

Remote signing protocols for financing transactions

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PART A – INTRODUCTION

The safest way to execute any document is for all parties or their attorneys to be physically present and to contemporaneously execute and exchange a hard-copy original. This can of course be done in counterparts, in which case the document should contain a suitable counterparts clause.

Increasingly, however, the location of the parties, the timing requirements of the transaction or other prevailing circumstances are making it impracticable for some or all signatories to be physically present at a signing, either directly or through an attorney. As a result, "remote" or "virtual" signings, involving the exchange of scanned documents or signature pages by email, have become common, especially in financing transactions. Remote signings raise issues, however, that do not affect face-to-face signings. Commercial parties are no longer able to observe physically the execution of the documents by other parties, and can only rely on the materials that the remote signatories circulate by email as their evidence that the remote signatories have in fact properly executed the documents. Legal advisers also need to be able to satisfy themselves that the manner in which remote parties execute a document is sufficient to satisfy any writing or other formalities that may be required for that type of document under Australian law, where Australian law is relevant. While this will be a concern for all lawyers on the transaction, these questions will be of particular importance to the firms that are issuing the closing opinions.

Perhaps surprisingly, given the prevalence of remote signings in modern commercial life, there are as yet no generally-accepted protocols in Australia for the conduct of remote signings, and no set of rules that is generally accepted by Australian legal practitioners as being sufficient to enable them to form the view that documents signed remotely have been properly executed as a matter of Australian law.

This absence in Australia of a generally-accepted set of procedures for the conduct of remote signings has concerned a number of practitioners for some time. As a result, the firms that are the joint authors of this paper have developed a set of procedures that they are prepared to accept (subject always to contrary instructions from clients) in the ordinary course for the effective remote execution of documents, in the hope that this will lead to a broader market consensus on the topic. The procedures have been developed for use in financing transactions, but should be able to be used for remote closings of other types of transactions as well.

Those procedures are the subject of this article. They are not necessarily the only procedures that are capable of satisfying relevant Australian legal requirements, and other procedures may be adequate in particular circumstances. This would need to be considered on a case-by-case basis.¹ The purpose of this paper is to set out some "safe harbour" procedures that the firms currently are prepared to accept (subject always to contrary instructions from clients) in the ordinary course for remote signings, in order to smooth the closing process. Where an opinion is being issued based

¹ For example, the procedures do not deal with the rules for electronic conveyancing that are being introduced across Australia (such as the *Electronic Conveyancing (Adoption of National Law) Act 2012* (NSW)). They also do not deal with the effectiveness of proprietary on-line products for the electronic creation, execution and storage of documents, such as DocuSign. See www.docusign.com.au.

on a closing in accordance with these procedures (particularly approaches 2 and 3), however, some additional assumptions and qualifications may also be necessary.

This paper sets out three distinct approaches to the remote signing of documents. The availability of a particular approach will depend for the most part on the type of document involved: in particular, whether the document is a deed; a document that will need to be registered with a land titles office; a document (such as a guarantee or document affecting land) to which the Statute of Frauds will apply; or a security agreement under the *Personal Property Securities Act 2009*.

If a transaction involves a remote signing, all affected parties should agree which of the approaches is to be adopted. This agreement should be struck in good time in advance of the actual signing, to avoid last minute misunderstandings. Each approach assumes there will be a “co-ordinating law firm” – this should also be agreed in good time. In a financing transaction this would usually be the financiers’ counsel, but that is not always the case.

