

CHECKLIST FOR MANAGING ELECTRONIC SIGNING PROCESS ON A CORPORATE OR COMMERCIAL TRANSACTION USING AN ONLINE PLATFORM

NOTE AND DISCLAIMER

This checklist has been produced by the following corporate professional support lawyers (PSLs), who are members of Networking for KnowHow, an association of corporate PSLs:

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This checklist has not been produced by, and is not endorsed by, any particular organisation or firm of solicitors or other professional advisers. It does not represent an agreed best practice of any particular law firm which is represented on the working group, nor does it preclude any such law firm from diverging from the guidance in this checklist either generally or in a particular case. The checklist is designed solely as an informal list of points to consider where an organisation is considering conducting an electronic signing. It does not constitute legal advice and no reliance may be placed on it. Any electronic signing should always be tailored to the particular circumstances of the transaction and the parties.

The purpose of this checklist is to set out a non-exhaustive list of points to consider when arranging the electronic execution of documents using an online platform. It also provides a framework for the relevant legal advisers to establish the mechanism for the signing to ensure that execution is completed in a manner acceptable to all parties.

HM Land Registry (“HMLR”) has published prescriptive requirements to be followed when arranging for the electronic execution of certain documents to be registered at HMLR. Whilst this checklist points out where HMLR requirements need to be considered, legal advisers to a transaction must ensure that they refer to the latest HMLR guidance when arranging electronic execution of those documents.

For further guidance in connection with **real estate transactions**, firms may wish to refer to the paper titled “E-signatures and E-signing platforms” published by a working group comprising PSLs from the Association of Professional Support Lawyers and the London Property Support Lawyers Group (available from Thomson Reuters Practical Law (subscription required) or from the Property Litigation Association¹).

For a separate checklist that can be used in the context **finance transactions**, firms may wish to refer to the checklist titled “Checklist for Managing Electronic Signing Process on a Finance Transaction using an Online Platform” published by a working group comprising PSLs from the Finance PSL Network.

We welcome feedback on this checklist.

¹ <https://www.pla.org.uk/2020/10/e-signatures-and-e-signing-platforms-serena-glover-warren-gordon-alison-henry-miri-stickland-kathryn-oie-bill-chandler-tarnya-mason-katherine-crowley/>

EXAMPLE PROPOSAL FOR MANAGING AN ALL PARTIES SIGNING PROCESS²

(TO BE SENT FROM ORGANISING TO NON-ORGANISING LAW FIRM)

PROJECT [] (“TRANSACTION”)

Law firms and e-signature platform	
Law firm managing the signing process (“we”/”us”)	<i>Insert name of organising law firm and whom they are representing. Insert name, email address and telephone number of contact(s) at this firm.</i>
Law firm representing each other party (“you”)	<i>Insert name of each other law firm and whom they are representing. Insert name, email address and telephone number of contact(s) at this firm.³</i>
E-signing platform (“platform”)	<i>Insert name of e-signing platform.</i>
Documents to be signed through the platform	<i>List the transaction documents that will be signed through the platform and whether they are to be signed as a deed or under hand. Identify any document that is not governed by English law, that is to be signed by non-English parties and/or that will need to be filed or registered with any authority) and any additional steps that will need to be taken in that regard.</i>
E-signing arrangements	
Signatories’ details	<i>Consider including details of the individuals who will be signing, so as to avoid any doubt, e.g. “The details of the persons who will sign the documents [(including all known witnesses at this point)] and their respective email addresses [and mobile telephone numbers] are set out in the schedule below.” The appendix contains some sample wording in relation to witnesses, which could be tailored to the specific circumstances.</i>
Signing instructions (signatories)	<i>Consider setting out the instructions that will be sent to each individual who will be asked to sign via the platform, either through the platform itself or by separate email to each individual or the relevant party’s legal advisers, e.g.:</i> <i>“Each signatory will be sent the following signing instructions [through the platform] OR [by email] asking them to sign the relevant documents:</i> <i>‘You are being asked to sign one or more documents in connection with Project [●]. By signing these documents, you will be confirming and acknowledging the following:</i> <i>1. You are the person to whom this email is addressed.</i> <i>2. You approve the form of each document you are being asked to sign.</i> <i>3. You will apply your signature to each document to be signed by you and will not instruct any other person to apply your signature.</i> <i>4. You [irrevocably and unconditionally] authorise any of the members, partners, directors, employees or consultants of [name of firm managing the process] to date and (where required) deliver each document at the time and in the manner agreed between the law firms advising in connection with the transaction.</i> <i>5. The original documents will be held in electronic form and circulated to the transaction parties. Once all transactions parties are in a position to exchange, the documents will be [dated within the signing platform. Each dated document will</i>

