at least one witness who attests the signature, and such execution shall take effect and be valid in like manner as if the corporation had executed the conveyance.

(5) Where a corporation aggregate is authorised under a power of attorney or under any statutory or other power to convey any interest in property in the name or on behalf of any other person (including another corporation), an officer appointed for that purpose by the board of directors, council or other governing body of the corporation by resolution or otherwise, may execute the instrument by signing it in the name of such other person or, if the instrument is to be a deed, by so signing it in the presence of a witness who attests the signature; and where an instrument appears to be executed by an officer so appointed, then in favour of a purchaser the instrument shall be deemed to have been executed by an officer duly authorised.

(6) This section shall apply whenever the power of an agent or officer was conferred or the appointment of an agent or officer was made.

(7) Notwithstanding anything contained in this section, any mode of execution or attestation authorised by written law or by the charter, memorandum or articles, deed of settlement or other instrument constituting the corporation sole or corporation aggregate or regulating the affairs thereof, shall (in addition to the modes authorised by this section) be as effectual as if this section had not been passed.

Execution of instrument as a deed by corporation aggregate

7. An instrument is validly executed by a corporation aggregate as a deed for the purposes of section 4(2)(b) if and only if —

- (a) it is duly executed by the corporation aggregate; and
- (b) it is delivered as a deed.

Execution of instruments etc by donee of power of attorney

8.—(1) If the donee of a power of attorney is an individual (referred to in this section as the donee), he may, if he thinks fit —

- (a) execute any instrument with his own signature; and
- (b) do any other thing in his own name,

by the authority of the donor of the power; and any instrument executed or thing done in that manner shall, subject to subsection (2), be as effective as if executed by the donee in any manner which would constitute due execution of that instrument by the donor or, as the case may be, as if done by the donee in the name of the donor.

(2) Where an instrument is executed by the donee as a deed, it shall be as effective as if executed by the donee in a manner which would constitute due execution of it as a deed by the donor only if it is executed in accordance with section 5(1)(a).

(3) For the avoidance of doubt, it is declared that an instrument to which section 6(4) applies may be executed either as provided in section 6(4) or as provided in this section.

(4) This section shall apply whenever the power of attorney was created.

Amendments to Companies Act

9. The Companies Act (Cap.50) is amended —

- (a) by repealing section 41 and substituting the following sections:

“Ratification by company of contracts made before incorporation

41.—(1) Any contract or other transaction purporting to be entered into by a company prior to its formation or by any person on behalf of a company prior to its formation may be ratified by the company after its formation and thereupon the company shall become bound by and entitled to the benefit thereof as if it had been in existence at the date of the contract or other transaction and had been a party thereto.

(2) Prior to ratification by the company, the person or persons who purported to act in the name or on behalf of the company shall, in the absence of express agreement to the contrary, be personally bound by the contract or other transaction and entitled to the benefit thereof.

Contracts by corporations

41A.—(1) A contract may be made —

- (a) by a corporation, under its common seal; or
- (b) on behalf of a corporation, by any person acting under its authority, express or implied,

and any formalities required by law in the case of a contract made by an individual also apply, unless a contrary intention appears, to a contract made by or on behalf of a corporation; and such contract may be varied or discharged in the manner in which it is authorised to be made.

(2) Where a corporation is incorporated outside Singapore, a contract may be made—

(a) by the corporation under its common seal or in any manner permitted by the laws of the territory in which the company is incorporated for the execution of documents by such a corporation; or

(b) on behalf of the corporation by any person who, in accordance with the laws of the territory in which the corporation is incorporated, is acting under the authority (express or implied) of that corporation,

and any formalities required by law in the case of a contract made by an individual also apply, unless a contrary intention appears, to a contract made by or on behalf of such corporation and such contract may be varied or discharged in the manner in which it is authorised to be made.

(3) This section and sections 41B to 41F shall not apply in relation to documents or instruments executed before the commencement of the Instruments (Formalities) Act 2001.

Execution of documents by corporations

41B.—(1) Subsections (2) to (7) shall have effect with respect to the execution of documents by a corporation.

(2) A document is executed by a corporation by the affixing of its common seal or, in the case of a corporation incorporated outside Singapore, in any manner permitted by the laws of the territory in which the corporation is incorporated for the execution of documents by such a corporation.

(3) A corporation need not have a common seal, however, and the following subsections shall apply whether it does or not.

(4) A document signed by a director and the secretary of a corporation, or by 2 directors of a corporation, and expressed (in whatever form of words) to be executed by the corporation has the same effect as if executed under the common seal of the corporation.

(5) Where a corporation is incorporated outside Singapore, a document which—

(a) is signed by a person or persons who, in accordance with the laws of the territory in which the corporation is incorporated, is or are acting under the authority (express or implied) of that corporation; and

(b) is expressed (in whatever form of words) to be executed by the corporation,

has the same effect in relation to that corporation as it would have in relation to a corporation incorporated in Singapore if executed under the common seal of a corporation so incorporated.

(6) Where a document is to be signed by a person as a director or the secretary of more than one corporation, it shall not be taken to be duly signed by that person for the purposes of subsection (4) or (5) unless the person signs it separately in each capacity.

(7) This section shall apply in the case of a document which is executed by a corporation in the name or on behalf of another person whether or not that person is also a corporation.

Execution of deeds by corporations

41C.—(1) A document is validly executed by a corporation as a deed for the purposes of section 4(2)(b) of the Instruments (Formalities) Act 2001, if and only if —

(a) it is duly executed by the corporation; and

(b) it is delivered as a deed.

(2) A corporation may, by deed, empower any person either generally or in respect of any specified matters, as its agent or attorney, to execute deeds on its behalf and a deed signed by such an agent or attorney on behalf of the corporation and under his seal, or, subject to section 41D, under the appropriate official seal of the corporation shall bind the corporation and have the same effect as if it were under its common seal.

(3) The authority of an agent or attorney empowered under subsection (2) shall as between the corporation and any person dealing with him continue during the period, if any, mentioned in the instrument conferring the authority, or if no period is therein mentioned then until notice of the revocation or determination of his authority has been given to the person dealing with him.

Official seal for use abroad

41D. A corporation may, if authorised by its articles, have for use in any place outside Singapore one or more official seals, each of which shall be a facsimile of the common seal of the corporation with the addition on its face of the name of the place where it is to be used and the person affixing any such official seal shall, in writing under his hand, certify on the instrument to which it is affixed the date on which and the place at which it is affixed.

Authority of agent of a corporation need not be under seal, unless seal required by law of foreign territory

41E.—(1) The fact that a power of attorney or document of authorisation given to or in favour of the donee of the power or agent of a corporation is not under seal shall not, if such power of attorney or document of authorisation is valid as a power of attorney or document of authorisation in accordance with the laws of the territory under which such corporation is incorporated, affect for any purpose intended to be effected in Singapore the validity or effect of any instrument under seal executed on behalf of that corporation by such donee of the power or agent, which shall for all such purposes whatsoever be as valid as if such authority had been under seal.

(2) Subsection (1) shall also apply to every instrument under seal executed before 15th May 1987 on behalf of any corporation by a donee of a power or an agent of that corporation whose authority was not under seal.

Authentication of documents

41F. A document or proceeding requiring authentication by a corporation may be authenticated by the signature of an authorised officer of the corporation and need not be authenticated under the common seal of the corporation.”.

(b) by deleting paragraph (d) of section 272(2) and substituting the following paragraphs:

“(d) do all acts and execute in the name and on behalf of the company, all deeds, receipts and other documents;

(da) use the company’s seal; and”.

Consequential amendments

10.—(1) Subject to the Schedule, any written law or instrument made before the commencement of this Act shall, so far as may be necessary in consequence of the provision made by this Act have effect as if —

(a) any reference to an instrument under seal were a reference to an instrument executed as a deed;

(b) any reference to the signing and sealing of an instrument or, otherwise than in an attestation, to the signing, sealing and delivering of an instrument were a reference to the execution of an instrument as a deed; and

(c) any reference in an attestation to the signing, sealing and delivering of an instrument were a reference to the signing of an instrument as a deed.

(2) The provisions of the Acts specified in the first column of the Schedule are amended in the manner set out in the second column thereof.

Transitional provisions and application

11. This Act shall not apply in relation to any instrument executed before the date of commencement of this Act.

THE SCHEDULE

Section 10(2)

CONSEQUENTIAL AMENDMENTS

<i>First column</i>	<i>Second column</i>
(1) Companies Act (Cap.50, 1994 Ed.),	
(a) Section 112	Delete the words “in that behalf under the seal of the company” and substitute the words “by the company by deed”.
(b) Section 123	(i) Delete the words “under the common or official seal of the company” in subsection (1) and substitute the words “executed in accordance with section 41B”. (ii) Delete the words “under the common seal of the company or in, the case of a share certificate relating to shares on a branch register, the official seal of the company” in subsection (2) and substitute the words “executed in accordance with section 41B”.
(c) Section 179(5)	Delete the words “section 41(8) and (9), a certificate under the seal of the corporation” and substitute the words “section 41E, a certificate executed in accordance with section 41B”.
(d) Section 385	Delete the words “under the seal of a foreign company” and substitute the words “executed in accordance with section 41B(5)”.
(2) Conveyancing and Law of Property Act (Cap.61, 1994 Ed.)	
(a) Section 45	Repeal
(b) Section 58	Insert, immediately after subsection (4), the following subsection: “(5) In its application to instruments made after the date of commencement of the Instruments (Formalities) Act 2001, subsection (1) shall have effect as if for the words “contract under seal, and a bond or obligation under seal” there were substituted the words “contract, bond or obligation executed as a deed in accordance with section 4

<i>First column</i>	<i>Second column</i>
	of the Instruments (Formalities) Act 2001.”.
(c) Section 69(1)	Delete the word “or” in the 1st line and substitute the word “and”.
(3) Land Titles Act (Cap.157, 1994 Ed.)	
(a) Section 19(9)	Delete the words “under its common seal” and substitute the words “by deed”.
(b) Section 146	Delete the words “an instrument under seal” in the 2nd line and the word “instrument” in the penultimate line in the definition of the word “attorney” and substitute in each case the word “deed”.
(4) Registered Designs Act (Act 25 of 2000)	
Section 32(7)	Insert, immediately after the word “seal”, the words “or, as the case may be, by executing the document in accordance with section 41B of the Companies Act (Cap.50) or section 6(1) of the Instruments (Formalities) Act 2001”.
(5) Stamp Duties Act (Cap.312, 2000 Ed.)	
Section 2	Insert, immediately after the word “seal” in the definition of ““executed” and “execution””, the words “or not executed as deeds”.
(6) Trade Marks Act (Cap.332, 1999 Ed.)	
Section 38(4)	Insert, immediately after the word “seal”, the words “or, as the case may be, by executing the document in accordance with section 41B of the Companies Act (Cap.50) or section 6(1) of the Instruments (Formalities) Act 2001”.

EXPLANATORY STATEMENT

Please see Part 5 of Report

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.

