



Focus on
COVID-19
Coronavirus

A&L Goodbody

COVID-19 and the increasing demand to use e-signatures

Since the first case of coronavirus in Ireland in February 2020, there has been an unparalleled impact on the country and the Irish economy.

Aside from the general challenge of trying to keep a business functioning in these circumstances, working from home raises practical issues for Irish companies who need to sign documents during this period (some of which may be essential to maintain funding or continuity of business operations). Unsurprisingly, there has been a significant increase in interest in the use of “**electronic signatures**” or “**e-signatures**”.



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Electronic signatures

The legal background

The use of e-signatures in Ireland is governed by both domestic and EU legislation:

- i. the Electronic Commerce Act 2000 (**2000 Act**) (which implemented Directive 1999/93/EC which created an European community wide framework for the use of e-signatures (the **1999 Directive**))
- ii. Regulation (EU) No 910/2014 (**eIDAS Regulation**), which came into force on 1 July 2016 and repealed the 1999 Directive.

The 2000 Act provides that (subject to certain exceptions, which are discussed below), e-signatures have the same legal effect as 'wet-ink signatures'. The eIDAS Regulation (which expands on the old 1999 Directive) similarly gives legal effect to the use of electronic signatures for the execution of documents but on an EU-wide basis and to better facilitate cross-border transactions.

Due to the supremacy of EU law, where there is a conflict between the terms of the 2000 Act and the eIDAS Regulation, the eIDAS Regulation will take precedence. However, where the 2000 Act and the eIDAS Regulation differ and impose separate (rather than conflicting) requirements, both must be complied with.

In addition, the Law Society of Ireland has published a guidance note '[E-Signatures, Electronic Contracts and Certain other Electronic Transactions](#)' in March 2020.

Electronic signatures

Types of e-signatures

The eIDAS Regulation provides for three kinds of e-signatures: (i) simple electronic signatures (ii) advanced electronic signatures and (iii) qualified electronic signatures.

- **Simple Electronic Signature (SES):** means 'data in electronic form which is attached to or logically associated with other data in electronic form and which is used by the signatory to sign'. This type of signature can include .jpeg images of signatures or typed signatures.
- **Advanced Electronic Signature (AES):** means a signature that meets the following requirements:
 - » it is uniquely linked to the signatory
 - » it is capable of identifying the signatory
 - » it is created using electronic signature creation data that the signatory can, with a high level of confidence, use under his sole control
 - » it is linked to the data signed therewith in such a way that any subsequent change in the data is detectable

This signature provides a greater level of authentication and will therefore provide greater evidential weight.

- **Qualified Electronic Signature (QES):** means an 'advanced electronic signature that is created by a qualified electronic signature creation device, and which is based on a qualified certificate for electronic signature'.

A QES provides an even greater level of authentication given it is created in a manner that satisfies a greater number of technical requirements. If those are met, eIDAS provides that a QES will have the same legal effect as a handwritten signature (Recital 49, eIDAS).

The 2000 Act has not been updated to reflect the 'three tier' EU electronic signature framework introduced by the eIDAS Regulation. The 2000 Act provides for 'electronic signatures' and 'advanced electronic signatures' however while similar these are not direct equivalents to those specified under the eIDAS Regulation.

For certain documents (including those to be witnessed and those under seal), the 2000 Act permits an 'advanced electronic signature based on a qualified certificate' (**AES/QC**) to be used. It is important to note that an AES/QC is not the equivalent of an AES or a QES under the eIDAS Regulation and instead creates separate, distinct requirements. Whilst the primary e-signature platform providers offer e-signatures purporting to conform to the eIDAS Regulations, we are not aware of a provider who offers an e-signature conforming to an AES/QC under the 2000 Act.

Frequently Asked Questions



01

Our directors need to sign legal documents on behalf of an Irish company, but the directors are based in different parts of the country. Can this be done using e-signatures?