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In summary, the approaches are these:

No.	Approach	Accepted for	Not preferred for
1.	<p>Print and sign entire document</p> <p>Remote party receives by email and prints entire document, signs it and returns by email a scanned copy of the entire signed document, or of the signed signature page.</p> <p>The originals follow, but receipt of the originals is not a condition to closing.</p>	All types of document.	<p>Not applicable.</p> <p>Note that this is the only proposed approach for deeds, real property mortgages and other registrable real property documents.</p>
2.	<p>Print and sign signature page</p> <p>Remote party receives by email the entire document with a separate signature page, prints and signs just the signature page, and returns a scanned copy of the signed signature page by email.</p> <p>The originals follow, but receipt of the originals is not a condition to closing.</p>	<p>Guarantees (unless deeds).</p> <p>Agreements that affect real property (unless registrable, or deeds).</p> <p>PPSA security agreements (unless deeds).</p> <p>Other simple contracts that are not subject to contrary statutory writing or signing requirements.</p>	<p>Deeds.</p> <p>Real property mortgages.</p> <p>Other registrable real property documents.</p> <p>Contracts that are subject to contrary statutory writing or signing requirements.</p>
3.	<p>Sign signature page in advance</p> <p>Remote party receives by email and prints a separate signature page, signs it and returns a scanned copy of the signed signature page by email.</p> <p>Remote party sends in original signed signature page by courier, before closing.</p> <p>Remote party sends follow-up email when document has been finalised, agreeing to be bound by the document and authorising the original signed signature page to be inserted into a hard copy.</p>	<p>PPSA security agreements (unless deeds).</p> <p>Other simple contracts that are not subject to contrary statutory writing or signing requirements.</p>	<p>Deeds.</p> <p>Real property mortgages.</p> <p>Other registrable real property documents.</p> <p>Guarantees (where the Statute of Frauds applies).</p> <p>Agreements that affect real property.</p> <p>Documents executed by a company under s 127(1) or (2) of the Corporations Act, if other parties intend to rely on the statutory assumption as to due execution in s 129(5) or (6) of the Corporations Act.</p> <p>Contracts that are subject to</p>

			contrary statutory writing or signing requirements.
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The full requirements for each approach are set out in Part B.

A remote signing may not always be appropriate

Approaches 1 and 2 contemplate that the remote party will send its wet-ink signed documents or signature pages to the co-ordinating law firm after closing. This exposes other parties to the risk that the remote party might not do this. While clients may be prepared to accept this risk for most types of documents, on the basis that the emailed signed document or signature page can be sufficient evidence that the remote party has bound itself, it can be more problematic for registrable real property documents, as you will need the wet-ink originals for registration. If you or your client are not completely confident that a remote party will send in the wet-ink originals promptly after signing them, you may need to make alternative signing arrangements.

Also, some legislation may require that registrable instruments be on a particular type of paper, or on paper of a particular size (eg A4). These requirements will need to be taken into account on a case-by-case basis, and may have the result in some transactions that a remote signing will not be practicable. In these situations, again, you will need to make alternative arrangements.

PART B – THE APPROACHES, AND WHEN TO USE THEM

1. Approach 1 - print and sign entire document

1.1 When it can be used

This approach can be used for all types of documents. It is the only proposed approach for deeds, real property mortgages and other registrable real property documents.

1.2 Steps in the approach

1. The co-ordinating law firm emails to the parties and their lawyers the final execution copy of the whole document, as a PDF or Word attachment.² The email should:
 - (a) instruct the parties to complete the steps described below; and
 - (b) state the number of copies of the document that each remote party's signatory needs to sign (eg one for each party).

A template for this email is attached as Annexure A.

2. Each party prints the required number of copies of the whole document, and its authorised signatory signs each of them on the signature page within the document. The document should **not be dated** at this stage – see step 5.
3. If it is a deed, the authorised signatory for each party (or another person authorised by deed) delivers the document.³ The party emails back to the co-ordinating law firm either:
 - (a) a scanned (ie PDF) copy of one of the signed documents, in full; or
 - (b) if that is not practicable because the document is lengthy, a PDF copy of the signed signature page from one of the signed documents.⁴

² While there is no substantive difference for present purposes between PDF and Word, parties may prefer to distribute PDFs as they are less amenable to unauthorised amendment. A PDF should also avoid the risk that the Word version of a document might contain an automatic date-updating feature (eg in a footer) that could inadvertently result in parties signing the document with inconsistent footer dates appearing on different pages or the document being automatically repaginated, possibly rendering cross-references incorrect.