TABLE A: DERIVATION TABLE OF DRAFT BILL

Part 1		
Clause from Instruments (Formalities) Bill	UK Legislation as specified	Other legislation and comments
1	-	-
2 definition of: “corporation aggregate” “sign” and “signature”	- Law of Property (Miscellaneous Provisions) Act 1989 s.1(4), as amended by Instruments (Formalities) Bill, schedule 1, para.4	New Reference to “an individual signing the name of the person or party on whose behalf he executes the instrument” omitted
3(2)	Law of Property Act 1925 s.74(5) <i>(in part)</i>	-
3(1)	-	New
4(1)	Law of Property (Miscellaneous Provisions) Act 1989 s.1(1)	-
4(2)(a)	Law of Property (Miscellaneous Provisions) Act 1989 s.1(2)	-
4(2)(b)	Law of Property (Miscellaneous Provisions) Act 1989 s.1(2)(b), as amended by proposed Instruments (Formalities) Bill, clause 5(4)	-
4(3)	Law of Property (Miscellaneous Provisions) Act 1989 s.1(2A), inserted by proposed Instruments (Formalities) Bill, clause 7	-
4(4)	Law of Property (Miscellaneous Provisions) Act 1989 s.1(5), inserted by proposed Instruments (Formalities) Bill, clause 8	-
4(5)	Law of Property (Miscellaneous Provisions) Act 1989 s.1(6) and Law of Property Act 1925 s.205(1)(xxi)	-
5(1)	Law of Property (Miscellaneous Provisions) Act 1989 s.1(3)	Words “by him or a person authorised to do so on his behalf” (repealed by Instruments (Formalities) Bill, schedule 2) retained.
5(2)	Law of Property (Miscellaneous Provisions) Act 1989 s.1(4A),	-

	inserted by proposed Instruments (Formalities) Bill, clause 5(5)	
6(1)	Law of Property Act 1925 s.74(1), inserted by proposed Instruments (Formalities) Bill, clause 1	-
6(2)	Law of Property Act 1925 s.74(1A), inserted by proposed Instruments (Formalities) Bill, clause 5(1)	-
6(3)	Law of Property Act 1925 s.74(2)	-
6(4)	Law of Property Act 1925 s.74(3), as amended in Instruments (Formalities) Bill, Schedule 1, para.1(3)	-
6(5)	Law of Property Act 1925 s.74(4), as amended in Instruments (Formalities) Bill, Schedule 1, para.1(4)	-
6(6)	Law of Property Act 1925 s.74(5) (modified) cp. Powers of Attorney Act 1971, s.7(4)	-
6(7)	Law of Property Act 1925 s.74(6)	For clarity, refers to “corporation sole or corporation aggregate” instead of “corporation”.
7	Law of Property Act 1925 s.74A(1), inserted by proposed Instruments (Formalities) Bill, clause 2	Presumption of delivery in Law of Property Act 1925 s.74A(2) omitted
8(1)	Powers of Attorney Act 1971 s.7(1), as amended in Instruments (Formalities) Bill, Schedule 1	-
8(2)	Powers of Attorney Act 1971 s.7(1A), inserted by Instruments (Formalities) Bill, Schedule 1	-
8(3)	Powers of Attorney Act 1971 s.7(2)	-
8(4)	Powers of Attorney Act 1971 s.7(4)	-
9(a)	-	See Part 2 of Table
9(b)	Insolvency Act 1986, Schedule 4, Part III, paragraph 7 and 7A (as amended by Instruments (Formalities) Bill, clause 6)	
10(1)	Law of Property (Miscellaneous Provisions) Act 1989, Schedule 1, Paragraph 1	-
10(2)	See generally Law of Property (Miscellaneous Provisions) Act 1989, Schedule 1	Specific consequential amendments in the Schedule to the draft Bill
11	Instruments (Formalities) Bill, clause 11(4)	-

Part 2		
Section of Companies Act (Cap.50) inserted by clause 8	Existing section of Companies Act (Cap.50) being replaced	Other legislation and comments
41(1) and (2)	Re-enacts s.41(1) and (2)	-
41A(1)	41(3)	UK Companies Act 1985, s.36
41A(2)	-	UK Companies Act 1985, s.36, as modified by UK Foreign Companies (Execution of Deeds) Regulations 1994
41A(3)	-	Proposed UK Instruments (Formalities) Bill, clause 11(4)
41B(1)	-	UK Companies Act 1985, s.36A(1)
41B(2)	-	UK Companies Act 1985, s.36A(2), as modified by UK Foreign Companies (Execution of Deeds) Regulations 1994
41B(3)	-	UK Companies Act 1985, s.36A(3)
41B(4)	-	UK Companies Act 1985, s.36A(4)
41B(5)	-	UK Companies Act 1985, s.36A(4), as modified by UK Foreign Companies (Execution of Deeds) Regulations 1994
41B(6)	-	UK Companies Act 1985, s.36A(4A), inserted by proposed Instruments (Formalities) Bill
41B(7)	-	UK Companies Act 1985, s.36A(7), inserted by proposed Instruments (Formalities) Bill
41C(1)	-	UK Companies Act 1985, s.36AA(1)
41C (2)	41(5)	Australian Corporations Law s.182(8)
41C(3)	41(6)	Australian Corporations Law s.182(9)
41D	41(7)	Australian Corporations Law s.182(10) and (11)
41E(1)	41(8)	-
41E(2)	41(9)	-
41F	41(4)	Australian Corporations Law s.182(7)

TABLE B: STATUTORY PROVISIONS ON EXECUTION OF INSTRUMENTS AND APPOINTMENT OF AGENTS APPLICABLE TO VARIOUS ENTITIES

STATUTORY PROVISIONS	INDIVIDUALS	CORPORATIONS AS DEFINED IN COMPANIES ACT eg. local and foreign companies, and most statutory bodies.	CORPORATIONS AGGREGATE e.g. co-operative societies and public authorities declared under section 4 of the Companies Act ¹ .	CORPORATIONS SOLE e.g. Public Trustee, Minister for Finance, numerous corporations sole established under Private Acts.
<u>Proposed Instruments (Formalities) Act</u>				
<u>Section 4(1)(a)</u> Deed need not be written on paper	Applies	Applies	Applies	Applies
<u>Section 4(1)(b)</u> Seal not required for valid execution of deed by individual	Applies	N.A. See Companies Act s.41B(3) & (4)	N.A.	N.A.
<u>Section 4(1)(c)</u> Deed not required for authority to deliver deed on another's behalf	Applies	Applies	Applies	Applies
<u>Section 4(2)(a)</u> Face value requirement	Applies	Applies	Applies	Applies

¹ See footnote 32.

STATUTORY PROVISIONS	INDIVIDUALS	CORPORATIONS AS DEFINED IN COMPANIES ACT eg. local and foreign companies, and most statutory bodies.	CORPORATIONS AGGREGATE e.g. co-operative societies and public authorities declared under section 4 of the Companies Act ¹ .	CORPORATIONS SOLE e.g. Public Trustee, Minister for Finance, numerous corporations sole established under Private Acts.
<u>Section 4(2)(b)</u> Confirms that deed may be executed <i>on behalf</i> of the maker of the deed	Applies	Applies	Applies	Applies
<u>Section 4(3)</u> Instrument not a deed merely because it is executed under seal	Applies	Applies	Applies	Applies
<u>Section 4(4) & (5)</u> Presumption that solicitor is authorised to deliver deed	Applies	Applies	Applies	Applies
<u>Section 5</u> Execution of instruments by or on behalf of individuals.	Applies.	N.A., but applies to individual executing or delivering instrument on behalf of company.	N.A., but applies to individual executing or delivering instrument on behalf of corporation.	N.A., but applies to individual executing or delivering instrument on behalf of corporation.
<u>Section 6</u> Execution of instruments by or on behalf of corporations (aggregate or sole). Note: There is no provision for such corporations to	N.A., except s.6(4) where the person authorised may be an individual.	N.A. S.6(4) would not apply where the person authorised is a company since the method of execution is unsuitable for a company.	Applies. Section 6(4) applies to conveyances on behalf of a corporation aggregate.	Sections 6(4) and (7) apply. Section 6(4) applies to conveyances on behalf of a corporation sole.

STATUTORY PROVISIONS	INDIVIDUALS	CORPORATIONS AS DEFINED IN COMPANIES ACT eg. local and foreign companies, and most statutory bodies.	CORPORATIONS AGGREGATE e.g. co-operative societies and public authorities declared under section 4 of the Companies Act ¹ .	CORPORATIONS SOLE e.g. Public Trustee, Minister for Finance, numerous corporations sole established under Private Acts.
execute instruments by signature, except by appointing an agent (s.6(4)) or an officer to convey an interest in property (s.6(5)) or when the corporation is appointed to convey such an interest (s.6(6)). But see Corporate Bodies' Contract Act below.				
<u>Section 7</u> Execution of instrument as deed by corporation aggregate	N.A.	N.A.	Applies	N.A.
<u>Section 8</u> Execution of instruments etc by donee of power of attorney who is an individual.	Applies.	N.A.	N.A.	N.A. (see definition "individual" in clause 2)
<u>Section 10(1)</u> Consequential provisions	Applies	Applies	Applies	Applies

STATUTORY PROVISIONS	INDIVIDUALS	CORPORATIONS AS DEFINED IN COMPANIES ACT eg. local and foreign companies, and most statutory bodies.	CORPORATIONS AGGREGATE e.g. co-operative societies and public authorities declared under section 4 of the Companies Act ¹ .	CORPORATIONS SOLE e.g. Public Trustee, Minister for Finance, numerous corporations sole established under Private Acts.
<u>Section 11</u> Transitional provisions	Applies	Applies	Applies	Applies
Companies Act (Cap.50)				
Proposed new sections 41 to 41F (inserted by section 9(a) of proposed Instruments (Formalities) Act)	N.A., except insofar as an individual may be an agent or attorney of the company.	Applies	N.A., except insofar as a corporation aggregate may be an agent or attorney of the company.	N.A., except insofar as a corporation sole may be an agent or attorney of the company.
Applies to liquidator of the company, whether an individual or a corporation.				

<p>STATUTORY PROVISIONS</p>	<p>INDIVIDUALS</p>	<p>CORPORATIONS AS DEFINED IN COMPANIES ACT eg. local and foreign companies, and most statutory bodies.</p>	<p>CORPORATIONS AGGREGATE e.g. co-operative societies and public authorities declared under section 4 of the Companies Act¹.</p>	<p>CORPORATIONS SOLE e.g. Public Trustee, Minister for Finance, numerous corporations sole established under Private Acts.</p>
<p>Corporate Bodies Contracts Act (Cap 385)</p>				
<p>The Act prescribes methods for a body corporate to make contracts in writing and by parol.</p>	<p>N.A.</p>	<p>N.A. by virtue of s.2 of the Act</p>	<p>Applies</p>	<p>Applies</p>

TABLE C: MODES OF EXECUTION APPLICABLE TO BODIES CORPORATE

	UK	Singapore	Corporations as defined in Companies Act ³	Corporations aggregate	Corporations aggregate to which Companies Act does not apply ²	Corporations aggregate	Corporations aggregate	
EXECUTION:	Existing* (1)	New# (2)	Existing* (3)	New# (4)	Existing* (5)	New# (6)	Existing* (7)	New# (8)
By self	<ul style="list-style-type: none"> Document executed by a company under its common seal: CA85 s.36(a) & 36A(2) By person expressly or impliedly authorised to do so: CA85 s36(b) Document 	<ul style="list-style-type: none"> No change 	<ul style="list-style-type: none"> Specific provisions in relevant Act may provide regime similar to CA s.36A, or dual regime of common seal or signature by relevant persons⁴, or by common seal only⁵. Corporate 	<ul style="list-style-type: none"> No change⁷ 	<ul style="list-style-type: none"> Companies Act s41(1), (2) on pre-incorporation contracts. CA s42(3) contracts (a) required to be in writing under seal, may be by common seal, (b) required to be in writing and signed, may be signed by person acting under express or 	<ul style="list-style-type: none"> No change. Re-enacted as CA s.41(1) and (2) New s41A(1) adopts UK CA85 s 36; para(a) corresponds to (a) (see also new s.41B(2)), para(b) corresponds to (b) and (c). Additionally, no need for common seal. Documents 	<ul style="list-style-type: none"> Acts establishing statutory corporations generally provide for a common seal and regs to be made w.r.t. use of the seal.⁸ Corporate Bodies' Contracts Act⁹ provides 	<ul style="list-style-type: none"> Corporation's seal affixed in presence of and attested by 2 members of board, etc, or one such member and the secretary or other officer: s.6(1) (See pg.5 below) Mode of execution or attestation