² This template is designed for a transaction on which a single firm will be circulating documents for signature to all transaction parties and not merely to their own client.

³ Repeat for each firm where there are more than two firms participating in the transaction.

	<p>constitute an original document, and any number of further original documents may be produced by printing those electronic documents.] OR [printed off and dated in manuscript. Each dated document will constitute an original document.] Certain of your details and details of the electronic signing will be recorded in a completion record, which will be accessible by the transaction parties.</p> <p>6. If you are signing on behalf of someone else (including a corporation), you are authorised to sign the documents on behalf of that person and to provide the confirmations in paragraphs 2 to 5 (inclusive) above on behalf of that person.”</p>
[Witnesses]	<p>Consider setting out any specific arrangements where documents are to be witnessed and how this will be achieved using the platform. The appendix contains some sample wording, which could be tailored to the specific circumstances.</p>
[Signing instructions (witnesses)]	<p>Consider whether to set out any specific instructions for witnesses in the covering email sent by the platform, or whether individual firms should advise their own clients on this separately outside the platform. If advising within the platform, consider setting out instructions that will be sent through the platform to each witness, e.g.:</p> <p>“Each witness will be sent the following instructions through the platform in the email asking them to sign the relevant documents:</p> <p>“You are being asked to attest that you have witnessed someone sign one or more documents electronically. You will do so by countersigning each document in question and inserting your name, address [and occupation]. By doing so, you will be confirming the following:</p> <ol style="list-style-type: none"> 1. You are the person to whom this email is addressed. 2. You are [over the age of 18][,] [not related to, married to or in a civil partnership or cohabiting relationship with the person whose signature(s) you are attesting] [and] not a party to (any of) the document(s) in question. 3. You did in fact see the person whose signature(s) you are attesting sign the document(s) in question. 4. You were in the physical presence of that person when they signed the document(s) and (in particular) you did not merely witness that person sign the document from a different location through any remote or televisual means. 5. You will apply your signature to each document to be signed by you and will not instruct any other person to apply your signature.”
Authentication	<p>If using two-step authentication, consider setting out the details of how it will work, e.g.:</p> <p>“The signature process will incorporate a two-step authentication process for each signatory. To access and sign the documents, each signatory will need:</p> <ul style="list-style-type: none"> • access to their email account; and • a separate code which will be sent by [insert details, e.g. “[short messaging service (SMS) to the mobile telephone number] OR [email to the email address] provided for that signatory in the schedule”].”
Forwarding and assigning to other persons	<p>Consider setting out arrangements to ensure signatories cannot forward the documents, or re-assign the task of signing documents, to someone else. This will depend substantially on the platform’s settings. For example:</p> <p>“The platform will be set up so that signatories cannot re-assign the task of signing a document to somebody else.”</p>
Arrangements for reviewing the documents	<p>Consider setting out arrangements to reassure the non-organising firms that the process has been conducted properly. This will depend heavily on the extent to which firms prefer to manage aspects of the transaction process, such as agreeing on the final form of documents and organising dating and exchange, outside the platform. Wording for this proposal might be something like:</p> <p>“The platform will be arranged so that each non-organising firm will be able to view a copy of each document within the platform:</p>

