



# “Shakespeare, Pens, Swords, E-Signatures, COVID-19 and the E-Commerce Act 2000”

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# “Shakespeare, Pens, Swords, E-Signatures, COVID-19 and the E-Commerce Act 2000”

I have always had a keen interest in old English literature and recent events in Gatal have reminded me of my Leaving Certificate days when both Shakespeare and a mid-Nineteenth century play were referenced on client calls when advising on executing documents on behalf of Irish companies and whether or not they can be ink or electronically signed.

Novelist Edward Bulwer-Lytton’s play “Richelieu; or the Conspiracy”, in which he was first to coin the phrase “the Pen is mightier than the Sword” was mentioned by a director of a Canadian company who we are assisting to register a new company in Ireland, when he observed that the Pen is slowly being superseded by technology. The Pen might well be mightier than the Sword, (a debate for another day), but under Corporate Governance regulations in Ireland, it can be argued that the Pen is only occasionally mightier than the legislation governing the validity of e-signatures – namely the E-Commerce Act of 2000 and the relevant subsequent guidance note issued by the Law Society of Ireland in March 2020 (“the Regulations”).

Let us look at the Regulations in a bit more detail and see how they are affecting the execution of corporate documents under Irish Company Law.

The main point to note is that, subject to each individual Company’s Constitution, the majority of contracts and legal documents can be signed electronically provided both parties consent, a suitable clause is usually inserted into the document confirming this.

If the document contains the phrase “in writing” or “executed under hand”, it must be ink signed and it is also important to note that when dealing with international transactions, consideration must be given to whether or not e-signatures are valid in other countries.

## So, what documents must still be ink signed?

1. Wills or grant of probate documents
2. Leases and other property related documents being submitted to the Property Registration Authority
3. Any document where the Company Seal is required to be affixed thereto or requires a signature to be witnessed.
4. Sworn declarations and affidavits
5. Tribunal or Rules of Court documents
6. Documents that specifically exclude the validity of e-signatures under its terms and conditions

## And what documents may be signed electronically?

1. Minutes of directors board meetings
2. Minutes of shareholders AGM/EGMs
3. Powers of Attorney (with some exceptions)
4. Companies Registration Office forms that are available on its CORE platform (certain forms still need original ink signatures)
5. Irish tax returns and other tax reporting filings

“In essence, the E-Commerce Act of 2000 gives electronic contracts the same legal status as their paper counterparts.”



The second literature reference mentioned on a call, this time from William Shakespeare, was when a client raised his voice slightly and intentionally misquoted from Hamlet's famous "To Be or Not to Be" soliloquy", with the words "To sign or not to sign?, that is the question"!

As can be seen from above, the answer to this question is simple - it depends on what is being signed!

Having read the Regulations and noted their importance to Company Law in Ireland during Covid-19 times, it is clear to me and to all directors and shareholders of Irish companies working remotely that the E-Commerce Act 2000 is simply not a case of Much Ado About Nothing.

If Gatal can assist in any way, please do contact us (no pens required!)

Please contact us by email [admin@gatal.ie](mailto:admin@gatal.ie), via our website [www.gatal.ie](http://www.gatal.ie) or contact your usual Gatal or Moore contact in Cork or Dublin.

## GATAL

**Gatal Limited** assists companies, their directors, company secretaries and shareholders to comply with the constantly changing regulatory landscape in Ireland and with the statutory responsibilities and obligations placed on them under the Companies Act 2014 by providing solution focused practical and technical assistance.

Our services are provided to a large number of domestic and international clients and cover all incorporation, all compliance requirements and dissolution services along with all Company Law changes that arise during the life span of Irish Companies

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