	UK	Corporations aggregate to which Companies Act does not apply ²	Singapore Corporations as defined in Companies Act ³	Corporations aggregate	
	Registered and unregistered ¹ companies	Existing* (3)	Existing* (5)	Existing* (4)	
EXECUTION:	Existing* (1)	New* (2)	New* (6)	New* (7)	
	Existing* (1)	New* (2)	New* (6)	New* (8)	
	may signed by a director and the secretary, or 2 directors, and expressed to be executed by the company: s.36A(4)		implied authority (c) parol contract, may be by parol by person under express or implied authority.	that contracts (a) required to be in writing and signed, may be signed by person acting under express or implied authority or (b) parol contract, may be by parol by person under express or implied authority. • CL (See col.3)	authorised under charter, etc, of the corporation: s.6(7). • Mode of execution or attestation authorised under any written law: s.6(7), e.g. Corporate Bodies' Contracts Act or constituting Act.
		Bodies' Contracts Act. Under common law by affixing corp. seal, accompanied by formalities (if any) prescribed by its constitution e.g. statute, charter or articles) ⁶ and delivery.		may signed by a director and the secretary, or 2 directors, and expressed to be executed by the company: New s.41B(3) & (4) adopts UK CA85 s36A.	
			• Authentic ation of documents may be by		
			• No change: new s.41F		

	UK	Registered and unregistered* companies	Corporations aggregate to which Companies Act does not apply ²	Singapore Corporations as defined in Companies Act ³	Corporations aggregate	
	Existing* (1)	New* (2)	Existing* (3)	Existing* (5)	Existing* (7)	
	Existing* (1)	New* (2)	Existing* (3)	Existing* (5)	Existing* (7)	
EXECUTION:	Existing* (1)	New* (2)	Existing* (3)	Existing* (5)	Existing* (7)	New* (8)
				signature, common seal not required: s.41(4)		
	<ul style="list-style-type: none"> In the case of a foreign company, by affixing common seal or in any manner permitted by foreign law, or by signature of person/s acting (in accordance with foreign law) under the authority of the company so long as the document is 			<ul style="list-style-type: none"> Same provisions apply to foreign companies: CA s4, definitions of "corporation" and "foreign companies" 		
				<ul style="list-style-type: none"> Similar new provisions apply to foreign companies: contracts-s41A(2)(a); docs-s41B(2) and (5). 		

	UK	Corporations aggregate to which Companies Act does not apply ²	Singapore Corporations as defined in Companies Act ³	Corporations aggregate		
	Registered and unregistered ¹ companies	Existing* (3)	New* (4)	Existing* (5)		
	Existing* (1)	New* (2)	Existing* (6)	New* (7)		
EXECUTION:	Existing* (1)	New* (2)	Existing* (5)	New* (8)		
	expressed to be executed by the company: CA85 s.36A amended by Foreign Companies (Execution of Documents) Regulations 1994.					
	<ul style="list-style-type: none"> Alternatively, LPA 1925 s74(1) and (2) applies. (See col 3) 	<ul style="list-style-type: none"> See col 4 	<ul style="list-style-type: none"> Alternatively, LPA 1925 s.74 (1) deeds, seal affixed in presence of and attested by clerk etc and a member of board (2) instr. not under seal, 	<ul style="list-style-type: none"> UK Bill to amend s.74(1) for execution by (a) 2 members of the board or (b) 1 member and the clerk etc. 	<ul style="list-style-type: none"> Unlike UK, defn of "corp. aggregate" in Bill excludes "corp." as defined in Companies Act i.e. Cl 6 does not apply to such corp. 	<ul style="list-style-type: none"> CI 6(1) and (3) adopts UK LPA s.74(1) and (2) as amended.

	UK	Singapore	Corporations aggregate	Corporations as defined in	Corporations aggregate			
	Registered and unregistered ¹ companies	Corporations as defined in Companies Act ³	to which Companies Act does not apply ²	Companies Act ³	to which Companies Act does not apply ²			
EXECUTION:	Existing* (1)	New* (2)	Existing* (3)	New* (4)	Existing* (5)			
			by agent etc appointed by resolution.		Existing* (6)			
					New* (7)			
					Existing* (8)			
By another	<ul style="list-style-type: none"> Individual attorney can simply sign name of corporation followed by his own name as attorney¹⁰ but signature may have to be witnessed and the deed delivered¹¹. Individual attorney may sign own name stated to be as attorney on behalf of donor¹²; 	<ul style="list-style-type: none"> LR(MP)A 89 s1(4A) and CA 85 s36A(7) amended to clarify that formalities are those applicable to the attorney¹⁵ Defn of "sign" to include signing of donor's name by attorney.¹⁶ Require ment of 	<ul style="list-style-type: none"> See col 1 	<ul style="list-style-type: none"> No provision to clarify formalities for corporations acting as attorneys¹⁸ 	<ul style="list-style-type: none"> Agent or attorney to sign under his seal or corporation's common seal (s.41(5)), or official facsimile seal for outside Singapore (s41(7)). Same provisions apply to foreign companies: CA s4, definitions of "corporation" and "foreign 	<ul style="list-style-type: none"> New s41C(2), (3) & 41D re-enact s41(5), (6) and (7) respectively. Cl.6(4) adopts UK LPA s74(3) & (4A) as amended Cl. 5(1), (2) & 8(1) adopt UK LPA(MP)A 1989 s1(3), (4A) and Powers of Attorney Act 1971 s7(1) respectively. 	<ul style="list-style-type: none"> Applicatn of common law uncertain²⁰ 	<ul style="list-style-type: none"> Cl.6(4) adopts UK LPA s74(3) & (4A) as amended Cl. 5(1), (2) & 8(1) adopt UK LPA(MP)A 1989 s1(3), (4A) and Powers of Attorney Act 1971 s7(1) respectively.

	UK	Corporations aggregate to which Companies Act does not apply ²	Singapore Corporations as defined in Companies Act ³	Corporations aggregate					
	Registered and unregistered ¹ companies	Existing* (3)	Existing* (5)	Existing* (7)					
	Existing* (1)	New* (2)	New* (6)	New* (8)					
EXECUTION:	<p>again signature may have to be witnessed and deed delivered¹³.</p> <ul style="list-style-type: none"> • Conveyance of property owned by corporation, individual attorney may execute deed by signing name of corporation in presence of witness¹⁴. 	<p>attestation added to LPA s74(3).¹⁷</p>	<p>companies¹⁹</p> <ul style="list-style-type: none"> • Appln of common law uncertain 	<p>Do not adopt amended defn of "sign"</p>					
In the name of or on behalf of another	<ul style="list-style-type: none"> • Attorney executes in the manner appropriate to itself. (See 	<ul style="list-style-type: none"> • LPA s74(1A), LPA(MP)A 1989 s.1(2)(b) and CA85 	<ul style="list-style-type: none"> • No provision in CA. Common law applies i.e. corporation 	<ul style="list-style-type: none"> • LPA s74(1) applies whether or not other 	<ul style="list-style-type: none"> • See col.1 	<ul style="list-style-type: none"> • LPA s74(1) applies whether or not other 	<ul style="list-style-type: none"> • Cl.4(2) (b) adopts UK LP(MP)A a1(2)(b). • New CA s41B (7) 	<ul style="list-style-type: none"> • No provision. 	<ul style="list-style-type: none"> • S.6(1) applies whether or not other person is a corporation aggregate:

	UK	Corporations aggregate to which Companies Act does not apply ²	Singapore Corporations as defined in Companies Act ³	Corporations aggregate
EXECUTION:	Existing* (1)	Existing* (3)	Existing* (5)	Existing* (7)
	<p>Registered and unregistered* companies</p> <p>New* (2)</p> <p>s36A(5) amended to make express provision for execution by attorney²¹</p> <ul style="list-style-type: none"> • LPA s74(4) to require signature of appointed officer to be attested.²² 	<p>person is a corporation on aggregate e:</p> <ul style="list-style-type: none"> • s74(1A) LPA s74(4) to require signature of appointed officer to be attested.²³ 	<p>should execute in manner appropriate to itself.</p>	<p>adopts UK CA85 s36A(7) as amended.</p> <ul style="list-style-type: none"> • Cl.6(5) adopts UK LPA s74(4) as amended. • See col 1 & 2
	<p>Existing* (1)</p> <p>section on execution "by self" above.)</p> <ul style="list-style-type: none"> • Conveyance of property, attorney corporation may execute deed in name of owner by officer appointed for that purpose by board etc: LPA s74(4). 			<p>Corporations aggregate</p> <p>New* (8)</p> <p>s.6(2) adopt UK LPA s74 (1A)</p> <ul style="list-style-type: none"> • Where corporation aggregate is authorised under a power of attorney, etc, conveyance of interest in property may be executed by an officer appointed by the board, etc, of the corporation by resolution or otherwise, signing in the name of other person and, in the case of a deed, in the

	UK	Singapore		
	Registered and unregistered* companies	Corporations aggregate to which Companies Act does not apply ²	Corporations as defined in Companies Act ³	
	Existing* (1)	New* (2)	Existing* (5)	
	Existing* (1)	New* (4)	New* (6)	
	Existing* (1)	Existing* (3)	Existing* (7)	
	Existing* (1)	New* (8)	New* (8)	
EXECUTION:	doubt ability of companies to appoint attorney to execute deeds outside UK where there was no express power in the articles.		law of country of incorporation: s41(8), (9)	need not be by deed: s.4(1)(c) adopts UK LP(MP)A s1(1)(c)
		• Corporate Bodies' Contracts Act	Cl.4(1)(c) adopts UK LP(MP)A s1(1)(c) • Corporate Bodies' Contracts Act (Cap.385)	• Corporate Bodies' Contracts Act (Cap.385)

*Existing law to date. Existing position w.r.t. UK includes the Law of Property Act 1925, Powers of Attorney Act 1971 and Law of Property (Miscellaneous Provisions) Act 1989, as amended prior to that date.

New law w.r.t UK denotes amendments in the proposed UK Instruments (Formalities) Bill. W.r.t Singapore, this denotes amendments in the proposed Instruments (Formalities) Bill 2001

¹ For the purposes of s36A of the UK Companies Act, "companies" includes "unregistered companies": Companies (Unregistered Companies) Regulations 1985. This is defined as "any body corporate incorporated in or having a principal place of business in Great Britain other than: any body incorporated by or registered under a public general Act of Parliament; any body not formed for the purposes of carrying on a business which has for its object the acquisition of gain by the body or its members; any body for the time being exempted by the Secretary of State: Section 718 of Companies Act 1985.

² E.g. those created under public general Acts of Parliament such as building societies, friendly societies, industrial and provident societies, charities, local government. There are also some corporations incorporated by private Act or royal charter or which owe their existence to prescription, custom or presumed lost charter. See definition of "unregistered company" in footnote 1. See Law Com No. 253, Part 4, para 4.3.

³ Companies Act (Cap.50) s4:"corporation" means any body corporate formed or incorporated or existing in Singapore or outside Singapore and includes any foreign company but does not include —

(a) any body corporate that is incorporated in Singapore and is by notification of the Minister in the *Gazette* declared to be a public authority or an instrumentality or agency of the Government or to be a body corporate which is not incorporated for commercial purposes;

(b) any corporation sole;

(c) any co-operative society; or

(d) any registered trade union.

