



# COVID-19: REMOTE OR VIRTUAL SIGNINGS

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The restrictions imposed upon us as a result of the COVID-19 Coronavirus pandemic have led to a number of practical issues for parties signing and executing documents. This note sets out a recommended approach to remote or virtual signings, together with some practical considerations.

## Executing documents remotely: a recommended approach

### Deeds

Email the relevant signatories with a complete final version of the document (for convenience a separate PDF of the signature page should be sent with the document) together with a request that the signatories:

- print the document (or just the signature page); and
- sign the signature page (complying with necessary witnessing formalities).

Alternatively (for example, if the signatories do not have access to a printer), the signatories may use an electronic signature. In either case, the signatories should email back both:

- the complete final version of the document; and
- the validly executed signature page.

This email constitutes the original duly executed document.

### Simple contracts

The procedure recommended for deeds (see above) should be followed if possible. However, it would also be acceptable to email the final document to the signatories and receive back the signed signature page only. The return email should contain express authority from the relevant signatory for the recipient to attach the signature page to the final contract.

### Key points to note

**Counterparts:** it is recommended that the document contains a counterparts clause (although this is not a strict legal requirement).

**Electronic signatures:** electronic signatures are a valid means of executing documents (including deeds). However, they should not be used for deeds effecting registrable real estate dispositions. A number of electronic signature software platforms are available (for example, DocuSign) and may assist but are not required.

**Signing on a mobile device:** smartphones or other mobile devices may also be used in the signing process. An individual is able to sign electronically via a touch-screen.

**Pre-signed signature pages:** for simple contracts, pre-signed signature pages are acceptable. They should not be used for deeds.

**Witnesses:** if a signature needs to be witnessed or attested, the witness should be physically present when the document is signed. Remote witnessing (i.e. witnessing through a video call)

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may not be valid, although we understand that Government is considering issuing guidance on this topic.

**Who is an appropriate witness?** A witness should be independent and must not be another party to a document. Where no one else is available, an adult relative may witness a signature.

**Rebuttable presumption of delivery:** the rebuttable presumption is that delivery of a document takes place on execution. If the document is not intended to be delivered until completion, this must be made clear.

### Practical considerations

**Speak to the signatories:** give plenty of notice and ensure that they are all comfortable with the proposed approach. All signatories should be clear on how electronic devices may be used to assist in the process, including what applications must be downloaded. Parties should also check permissions under their internal policies on the use of those applications.

**Check the constitutional documents of the signing parties:** ensure that they do not contain anything that would restrict the proposed method of execution. No positive authority to use a remote method of execution is needed in the absence of any such restriction.

**Consider confidentiality and email security:** this is particularly important if a personal email account will be used to facilitate any part of the signing process.

**Powers of attorney:** the issues referred to above apply to both the grant of a power of attorney and the signature of a document by the donee of the power.

**Common seals:** corporations such as government bodies and local authorities are required to execute deeds using a seal. Seals may not be available and this will need to be

considered on a case by case basis.

This document has been produced by the Slaughter and May Commercial Contracts group. If you would like further information about the impact of COVID-19 on your business, please speak to your usual Slaughter and May contact.



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