	<ul style="list-style-type: none"> • [before it is signed; and] • after it is signed but before it is dated. <p>The signed and dated documents will be circulated automatically by the platform to all signatories once they have been dated.”</p>
<p>Signatories’ [and witnesses’] ability to see the documents</p>	<p><i>Consider setting out which signatories are to be able to see which documents during and after the signing process and details of any arrangements for ensuring that signatories see only the documents they are to be permitted to see.</i></p> <p><i>If any signatures are to be witnessed, consider setting out arrangements to ensure that the content of the documents remains confidential and witnesses are not able to see the substantive content of those documents, including circulating any documents that need to be witnessed separately from the other transaction documents. This will depend heavily on the functionality of the platform, so consider checking the platform’s functionality to understand whether witnesses will be able to see the content of the documents.</i></p> <p><i>Example wording might include the following:</i></p> <p>“The documents will be circulated for signature [together] OR [separately]. Signatories [(including any witness)] will be able to see [all documents], including those they are not OR [only those documents which they are] required to sign. [[In addition] OR [However], information about the existence and execution of all of the documents will appear in a completion record (see below) which will be available to all signatories [and any witnesses].]</p> <p>[As an exception, [each] OR [the] document below will be circulated separately so that only the signatories to that document [(including any witnesses)] will be able to see that document and no person other those signatories [and witnesses] will see the completion record relating to it:</p> <p><i>[List particularly sensitive document[s]]”</i></p> <p><i>or</i></p> <p>“Each document will be circulated for signature separately. Signatories will not be able to view documents they are not required to sign. Information about the existence and execution of each document will appear in a separate completion record for that document.”</p>
<p>[Location tracking]</p>	<p><i>Consider setting out whether signatories will be asked to provide details of their location when signing or, if location-tracking is enabled by default, whether they will be given the option to decline to provide this information. This will depend on the functionality and settings of the platform and the type of package to which the organising firm has subscribed.</i></p>
<p>Dating documents</p>	<p><i>Consider clarifying the arrangements for dating the transaction documents in order to effect exchange and deliver any deeds, e.g.:</i></p> <p>“The platform will be set up so that the documents are not automatically dated by the platform when they are signed. Instead, the documents will be dated [on the date agreed between us] OR [once you and we have agreed they are released for dating]. The documents will be dated [by the organising firm typing the date in a text box in the document within the platform] OR [outside the platform by each participant firm printing the documents and writing the date in manuscript on the printed documents].”</p>

<p>Evidence of signing</p>	<p><i>The platform might generate a separate record of completion for the signing. Consider acknowledging this, the contents of the completion record and any arrangements for providing copies of it so there is no doubt at a later date. For example:</i></p> <p>“The platform will generate a completion record once the signing process is complete. That record will show the following information for each signatory [and witness]:</p> <ul style="list-style-type: none"> • their name and email address (as entered into the platform) • the internet protocol (IP) address through which they accessed the platform at the time they signed the document(s) • [the method of authentication they used, including their mobile telephone number where SMS authentication was used]⁴ • the date on and time at which they signed the document(s) • [if they provided details of their location, the place in which they were located when they signed the document(s)]⁵ <p>[We can provide a copy of each completion record on request.] OR [The platform will automatically circulate the completion record to all signing parties (including, potentially, witnesses, depending on the witnessing method used).]</p> <p>[We will retain the completion record as evidence of completion of the signing process.]”</p>
<p>Circulation of copies</p>	<p><i>Consider setting out the procedure for ensuring that all parties to the transaction have copies of the signed, dated documents. The platform is likely to send copies to everyone who participated in the signing process (including, potentially, witnesses), but this might not include the firms advising on the transaction. For example:</i></p> <p>“The platform will be set up to [circulate a link to the signed, dated documents] OR [send a copy of each signed, dated document] to everyone who participated in the signing process via the platform, [as well as to the law firms involved in the transaction]⁶. We [can provide further copies of signed, dated documents on request] OR [will provide further copies of the signed, dated documents by email to [name(s) of relevant recipient(s)] following completion].”</p>
<p>Removing documents from the platform</p>	<p><i>Consider setting out arrangements for storing copies of the final signed, dated documents on the platform’s servers and removing them in due course. This is likely to differ from platform to platform and depending on any particular requirements or sensitivities of any parties to the transaction. It may also be useful to establish this at the outset for the purposes of GDPR compliance. For example:</i></p> <p>“The platform will be set up so that the copies of the signed, dated documents will be removed from the platform’s servers automatically [immediately] OR [●] after the signing procedure is complete. [However, each completion record and other details of the signing process will remain in the platform as evidence of signing.]”</p>
<p>[Important notice]</p>	
<p>[Disclaimer]</p>	<p><i>Consider agreeing the status of this proposal document, if it is being used in this form. The idea behind the template is for it to act as a starting point and informal framework, rather than a formal procedure. For example:</i></p> <p>“The purpose of this document is to record the basis on which we propose that the transaction documents will be signed. It is not intended to be legally binding or to create any right or liability of any person, whether in respect of any deviation from or failure to follow this proposal or any failure of the platform to operate in the manner contemplated by this proposal. In particular, nothing in this document has the effect of creating any</p>