⁴ List of public authorities excluded from the definition of "corporation" set out in *Declarations – Public Authorities – Consolidation* (Cap.50, Decl 3)

⁵ e.g. Friendly Societies Act 1992 Sched 6 para 2, Charities Act 1993 s.60.

⁶ e.g. Post Office Act 1969 Sched 1 para 13 (with categories of person to authenticate fixing of seal), Industrial and Provident Societies Act 1965 Sched 1 para 13 and Building Societies Act 1986 Sched 2 para 3 (requiring corporation to make rules for use of seal).

⁷ *Clarke v Imperial Gas Light and Coke Co* (1832) 110 ER 473, 477–478. Also *Halsbury's Laws* (4th Ed) Vol 12, paras 1335–1336. It seems that non-statutory corporation must, in absence of any special and legally binding regulations to the contrary, be sealed at a duly constituted meeting of the corporation and in pursuance of the resolution of a majority of the members then present. This is similar as regards delivery of the deed by the corporation: *Mayor, Constables and Company etc v Bank of England* (1887) 21 QBD 160, 1650166. The seal of a trading corporation, however, in the absence of specific provision under its constitution, may be affixed by those managing its affairs, in performance of acts within their authority: *Re Barmid's Banking Co, ex p. Contract Corporation* (1867) LR 3 Ch App 105. Law Com No 253 para 4.4, footnote 9.

⁷ Although the UK Law Commission was of the view that greater uniformity was desirable, it recommended against introduction of formula for execution by all corporations aggregate at this stage because there was no clear support for such a provision in their consultation, it would require detailed investigation of all the current statutory provisions and it further reconsideration of the distinction between deeds and documents was envisaged in view of the increasing use of electronic communication. It was felt that Law of Property Act s.74(1) already gives a measure of uniformity to the extent that it sets out a common irrevocable presumption of due execution for all corporations where execution under seal is in accordance with that section. Law Com No 253 paras 4.14-4.19.

⁸ e.g. Jurong Town Corporation (Cap.150) s32 and JTC (Common Seal) Regulations (Rg1)

⁹ (Cap.385). The Act excludes companies as defined in the Companies Act. Therefore, it applies to some corporations which are also governed by certain provisions of the Companies Act e.g. s.41 with respect to mode of execution.

¹⁰ At common law, individual attorney had to execute in name and on behalf of the donor i.e. sign donor's name and use donor's seal. Application of this rule to corporate donor is uncertain; whether attorney is allowed to use company seal depends on the articles. In practice, execution by signing corporation's name, without affixing seal, appears to be widely accepted. Law Com No 253, para 7.13, footnote 12.

¹¹ LPA(MP)A 1989 s1(3). Law Com No 253, para 7.13, footnote 12.

¹² Powers of Attorney Act 1971 s7(1).

¹³ LPA(MP)A 1989 s1(3). Law Com No 253, para 7.13, footnote 12.

¹⁴ LPA 1925 s74(3)

¹⁵ Law Com No 253, para 7.28, 7.31, 7.32

¹⁶ LPA (MP) A 1989 s.1(4). An individual executing as attorney for another must comply with s.1(3) and sign in the presence of a witness who attests. Law Com No 253, para 7.34

¹⁷ Law Com No 253, para 7.36. To correct minor inconsistency with LP(MP)A 1989 s1(3).

¹⁸ This is because there is no statutory provision setting out how corporations may execute instruments on which such a new provision may be hung. Law Com No 253, para 7.32.

¹⁹ See footnote 10

²⁰ See footnote 10

²¹ Law Com No 253, para 7.23, 7.30

²² Law Com No 253, para 7.39. For consistency with LP(MP)A 1989 s1(3).

²³ Law Com No 253, para 7.39. For consistency with LP(MP)A 1989 s1(3).

²⁴ Powers of Attorney Act 1971 s1(1) does not apply to bodies corporate. No equivalent provision in Singapore. But common law requires authority to execute or deliver deed to be by deed. See footnote 25.

²⁵ Law of Property Act (Miscellaneous Provisions) Act 1989 s1(1)(c)

²⁶ Halsbury's Laws Vol1(2), p.18, para.20, footnote 1. Though even prior to its abolition, the UK Court of Appeal ignored the requirement w.r.t authority to deliver in the recent case Longman v Viscount Chelsea (1989) 58 P&CR 189.

TABLE D: MODES OF EXECUTION APPLICABLE TO INDIVIDUALS AND CORPORATIONS SOLE

EXECUTION:	UK		Singapore		Corporations sole		
	Individuals Existing* (1)	New* (2)	Individuals Existing* (5)	New* (6)	Existing* (7)	New* (8)	
By self	<ul style="list-style-type: none"> Sealing not required¹ Signature and attestation required² Parchmen t not required³ Face value requirement⁴ Delivery⁵ 	<ul style="list-style-type: none"> No change 	<ul style="list-style-type: none"> Under common law, by sealing and delivery⁶ Where there is no corporate seal, by wafer seal Corporate Bodies' Contracts Act 	<ul style="list-style-type: none"> No change⁷ 	<ul style="list-style-type: none"> At CL, signing is unnecessary.⁸ Sealing is necessary, but any impression on parchment with intent to seal is sufficient. Wax or wafer not essential.⁹ Parchment¹⁰ Delivery¹¹ 	<ul style="list-style-type: none"> Private Acts provide for common seal, affixed in presence of person holding specified title or his attorney. Corporate Bodies' Contracts Act (Cap.385)¹² 	<ul style="list-style-type: none"> No change. Mode of execution or attestation authorised under any written law, charter etc continue to apply: cl 6(7), e.g. private Acts and Corporate Bodies' Contracts Act (Cap.385)
	<ul style="list-style-type: none"> Attorney may execute with his own signature¹³ Alternative ly, in the case of conveyance 	<ul style="list-style-type: none"> Clarifies that method of execution is that applicable to the donee of power of attorney e.g. individual¹⁶, 	<ul style="list-style-type: none"> Conveyanc e of interest in property for corp. sole or aggregate may be executed by an attorney signing 	<ul style="list-style-type: none"> Conveya nce of interest in property for corp. sole may be executed by an 	<ul style="list-style-type: none"> Attorney may execute in and with his own name and signature and his own seal, where sealing is required, by 	<ul style="list-style-type: none"> Attorney may execute in and with his own name and signature and his own seal, where sealing is required, by 	<ul style="list-style-type: none"> Adopt UK provisions (See col 1 & 2) e.g. individual: cl 5 & 8, corporation aggregate:
By another				<ul style="list-style-type: none"> Adopt UK provisions (See col 1 & 2) e.g. individual: cl 5 & 8, corporation aggregate: 	<ul style="list-style-type: none"> See col 5 	<ul style="list-style-type: none"> Adopt UK provisions (See col 4): cl 6(4), (5). 	

UK		Singapore		Corporations sole		
Individuals Existing* (1)	New# (2)	Individuals Existing* (5)	Individuals Existing* (7)	Corporations sole Existing* (7)	Corporations sole New# (8)	
<p>of interest in property, see col 3.¹⁴</p> <ul style="list-style-type: none"> Conclusive presumption of authority to deliver for solicitor, licensed conveyancer, his agent or employee, in respect of disposition or creation of interest in land¹⁵ 	<p>corporation aggregate¹⁷</p> <ul style="list-style-type: none"> Presumption on extended to other transactions.¹⁸ 	<p>the authority of the donor: Conveyancing and Law of Property Act (c.61) s.45²³</p>	<p>attorney signing name the corporation in the presence of at least one witness who attests the signature²¹</p> <ul style="list-style-type: none"> Conveyance of interest in property by corporation aggregate, signed by officer (of donee corporation aggregate) authorised by resolution or 	<p>name the corporation in the presence of at least one witness and in the case of a deed by affixing his own seal.¹⁹</p> <ul style="list-style-type: none"> Conveyance of interest in property, may be executed in the name of donor by officer (of donee corporation aggregate) authorised by resolution or otherwise²⁰ 	<p>attorney signing name the corporation in the presence of at least one witness who attests the signature²¹</p> <ul style="list-style-type: none"> Conveyance of interest in property by corporation aggregate, signed by officer (of donee corporation aggregate) authorised by resolution or 	<p>cl 6(1), (2)</p> <ul style="list-style-type: none"> Repeal CLPA s.45 Presumption of authority to deliver deed w.r.t solicitor only: cl 4(4)

UK		Singapore		Corporations sole		Corporations sole	
Individuals Existing* (1)	New# (2)	Corporations sole Existing* (3)	New# (4)	Individuals Existing* (5)	New# (6)	Corporations sole Existing* (7)	New# (8)
EXECUTION:							
In the name of or on behalf of another	<ul style="list-style-type: none"> Conveyance of interest in property for body corporate may be executed by an attorney signing name the corporation in the presence of at least one witness and in the case 		<p>otherwise, and in case of a deed, signing in presence of witness who attests signature.²²</p>		<ul style="list-style-type: none"> Adopt UK provision (see col.2): cl 6(4) 		

UK		Singapore		Corporations sole		
Individuals Existing* (1)		Individuals Existing* (5)		Existing* (7)		
New# (2)		New# (6)		New# (8)		
EXECUTION:		of a deed by affixing his own seal. ²⁴				
APPOINTMENT OF AGENT		<ul style="list-style-type: none"> • Powers of attorney must be executed as a deed.²⁶ • Authority to deliver deed need not be by deed²⁷ 	<ul style="list-style-type: none"> • No equivalent of the UK Powers of Attorney Act s.1. • At CL, power to execute deed must be contained in deed²⁸ • At CL, authority to deliver deed must be given by deed²⁹ 	<ul style="list-style-type: none"> • Adopt UK provision that authority to deliver a deed need not be by deed: cl 4(1)(c) (See col 1) 	<ul style="list-style-type: none"> • See col.5 	<ul style="list-style-type: none"> • See col.6

*Existing law to date. Existing position w.r.t. UK includes the Law of Property Act 1925, Powers of Attorney Act 1971 and Law of Property (Miscellaneous Provisions) Act 1989, as amended prior to that date.

New law. W.r.t UK this denotes amendments in the proposed UK Instruments (Formalities) Bill. W.r.t Singapore, this denotes amendments in the Instruments (Formalities) Bill.

