



COVID-19: LAW SOCIETY'S GUIDANCE ON THE USE OF VIRTUAL EXECUTION AND E-SIGNATURES

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Background

The Law Society has recognised the current pandemic and social distancing rules has increased the need for solicitors and clients to be able to close deals without being face to face. This has led to an increase in the use of virtual executions and the use of e-signatures as a practical means for completing transactions in a timely manner.

For a number of years, the Law Society has promoted the use of virtual execution and e-signatures in order to facilitate legal transactions in an increasingly digital world. To this end, it had issued the following practice notes:

- [Practice note, issued on 16 February 2010](#), on the execution of documents by virtual means following the decision of the High Court in Mercury Tax Group (and another) v HMRC [2008]; and;
- [Practice note on the execution of a document using an electronic signature](#), issued on 21 July 2016.

The Law Society has confirmed these practice notes continue to apply during the pandemic and the law in these areas remains unchanged. However, the Law Society has issued a recent note which aims to bring the previous notes to the attention of all solicitors and to provide an update on recent relevant advances in the use and acceptability of electronic execution.

Updated guidance published on 18 June 2020

The update includes tips on how to operate in practice during the pandemic, with the aim being to support solicitors and their clients to complete a transaction by virtual execution with confidence.

The key tips are as follows:

Best Practice

- The Law Society's practice notes, as noted above, should be followed.

Agree

- Speak to the lawyers on the other side of any transaction to ensure there is clear agreement on how to manage the transaction.

Verify

- Consider what steps (if any) you wish to take to verify the identity and authority of each person signing beyond that which is required by law, including the anti-money laundering regime.
- How best to do this may depend on common practice in the relevant area or specific regulatory requirements. For example, on certain transactions solicitors may be involved in checking the identity of a signatory, the authenticity of a signature and/or whether a document has been properly approved. On other transactions the identity, authenticity and approval can be assumed. The use of electronic signatures will not change this.
- If authenticity cannot be assumed, practitioners may wish to use additional and objective sources of verification. This could include using video or photographic evidence. One technique that has been used is to make a live recording, which is then shared with all the parties as soon as possible.

Evidence

- Ensure that you have the evidence immediately to hand on file in a timely and accessible manner. This may include taking screen shots if you cannot save the evidence directly to your system.

Report

- Use electronic means to report back to all parties that the transaction has closed.

Understand

- Ensure you are aware of the legislative, regulatory or cultural requirements for virtual execution and e-signatures in the relevant legal area.
- Note that there remains the requirement, in current law, that the witness must be physically present when a deed is executed by or on behalf of the maker.
- It is possible to demonstrate physical presence while also maintaining social distancing with appropriate safeguards, although there are practical challenges. When operating on the extremities of what may reasonably be considered to constitute presence, you should collect clear evidence of presence, such as a video recording (subject to getting appropriate data protection rights consents).

Comment

We have seen a recent increase in the use of digital and e-signature platforms such as DocuSign and Adobe Sign. However, there is still a lack of understanding in the legal profession how these services can be used, particularly when it comes to M&A or private equity transactions.

The updated guidance from the Law Society provides useful practical advice to solicitors and their clients to determine whether the use of virtual execution is appropriate for a particular transaction, and if so, what additional steps can be taken to ensure these electronic methods are used appropriately.

It is important to be aware that these are only tips and solicitors need to review each

specific transaction on a case-by-case basis to determine what level of risk is acceptable. Whether it is appropriate to use an electronic signature may depend on any relevant legislation, regulatory requirements within specific practice area and the type of document being signed or executed.

The impact of the pandemic has led to an increased focus on this topic and it is likely further developments will arise as remote working increases. For example, the Law Society identifies that further engagement is required with both the Law Commission and the Government on the use of virtual executions and e-signatures, including consideration of methods such as video witnessing of electronic signatures.

A copy of the Law Society's updated guidance is available [here](#).

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