⁴ Delete if no method of authentication will be used.

⁵ Delete if location-tracking will not be used or the completion record will not display this.

⁶ This will depend on whether the platform being used allows non-signatories to receive copies of the documents.

	undertaking by you, us or any other person to do anything or as to any state of affairs, or any duty of care that would not otherwise exist.”
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SCHEDULE

Signatory (* indicates that a witness is required)	Email address	Mobile telephone number	Party on whose behalf the signatory is signing and jurisdiction of incorporation/domicile
[Name of individual]	[Email address]	[Telephone number]	[Herself] OR [Himself] OR [Name of transaction party]

EXAMPLE PROPOSAL FOR MANAGING AN OWN CLIENT SIGNING⁷

PROJECT [] (“TRANSACTION”)

Law firms and e-signature platform	
Law firm managing the signing process (“we”/”us”)	<i>Insert name of organising law firm and whom they are representing. Insert name, email address and telephone number of contact(s) at this firm.</i>
Law firm representing each other party (“you”)	<i>Insert name of each other law firm and whom they are representing. Insert name, email address and telephone number of contact(s) at this firm.⁸</i>
E-signing platform (“platform”)	<i>Insert name of e-signing platform.</i>
Documents to be signed through the platform	<i>List the transaction documents that will be signed through the platform and whether they are to be signed as a deed or under hand. Identify any document that is not governed by English law, that is to be signed by non-English parties and/or that will need to be filed or registered with any authority) and any additional steps that will need to be taken in that regard.</i>
E-signing arrangements	
Signatories’ details	<i>Consider including details of the individual who will be signing, so as to avoid any doubt, e.g. “The details of the persons who will sign the documents [(including all known witnesses at this point)] and their respective email addresses [and mobile telephone numbers] are set out in the schedule below.” The appendix contains some sample wording in relation to witnesses, which could be tailored to the specific circumstances.</i>
Signing instructions (signatories)	<i>Consider setting out the instructions that will be sent to each individual who will be asked to sign via the platform, either through the platform itself or by separate email to each individual or the relevant party’s legal advisers, e.g.:</i> <i>“Each signatory will be sent the following signing instructions [through the platform] OR [by email] asking them to sign the relevant documents:</i> <i>‘You are being asked to sign one or more documents in connection with Project [●]. By signing these documents, you will be confirming and acknowledging the following:</i> <i>1. You are the person to whom this email is addressed.</i> <i>2. You approve the form of each document you are being asked to sign.</i> <i>3. You will apply your signature to each document to be signed by you and will not instruct any other person to apply your signature.</i> <i>4. You [irrevocably and unconditionally] authorise any of the members, partners, directors, employees or consultants of [name of firm managing the process] to date and (where required) deliver each document at the time and in the manner agreed between the law firms advising in connection with the transaction.</i> <i>5. The original documents signed by you will be held in electronic form and circulated to the transaction parties. Once all transactions parties are in a position to exchange counterparts, the documents signed by you will be [dated within the signing platform.</i>

⁷ This template is designed for a transaction on which each firm will be circulating documents for signature to their own client but not to the other transaction parties. It should be completed for each law firm that is arranging for signatories to sign documents electronically. Consequently, this template will not be needed for any law firm that is arranging a physical signing.

⁸ Repeat for each firm where there are more than two firms participating in the transaction.