Depending on the type of document, it should be possible for the relevant documents to be signed remotely by the directors. However, the following should be considered:

- the type of document to be signed
- whether the document needs to be witnessed
- whether the other parties to the document have consented to the use of e-signatures
- any filing/registry requirements

Type of document

You should consider the type of document to be signed, and what type of e-signature might be required. If the document is under hand (such as simple contracts and agreements), a simple e-signature can be used (although it is important to ensure the document does not contain a restriction on the use of e-signatures).

Section 10 of the 2000 Act provides that the general provisions under the 2000 Act permitting the use of e-signatures are without prejudice to the rules pertaining to certain types of documents. These documents include: wills, codicils, trusts, enduring powers of attorney; documents relating to the way interests in real property are created, acquired and disposed, or registered; affidavits or sworn declarations; and documents relating to the rules, practices

and procedures of the courts. Accordingly, when signing any of these documents, the prudent course of action is that 'wet-ink signatures' be used.

Witnessing of documents

Documents to be executed by an Irish company which must be witnessed may be executed by way of e-signature. An advanced electronic signature based on a qualifying certificate (**AES/QC**, as defined under the 2000 Act) or a qualifying electronic signature (**QES**, as defined under the eIDAS Regulation) are effective. In addition, the Law Society Guidance suggests that a deed to be executed by an attorney appointed by the relevant Irish company and witnessed may be executed using any form of e-signature (i.e. a simple e-signature rather than more advanced forms of e-signature like the AES/QC or QES).

Consent

Under the 2000 Act, each party signing must consent to the use of an e-signature. While this consent does not need to be explicit, and can be implied or inferred (e.g. from contemporaneous emails), best practice is to obtain express consent between the parties where possible (e.g. by including a consent clause in the relevant document).

Filing/Registry Requirements

The parties to the document should consider if it will need to be presented to any authority or filed with a registry. If so, the parties should confirm in advance with the relevant authority/registry that it will accept electronically signed documents.

Frequently Asked Questions



02

What if our company seal is in our head office while we are working from home?

Documents that must be executed by an Irish company under its common seal may not be executed by e-signature as the 2000 Act does not provide for the electronic equivalent of a company seal.

However, it may be possible to execute certain documents which are usually executed under company seal pursuant to a power of attorney (see previous *'Witnessing of documents' section*). The Law Society Guidance suggests that (i) the attorney may sign the document using the e-signature; and (ii) witnessing the signature of the attorney may be done by way of e-signature or wet-ink, provided the witness is physically present when the attorney signs the document.

03

As a director of a company, can I use an e-signature to sign minutes of the meetings of directors or shareholder corporate resolutions?

Yes, directors' board minutes and corporate resolutions may be signed by way of e-signature (provided e-signatures are not explicitly prohibited by the company's constitution).

04

Can I sign a lease or a deed of conveyance using an e-signature?

As discussed above, Section 10 of the 2000 Act suggests that documents creating or transferring an interest in land should not be signed by way of e-signature. Accordingly, a lease or conveyance should be executed as normal using a 'wet-ink signature'.

05

Our accountant needs to file some documents in the Companies Registration Office (CRO), can they do this using an e-signature?

It will depend on the particular document or CRO form. A limited number of CRO forms can be executed electronically and filed via CORE (such as the forms C1/C1A & B). For other documents or forms, the CRO still requires wet-ink signatures. The CRO website should be consulted to confirm the up to date position regarding the particular document or form to be filed.

Conclusion

Prior to the outbreak of the COVID-19 pandemic, the use of e-signatures was relatively rare in Ireland. Already there has been a significant increase in the number of Irish businesses using e-signatures and once the COVID-19 pandemic has abated, their usage could become normalised or even standard practice in Irish business transactions.

If you require any further information or assistance in relation to e-signatures, please contact a member of the [Finance team](#), or the [Knowledge team](#), or your usual A&L Goodbody contact.



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