

## **Briefing Note – Virtual signings**

This note sets out the procedure to follow in the event of virtual signings/closings for property transactions. It is based on the Law Society Practice Note dated 16<sup>th</sup> February 2010 on best practice for execution of documents by virtual means.

It covers those transactions where signatories may not be physically present at exchange, completion or, in the case of corporate transactions with a property element, closing.

Virtual signings and closings are becoming more common, but recent case law suggests that we need to be especially cautious of virtual methods in relation to property transactions given statutory requirements in relation to real estate contracts and deeds and land registration rules (see ss.1(3) and 2 Law of Property (Miscellaneous Provisions) Act 1989.)

### **Best Practice Guidelines for Virtual Transactions**

- Virtual transactions need the prior approval and cooperation of all parties;
- You need to have considered the relevant regulatory and tax implications of virtual signings;
- The parties' domestic rules and internal rules need to allow for virtual execution and you must have the appropriate Board Resolutions if required;
- Legal opinions in the case of foreign companies must address the authority of the signatory to use virtual forms of execution and enforceability.
- Deeds should be returned in full PDF or Word format together with signature page. Sending just the signature page or using an advance pre-signed signature page is not sufficient for the purposes of section 1(3) LP(MP)A 1989 as to execution of real estate documents as a deed.
- Real Estate Contracts should also be returned in full PDF or Word format with virtual signature page attached as case law suggests that that requirements of section 2 LP(MP)A 1989 are analogous to those for deeds in section 1(3).
- Mortgages, trust deeds, debentures or other security documents relating to interests in land ought to be treated the same as deeds and contracts above.
- In exchange of contracts using Law Society Formula B, you must tell the other side that you are using virtual signatures and do not have a 'wet ink' copy in front of you.

### **Registration Considerations**

As land transactions are subject to registration rules and requirements, you need to ensure that you will have 'wet ink' originals available for registration at HM Land Registry or Companies House.

On signing/completion/closing, appropriate undertakings for production of 'wet ink' originals must be obtained. If you are asked to give such an undertaking, you can only do so if you have the 'wet ink' signature in your possession and therefore under your control. Simply seeing an electronic version of the wet ink signature is insufficient.

## **Guarantees and simple contracts**

There are different requirements in relation to guarantees, which need to comply with section 4 Statute of Frauds 1677. Depending on the circumstances of the transaction, it may be sufficient to simply attach a signature page to an email or use a pre-signed signature page.

Simple Contracts not relating to land may rely on emails, single page signatures or pre-signed signatures.

For more information on guarantees and simple contracts, refer to Law Soc Practice Note link below.

## **Virtual Transactions in practice**

- Do all parties agree to virtual signings?
- Final execution copies of the documents are emailed to the absent parties as either word or PDF documents. In the case of large documents you can also send separate signature pages.
- Absent signatories print off the signature page (you don't need to print off the full document) and sign/execute it appropriately.
- Signed/executed signature pages then get emailed back to the coordinating lawyers as a PDF together with the full document. In the case of deeds, you need to be clear about when delivery is intended to take place i.e. is the emailed signature delivery or not.
- Final versions of the document with the signature page ought to be circulated to all parties by the co-coordinating lawyers
- The Law Society does not mention the need for a memorandum of understanding between the parties but it would seem sensible to agree one stating that it has been agreed that the documents be completed virtually.

For more information, refer to

[www.lawsociety.org/productsandservices/practicenotes/executionofdocumentsbyvirtualmeans](http://www.lawsociety.org/productsandservices/practicenotes/executionofdocumentsbyvirtualmeans)