³ A deed, to be effective, needs to be delivered. This can be done either unconditionally, or conditionally (ie as an escrow). Either way, once a party has delivered its deed it cannot resile from it. If a party does not want to deliver its deed immediately, but instead wants to entrust it to another person (eg the party's lawyers) on the basis that the other person will later deliver it on their behalf, it is likely that the party would need to authorise the other person to do so by a document under seal. See eg *Powell v London and Provincial Bank* [1893] 2 Ch 55, and more recently *Scook v Premier Building Solutions (2003) WAR 124* at paras [42]-[43]. This requirement does not apply, however, in Victoria – see s 73B of the *Property Law Act 1958* (Vic).

There is authority to the effect that a more relaxed approach may be available for conveyancing settlements, or possibly other settlements that involve the exchange of documents: see *Hooker Industrial Developments Pty Ltd v Trustees of the Christian Brothers* [1977] 2 NSWLR 109, and *Longman v Viscount Chelsea* [1989] 2 EGLR 242. Rather than rely solely on that approach, however, Approach 1 accommodates the stricter requirements for delivery of a deed as an escrow.

⁴ Whilst not essential, it would also be helpful to create the execution version of the document as a new version in the drafting firm's word-processing system, and to ensure that the version number is included in each page of the document including the signature page (eg as a footer). This can help to reduce the risk that the remote signatory might execute the wrong version of the document.

If it is anticipated that a remote party might return just the signed signature page and not the entire signed document, it would be helpful as an evidentiary matter for the following text to be inserted into the document, immediately below the "EXECUTED as [a deed/an agreement]" (or equivalent) text that appears immediately before the signature blocks:

Each person who signs this document for a party confirms that the page on which he or she signs is in a full copy of the document.

4. The email described in step 3 needs to provide a number of confirmations. The template email in Annexure A is drafted so that the co-ordinating law firm sets the confirmations out in the email, and the remote party gives the confirmations simply by replying to the email. The confirmations are:
 - (a) (if they only return the signature page) that the signatory signed the entire document, in the required number of copies, as set out in step 2; and
 - (b) either:
 - (i) that the party has executed⁵ and (if it is a deed) delivered the document with immediate effect, and that the co-ordinating law firm is authorised to date it immediately (take care using this option, if there is a chance that different parties will respond on different dates); or
 - (ii) that the party has executed⁶ and (if it is a deed) delivered the document on the basis that the document will not be effective until the conditions specified in the email are satisfied (eg that the co-ordinating law firm has received what it believes to be all other parties' corresponding materials), and that the co-ordinating law firm is authorised to date it, once those conditions have been satisfied.
5. When the co-ordinating law firm has received an email under step 4 from each party, and it believes that any conditions specified under step 4(b)(ii) have been satisfied, it sends a confirmatory email to the parties, and dates the signed documents (scanned or otherwise) that it has received in accordance with the authorisations provided by the parties.

Where a party has only sent scanned signature pages, that party may date its original signed document:

- (a) with the date on which it executed the document, if the option in step 4(b)(i) applies; or
- (b) with the date of the confirmatory email from the co-ordinating law firm, if the option in step 4(b)(ii) applies.

⁵ The approach refers here to "execute" rather than "sign" (as used elsewhere), to encompass both signing and (to the extent necessary) sealing.

⁶ See note 5.

Steps 1 to 5 will satisfy the relevant formal legal requirements. Steps 6 and 7 should also be completed, however, as a matter of good transaction management.

6. Promptly after closing, each remote party sends its original signed documents to the co-ordinating law firm by courier.
7. When the co-ordinating law firm receives the original signed documents under step 6, it dates them (as needed) with the date contemplated by step 5. When it has received all parties' originals, it distributes them as appropriate. In doing this, the co-ordinating law firm should **not** bind multiple counterparts together, or extract signature pages from different counterparts and bind them into "fully-signed" composite copies. Instead, the co-ordinating law firm should distribute the individual counterparts in the form in which it receives them.