	<p><i>Each dated document will constitute an original counterpart, and any number of further original counterparts may be produced by printing those electronic documents.] OR [printed off and dated in manuscript. Each dated document will constitute an original counterpart.]</i></p> <p>6. <i>If you are signing on behalf of someone else (including a corporation), you are authorised to sign the documents on behalf of that person and to provide the confirmations in paragraphs 2 to 5 (inclusive) above on behalf of that person.”</i></p>
[Witnesses]	<p><i>Consider setting out any specific arrangements where documents are to be witnessed and how this will be achieved using the platform. The appendix contains some sample wording, which could be tailored to the specific circumstances.</i></p>
[Signing instructions (witnesses)]	<p><i>Consider whether to set out any specific instructions for witnesses in the covering email sent by the platform, or whether individual firms should advise their own clients on this separately outside the platform. If advising within the platform, consider setting out instructions that will be sent through the platform to each witness, e.g.:</i></p> <p>“Each witness will be sent the following instructions through the platform in the email asking them to sign the relevant documents:</p> <p><i>‘You are being asked to attest that you have witnessed someone sign one or more documents electronically. You will do so by countersigning each document in question and inserting your name, address [and occupation]. By doing so, you will be confirming the following:</i></p> <ol style="list-style-type: none"> 1. <i>You are the person to whom this email is addressed.</i> 2. <i>You are [over the age of 18][,] [not related to, married to or in a civil partnership or cohabiting relationship with the person whose signature(s) you are attesting] [and] not a party to (any of) the document(s) in question.</i> 3. <i>You did in fact see the person whose signature(s) you are attesting sign the document(s) in question.</i> 4. <i>You were in the physical presence of that person when they signed the document(s) and (in particular) you did not merely witness that person sign the document from a different location through any remote or televisual means.</i> 5. <i>You will apply your signature to each document to be signed by you and will not instruct any other person to apply your signature.”</i>
Authentication	<p><i>If using two-step authentication, consider setting out the details of how it will work, e.g.:</i></p> <p>“The signature process will incorporate a two-step authentication process for each signatory. To access and sign the documents, each signatory will need:</p> <ul style="list-style-type: none"> • access to their email account; and • a separate code which will be sent by [<i>insert details, e.g. “[short messaging service (SMS) to the telephone number] OR [email to the email address] provided for that signatory in the schedule”</i>].”
Forwarding and assigning to other persons	<p><i>Consider setting out arrangements to ensure signatories cannot forward the documents, or re-assign the task of signing documents, to someone else. This will depend substantially on the platform’s settings. For example:</i></p> <p>“The platform will be set up so that signatories cannot re-assign the task of signing a document to somebody else.”</p>
Arrangements for reviewing the documents	<p><i>Consider setting out arrangements to reassure the other law firms that the process has been conducted properly. This will depend heavily on the extent to which firms prefer to manage aspects of the transaction process, such as agreeing on the final form of documents and organising dating and exchange, outside the platform. Wording for this proposal might be something like:</i></p> <p>“The platform will be arranged so that each non-organising firm will be able to view a copy of each document within the platform:</p> <ul style="list-style-type: none"> • [before it is signed; and]

