

## COMMERCIAL UPDATE

# Negotiating, signing & executing contracts virtually

With a significant proportion of individuals working from home since the outbreak of COVID-19, this note recaps on the rules relevant to those negotiating, signing and executing contracts electronically.

## Negotiating contracts

- › “Subject to contract”: It is worth remembering that electronic communications (not marked “subject to contract”), such as an exchange of emails between lawyers, can constitute a binding agreement.
- › Counterparts clauses: Many template counterparts clauses contain wording that has a similar effect to “subject to contract”: the contract will not come into effect until the formalities specified in the clause have been fulfilled.

## Electronic signatures

According to a Law Commission [report](#) which earlier this month was [endorsed](#) by the Government, the position on electronic signatures is that they can be used to execute documents (including deeds) provided that:

- › The person signing the document intends to authenticate it. This is an objective test, but would be satisfied where a person, for example, types their name at the bottom of an email or uses a scanned manuscript signature (more advanced digital signature technologies aren't strictly required under English rules, but may be useful if the contract has an international element to it and can also provide clear audit trails as well as in-built security).
- › Any formalities (contractually or in legislation) relating to execution are satisfied e.g. if a signature must be witnessed (as required for deeds), the witness must be physically present i.e. not via videocon. The witness can be a spouse or family member, provided they are not party to the deed (an independent witness is useful in case validity is later questioned).

Further, for legal entities, check any constitutional documents to ensure there are no restrictions on the use of electronic signatures or additional formalities and ensure that a “wet ink” signature is not required to be filed with any regulatory authority.

**If you would like any further advice or assistance on this topic, please contact your usual Northridge contact or alternatively our Legal Director, Tessa Jones ([tessa.jones@northridgelaw.com](mailto:tessa.jones@northridgelaw.com))**

If you are seeking to record a variation to a contract which states that any variation must be “*in writing and signed*” (but is not a deed), an exchange of emails could be valid for these purposes (NB: Remember that deeds can only be varied by another deed).

## Virtual signings

A virtual signing refers to the process of executing documents more generally by virtual means (e.g. email).

### What are the options?

Document	Option 1	Option 2	Option 3
Deed	Yes	No	No
Simple contract	Yes	Yes	Yes

- › Option 1: Execution version circulated (PDF/Word). Parties return entire execution version (PDF/Word) plus copy of signed signature page.
- › Option 2: Execution version circulated (PDF/Word). Parties return only the signed signature page.
- › Option 3: Signature pages signed in advance by parties. Attached to final version once agreed.

## Top tips

- › If possible, avoid using deeds (given the above issues).
- › Use and retain “subject to contract” where you don't (yet) want to be bound (and vice versa).
- › If a draft contract has a counterparts clause, ensure the parties carry out all the formalities for executing – or remove/amend the clause (not strictly needed).
- › Agree in advance the process for virtual signings (including, if a deed, when ‘delivery’ will take place).
- › Check rules applicable in other jurisdictions relevant to your contract (e.g. the counterparty's jurisdiction).
- › Keep a good record of all contracts and variations.