2. Approach 2 - print and sign signature page

2.1 When it can be used

This approach is proposed for:

- (a) guarantees (unless they are intended to take effect as a deed);
- (b) agreements affecting real property that do not require registration (and that are not intended to take effect as a deed);
- (c) PPSA security agreements (unless they are intended to take effect as a deed); and
- (d) other simple contracts that are not subject to contrary statutory writing or signing requirements.

It is not proposed for deeds, real property mortgages, other registrable real property documents or contracts that are subject to contrary statutory writing or signing requirements.⁷

2.2 Steps in the approach

1. The co-ordinating law firm emails to the parties and their lawyers the final execution copy of the whole document as a PDF or Word attachment, and a separate PDF or Word copy of the relevant signature page.⁸ The email should:
 - (a) instruct the parties to complete the steps described below; and
 - (b) state the number of copies of the signature page that each remote party's signatory needs to sign (eg one for each party).

A template for this email is attached as Annexure B.

⁷ If a contract is subject to a statutory requirement for writing and/or signing, this approach may still be appropriate. This would depend, however, on the wording of the statute.

⁸ PDFs may be preferable. See note 2.

The separate signature page should clearly identify the document that it belongs to, eg by including identifying features such as:

- the name of the document (in a header or footer)
- the numeric identifier given to the document by the drafting firm's word processing system, including the version number (usually in a footer)
- its page number in the document (in a header or footer).

2. Each party prints the required number of copies of the signature page, and its signatory signs them. The page should **not be dated**.
3. Each party emails back to the co-ordinating law firm a scanned (ie PDF) copy of one of the signed signature pages.

In the email, the party needs to provide a number of confirmations. The template email in Annexure B is drafted so that the co-ordinating law firm sets the confirmations out in the email, and the remote party gives the confirmations simply by replying to the email. The confirmations are:

- (a) that the remote party's authorised signatory has signed the required number of signature pages as set out in step 2;
- (b) that the remote party will be bound by the document from:
 - (i) the date of that email (take care using this option, if there is a chance that different parties will respond on different dates); or
 - (ii) the date specified in the email as the date on which the remote party intends for the document to otherwise take effect (eg when the co-ordinating law firm has received what it believes to be all other parties' corresponding materials); and
- (c) that the co-ordinating law firm is then authorised, on or after that date:
 - (i) to insert each of the original signed signature pages into a copy of the document emailed to the signatory under step 1, in substitution for the corresponding unsigned signature page; and
 - (ii) to date those compiled documents with the date contemplated by step 3(b).

While not critical, it is helpful if the covering email is sent by the remote signatory. The email can however be sent by another person on the remote signatory's behalf. In either case, it is helpful if the sender of the email inserts their name into the email by way of signature (and does not simply rely on their email system to identify them as the sender).

4. When the co-ordinating law firm has received an email under step 3 from each party, and it believes that any conditions specified under step 3(b)(ii) have been satisfied, it sends a confirmatory email to the parties.

Steps 1 to 4 will satisfy the relevant formal legal requirements. Steps 5 and 6 should also be completed, however, as a matter of good transaction management.

5. Promptly after closing, each remote party sends its original signed signature pages to the co-ordinating law firm by courier.
6. When the co-ordinating law firm receives the original signed signature pages, it inserts them into the relevant documents, and dates those documents with the date contemplated by step 3. When it has compiled all the documents, it distributes them as appropriate.

3. Approach 3 - sign signature page in advance

3.1 General description and warning

This approach allows signature pages to be signed before the documents themselves have been finalised. A pre-signed signature page when attached to a final document with the authority of the relevant party can constitute the execution of the document by that party.

