

# Virtual Completions: Practical Considerations.

With governments around the world issuing strict 'stay-at-home' instructions to their citizens as a result of the on-going COVID-19 pandemic, the restrictions placed on social interactions and the ability to travel have presented new logistical challenges for completing transactions. Some of these hurdles include:

- directors and/or shareholders not being able to attend meetings in person (and where the constitutional documents do not allow for virtual/telephone attendance at such meetings and/or require them to be held in a specific location);
- signatories being unable to attend signing meetings to provide their 'wet-ink' signatures;
- authorised representatives being unable to deliver and/or take receipt (on behalf of their clients) of key original documents such as security documents and deliverables thereunder (which may be required to perfect such security); and
- ensuring documents are validly witnessed (where so required), as it is not sufficient for a witness to view the events via video link.

---

Whether or not social distancing measures are in place, the below are some practical considerations to consider (which should not be taken to be an exhaustive list):

## 1. Signing in Counterparts:

Documents should, wherever possible, ensure that express wording is included to permit signing/execution in counterpart. Though no statutory requirement exists requiring such a clause or such wording to be contained, the inclusion of such wording adds clarity and confirmation of the validity of the signing method adopted.

The document becomes legally binding when all parties have signed, and the counterparts are delivered to the parties (with such method of delivery agreed in advance, which can be by way of pdf copy sent via e-mail). The date of delivery should be agreed in advance. It is not uncommon for parties to sign/execute a document without dating it, deliver it to a nominated person and specifying that their counterpart will be held as undelivered until they confirm otherwise or a condition has been specified.

Companies should note however that where documents are required to be executed as a deed (by companies incorporated under the Isle of Man Companies Acts 1931-2004) by way of either two directors or one director and the company secretary, both signatories must be physically present in the same location and provide their signatures in the same execution block.

## 2. Mercury Rules

The decision in Ref: R (*on the application of (1) Mercury Tax Group Limited and (2) Darren Neil Masters*) v HMRC and others [2008] EWHC 2721 (Admin) and the subsequent English Law Society Guidance note has significantly affected execution practices, and it is important to observe a greater degree of formality in comparison to pre-Mercury practices and the email correspondence and documents must make it very clear exactly which version of a document signatures relate to.

Where authority is to be provided for signature pages to be attached to simple contracts or guarantees, the authority needs to be clear and comprehensive.

Where authority is to be provided for the execution of deeds, signatory parties must ensure that any return email contains either:

- both the final version of the document **and** the signed signature pages in order to satisfy the *Mercury* requirement of being the “same physical document”; or
- the pdf copy of the document in its entirety, signed/executed.

### 3. Constitutional Documents:

Companies should ensure that their constitutional documents specifically permit board (and if required, shareholder meetings) to take place via telephone or virtual conferencing, and expressly state that all board members participating would be deemed to be physically present. Companies which are incorporated under the Isle of Man Companies Acts 1931-2004 and which have adopted the form of Table A memorandum and articles contained in the Companies (Memorandum and Articles of Association) Regulations 1988 should particularly take note, and ensure that their constitutional documents are up to date and contain the appropriate amendments.

Constitutional documents (and any related shareholder agreements) should also be reviewed to ascertain whether they stipulate that board meetings cannot be held in certain jurisdictions and/or contain unusual quorum requirements (e.g. a certain number of ‘A’ and ‘B’ directors in a JV scenario).

### 4. Witness Requirements and Independent Legal Advice:

In certain circumstances, a party's signature to a deed may need to be attested by a witness. As a witness must be physically present to see the application of a signatory's signature (which includes electronic signature) and “remote” witnessing is not an advisable option (for example, over skype or zoom etc.), signatories (who are self-isolating) may wish to consider asking household members to act as witnesses (although not ideal, this would be acceptable from a legal perspective, so long as they are not also a party to the document).

Furthermore, an individual who is, for example, granting a guarantee to a bank in respect of the debts of their spouse/partner should, to ensure such individual has not been subject to undue influence, take independent legal advice in accordance with the guidelines in the House of Lords case of *Royal Bank of Scotland plc v Etridge (No.2)* [2001] UKHL 44.

### 5. Undertakings:

Where there are difficulties in collating and circulating original form documents (including any security perfection deliverables or ancillary documents relating thereto), parties may wish to consider obtaining undertakings requiring the delivery of such original copy documents as soon as reasonably practicable once offices have reopened.

### 6. Using Electronic Signatures

As highlighted in a previous article, the use of electronic signatures is permitted in the Isle of Man save in certain transactions which are deemed to be “excluded transactions”. Parties may wish to consider signing by way of digital signatures (which is a specific type of e-signature provided by digital signature solution providers such as Adobe and DocuSign), which authenticates, validates and verifies the signatory's identity. As a digital signature is also marked with the time the document was signed by the signatory, if the document changes after signing, that digital signature is invalidated. This provides parties with an additional level of comfort that they are signing the document in the actual form they have read and considered.

For more  
information  
please contact



**Kirsten Middleton**  
Associate  
+44 1624 638303  
kirsten.middleton@cains.com



**George Walmsley**  
Trainee  
+44 1624 638378  
george.walmsley@cains.com

This publication is intended merely to highlight issues and not to be comprehensive, nor to provide legal advice. Should you have any questions on issues reported here or on other areas of law, please contact one of your regular contacts at Cains or the above individuals.

T: +44 1624 638300 | E: law@cains.com | Cains, Fort Anne, Douglas, Isle of Man IM1 5PD

Cains is the trading name of Cains Advocates Limited, an incorporated legal practice in the Isle of Man with registered number 009770V. A list of all the directors' names is open to inspection at Cains' registered office. Registered office: Fort Anne, Douglas, Isle of Man IM1 5PD