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- ¹ LP(MP)A 1989 s.1(1). LPA 1925 s73 (repealed) required deeds to be signed (or marked) and sealed. There is uncertainty as to what constitutes sealing.
- ² LP(MP)A 1989 s.1(3). LPA 1925 s73 (repealed) required deeds to be signed (or marked) and sealed. Note: “sign” is now defined to include marking. Attestation was not required at common law but was always carried out in practice: Halsbury’s Statutes vol 37 p 175 (4th Ed), notes on LPA 1925 s73.
- ³ LP(MP)A 1989 s.1(1). Parchment was required by common law.
- ⁴ LP(MP)A 1989 s1(2). New requirement.
- ⁵ Required by common law
- ⁶ Law Com No 253 para 4.23-4.24
- ⁷ Although the UK Law Commission was of the view that it would be useful to allow corporations sole to execute deeds without seal, they were not convinced that such an exercise was justified at this stage as a thorough study would be required. Law Com No 253 paras 4.27-4.28
- ⁸ Halsbury’s Statutes vol 37 p 175 (4th Ed), notes on LPA 1925 s73
- ⁹ Halsbury’s Statutes vol 37 p 175 (4th Ed), notes on LPA 1925 s73
- ¹⁰ Required by common law
- ¹¹ Required by common law
- ¹² Section 1(1) (a) contract required to be in writing signed by parties may be made on behalf of body corporate in writing signed by person acting under its authority, express or implied, and (b) parol contract may be made on behalf of body corporate by person acting under its authority, express or implied
- ¹³ Power of Attorney Act 1971 s.7(1). See *Bowstead and Reynolds on Agency* (6th ed), Ch.8 para 8-088, p.428. Attorney may execute in his own name but principal should be mentioned in body of deed (otherwise undisclosed principal cannot intervene) and it is desirable that attorney should express that he executes as attorney on behalf of the principal. Specific authority to execute in his own name is probably no longer required c.f. *Fridman’s Law of Agency* (6th ed) , Ch.11, p.198.
- ¹⁴ LPA 1925 s 74(3) & (4).
- ¹⁵ LP(MP)A 1989 s1(5)
- ¹⁶ See LP(MP)A 1989 s.1(3) & (4A) and Powers of Attorney Act 1971 s.7(1) & (1A), as amended by UK Bill.
- ¹⁷ See LPA 1925 s.74(1) and (1A), as amended by UK Bill
- ¹⁸ LP(MP)A 1989 s1(5) amended by UK Bill, s.8
- ¹⁹ LPA 1925 s 74(3)
- ²⁰ LPA 1925 s 74(4)
- ²¹ LPA 1925 s 74(3) as amended by UK Bill
- ²² LPA 1925 s 74(4) as amended by UK Bill
- ²³ Similar to LPA 1925 s.123(1) (re-enacting Conveyancing Act 1881 s.46), which was superseded by UK Powers of Attorney Act 1971 s.7(1) (see prior to 1989 amendment)
- ²⁴ LPA 1925 s 74(3)
- ²⁵ LPA 1925 s 74(3) as amended by UK Bill
- ²⁶ Powers of Attorney Act 1971 s.1, as amended by LR(MP)A 1989, see generally Halsbury’s Statutes vol 37 p 55 (4th Ed) Prior to the 1989 amendment, powers of attorney had to be signed and sealed (except in relation to bodies corporate) by, or by direction and in the presence of, the donor. In the latter case, 2 witnesses were required.
- ²⁷ LP(MP)A 1989 s1(1)

²⁸ Halsbury's Statutes Vol1(2), p. 18, para.20, footnote 1. But deed not necessary where execution of deed is in presence of principal, and is signed at his request by someone on his behalf and in his name (*ditto*, footnote 10)

²⁹ Halsbury's Statutes Vol1(2), p. 18, para.20, footnote 1. Authority to deliver escrow had to be by seal: *Windsor v Branch Nominees* [1961] Ch 88.

**CONSEQUENTIAL AMENDMENTS MADE
BY DRAFT BILL**

Note: Amendments appear in italics. All amendments made in First Schedule of Bill unless otherwise noted.

COMPANIES ACT (CAP.50, 1994 Ed.)

Interests to be issued by companies only

112. No person, except a company or an agent of a company authorised *by the company by deed* shall issue or offer to the public for subscription or purchase or shall invite the public to subscribe for or purchase any interest.

Certificate to be evidence of title.

123.—(1) A certificate *executed in accordance with section 41B* specifying any shares held by any member of the company shall be prima facie evidence of the title of the member to the shares.

(2) Every share certificate shall be *executed in accordance with section 41B* and shall state as at the date of the issue of the certificate —

- (a) the name of the company and the authority under which the company is constituted;
- (b) the address of the registered office of the company in Singapore, or, where the certificate is issued by a branch office, the address of that branch office; and
- (c) the nominal value and the class of the shares and the extent to which the shares are paid up.

(3) Failure to comply with this section shall not affect the rights of any holder of shares.

(4) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence.

Quorum, chairman, voting, etc., at meetings

179.—

(5) Subject to *section 41E*, a certificate *executed in accordance with section 41B* shall be prima facie evidence of the appointment or of the revocation of the appointment, as the case may be, of a representative pursuant to subsection (3).

[Subsections (1), (2), (3), (4) and (6) not reproduced here]

Powers of liquidator *(as amended by clause 9(2) of draft Bill)*

272.—(1) The liquidator may with the authority either of the Court or of the committee of inspection —

(a) — (c) *[not reproduced here]*

(d) *do all acts and execute in the name and on behalf of the company, all deeds, receipts and other documents;*

(da) *use the company's seal; and*

(e) *[not reproduced here]*

[Other subsections not reproduced here]

Certificate as to shareholding

385. A certificate *executed in accordance with section 41B(5)* specifying any shares held by any member of that company and registered in the branch register shall be prima facie evidence of the title of the member to the shares and the registration of the shares in the branch register.

Aust.s.360.

CONVEYANCING AND LAW OF PROPERTY ACT *(Cap.61, 1994 Ed)*

Execution under power of attorney

45.—(1) *The donee of a power of attorney may, if he thinks fit, execute or do any assurance, instrument or thing in and with his own name and signature and his own seal, where sealing is required, by the authority of the donor of the power.*

(2) *Every assurance, instrument and thing so executed and done shall be as effectual in law, to all intents, as if it had been executed or done by the donee of the power in the name and with the signature and seal of the donor thereof.*

(3) *This section shall apply to powers of attorney created by instruments executed before, on or after 1st August 1886.*

[Whole section repealed]

Effect of covenant with two or more persons jointly

58.—(1) A covenant, and a contract under seal, and a bond or obligation under seal, made with two or more persons jointly, to pay money or make a conveyance, or to do any other act, to them or for their benefit, shall be deemed to include, and shall, by virtue of this Act, imply, an obligation to do the act to, or for the benefit of, the survivor or survivors of them, and to, or for the benefit of, any other person to whom the right to sue on a covenant, contract, bond or obligation devolves.

(2) This section shall extend to a covenant implied by virtue of this Act.

(3) This section shall apply only if and as far as a contrary intention is not expressed in the covenant, contract, bond or obligation, and has effect subject to the covenant, contract, bond or obligation, and to the provisions therein contained.

(4) This section shall apply only to a covenant, contract, bond or obligation made or implied on or after 1st August 1886.

(5) *In its application to instruments made after the date of commencement of the Instruments (Formalities) Act 2001, subsection (1) shall have effect as if for the words "contract under seal, and a bond or obligation under seal," there were substituted the words "contract, bond or obligation executed as a deed,".*

Mode of execution of power

69.—(1) A deed executed in the presence of *and* attested by two or more witnesses, in the manner in which deeds are ordinarily executed and attested, is so far as respects the execution and attestation thereof a valid execution of a power of appointment by deed or by any instrument in writing, not testamentary, notwithstanding that it is expressly required that a deed or instrument in writing, made in exercise of the power, is to be executed or attested with some additional or other form of execution or attestation or solemnity.

(2) This section shall not operate to defeat any direction in the instrument creating the power that the consent of any particular person is to be necessary to a valid execution, or that in order to give validity to any appointment, any act is to be performed having no relation to the mode of executing and attesting the instrument.

(3) This section shall not prevent the donee of a power from executing it in accordance with the power by writing, or otherwise than by an instrument executed and attested as an ordinary deed, and where a power is so executed this section shall not apply.

(4) This section shall apply to powers created by instruments coming into operation before, on or after 1st August 1886.

LAND TITLES ACT (*Cap.157, 1994 Ed.*)

Primary applications

19.—(9) Unless expressly prohibited by the terms of its memorandum of association, charter or other constitution, any corporation, whether sole or aggregate, shall be deemed to have power to apply to the Registrar to bring land under the provisions of this Act, and the application may be made on behalf of the corporation by its managing director, manager, secretary or by an attorney appointed in that behalf by the corporation *by deed*.

[Other subsections not reproduced here]

Interpretation

146. In this Part,

“attorney” means any person appointed by *deed* to act as the agent for or on behalf of a principal in relation to transactions with registered land, whether the agent is called attorney, receiver, broker, factor or otherwise and, where the context admits, “power” means the *deed* by which an attorney is appointed.

REGISTERED DESIGNS ACT (ACT 25 OF 2000)

32.—(1) A registered design or any right in it is personal property and may be assigned or transmitted in the same way as other personal property.

(2) A registered design or any right in it may be vested by an assent of personal representatives.

(3) A licence may be granted for the use of a registered design and, to the extent that the licence so provides, a sub-licence may be granted under any such licence.

(4) Any such licence or sub-licence —

(a) may be assigned or transmitted in the same way as personal property; and

(b) may be vested by an assent of personal representatives.

(5) Subsections (1) to (4) shall have effect subject to this Act.

(6) An assignment of a design or a right therein, or an assent relating to a registered design or a right therein, is not effective unless it is in writing and signed by or on behalf of the assignor or, as the case may be, a personal representative.

(7) Subsection (6) may be satisfied in a case where the assignor or personal representative is a body corporate by the affixing of its seal *or, as the case may be, by executing the document in accordance with section 41B of the Companies Act (Cap.50) or section 6(1) of the Instruments (Formalities) Act 2001.*

(8) Subsections (6) and (7) shall apply to an assignment by way of security as they apply to any other assignment.

(9) An assignment of a registered design or any right in it, or an exclusive licence in relation to a registered design, may confer on the assignee or licensee the right of the assignor or licensor to bring proceedings under section 23 or 36.

STAMP DUTIES ACT (Cap.312, 2000 Ed)

Section 2

“executed” and “execution” , used with reference to instruments not under seal *or not executed as deeds*, mean “signed” and “signature”;

TRADE MARKS ACT (Cap.332, 1999 Ed.)

Assignment, etc., of registered trade mark

38.—(1) A registered trade mark is assignable and transmissible in the same way as other personal or movable property, and is so assignable or transmissible either in connection with the goodwill of a business or independently.

(2) An assignment or transmission of a registered trade mark may be partial, that is, limited so as to apply in relation to some but not all of the goods or services for which the trade mark is registered.

(3) An assignment of a registered trade mark, or an assent relating to a registered trade mark, is not effective unless it is in writing signed by or on behalf of the assignor or, as the case may be, a personal representative.

(4) Subsection (3) may be satisfied in a case where the assignor or personal representative is a body corporate by the affixing of its seal *or, as the case may be, by executing the document in accordance with section 41B of the Companies Act (Cap.50) or section 6(1) of the Instruments (Formalities) Act 2001.*

(5) Subsections (1) to (4) shall apply to assignment by way of security as they apply to any other assignment.

(6) A registered trade mark may be the subject of a charge in the same way as other personal or movable property.

(7) Nothing in this Act shall be construed as affecting the assignment or transmission of an unregistered trade mark as part of the goodwill of a business.

CORPORATE BODIES' CONTRACTS ACT (CAP.385), SECTIONS 1 & 2

Cases where contracts need not be under seal

1.—(1) Contracts may be made on behalf of any body corporate, wherever incorporated, as follows:

- (a) a contract which if made between private persons would by law be required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the body corporate in writing signed by any person acting under its authority, express or implied; and
- (b) a contract which if made between private persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the body corporate by any person acting under its authority, express or implied.

(2) A contract made according to this section shall be effectual in law, and shall bind the body corporate and its successors and all other parties thereto.

(3) A contract made according to this section may be varied or discharged in the same manner in which it is authorised by this section to be made.

(4) Nothing in this section shall be taken as preventing a contract under seal from being made by or on behalf of a body corporate.

(5) Nothing in this section applies to the making, variation or discharge of a contract before 12th November 1993 except in so far as it was applicable by virtue of section 5 of the Civil Law Act (Cap.43) in force before that date.

