

We use hyperlinks to give you more information. If you don't want to click hyperlinks, you can search for the information on the **ATO website**.



General advice

Reference Number: 1052103132218

Hello Hein Preller,

We received your correspondence on 16.06.2022 regarding what is required in the way of a signature for an electronic trust deed. We're sorry for the delay in responding to your query.

We haven't been able to respond to you due to the very high demand for our advice service from the community.

This guidance is general in nature and is not binding on the Commissioner.

Criteria for a valid electronic signing of a corporate document or deed

The trust deed you have attached is for a Self-Managed Super Fund (SMSF) run under a corporate trust structure. In response to the COVID-19 pandemic, the government introduced the 'Corporations (Coronavirus Economic Response) Determination (No.1) 2020'. This determination modified section 127(1) of the Corporations act, allowing corporate trust deeds to be signed in electronic form. As this was a determination, it was due to expire in March 2021.

Fortunately, on the 22nd of February 2022 the 'Corporations Amendment (Meetings and Documents) Bill 2021' was given royal assent. This bill permanently enshrines the ability to sign corporate documents (including deeds) electronically.

Relevant passages from the legislation:

110A Technology neutral signing

(1) A person may sign a document to which this division applies:

- (a) By signing a physical form of the document by hand; or*
- (b) By signing an electronic form of the document using electronic means;*

If the method of the signing satisfies subsection (2)

(2) A method of signing satisfies this subsection if:

- (a) The method identifies the person and indicates the person's intention in respect of the information recorded in the document; and*
- (b) The method was either:*
 - (i) As reliable as appropriate for the purpose for which the information was recorded, in light of all the circumstances, including any relevant agreement; or*
 - (ii) Proven in fact to have fulfilled the functions described in paragraph (a), by itself or together with further evidence*

You can find further information about the legislation [here](#):

As such, if the method of signing the electronic form satisfies the criteria above, then it may be considered a valid signature for the purposes of the trust deed.

Auditor questioning the validity of a document or deed

It is the responsibility of an auditor to be confident in the validity of a document or deed from a SMSF they are auditing. The auditor must feel assured that a document or deed from a SMSF they are auditing is authentic and valid before determining to the ATO that the SMSF is complying.

If an auditor does not feel confident in this, whether that be due to a lack of timestamps or audit trails etc, then the auditor must work with the SMSF trustees to gather further evidence. There are no exact criteria for what this may be, but could include email timestamps, correspondence between trustees, written confirmation from trustees etc- it is up to the auditor to decide what evidence is required for them to feel confident in a document or deeds validity (as they will be the ones certifying compliance). I have added a link below that will take you to the ATO compliance audit guide- this should give you a good idea about the minimum expectations of an audit check:

[Compliance Audit Guidelines \(ATO.gov.au\)](#)