

Electronic Signatures and Registered Land - No Change in Practice Despite New Irish Regulations

The move towards e-conveyancing in Ireland has been aided by the introduction of the Electronic Commerce Act 2000 (Application of sections 12 to 23 to Registered Land) Regulations 2022 (the "Regulations") which amend the Electronic Commerce Act 2000 (the "E-Commerce Act") by providing that the E-Commerce Act shall apply to the law governing the manner in which an interest in registered land, i.e. property which is registered in the Land Registry, may be created, acquired, disposed of or registered. This amendment allows for the legal recognition of the electronic execution of documents dealing with interests in registered land.

Previously, interests in land were specifically excluded from the ambit of the E-Commerce Act. The Regulations represent a U-turn on this position with respect to registered land. The Regulations apply to interests in registered land only. Interests in unregistered land, i.e. property registered in the Registry of Deeds only, remain outside the ambit of the E-Commerce Act for the time being.

The Property Registration Authority of Ireland (the "PRAI") has welcomed the introduction of the Regulations stating that they will allow it to "*explore the potential for the development of a paperless system of registration*". The PRAI also clarified that it is not currently in a position to accept electronic or digital signatures on documents submitted to it for registration. While the Regulations assist in advancing the move towards e-conveyancing in Ireland, it appears that the status quo will remain for some time as ultimately PRAI practice will

dictate whether electronic signatures are acceptable on documents requiring registration in the Land Registry.

Despite the Regulations, practice has not yet changed in Ireland. Original wet ink signatures are still required on all documents which create, acquire, dispose of or register an interest in real property in Ireland for both registered and unregistered property. Such documents include, for example, deeds of transfer, mortgages, occupational leases and deeds of release. The only exception is a contract for the creation, acquisition or disposal of such interests, i.e. a contract for sale. Other real estate documents which may be executed by electronic signature include licences, side letters, exclusivity agreements and non-disclosure agreements.

Hopefully the PRAI will take this opportunity to accelerate the move towards e-conveyancing in Ireland, following the approach of the HM Land Registry in England and Wales which adopted the use of electronic signatures in July 2020. The adoption and acceptance of electronic signatures for conveyancing transactions in Ireland would certainly be a welcome development and would solve many practical issues.

For further information, please reach out to your usual Maples Group contact or any of the persons listed below.

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