Exclusion of companies under Companies Act

2. This Act shall not apply to any company as defined in the Companies Act (Cap.50).

**LIST OF CORPORATIONS SOLE AND
THEIR RESPECTIVE COMMON SEAL PROVISIONS**

PUBLIC TRUSTEE ACT (CHAPTER 260)

Section 3

Corporation sole.

(3) The Public Trustee shall be a corporation sole under that name, with perpetual succession and an official seal, and may sue and be sued under the above name like any other corporation sole.

Vesting of trust property.

Section 6

(2) On the Public Trustee undertaking, by declaration in writing signed and sealed by him, to administer the estate, the trust property other than stock shall, by virtue of this Act, vest in him, and the right to transfer or call for the transfer of any stock forming part of the estate shall also vest in him, in like manner as if vesting orders had been made for the purpose by the court under the Trustees Act, and that Act shall apply accordingly:

Cap. 337.

Provided that the Public Trustee shall not exercise the right of himself transferring the stock without the leave of the court.

**MINISTER FOR FINANCE (INCORPORATION) ACT (CHAPTER
183)**

Execution of documents.

4.—(1) All deeds, documents or other instruments requiring the seal of the Corporation shall be sealed with the seal of the Corporation in the presence of the Minister for the time being charged with the responsibility for finance, who shall sign every such deed, document or other instrument to which the corporate seal is affixed, and such signing shall be sufficient evidence that the seal was duly and properly affixed and that the seal is the lawful seal of the Corporation.

(2) Section 12 of the Registration of Deeds Act shall not apply to any instrument purporting to be executed under subsection (1).

BISHOP OF SINGAPORE ORDINANCE(CHAPTER 355)

Use of corporate seal

4.—(1) All deeds, documents and other instruments requiring the seal of the corporation shall be sealed with the seal of the corporation in the presence of the Bishop of Singapore for the time being or his attorney duly authorized by a power of attorney deposited under section 48 of the Conveyancing and Law of Property Ordinance and shall also be signed by the said Bishop for the time being or his attorney so authorized as aforesaid.

1955 Ed. Cap. 243.

(2) Such signing shall be and be taken as sufficient evidence that the said seal was duly and properly affixed and that the same is the lawful seal of the corporation.

BROTHERS OF ST. GABRIEL ORDINANCE(CHAPTER 356)

Execution of documents.

4.—(1) All deeds, documents and other instruments requiring the seal of the corporation shall be sealed with the seal of the corporation in the presence of the person who is the Titular Superior for the time being of the Congregation of the Brothers of Christian Instruction of St. Gabriel in Singapore, or when the office is vacant, in the presence of the Brother Procurator or of the Attorney of any one of them duly authorized by a Power of Attorney deposited under section 48 of the Conveyancing and Law of Property Ordinance, and shall also be signed by the said Titular Superior for the time being of the Congregation of the Brothers of Christian Instruction of St. Gabriel or by the Brother Procurator as the case may be or the Attorney of any one of them so authorized as aforesaid.

1955 Ed. Cap. 243.

(2) Such signing shall be and be taken as sufficient evidence that the said seal was duly and properly affixed and that the same is the lawful seal of the corporation.

CENTRAL SIKH GURDWARA BOARD ACT (CHAPTER 357)

Incorporation of Board.

2. —(1) There shall be constituted in Singapore a body corporate under the name of the Central Sikh Gurdwara Board (referred to in this Act as the Board).

(2) The Board may sue and be sued in its said name and shall have perpetual succession and a common seal which seal the Board may from time to time alter or make anew as it shall see fit to do.

(3) All deeds, documents and other instruments requiring the seal of the Board shall be sealed with the common seal of the Board in the presence of the President, the Treasurer and the Secretary of the Board, and shall be signed by the President, the Treasurer and the Secretary of the Board. Such signing shall be taken as sufficient evidence of the due sealing of those deeds, documents and other instruments

CHRISTIAN BROTHERS' SCHOOLS VISITOR ORDINANCE (CHAPTER 358)

Use of the corporate seal.

3.—(1) No deed, document or other instrument sealed with the seal of the corporation shall be deemed to be duly sealed unless such seal has been affixed in the presence of the said James Joseph Byrne or his attorney duly authorized by a power of attorney registered under section 48 of the Conveyancing and Law of Property Ordinance, or in the presence of his successor for the time being in his said office of Visitor and duly qualified as

aforesaid, and unless such deed, document or other instrument is signed by the said James Joseph Byrne or his attorney or by his successor or his said attorney.

1955 Ed.

Cap. 243.

(2) Such signing shall be taken as sufficient evidence of the due sealing of such deed, document or other instrument.

DAUGHTERS OF CHARITY OF THE CANOSSIAN INSTITUTE INCORPORATION ORDINANCE (CHAPTER 359)

Execution of documents.

5.—(1) All deeds and other instruments requiring the seal of the corporation shall be sealed in the presence of the person who is for the time being Mother Superior in this Colony of the said Society or of her attorney duly authorised and such deeds and instruments and all other documents, instruments and writings requiring the signature of the corporation shall be signed by such Mother Superior or her attorney.

(2) Such signing shall be and be taken as sufficient evidence that the said seal was duly and properly affixed, and that the seal is the lawful seal of the corporation.

DISTRICT GRAND MASTER OF THE EASTERN ARCHIPELAGO ORDINANCE (CHAPTER 360)

Use of corporate Seal.

6. All deeds, documents and other instruments requiring the Seal of the Corporation shall be sealed with the Seal of the Corporation in the presence of the District Grand Master of the Eastern Archipelago for the time being or his attorney duly authorised by a power of attorney deposited under section 48 of the Conveyancing and Law of Property Ordinance and shall also be signed by the said District Grand Master for the time being or his attorney so authorised as aforesaid.

Such signing shall be and be taken as sufficient evidence that the said Seal was duly and properly affixed and that the same is the lawful Seal of the Corporation.

1955 Ed. Cap. 243.

FEDERAL LANDS COMMISSIONER, MALAYSIA (INCORPORATION) ACT (CHAPTER 361)

Execution of documents.

5.—(1) All deeds, documents and other instruments requiring the seal of the Corporation shall be sealed with the seal of the Corporation in the presence of the Federal Lands Commissioner who shall sign every such deed, document or other instrument to which the corporate seal is affixed, and such signing shall be sufficient evidence that the seal was duly and properly affixed and that the seal is the lawful seal of the Corporation.

(2) Section 12 of the Registration of Deeds Act shall not apply to any instrument purporting to be executed under subsection (1).

Cap. 269.

Corporation to be a company for the purposes of land acquisition.

9. For the purposes of the Land Acquisition Act, the Corporation shall be deemed to be a company, and any person duly appointed by the Corporation and authorised by the Minister shall be deemed to be an officer of the company.

Cap. 152.
71/59.

Act deemed a private Act for purposes of Registration of Deeds Act.

10. For the purposes of the Registration of Deeds Act, this Act shall be deemed to be a private Act.

Cap. 269.

**FRANCISCAN MISSIONARIES OF THE DIVINE MOTHERHOOD
ORDINANCE (CHAPTER 362)**

Use of corporate seal

3.—(1) All deeds, documents and other instruments requiring the seal of the Corporation shall be sealed with the seal of the Corporation in the presence of the Reverend Mother Superior for the time being or her attorney, duly authorised by power of attorney registered under section 48 of the Conveyancing and Law of Property Ordinance and shall also be signed by the said Reverend Mother Superior for the time being, or her attorney so authorised as aforesaid.

1955 Ed.
Cap. 243.

(2) Such signing shall be taken as sufficient evidence that the seal was duly and properly affixed and that the same is the lawful seal of the Corporation.

GOOD SHEPHERD NUNS ORDINANCE (CHAPTER 363)

Use of corporate seal

3.—(1) All deeds, documents and other instruments requiring the seal of the Corporation shall be sealed with the seal of the Corporation in the presence of the Reverend Mother Superior for the time being or her attorney, duly authorised by power of attorney registered under section 48 of the Conveyancing and Law of Property Ordinance, and shall also be signed by the said Reverend Mother Superior for the time being, or her attorney so authorised as aforesaid.

1955 Ed.
Cap. 243.

HINDU ENDOWMENTS ACT (CHAPTER 364)

Use of seal

13.—(1) The seal of the Board shall be kept in the custody of the Secretary of the Board.

(2) The seal shall be affixed in the presence of the Chairman and the Secretary of the Board who shall sign as witnesses:

Provided that, in the absence of the Chairman or the Secretary of the Board or both, the seal shall be affixed in the presence of a member or members of the Board, as the case may be, who has or have been authorised in that behalf by the Board, and such member or members shall sign as witnesses.

(3) The following documents shall be executed under the corporate seal of the Board:

- (a) documents requiring registration under any written law;
- (b) documents authorising any person to act for any particular purpose on behalf of the Board; and
- (c) such other documents or classes of documents as the Minister may from time to time direct.

KWONG-WAI-SHIU HOSPITAL ORDINANCE (CHAPTER 366)

Control of capital funds

7.—(1) Subject to this Ordinance, the trustees shall have sole control of the capital funds of the corporation.

Deeds, etc., to be sealed.

(2) All deeds, documents and other instruments requiring the seal of the corporation shall be sealed with the seal of the corporation in the presence of the President and of another trustee.

(3) The signature of the President and of another trustee shall be taken as sufficient evidence of the due sealing of such deeds, documents and other instruments.

LITTLE SISTERS OF THE POOR ORDINANCE (CHAPTER 367)

Use of corporate seal

3.—(1) All deeds, documents and other instruments requiring the seal of the Corporation shall be sealed with the seal of the Corporation in the presence of the Reverend Mother Superior for the time being or her attorney, duly authorised by power of attorney registered under section 48 of the Conveyancing and Law of Property Ordinance, and shall also be signed by the said Reverend Mother Superior for the time being, or her attorney so authorised as aforesaid.

1955 Ed.
Cap. 243.

(2) Such signing shall be and be taken as sufficient evidence that the said seal was duly and properly affixed and that the same is the lawful seal of the Corporation.

METHODIST EPISCOPAL LOCATION BOARD ORDINANCE (CHAPTER 368)

Use of the corporate seal

3.—(1) All deeds, documents and other instruments requiring the seal of the corporation shall be sealed with the seal of the corporation in the presence of the said William Thomas Cherry or his attorney, duly authorised by a power of attorney registered under section 48 of the Conveyancing and Law of Property Ordinance, or in the presence of his successor for the time being in the office of Secretary of the Trustees of the Methodist Church in Singapore or his attorney duly authorised as aforesaid, and shall also be signed by the said William Thomas Cherry or his attorney or his said successor or his said attorney.

1955 Ed.

Cap. 243.

(2) Such signing shall be and be taken as sufficient evidence of the due sealing of such deeds, documents and other instruments.

MISSIONS ÉTRANGÈRES ORDINANCE (CHAPTER 369)

Use of corporate seal

3.—(1) No deed, document or other instrument, sealed with the seal of the corporation, shall be deemed to be duly sealed unless such seal has been affixed in the presence of the Procureur duly qualified as aforesaid, or his attorney duly authorised by a power of attorney registered under section 48 of the Conveyancing and Law of Property Ordinance, and unless such deed, document or other instrument is signed by the Procureur or his attorney.

1955 Ed.

Cap. 243.

(2) Such signing shall be sufficient evidence of the due sealing of such deed, document or other instrument.

NGEE ANN KONGSI (INCORPORATION) ORDINANCE (CHAPTER 370)

The seal

18.—(1) The seal of the Corporation shall be kept at the office of the Corporation and shall not be used except by the authority of a resolution of the Committee of Management, and all deeds and other documents requiring to be sealed shall be sealed with such seal in the presence of and shall be signed by the President of the Corporation or one of the Vice-Presidents and by the Honorary Secretary and one other member of the Committee of Management.

