

COVID-19

# Practical Considerations: Execution of Documents

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Due to the outbreak of COVID-19 and resulting restrictions on travel and meetings, it is necessary to find practical solutions to minimise disruptions to business transactions, while ensuring compliance with public health recommendations regarding containment of the virus.

In light of the restrictions in place, 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 are capable of being 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 videoconference.

## 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 in light of public

health recommendations regarding 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

When an Irish company executes a deed, it generally does so '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:

<sup>1</sup>The use of electronic signatures in Ireland is governed by Regulation (EU) No 910/2014 ("eIDAS") and the Electronic Commerce Act 2000.

- Consent:** Under Irish law counterparty consent is required to a party using an electronic signature. This consent may be implied, however best practice is to obtain the express consent of the counterparty where possible. When dealing with public bodies, electronic signatures may only be used where the public body consents to their use and if the particular IT requirements of that public body have been satisfied.
- Restrictions:** Certain categories of documents (including wills; trusts; enduring powers of attorney; deeds of assurance of interests in real property; property registration application forms; affidavits or statutory or sworn declarations; and documents required by the rules, practices or procedures of a court or tribunal) cannot, for the time being, be signed using electronic signatures<sup>2</sup>. It is also important to check whether there are any contractual provisions in the document which is to be signed which restrict the use of electronic signatures.
- Filing Requirements:** Registries, including the Companies Registration Office, the Property Registration Authority and the Intellectual Property Office of Ireland 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:** Irish law is 'technology neutral' on the forms 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-Irish parties are involved, it would be sensible to seek confirmation from local counsel in the other jurisdiction regarding the recognition of electronic signatures.
- Virtual Execution:** For any transaction where the parties are not physically together and executed documents are to be circulated electronically (regardless of whether documents are executed electronically, or comprise scanned copies of wet-ink documents) parties should ensure they comply with [guidance on the 'virtual' execution of documents](#) issued by the Law Society of Ireland.

<sup>2</sup> Section 10, Electronic Commerce Act, 2000.

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