This approach may not be acceptable to all parties. If it is used, great care should be exercised. The practice requires clear evidence of authority and the creation of a clear and unambiguous paper trail for evidentiary purposes. This is reflected in the steps for this approach as set out below.

3.2 When it can be used

This approach could be used for PPSA security agreements (unless they are intended to take effect as a deed) and for other simple contracts for which Australian law does not impose a contrary writing or signing requirement.⁹

This approach is not proposed for any other documents.

This approach may also not be appropriate if the remote party is expected to execute the document under s 127(1) or (2) of the *Corporations Act 2001* (Cth) in a manner that will allow other parties to rely on the statutory assumption as to due execution in s 129(5) or (6) of the *Corporations Act*.

3.3 Steps in the approach

1. The co-ordinating law firm emails to the parties and their lawyers the relevant signature page, as a PDF or Word attachment.¹⁰ The signature page should identify the document that it belongs to (eg by including the name of the document or other identifying features).

The email should:

- (a) instruct the parties to complete the steps described below;
- (b) state the number of copies of each signature page that each remote party's signatory needs to sign (eg one for each party); and
- (c) state that when the party's authorised signatory signs the signature pages and releases them for scanning and return to the co-ordinating law firm, it authorises them to be attached by the co-ordinating law firm to the form of

⁹ See, however, note 7.

¹⁰ PDFs may be preferable. See note 2.

document which a subsequent email confirms has been agreed by the party, as outlined below.

A template for this email is attached as Annexure C.

2. Each party prints, and its signatory signs, the required number of copies of the signature page. The page should **not be dated**.
3. Each party:
 - (a) emails a scanned (ie PDF) copy of one of the signed signature pages back to the co-ordinating law firm; and
 - (b) as soon as practicable sends the original signed signature pages to the co-ordinating law firm by courier.

The party, by sending the email referred to in paragraph (a), will be taken to give the authorisation referred to in step 1(c).

4. When negotiations are complete, the co-ordinating law firm sends an email to the parties with a copy of the final form of the document and a request for each of them to confirm that:
 - (a) the form of the document is agreed and binding on the party; and
 - (b) the co-ordinating law firm is authorised to insert each original signed signature page into a hard copy,

in each case, either with immediate effect, or on satisfaction of the conditions set out in the email (eg when the co-ordinating law firm has received what it believes to be corresponding emails from all other parties).¹¹

A template for this email is attached as Annexure D.

5. The remote party gives these confirmations by simply replying to the email from the co-ordinating law firm. The reply email should be sent by an authorised signatory of the party or their authorised representative. If a remote party requires multiple signatories to bind itself to the document, each signatory should send a separate email.
6. When the co-ordinating law firm believes that it has received the requisite emails from all the parties, it sends all parties a confirmatory email.

Steps 1 to 6 will satisfy the relevant formal legal requirements. As a matter of good transaction management, the co-ordinating law firm should then assemble and date the documents, and distribute them. Similar to Approach 2, the co-ordinating law firm may use the signature pages for all parties to compile "fully-signed" composite copies of each document.

¹¹ This assumes that the co-ordinating law firm has received original signed signature pages from each party. Parties may still be prepared to close, however, even if this is not the case. This should be discussed at the time.

ANNEXURE A

APPROACH 1 – PRINT AND SIGN ENTIRE DOCUMENT

TEMPLATE EMAIL FROM CO-ORDINATING LAW FIRM

To: Lawyers and parties

Re: [Name of transaction] – documents for execution

We attach [in PDF format] execution versions of the following documents:

	Name of document	Parties	No. of copies
1			
2			
3			

Steps for each party to take

Please make sure that your party adheres fully to the steps set out below, to ensure proper execution. If you do not, the transaction may not be able to close. If you are not the sole authorised signatory for your party, please make sure each authorised signatory receives a copy of this email.