	<ul style="list-style-type: none"> • after it is signed but before it is dated.”
[Location tracking]	<p>Consider setting out whether signatories will be asked to provide details of their location when signing or, if location-tracking is enabled by default, whether they will be given the option to decline to provide this information. This will depend on the functionality and settings of the platform and the type of package to which the organising firm has subscribed.</p>
Dating documents	<p>Consider clarifying the arrangements for dating the transaction documents in order to effect exchange and deliver any deeds, e.g.:</p> <p>“The platform will be set up so that the documents are not automatically dated by the platform when they are signed. Instead, the documents will be dated [on the date agreed between us] OR [once you and we have agreed they are released for dating]. The documents will be dated [by the organising firm typing the date in a text box in the document within the platform] OR [outside the platform by each participant firm printing the documents and writing the date in manuscript on the printed documents].”</p>
Evidence of signing	<p>The platform might generate a separate record of completion for the signing. Consider acknowledging this, the contents of the completion record and any arrangements for providing copies of it so there is no doubt at a later date. For example:</p> <p>“The platform will generate a completion record once the signing process is complete. That record will show the following information for each signatory [and witness]:</p> <ul style="list-style-type: none"> • their name and email address (as entered into the platform) • the internet protocol (IP) address through which they accessed the platform at the time they signed the document(s) • [the method of authentication they used, including their mobile telephone number where SMS authentication was used]⁹ • the date on and time at which they signed the document(s) • [if they provided details of their location, the place in which they were located when they signed the document(s)]¹⁰ <p>[We can provide a copy of each completion record on request.] OR [The platform will automatically circulate the completion record to all signing parties (including, potentially, witnesses, depending on the witnessing method used).]</p> <p>[We will retain the completion record as evidence of completion of the signing process.]”</p>
Circulation of copies	<p>Consider setting out the procedure for ensuring that all parties to the transaction have copies of the signed, dated documents. The platform is likely to send copies to everyone who participated in the signing process (including, potentially, witnesses), but this might not include the firms advising on the transaction. For example:</p> <p>“The platform will be set up to [circulate a link to the signed, dated documents] OR [send a copy of each signed, dated document] to everyone who participated in the signing process via the platform, [as well as to the law firms involved in the transaction]¹¹. We [can provide further copies of signed, dated documents on request] OR [will provide further copies of</p>

⁹ Delete if no method of authentication will be used.

¹⁰ Delete if location-tracking will not be used or the completion record will not display this.

¹¹ This will depend on whether the platform being used allows non-signatories to receive copies of the documents.

	the signed, dated documents by email to [name(s) of relevant recipient(s)] following completion].”
[Important notice]	
[Disclaimer]	<p><i>Consider agreeing the status of this proposal document, if it is being used in this form. The idea behind the template is for it to act as a starting point and informal framework, rather than a formal procedure. For example:</i></p> <p>“The purpose of this document is to record the basis on which we propose that the transaction documents will be signed. It is not intended to be legally binding or to create any right or liability of any person, whether in respect of any deviation from or failure to follow this proposal or any failure of the platform to operate in the manner contemplated by this proposal. In particular, nothing in this document has the effect of creating any undertaking by you, us or any other person to do anything or as to any state of affairs, or any duty of care that would not otherwise exist.”</p>

SCHEDULE

Signatory (* indicates that a witness is required)	Email address	Mobile telephone number	Party on whose behalf the signatory is signing and jurisdiction of incorporation/domicile
[Name of individual]	[Email address]	[Telephone number]	[Herself] OR [Himself] OR [Name of transaction party]

APPENDIX

SAMPLE WORDING FOR WITNESSING METHODS

Signatory to specify witness on signing	The signatory will receive an email through the platform asking them to sign the document. [[A note within the platform] OR [Our covering email] will remind the signatory to sign in the presence of a witness.] The signatory will be asked to specify in the platform the name and email address of the person who will act as their witness. ¹² The witness will then receive a separate email through the platform asking them to countersign and to insert their details once the signatory has signed the document.
Sender to specify witness	The document will be sent through the platform to the signatory and separately to the witness. If you are advising the signatory, you will provide us with the name, email address and mobile telephone number of the witness before the document is circulated for signature. The signatory will receive an email through the platform asking them to sign the document. [[A note within the platform] OR [Our covering email] will remind the signatory to sign in the presence of a witness.] The witness will receive a separate email through the platform asking them to countersign and to insert their details. ¹³ [Both the signatory and the witness will also each receive a separate one-time passcode allowing them to access the document.]
Signatory to pass over device	The signatory will be asked to sign the document and then provide their device to the witness so that the witness can sign and enter their own details. [[A note within the platform] OR [Our covering email] will remind the signatory to sign in the presence of a witness.] The signatory will receive an email through the platform but the witness will not.

¹² Provide more detail if possible, e.g. "This will be achieved by allocating the "Signs with witness" function to the signatory."

¹³ You may need to check whether, by specifying the witness as a signatory in the signing queue, the witness will be able to see the contents of the transaction documents and will receive copies of those documents and any completion certificate.