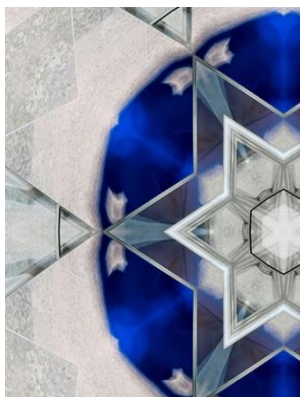


CORPORATE AND COMMERCIAL

# COVID-19: Practical Considerations: Execution of Documents

19 March 2020

Guidance for organisations in Northern Ireland.



Given current guidance of social distancing, for many organisations the usual authorised signatories may be unavailable, or not available at their usual location. We outline some practical solutions to consider, including that many documents can be validly executed using an electronic signature<sup>[1]</sup>, provided that applicable execution formalities are satisfied, and there are no restrictions on the use of electronic signatures in relation to the document in question.

**Authorised Signatories**

Consider appointing additional authorised signatories, and whether any additional approvals need to be obtained to do this.

**Meetings**

Check your constitutional documents to see whether board meetings can be held by telephone or video conference.

**Witnessing**

Certain documents must be witnessed (e.g. a deed executed by an individual). The witness should be physically present in the same location as the signatory and observe their signature. A witness must not be party to the document, and while it is regarded as best practice for a witness to be unconnected with the signatory, that may not be practical in the current environment, given public health advice on social distancing.

In respect of the execution of documents where signatures must be witnessed, where a signatory uses an electronic signature (e.g. an individual executing a deed on his/her own behalf, or an attorney executing a deed on behalf of a body corporate), the witnessing requirement is met where either:

- the witness is physically present when the signatory applies his/her electronic signature, and the witness then applies his/her electronic signature underneath as witness; or
- the witness is physically present when the signatory applies his/her electronic signature, but does not have his/her own electronic signature, and therefore prints the electronically-signed document and witnesses using a wet-ink signature.

**Documents 'Under Seal' and Powers of Attorney**

In Northern Ireland, a company may execute a deed by arranging for the document to be signed by two authorised signatories, or by one director in the presence of witness. This can be carried out electronically in accordance with the advice set out in this note. However, the practical implications of doing so, as set out below, should always be considered.

This document is a general summary of developments and is not a complete or definitive statement of the law. Specific legal advice should be obtained where appropriate.

<sup>[1]</sup> *The use of electronic signatures is governed by Regulation (EU) No 910/2014 ("eIDAS") and the Electronic Communications Act 2000 (as amended).*

A company may also execute a deed 'under seal', by affixing its common seal as authorised by the board of directors. It will often also use its common seal to execute documents that are not deeds. Unless the company's constitution provides otherwise, any document to which the common seal is affixed must be signed by a director and countersigned by the company secretary, a second director or another person appointed by the directors for that purpose. Some companies have specified in their constitutions that the signature of only one director is required when affixing the seal. Again, this is something you may wish to check for in your constitutional documents.

There is currently no electronic means for affixing a seal. However, companies can grant a power of attorney (which is not a deed, and does not need to be executed under the common seal) to one or more individuals to execute documents (including deeds) on its behalf. The attorney then executes the document (using his/her electronic signature where

appropriate) on the company's behalf without any requirement for the company seal to be affixed (but his/her signature must be witnessed if the document is a deed). This may be a practical solution where a company is presented with a situation where a document needs to be executed under its common seal, but the signatories and the common seal are not necessarily in the same location (as we expect to be the case with many companies at the moment).

**Additional Practical Considerations**

Some additional practical issues to consider in relation to the use of electronic signatures include:

- **Filing Requirements:** Registries, including Companies House, the Land Registry and the Intellectual Property Office require certain filings to be delivered as wet-ink originals. The requirements of each such registry (and any relevant international registry) should be checked before a decision is made as to whether to use electronic or wet-ink signatures.

- **Forms of Electronic Signature:** In Northern Ireland, there is a wide interpretation of the type of electronic signature that may be used to sign a document. Forms of electronic signature vary from applying a JPEG signature, including a typed name, to using a digital signature created using encryption technology. Some forms of electronic signature will be more secure, and therefore may carry more evidential weight than others. There may be an increased risk of repudiation when using a basic electronic signature over a more complex form. However it is worth noting that wet-ink signatures carry many of the same risks (e.g. forgery).
- **International Transactions:** Where a document is governed by the law of another jurisdiction or where non-UK parties are involved, it would be sensible to seek confirmation from local counsel in the other jurisdiction regarding the recognition of electronic signatures.

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