Step 1 – Print **in full** the number of copies of each document for your party that is set out for the document in the above table. **Do not just print the signature pages.**

Step 2 – Arrange for your party's authorised signatory/ies to sign each copy of each document in the relevant signature block in the body of the document. **Do not date the documents** at this stage. – see below.

Step 3 – Scan [**one full copy** of each document/the signed signature page from one copy of each document]¹, and email the scanned materials to us and the other recipients of this email as attachments to a "Reply all" email.²

Step 4 – Courier the full original signed documents to us at:

[address]

Delivery and efficacy

When we receive a party's scanned materials referred to in step 3 (or the originals, if they arrive first), that party will be taken to have executed and delivered its documents, on the basis that the documents [became effective on delivery/will only become effective when we confirm by email that

¹ Choose the appropriate option.

² The protocol contemplates that the remote party returns its materials with a "Reply all" email, as other transaction participants will also have an interest in knowing whether the party has signed. It would technically suffice, however, if the return email is sent only to the co-ordinating law firm.

we have received emails (or original documents) which appear to be from each party and (in the case of emails) to conform to step 3]³.

If we have received a scan of a full copy of a document, we will date it with the date on which it becomes effective. If we have only received a scan of the signature page for a document, the party (if it wishes) may date the originals with the date on which they became effective. (If not, we will do this, in accordance with your confirmations below.)

Confirmations

When you email to us a [document/the signature page for a document]⁴ or send us the originals of a document (if they arrive first) as described above, you will be taken to confirm the following on behalf of the relevant party:

- A. ⁵[If you email us only the signed signature page of the document rather than the full document – that the relevant authorised signatory/ies signed the required number of copies of the document in full.
- B.]The document has been executed and (where applicable) delivered by that party's authorised signatory/ies, and the party will be bound by the document from the date on which the document becomes effective, as described above.

[B./C.] When the document has become effective, we are authorised to date:

- (a) any scanned copy of the document that you have sent us; and
 - (b) the original copies of the document, when we receive them,
- with the date on which the document became effective.

[C./D.] If you are not your party's sole authorised signatory, the relevant authorised signatory/ies have authorised you to give the above confirmation(s).

If you have any questions, please let us know.

³ Choose the appropriate option.

⁴ Choose the appropriate option.

⁵ Delete if not applicable.

ANNEXURE B

APPROACH 2 – PRINT AND SIGN SIGNATURE PAGE

TEMPLATE EMAIL FROM CO-ORDINATING LAW FIRM

To: Lawyers and parties

Re: [Name of transaction] – documents for execution

We attach [in PDF format] execution versions of the following documents:

	Name of document	Parties	No. of copies
1			
2			
3			

We also attach a separate signature page for each document, which we have extracted from the documents.

Steps for you to take

Please make sure that your party adheres fully to the steps set out below, to ensure proper execution. If you do not, the transaction may not be able to close. If you are not the sole authorised signatory for your party, please make sure each authorised signatory receives a copy of this email.

Step 1 – Print the number of copies of each signature page for your party that is set out for the document in the above table.

Step 2 – Arrange for your party's authorised signatory/ies to sign each signature page in the relevant signature block. **Do not date the signature pages.** We will date the documents later, with the date they become effective – see below.

Step 3 – Scan one copy of the signed signature page for each document, and email it to us and the other recipients of this email as attachments to a "Reply all" email.¹

Step 4 – Courier all the original signed signature pages to us at:

[address]

Efficacy

Each party's documents will become effective [when we receive its relevant signature pages, either by email or as hard copy originals (if the originals arrive first)/when we confirm by email that we have received emails (or originals) which appear to be from each party and (in the case of emails)

¹ The protocol contemplates that the remote party returns its materials with a "Reply all" email, as other transaction participants will also have an interest in knowing whether the party has signed. It would technically suffice, however, if the return email is sent only to the co-ordinating law firm.

to conform to step 3]², even if we have not yet compiled full copies of them as contemplated by your confirmations below.