(2) The signature of the President or Vice-President and the Honorary Secretary and one member of the Committee of Management shall for all purposes be accepted as sufficient evidence of the due sealing of all deeds, documents and other instruments sealed on behalf of the Corporation.

PORTUGUESE MISSIONS ORDINANCE (CHAPTER 371)

Execution of deeds, etc.

7.—(1) No deed, document or other instrument sealed with the seal of the corporation shall be deemed to be duly sealed unless such seal has been affixed in the presence of the said Antonio Augusto Cardozo or his attorney duly authorized by a power of attorney deposited under section 48 of the Conveyancing and Law of Property Ordinance, or in the presence of his successor for the time being in his said office of Agent of the Commission for the Administration of the Estates of the Portuguese Missions in China at Singapore, and duly qualified as aforesaid, or his attorney duly authorised as aforesaid, and unless such deed, document or other instrument is signed by the said Antonio Augusto Cardozo or his attorney as aforesaid or a successor in his said office, or the attorney of such successor authorized as aforesaid.

1955 Ed.

Cap. 243.

(2) Such signing shall be taken as sufficient evidence of the due sealing of such deed or document or other instrument.

PRESBYTERIAN CHURCH OF ENGLAND MISSION ORDINANCE (CHAPTER 373)

Use of the corporate seal

3.—(1) All deeds, documents and other instruments requiring the seal of the corporation shall be sealed with the seal of the corporation in the presence of the Reverend John Angus Bethune Cook, or his attorney duly authorised by a power of attorney registered under section 48 of the Conveyancing and Law of Property Ordinance, or in the presence of his successors for the time being in the office of senior missionary, or his attorney duly authorised as aforesaid, and shall also be signed by the said John Angus Bethune Cook or his attorney, or by his successor or his attorney.

1955 Ed.

Cap. 243.

(2) Such signing shall be sufficient evidence of the due sealing of such deeds, documents and other instruments.

REDEMPTORIST FATHERS ORDINANCE (CHAPTER 374)

Use of the corporate seal

4.—(1) All deeds, documents and other instruments requiring the seal of the corporation shall be sealed with the seal of the corporation in the presence of the Titular Superior for the time being of the Redemptorist Fathers in Singapore, or when the office is vacant in the presence of the Reverend Father Minister, as the case may be, or the attorney of any one of them duly authorised by a Power of Attorney deposited under section 48 of the Conveyancing and Law of Property Ordinance, and shall also be signed by the said Titular Superior for the time being of the Redemptorist Fathers in Singapore or by the said Reverend Father Minister, as the case may be, or the attorney of any one of them so authorised as aforesaid.

1955 Ed.

Cap. 243.

(2) Such signing shall be and be taken as sufficient evidence that the said seal was duly and properly affixed, and that the same is the lawful seal of the corporation.

ROMAN CATHOLIC ARCHBISHOP ACT (CHAPTER 375)

Use of corporate name

4.—(1) All deeds, documents and other instruments requiring the seal of the Corporation shall be sealed with the seal of the Corporation in the presence of the Roman Catholic Archbishop of Singapore for the time being or when the Archbishopric is vacant in the presence of the Administrator Apostolic or of the Vicar Capitular of the Archdiocese of Singapore, as the case may be, or the attorney of any one of them duly authorised by a power of attorney deposited pursuant to section 48 of the Conveyancing and Law of Property Act, and shall also be signed by the Archbishop for the time being or by the Administrator Apostolic or Vicar Capitular, as the case may be, or the attorney of any one of them so authorised.

Cap. 61.

(2) Such signing shall be sufficient evidence that the seal was duly and properly affixed and that the seal is the lawful seal of the Corporation.

SAINT ANDREW'S MISSION HOSPITAL ORDINANCE (CHAPTER 376)

Schedule B

Use of Common Seal

26. The Board shall procure a Common Seal and shall provide for the safe custody thereof and the Common Seal shall not be affixed to any instrument except by the authority of a resolution of the Board or the Executive Committee and in the presence of at least two members of the Board and of the Secretary or some other person as the Board or the Executive Committee may appoint and these two members and the Secretary or other person aforesaid shall sign every instrument to which the Common Seal is so affixed in their presence.

SALVATION ARMY ORDINANCE (CHAPTER 377)

6.—(i) All deeds, documents and other instruments requiring the seal of the Corporation shall be sealed with the seal of the Corporation in the presence of the General for the time being of the Salvation Army or his attorney duly authorised by a power of attorney deposited under section 48 of the Conveyancing and Law of Property Ordinance and shall also be signed by the General for the time being or his attorney so authorised as aforesaid.

1955 Ed.

Cap. 243.

(ii) Such signing shall be and be taken as sufficient evidence that the said seal was duly and properly affixed and that the same is the lawful seal of the Corporation.

SCHEUT MISSIONS ORDINANCE (CHAPTER 378)

Execution of deeds etc.

6.—(1) No deed, document or other instrument sealed with the seal of the corporation shall be deemed to be duly sealed unless such seal has been affixed in the presence of the said Richard Quintens or his attorney duly authorised by a power of attorney registered under section 48 of the Conveyancing and Law of Property Ordinance or in the presence of his successor for the time being in his said office of Procureur and duly qualified as aforesaid and unless such deed document or other instrument is signed by the said Richard Quintens or his attorney or by his successor or the attorney of such successor as aforesaid.

(2) Such signing shall be taken as sufficient evidence of the due sealing of such deed, document, or other instrument.

SECRETARY OF THE SYNOD OF THE DIOCESE OF SINGAPORE ORDINANCE (CHAPTER 379)

Use of the Corporate Seal

3.—(1) The Seal of the Corporation shall not be fixed to any deed, document or other instrument except by the authority of a Resolution of the Standing Committee of the Synod of the Diocese of Singapore, and in the presence of a member of the Standing Committee duly authorised as witness in that resolution.

(2) All deeds, documents and other instruments requiring the seal of the Corporation shall be sealed with the seal of the Corporation in the presence of the said ROLAND KEITH HUDSON or his attorney, duly authorised by a power of attorney registered under section 48 of the Conveyancing and Law of Property Ordinance or in the presence of his successor for the time being in the office of Secretary of the Synod of the Diocese of Singapore or his attorney duly authorised as aforesaid and shall also be signed by the said ROLAND KEITH HUDSON or his attorney or his said successor or his said attorney and the member of the Standing Committee duly authorised as witness.

1955 Ed.
Cap. 243.

(3) Such signing shall be sufficient evidence that the said seal was duly and property affixed and the said seal is the lawful seal of the Corporation.

SOCIETY OF SAINT MAUR INCORPORATION ORDINANCE (CHAPTER 381)

Corporate seal

5.—(1) The Corporation may have and use a corporate seal which may from time to time be broken, changed, altered and made anew as to the Corporation seems fit.

(2) All deeds, documents or other instruments requiring to be sealed with the seal of the Corporation shall be deemed to be duly sealed if such seal be affixed in the presence of the said Euphrasie Labordenave or other the Lady Superior in Penang of the Society of Saint Maur for the time being, or by her attorney duly authorised by a Power of Attorney

registered under section 48 of the Conveyancing and Law of Property Ordinance, and if each such deed, document or other instrument be signed by the said Euphrasie Labordenave or her successor or her attorney so authorised as aforesaid, and such signing shall be and be taken as sufficient evidence that the seal of the Corporation was duly and properly affixed, and that the same is the lawful seal of the Corporation.

1955 Ed.,
Cap. 243.

TREASURER OF PRESBYTERIAN CHURCH, SINGAPORE ORDINANCE (CHAPTER 383)

Use of the corporate seal

3.—(1) All deeds, documents and other instruments requiring the seal of the corporation shall be sealed with the seal of the corporation in the presence of the said Francis Warrack or his attorney duly authorised by a power of attorney registered under section 48 of the Conveyancing and Law of Property Ordinance, or in the presence of his successor for the time being in the said office of Treasurer or his attorney duly authorised as aforesaid, and shall also be signed by the said Francis Warrack or his said attorney or by his said successor or his said attorney.

1955 Ed.
Cap. 243.

(2) Such signing shall be sufficient evidence of the due sealing of such deeds, documents and other instruments.

FOREIGN LEGISLATION REFERRED TO IN REPORT

G1. United Kingdom

The provisions are set out with amendments proposed by the draft UK Instruments (Formalities) Bill

G1.1 Law of Property Act 1925, section 74

G1.2 Powers of Attorney Act 1971, section 7

G1.3 Companies Act 1985, sections 36, 36A and 36AA

G1.4 Companies Act 1985, sections 36 and 36A as amended by the Foreign Companies (Execution of Documents) Regulations 1994 (SI 1994 No.950)

G1.5 Insolvency Act 1986, Schedule 4, Part III, para 7

G1.6 Law of Property (Miscellaneous Provisions) Act 1989, section 1

G2. Australia

G2.1 The Corporations Law, section 182

G1 United Kingdom

G1.1 THE LAW OF PROPERTY ACT 1925

Execution of instruments by or on behalf of corporations

74.—(1) In favour of a purchaser an instrument shall be deemed to have been duly executed by a corporation aggregate if a seal purporting to be the corporation's seal purports to be affixed to the instrument in the presence of and attested by —

- (a) two members of the board of directors, council or other governing body of the corporation, or*
- (b) one such member and the clerk, secretary or other permanent officer of the corporation or his deputy.*

(1A) Subsection (1) of this section applies in the case of an instrument purporting to have been executed by a corporation aggregate in the name or on behalf of another person whether or not that person is also a corporation aggregate.

(1B) For the purposes of subsection (1) of this section, a seal purports to be affixed in the presence of an attested by an officer of the corporation, in the case of an officer which is not an individual, if it is affixed in the presence of and attested by an individual authorised by the officer to attest on its behalf.

(2) The board of directors, council or other governing body of a corporation aggregate may, by resolution or otherwise, appoint an agent either generally or in any particular case, to execute on behalf of the corporation any agreement or other instrument which is not a deed in relation to any matter within the powers of the corporation.

(3) Where a person is authorised under a power of attorney or under any statutory or other power to convey any interest in property in the name or on behalf of a corporation sole or aggregate, he may as attorney execute the conveyance by signing the name of the corporation in the presence of at least one witness *who attests the signature*, and such execution shall take effect and be valid in like manner as if the corporation had executed the conveyance.

(4) Where a corporation aggregate is authorised under a power of attorney or under any statutory or other power to convey any interest in property in the name or on behalf of any other person (including another corporation), an officer appointed for that purpose by the board of directors, council or other governing body of the corporation by resolution or otherwise, may execute the *instrument by signing it* in the name of such other person *or, if the instrument is to be a deed, by so signing it in a presence of a witness who attests the signature*; and where an instrument appears to be executed by an officer so appointed, then in favour of a purchaser the instrument shall be deemed to have been executed by an officer duly authorised.

(5) The foregoing provisions of this section apply to transactions wherever effected, but only to deeds and instruments executed after the commencement of this Act, except that, in the case of powers or appointments of an agent or officer, they apply whether the

power was conferred or the appointment was made before or after the commencement of this Act or by this Act.

(6) Notwithstanding anything contained in this section, any mode of execution or attestation authorised by law or by practice or by the statute, charter, memorandum or articles, deed of settlement or other instrument constituting the corporation or regulating the affairs thereof, shall (in addition to the modes authorised by this section) be as effectual as if this section had not been passed.

