Universities & the Execution of Deeds

Key issue: A university needs to apply its seal to deeds

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Overview

Deeds sometimes cause problems for universities. We often get asked by universities whether or not they need to apply their seal to validly execute a document as a deed. The answer, in short, is usually yes they do, but this never seems to be the answer they want to hear.

Applying a university seal to a document almost invariably seems to invoke an elaborate process involving some of the most senior people in the university, who often have far more pressing priorities than executing a routine and relatively low-value research contract. To make matters worse, our unwelcome answer very often comes after weeks of difficult negotiation of the document in question, which inevitably by that time is urgently needed by an already frustrated and somewhat bewildered academic.

Our purpose with this note is, therefore, to outline some of the rules that apply to many universities when executing documents as deeds and to give some general information about how in practice universities can try to ensure that they comply with those rules.

Introduction

The general legal rules relating to the execution of deeds have been developed in a piecemeal fashion over several hundreds of years by both the common law and statute. Traditionally, individuals and all types of organisations were required to apply their seal to validly execute a document as a deed. Today, however, the rules vary according to the nature of who is executing the deed; for example the rules for individuals are different to the rules that apply to companies incorporated under the Companies Acts, and the rules that apply to other types of corporations, such as universities incorporated by Royal Charter, government departments and local councils, etc, are different again.

The long and scattered legal history of deeds, together with the multiple schemes of execution still in operation, can sometimes make it difficult to be confident about which set of rules apply in any given situation. To add further to the potential for confusion, the legal rules relating to the execution of deeds may also be supplemented by the individual constitutional rules of the particular organisation in question, such as the articles and memorandum of association of a company incorporated under the Companies Acts, or the charter and statutes of a university incorporated by Royal Charter, etc.

Universities

Universities incorporated by Royal Charter fall into the category of "other types of corporation" that are distinct from companies incorporated under the Companies Acts. The general legal rules relating to the execution of deeds by these "other types" of corporations are largely still found at common law. Statute has, however, modified these rules, but to a much lesser extent than for companies and individuals.

For example under the common law rules, a deed must be made under seal but statute has modified this position for individuals following the enactment of the Law of Property (Miscellaneous Provisions) Act 1989, and for companies following the enactment of the Companies Act 1989.

In respect of "other types" of corporations such as universities incorporated under Royal Charter, however, the traditional common law rule requiring deeds to be made under seal still applies. The familiar phrase "signed, sealed, and delivered" describing the traditional three stages of execution of a deed, therefore, still applies to universities incorporated by Royal Charter.

Legal requirements for deeds

Some general points concerning the execution of deeds by different types of bodies are outlined below:

1. Section 1(1)(b) of the Law of Property (Miscellaneous Provisions) Act 1989 abolished the rule requiring individuals to apply their seal to deeds. An individual can now validly execute a deed either by:
    a. signing the deed in the presence of a witness who attests the signature; or
    b. having the deed signed at the individual's direction in the presence of two witnesses who each attest the signature.

2. Section 130(2) of the Companies Act 1989 abolished the rule requiring companies registered under the Companies Acts to have a seal. Following the enactment of the Companies Act 1989, deeds can be executed by a company by either:
    a. a director and the company secretary signing the deed; or
    b. two directors of the company signing the deed; (and in each case expressing that the deed is executed by the company).

    The Companies Act 1989 provided that documents signed in this manner have the same effect as if executed under the seal of the company. These rules for companies were further modified by sections 44 and 46 of the Companies Act 2006 to allow a single director of a company to sign a deed in the presence of a witness who attests the signature.

3. Section 47 of the Companies Act 2006 provided that a company may, by an instrument executed as a deed, appoint a person as its agent to execute deeds or other documents on its behalf. This reflects the position under the general law of agency, which provides that where an agent is authorised to execute a deed on behalf of his principal, his authority must be given in a deed. If, therefore, an individual or a corporation wished to authorise an agent to execute deeds on its behalf, it, like a company, would need to grant that authority by deed. In each case, this would in practice probably be done by executing a power of attorney in favour of the agent.

4. In all cases, section 1(2) of the Law of Property (Miscellaneous Provisions) Act 1989 requires that an instrument will not be a deed unless it makes it clear that it is intended to be a deed. This can be satisfied in practice by the document describing itself as a deed, or by expressing itself to be executed or signed as a deed.

5. In addition, the old-fashioned requirement for deeds to be delivered still exists. There is no special form or observance necessary for delivery, and it may be satisfied by words or conduct. Although a legal requirement for the valid execution of deeds, the issue of delivery is, however, often overlooked, but its effect can have unexpected consequences. For example, a deed takes effect from the time of its delivery, and not from the day on which it may be stated in the deed to have been made or executed. A deed, therefore, should only be delivered once the party making the deed intends to be immediately and unconditionally bound by it. Careful thought about delivery should, therefore, be given in the case where the deed is intended to only take effect once some condition is fulfilled.

Constitutional rules

There may also be special procedures relating to the execution of deeds set out in the constitutional documentation of the particular organisation in question that should be followed in addition to the legal rules. For example in the case of a university incorporated by Royal Charter, the constitutional documentation may be its charter, statutes and bye-laws and these may contain detailed rules relating to how the university may apply its seal to various types of documents. In our experience, some universities have in recent years modified their constitutional rules relating to the use of their seal to facilitate the execution of property leases and other types of contracts, typically by delegating the signing of particular types of documents to a nominated individual (although the seal must still be applied in addition).

Getting around the rules?

It is important that any applicable constitutional rules relating to the execution of deeds are followed in addition to the legal rules so to avoid questions as to the validity of the deed at a later date. This is particularly important, for example, where the transaction in question is one that requires a deed by law, as in the case of the grant of a power of attorney, etc.

That said, however, section 74(1) of the Law of Property Act 1925 sets out a presumption in favour of a purchaser that a deed will be deemed to have been duly executed by a corporation, if it complies with the conditions set out in that section, namely a seal purporting to be the seal of the corporation is applied to the deed in the presence of, and attested by, two persons purporting to hold certain specified offices (including members of its council).

In addition, a corporation may be estopped (i.e. not be permitted for equitable reasons) from contesting the validity of a deed for reasons of non-compliance with the formalities of its internal constitution, if it appears on the face of the document to so comply. Estoppel is, however, a complex area of law and so it should not be assumed that the courts would accept arguments based on this legal principle. Estoppel would also not apply in circumstances of forgery.

Conclusion

To avoid questions as to the validity of documents executed as deeds, it is important that the specific legal and constitutional rules applicable to the organisation in question are followed. As outlined above, there are a few scenarios in which a court may essentially imply that a document has been validly executed as a deed even when the rules have not been strictly followed. These scenarios should not, however, be relied upon particularly in cases where the transaction in question is one that requires a deed by law. Alternatively where the transaction is one which does not require a deed by law but, nevertheless, the parties intend, but fail, to execute the document properly as a deed, that document may still be binding on the parties as a simple contract if it complies with the relevant requirements of an instrument under hand.