Confirmations

When you email or deliver to us a signature page as described above, you will be taken to confirm the following on behalf of the relevant party:

- A. The party's authorised signatory/ies signed the required number of signature pages.
- B. The party will be bound by the document to which the signature page relates from the date on which the document becomes effective, as described above.
- C. When the document has become effective, we are authorised to insert each original signed signature page into a copy of the relevant document in the form attached to this email, in substitution for the corresponding unsigned signature page, and to date the compiled document with the date referred to in paragraph B.
- D. If you are not the party's sole authorised signatory, the relevant authorised signatory/ies have authorised you to give the above confirmations.

If you have any questions, please let us know.

² Choose the appropriate option.

ANNEXURE C

APPROACH 3 –SIGN SIGNATURE PAGE IN ADVANCE

TEMPLATE EMAIL FROM CO-ORDINATING LAW FIRM – ATTACHING SIGNATURE PAGES

To: Lawyers and parties

Re: [*Name of transaction*] – signature pages for execution

We attach [in PDF format] signature pages for the following documents:

	Name of document	Parties	No. of copies
1			
2			
3			

Steps for you to take

Please make sure that your party adheres fully to the steps set out below. If you do not, the transaction may not be able to close. If you are not the sole authorised signatory for your party, please make sure each authorised signatory receives a copy of this email.

Step 1 – Print the number of copies of each signature page for your party that is set out for the document in the above table.

Step 2 – Arrange for your party's authorised signatory/ies to sign each signature page in the relevant signature block. **Do not date the signature pages.** We will date the documents later, with the date they become effective – see below.

Step 3 – Scan one copy of the signed signature page for each document, and email it to us as an attachment to an email replying to this email.

Step 4 – Courier all the original signed signature pages to us at:

[*address*]

The [scanned] signed signature pages must reach us before closing, or closing may not be able to proceed.

Confirmations

When you email or courier to us a signature page as described above, you will be taken to confirm the following on behalf of the relevant party:

- A. We are authorised, when we receive a subsequent email or emails from the requisite authorised signatory/ies of the party or their authorised representative, confirming that the form of the relevant document has been agreed, to attach the signature page to that form of document.
- B. If you are not the party's sole authorised signatory, the relevant authorised signatory/ies have authorised you to give the above confirmation.

If you have any questions, please let us know.

ANNEXURE D

APPROACH 3 –SIGN SIGNATURE PAGE IN ADVANCE

TEMPLATE EMAIL FROM CO-ORDINATING LAW FIRM – AUTHORITY TO CLOSE

To: [Names of remote parties]

Cc: [Names of lawyers]

Re: [Name of transaction] – authority to close

We refer to our email of [specify the date of email in the form of Annexure C] setting up the procedure and authorities that are to apply in relation to the execution of documents for this transaction.

As required in that email, you or your representative have previously sent us your party's signed signature pages for some or all of the following documents:

Name of document	
1	
2	
3	

The final form of each of these documents is now attached.

Confirmation and authority to close

To enable closing to proceed, we need the requisite authorised signatory/ies of each party or their authorised representative to send us an email or emails to confirm the following (if a party requires multiple signatories to bind itself to the document, each signatory should send a separate email):

- A. The party will be bound by the relevant documents in the form attached to this email, from the date [of the party's reply email(s)/on which we confirm by email that we have received corresponding emails which appear to be from each other party]¹.
- B. We are authorised to insert each signed signature page into a copy of the relevant document in the form attached to this email, in substitution for the corresponding unsigned signature page, and to date the compiled document with the date referred to in paragraph A.

Step for you to take

If you are prepared to give these confirmations, please reply to this email by way of a "Reply all" email.²

If you have any questions, please let us know.

¹ Choose the appropriate option.

² The protocol contemplates that the remote party returns its materials with a "Reply all" email, as other transaction participants will also have an interest in knowing whether the party has signed. It would technically suffice, however, if the return email is sent only to the co-ordinating law firm.