Update: New Act in force from 1 July: Scots law to allow signing in counterpart and e-mail delivery

Scotland 09.06.2015

- *The Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 will be in force from 1 July.*

From 1 July 2015:

- Parties to a Scots law governed document will be able to sign it in counterpart – that is, each party can sign a separate identical copy of the document rather than the same physical document as the other parties, so there is no need to meet together in one place to sign.
- Any document created and signed on paper will be able to be delivered electronically (by e-mail or memory stick, for example) and still have full legal effect.

This follows new laws already in force in Scotland giving *electronic* documents equivalent status and standards of validity and authenticity to paper documents.

Key points:

*What is a document executed in counterpart?*

Under the Act, a document is executed in counterpart if it is executed in two or more duplicate, interchangeable, parts and no part is subscribed by both or all parties.

*When does such a document become effective? Delivery requirement*

A document executed in counterpart will only become effective if delivery (which can be by electronic means) is made by each party of its signed counterpart to the other party or parties. In the case of some documents an additional step is needed before the document becomes legally effective (for example, guarantees also need to be delivered to a third party - the beneficiary - for legal effectiveness). It is also possible for the parties to any document to agree (as they can at present) that the document or obligations in it will not become effective until a later date.

Instead of having to make delivery to multiple parties, the Act also permits a party to be nominated to take delivery of any or all of the counterparts on behalf of others, which will be useful in multi-party transactions.
Once everything is signed the ‘final’ document is to consist of either (i) all of the signed counterparts put together in their entirety or (ii) just one full copy of the agreement attached to the signing page only from every counterpart signed by the parties.

**Delivery**

The key point here is that the new law makes it clear that documents created and signed on paper can be delivered electronically (by e-mail, fax or memory stick, for example) and still have full legal effect. This removes the concern under existing law that electronic delivery didn’t count.

**Action required?**

The Act enables execution in counterpart and electronic delivery without any need for special clauses or changes to documents. However, it is important that it is clear from looking at a document when it came into effect. Therefore, the date when the document has legal effect will need to be inserted.

In the case of a document executed in counterpart, this date cannot be earlier than the date upon which all counterparts have been delivered (the 'last' date of delivery) and the parties may choose to agree a later date. In either case, that date needs to be inserted in the document. This could be done in the testing clause (where it would have to be distinguished from the various dates of signing) or alternatively, by the inclusion of a date of delivery of the document on the first page of text and/or front cover, similar to the current practice in England.

It will also be prudent for the parties and their legal advisers to agree the arrangements for signing, delivery and dating of the document in advance. This will also help avoid the risk of any future argument as to when the contract actually came into effect.

**Comment**

The needs of business – and business practice - often outrun the law. Fully electronic documents and contracting are increasingly common. Likewise, the need for clarity on the legal effect of e-mail delivery of documents both electronic and on traditional paper, has become more pressing.

On electronic documents, *The Land Registration etc. (Scotland) Act 2012* now permits electronic documents to have equivalent status and standards of validity and authenticity to paper documents. *The Electronic Documents (Scotland) Regulations 2014* set out the requirements for e-signatures.

The new *Legal Writings (Counterparts and Delivery) (Scotland) Act* is a welcome additional step towards Scots law catching up with business needs with the enablement of execution in counterpart and the legitimisation of electronic delivery of all kinds of documents, whether in electronic or traditional paper form.

Further reading:

http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S4/SB_14-64.pdf

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