

COVID-19 Ireland Update: New E-Signature Requirements for Corporate Entities

COVID-19 is a global health crisis. It has also caused considerable volatility and disruption to the financial markets, which will have a radical impact on the corporate landscape for a prolonged period.

In an effort to curb the spread of the virus, various governments have announced stringent measures requiring people to stay at home, as well as restricting personal travel and contact between individuals.

From a business perspective, the current situation has resulted in most companies deploying their business continuity plans which include extensive remote working for all, or substantially all, personnel in order to comply with government imposed self-isolation and physical distancing measures.

The speed at which many companies have moved to full time remote working arrangements has presented some technological and operational challenges, including an inability to convene physical board meetings, which may disrupt a company's ability to conclude transactions and / or launch new products where directors are not resident or currently located in Ireland (the implications of which are considered in our recent client update on [Tax residence of Irish companies and Funds](#)). However, where directors are located in Ireland it remains possible to convene board meetings remotely and, *prima facie*, these would still serve to satisfy the need to maintain management and control of Irish corporates within the jurisdiction.

This update examines the specific impact that current restrictions may have on transactions, in particular, the inability to execute material contracts with wet ink / original signatures and the general use of electronic signatures in contracts. We also provide an update on the Companies Registration Office ("CRO") services during these unprecedented times.

Electronic Signatures

Electronic signatures have been legally recognised in Ireland since the Electronic Commerce Act 2000 (the "Act") (which implemented the Electronic Signatures Directive 1999/93/EC) was enacted. Section 13 contemplates the use of electronic signatures in contracts if each party consents to the use of an electronic signature by the other party. Regulation (EU) 910/2014 on electronic identification and trust services for electronic transactions in the internal market ("eIDAS Regulation") replaced the 1999 Directive from 1 July 2016, and further enshrined the principle in EU law that electronic signatures will not be denied legal effect or admissibility as evidence in legal proceedings solely on the grounds that it is in an electronic format¹.

Under Irish law therefore, an electronic signature has the equivalent legal effect of a handwritten signature. However, it is recommended that where possible contracts

¹ Note that the valid execution of documents in Ireland depends on a number of issues, which include the type of execution required; legislative requirements; governing documentation of the company; and powers of the individuals/companies concerned.

are updated to include a consent provision for the use of electronic signatures or, failing an express contractual provision, that the consent of the other party be received prior to the execution.

Deeds which are required to be executed under seal cause greater challenges. One solution is the use of powers of attorney (which themselves are not required to be executed under seal), enabling the attorney to then execute the deed on behalf of the company without any requirement to apply the corporate seal. However, it should be noted that execution of a deed in such a manner requires the attorney signature to be witnessed.

Section 14 of the Act provides that for documents where the signature is required to be witnessed an "advanced electronic signature based on a qualified certificate" can be used to execute such documents. However, the Law Society of Ireland has provided guidance (the "Guidance") that such provisions are enabling and therefore do not prevent the signatory or the witness using any other form of e-signature². The Guidance further clarifies that current best practice is that witnessing of such signatures requires physical presence and witnessing of signatures via telecommunication facilities is not acceptable.

Historically, there has been little use of electronic signatures, however in general, there are no legal impediments under Irish law from utilising them³, but when considering the use of e-signatures every transaction and document must be considered on its own merits to ensure that requirements of the relevant governing law

² Guidance note of the Business Law Committee of the Law Society of Ireland, "*E-signatures, electronic contracts and certain other electronic transactions*".

³ Section 10 of the Act prescribes certain agreements that require "wet ink" signatures and cannot be executed via electronic signature.

are taken in to account and that any document-specific execution requirements (for example witnessing, seals, notarisisation) are adhered to.

Legal Opinions

The Maples Group continues to support our clients by issuing legal opinions on transactions when required. We will be applying e-signatures to the majority of our legal opinions throughout the current period of remote working as a result of COVID-19. The application of an e-signature to legal opinions will bind the Maples Group in the same way as a wet ink document, without the need for a wet ink version of any legal opinion to be subsequently issued.

To the extent that searches need to be undertaken in order to issue a legal opinion, currently legal search companies are still able to conduct most searches. However, should this situation change or any particular search be unavailable, your usual Maples Group contact will liaise with you to agree an alternative basis upon which we can issue our opinion.

CRO Filings

On 30 March 2020, the CRO announced that due to COVID-19 it could not process submissions currently. It has recommended that companies continue to submit documents through its online portal CORE but it has given no commitment as to when these documents will be processed. It has also relaxed its requirements for wet ink signatures for certain documents only (and in exceptional circumstances, on a case-by-case basis). The filing of a form C1 (registering the details of a charge) will remain unaffected, as these filings are made through CORE, but incorporations will inevitably take longer to conclude and the

current expectation is that it will take approximately a week from submission of the required forms to the CRO before a newly incorporated Irish entity can be established.

Maples Group Response

We are closely monitoring the rapidly developing implications of COVID-19 and have launched a resource hub with relevant updates and information for our clients at www.maples.com/covid-19

Further Information

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