

# Guidance note for external counsel. Electronic signature.



## 1. Background.

- 1.1. Given the COVID-19 situation individuals may be required to self-isolate or may choose to work remotely away from the office. This may affect the conventional document signing process whereby documents are printed in full for wet-ink signature and then scanned back to their external counsel with authority to release signatures as appropriate.
- 1.2. Where printing is available to the signatory, our strongly preferred fall-back is to print the signature page of the document and apply a traditional wet-ink signature. If no scanner is available, the signatory can take a photo of the signature page and send the photo with appropriate instructions to their external counsel in the usual manner (including the version of the document that the signature page is to be attached to).
- 1.3. This note looks at the requirements to be met before we can accept alternatives to wet-ink signatures under present circumstances.

## 2. Types of documents.

- 2.1. This note applies to any agreements, forms and notices to be signed by customers. We are aware of the proposals for changes to the Contracts and Commercial Law Act but while these remain pending this note sets out our requirements in respect of document execution.
- 2.2. We are willing to accept documentation executed with a form of electronic signature, subject to the terms of this guidance. You are reminded that your instructions from us and the solicitors' certificate require you to confirm to us that the required documentation has been properly executed. Nothing in this guidance relieves you of those obligations and to the extent you believe additional steps are needed for documentation to be properly executed we expect you to take those additional steps.
- 2.3. Electronic signatures must not be used for the following types of documents:
  - (a) statutory declarations;
  - (b) powers of attorney;
  - (c) (subject to paragraph 2.4 below) security documents containing a power of attorney, for example:
    - (i) general security agreements;
    - (ii) specific security agreements; and
    - (iii) security trust deeds; and
  - (d) negotiable instruments.
- 2.4. We will however accept electronic signatures for security documents containing a power of attorney, on the condition that a separate power of attorney by way of deed poll is signed with wet-ink and provided to Westpac as soon as practicable when lockdown is lifted. A copy of the required document is available at [westpac.co.nz/solicitors](https://westpac.co.nz/solicitors).

## 3. Electronic signature requirements.

If printing the signature page is not an available option then an "electronic signature" may be affixed to the soft copy of the document in substitute of conventional wet-ink signature. However the following requirements must be met:

- 3.1. Notification  
Your covering email to us returning documentation must identify:
  - (a) the documents executed using an electronic signature and who has executed them; and
  - (b) whether a separate power of attorney is required by paragraph 2.4.
- 3.2. Identification requirement  
The name of the signatory must be clearly legible from the electronic signature and printed below the electronic signature.

### 3.3. Assent requirement

The electronic signature must be applied to the appropriate signature block of the full document.

### 3.4. Reliability requirement

- (a) The signatory must send a confirmatory email in the form appended to this note. You must include a copy of that email in the documentation you return to us.
- (b) The email should re-attach a copy of the full document (unaltered), including the signature page with the electronic signature(s) affixed (of both the signatory and witness, if applicable).
- (c) The sender's email address and identifying details must link both to the signatory and to the entity that the signatory is representing.

The purpose is to link the electronic signature to the signatory and to show the electronic signature was under the full control of the signatory.

### 3.5. Witness requirement

- (a) If a document is required to be witnessed, the witness must either: (i) be physically present with the signatory; or (ii) watch via a reliable audio-video link (such as Skype, Microsoft Teams) without interruption, the process which the signatory attaches their signature or gives authorisation to attach the electronic signature.
- (b) The same requirements set out in 2.1 to 2.3 above apply to a witness using an electronic signature.

### 3.6. Where an entity is required to sign by two signatories, it is acceptable for the two signatories to sign on separate pages.

## **4. Form of email confirmation from signatory [see para 2.3(a)].**

Please use the following wording in the covering email.

I refer to the following attached documents:

- [Facility Agreement between x and y]
- [A director's certificate relating to some or all of the above from XYZ Limited],

(the "Documents").

I, [signatory's full name], confirm that I authorised my electronic signature to be attached to each of the Documents in my capacity [director / authorised signatory / attorney].

## **5. Form of email confirmation from witness [see para 2.4].**

Please use the following wording in the covering email.

I refer to the following attached documents:

- [Facility Agreement between x and y]

(the "Documents").

I, [witness full name], confirm that I authorised my electronic signature to be attached to each of the Documents in my capacity as a witness to the signature of [signatory's full name] (Signatory). I can verify that Signatory [affixed his/her electronic signature to the Documents] OR [authorised his/her electronic signature to be affixed to the Documents].