Execution of instruments as a deed

74A.—(1) *An instrument is validly executed by a corporation aggregate as a deed for the purposes of section 1(2)(b) of the Law of Property (Miscellaneous Provisions) Act 1989, if and only if—*

(a) *it is duly executed by the corporation, and*

(b) *it is delivered as a deed.*

(2) *An instrument shall be presumed to be delivered for the purposes of subsection (1)(b) of this section upon its being executed, unless a contrary intention is proved.*

G1.2 THE POWER OF ATTORNEY ACT 1971

Execution of instruments etc by donee of power of attorney

7.—(1) If the donee of a power of attorney is an individual, he may, if he thinks fit—

(a) execute any instrument with his own signature, and

(b) do any other thing in his own name,

by the authority of the donor of the power; and any instrument executed or thing done in that manner shall, subject to subsection (1A) of this section, be as effective as if executed by the donee in any manner which would constitute due execution of that instrument by the donor or, as the case may be, as if done by the donee in the name of the donor.

(1A) *Where an instrument is executed by a donee as a deed, it shall be as effective as if executed by the donee in a manner which would constitute due execution of it as a deed by the donor only if it is executed in accordance with section 1(3)(a) of the Law of Property (Miscellaneous Provisions) Act 1989.*

(2) For the avoidance of doubt it is hereby declared that an instrument to which subsection (3) of section 74 of the Law of Property Act 1925 applies may be executed either as provided in that subsection or as provided in this section.

.....

(4) This section applies whenever the power of attorney was created.

61.3 THE COMPANIES ACT 1985

Company contracts: England and Wales

36. Under the law of England and Wales a contract may be made —

- (a) by a company, by writing under its common seal, or
- (b) on behalf of a company, by any person acting under its authority, expressed or implied;

and any formalities required by law in the case of a contract made by an individual also apply, unless a contrary intention appears, to a contract made by or on behalf of a company.

Execution of documents: England and Wales

36A.—(1) Under the law of England and Wales the following provisions have effect with respect to the execution of documents by a company.

- (2) A document is executed by a company by the affixing of its common seal.
- (3) A company need not have a common seal, however, and the following subsections apply whether it does or not.
- (4) A document signed by a director and the secretary of a company, or by two directors of a company, and expressed (in whatever form of words) to be executed by the company has the same effect as if executed under the common seal of the company.

(4A) Where a document is to be signed by a person as a director or the secretary of more than one company, it shall not be taken to be duly signed by that person for the purposes of subsection (4) unless the person signs it separately in each capacity.

...

- (6) In favour of a purchaser a document shall be deemed to have been duly executed by a company if it purports to be signed by a director and the secretary of the company, or by two directors of the company ...

A “purchaser” means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property.

(7) This section applies in the case of a document which is, or purports to be, executed by a company in the name or on behalf of another person whether or not that person is also a company.

(8) For the purposes of this section, a document is (or purports to be) signed, in relation to a director or the secretary of a company which is not an individual, if it is (or purports to be) signed by an individual authorised by the director or secretary to sign on its behalf.

i. Execution of deeds: England and Wales

36AA.—(1) A document is validly executed by a company as a deed for the purposes of section 1(2)(b) of the Law of Property (Miscellaneous Provisions) Act 1989, if and only if—

(a) it is duly executed by the company, and

(b) it is delivered as a deed.

(2) A document shall be presumed to be delivered for the purposes of subsection (1)(b) upon its being executed, unless a contrary intention is proved.

G1.4 THE COMPANIES ACT 1985 (as amended by the Foreign Companies (Execution of Documents) Regulations 1994 (SI. 1994 N.950)).

Amendments made by the Regulations are underlined.

Companies contracts: England and Wales

36.—(1) Under the law of England and Wales a contract may be made —

(a) by a company, by writing under its common seal or in any manner permitted by the laws of the territory in which the company is incorporated for the execution of documents by such a company, or

(b) on behalf of a company, by any person who, in accordance with the laws of the territory in which the company is incorporated, is acting under the authority (express or implied) of that company;

and any formalities required by law in the case of a contract made by an individual also apply, unless a contrary intention appears, to a contract made by or on behalf of a company.

Execution of documents: England and Wales

36A.—(1) Under the law of England and Wales the following provisions have effect with respect to the execution of documents by a company.

(2) A document is executed by a company by the affixing of its common seal, or if it is executed in any manner permitted by the laws of the territory in which the company is incorporated for the execution of documents by such a company.

(3) A company need not have a common seal, however, and the following subsections apply whether it does or not.

(4) A document which —

- (a) is signed by a person or persons who, in accordance with the laws of the territory in which the company is incorporated, is or are acting under the authority (express or implied) of that company, and
- (b) is expressed (in whatever form of words) to be executed by the company,

has the same effect in relation to that company as it would have in relation to a company incorporated in England and Wales if executed under the common seal of a company so incorporated.

(5) A document executed by a company which makes it clear on its face that it is intended by the person or persons making it to be a deed has effect, upon delivery, as a deed; and it shall be presumed, unless a contrary intention is proved, to be delivered upon its being so executed.

(6) In favour of a purchaser a document shall be deemed to have been duly executed by a company if it purports to be signed by a person or persons who, in accordance with the laws of the territory in which the company is incorporated, is or are acting under the authority (express or implied) of that company and, where it makes it clear on its face that it is intended by the person or persons making it to be a deed, to have been delivered upon its being executed.

A “purchaser” means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property.

G1.5 THE INSOLVENCY ACT 1986

Schedule 4 — Powers of Liquidator in a Winding up

Part III — Powers Exercisable Without Sanction in any Winding Up

7. Power to do all acts and execute, in the name and on behalf of the company, all deeds, receipts and other documents ...

7A. Power to use the company’s seal.

G1.6 THE LAW OF PROPERTY (MISCELLANEOUS PROVISIONS) ACT 1989

Deeds and their execution

1.—(1) Any rule of law which —

- (a) restricts the substances on which a deed may be written;
- (b) requires a seal for the valid execution of an instrument as a deed by an individual; or
- (c) requires authority by one person to another to deliver an instrument as a deed on his behalf to be given by deed,

is abolished.

(2) An instrument shall not be a deed unless —

- (a) it makes it clear on its face that it is intended to be a deed by the person making it or, as the case may be, by the parties to it (whether by describing itself as a deed or expressing itself to be executed or signed as a deed or otherwise); and
- (b) it is validly executed as a deed —
 - (i) *by that person or a person authorised to execute in the name or on behalf of that person, or*
 - (ii) *by one or more of those parties or a person authorised to execute it in the name or on behalf of one or more of those parties.*

(2A) For the purposes of subsection (2)(a) above, an instrument shall not be taken to make it clear on its face that it is intended to be a deed merely because it is executed under seal.

(3) An instrument is validly executed as a deed by an individual if, and only if —

- (a) it is signed —
 - (i) by him in the presence of a witness who attests the signature; or
 - (ii) at his direction and in his presence and the presence of two witnesses who each attest the signature; and
- (b) it is delivered as a deed ...

(4) In subsections (2) and (3) above “sign”, in relation to an instrument, includes —

- (a) *an individual signing the name of the person or party on whose behalf he executes the instrument; and*
- (b) *making one’s mark on the instrument,*

and “signature” is to be construed accordingly.

(4A) Subsection (3) above applies in the case of an instrument executed by an individual in the name or on behalf of another person whether or not that person is also an individual.

(5) Where a solicitor, duly certificated notary public or licensed conveyancer, or an agent or employee of a solicitor, duly certificated notary public or licensed conveyancer, in the course of or in connection with a transaction ..., purports to deliver an instrument as a

deed on behalf of a party to the instrument, it shall be conclusively presumed in favour of a purchaser that he is authorised so to deliver the instrument.

(6) In subsection (5) above —

“purchaser” has the same meaning as in the Law of Property Act 1925;

“duly certificated notary public” has the same meaning as it has in the Solicitors Act 1974 by virtue of section 87 of that Act.

(7) Where an instrument under seal that constitutes a deed is required for the purposes of an Act passed before this section comes into force, this section shall have effect as to signing, sealing or delivery of an instrument by an individual in place of any provision of that Act as to signing, sealing or delivery.

(8) The enactments mentioned in Schedule 1 to this Act (which in consequence of this section require amendments other than those provided by subsection (7) above) shall have effect with the amendments specified in that Schedule.

(9) Nothing in subsection (1)(b), (2), (3), (7) and (8) above applies in relation to deeds required or authorised to be made under —

(a) the seal of the county palatine of Lancaster;

(b) the seal of the Duchy of Lancaster; or

(c) the seal of the Duchy of Cornwall.

(10) The references in this section to the execution of a deed by an individual do not include execution by a corporation sole and the reference in subsection (7) above to signing, sealing or delivery by an individual does not include signing, sealing or delivery by such a corporation.

(11) Nothing in this section applies in relation to instruments delivered as deeds before this section comes into force.

G2. Australia

G2.1 THE CORPORATIONS LAW, SECTION 182

Division 4 — Transactions on a company's behalf

182. Confirmation of contracts and authentication and execution of documents

(1) So far as concerns the formalities of making, varying or discharging a contract, a person acting under the express or implied authority of a company may make, vary or discharge a contract in the name of, or on behalf of, the company in the same manner as if that contract were made, varied or discharged by a natural person.

(2) The making, variation or discharging of a contract in accordance with subsection (1) is effectual in law and binds the company and other parties to the contract.

(3) A contract or other document executed, or purporting to have been executed, under the common seal of a company is not invalid merely because a person attesting the affixing of the common seal was in any way, whether directly or indirectly, interested in that contract or other document or in the matter to which that contract or other document relates.

(4) This section does not prevent a company from making, varying or discharging a contract under its common seal.

(5) This section does not apply in relation to a Division 2, 3 or 4 company in relation to the making, variation or discharging of a contract before the company's registration day, but applies otherwise in relation to such a company whether it gives its authority before, on or after that day.

(6) This section does not affect the operation of a law that requires some consent or sanction to be obtained, or some procedure to be complied with, in relation to the making, variation or discharge of a contract.

(7) A document or proceeding requiring authentication by a company may be authenticated by the signature of an officer of the company and need not be authenticated under the common seal of the company.

(8) A company may, by writing under its common seal, empower a person, either generally or in respect of a specified matter or specified matters, as its agent or attorney to execute deeds on its behalf, and a deed signed by such an agent or attorney on behalf of the company and under his, her or its seal or, subject to subsections (10) and (11), under the appropriate official seal of the company, binds the company and has the same effect as if it were under the common seal of the company.

(9) The authority of an agent or attorney empowered under subsection (8), as between the company and a person dealing with him, her or it, continues during the period (if any) mentioned in the instrument conferring the authority or, if no period is so mentioned, until notice of the revocation or termination of his, her or its authority has been given to the person dealing with him, her or it.

(10) A company may, if authorised by its articles, have for use in place of its common seal outside the State or Territory when its common seal is kept one or more official seals, each of which shall be a facsimile of the common seal of the company with the addition on its face of the name of every place where it is to be used.

(11) The person affixing such an official seal shall, in writing signed by the person, certify on the instrument to which it is affixed the date on which and the place at which it is affixed.

(12) A document sealed with such an official seal shall be deemed to be sealed with the common seal of the company.

DRAFT UK INSTRUMENTS FORMALITIES BILL

ANNEX H

*(Annex H omitted. UK draft Bill is available at
<http://www.lawcom.gov.uk/library/lc253/bill.pdf>)*

Parties Consulted

The Law Reform Committee, Singapore Academy of Law

The Registrar of Companies and Businesses

The Registrar of Titles and Deeds

