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COVID-19: Legal reflections on virtual closings

Year 2020. A beautiful number for the New Year. And yet, the dawn of 2020 has found humanity battling an epidemic threatening human lives and the future continuity and daily routine of humanity for months to come. Nevertheless, history has proven that humans can be resilient and resourceful in difficult times, wars, epidemics, economic crises.

It has been documented that military necessity in times of war has sparked technological development. The revolutionary technology of radio-based detection and tracking was the product of research and development during the World War II. Additionally, the layout of European railroad networks widely enjoyed by travellers was strongly influenced by strategic military considerations. The widely known GPS (global positioning system) navigation system was created for U.S. military use in the 1990s. All the above are just a few examples of how governments, companies, individuals can coordinate efforts in research and development to produce technologies for a better life.

There is no doubt that the COVID-19 pandemic represents a new challenge in all sectors of the economy, let alone the legal world. Turning to the specific issue at hand, which is the negotiation and conclusion of a corporate finance transaction, significant importance is attached to the *need* to have all parties, their representatives, legal and financial advisers physically present in the same place, in the same conference room. This takes the form of several meetings while a deal is being negotiated, leading to a final meeting when the closing of the deal is achieved; documents are in final agreed form, they are executed by the relevant parties, they are exchanged, hands are shaken.

Anyone with little experience in these types of closings, or who has heard relevant rumours from fellow colleagues, is wise enough to extend a polite warning to her or his family on the day of the closing that she or he might not be home in time for dinner. And despite the thrill of negotiations that many of us may enjoy during physical closings, there are technologically advanced ways that can facilitate such closings. The current epidemic has revealed a new opportunity to adopt new virtual ways which are not only less time consuming for legal counsel and representatives of parties attending the meetings in these transactions, but also more cost-efficient for the client who at the end of the day will not have to compensate the professionals involved for making themselves “physically”

available during closing negotiations. Research produced during this global pandemic focusing on the inner workings of companies who have had to transition into a “work-from-home” scheme for their employees, restricting physical, internal or external, meetings, revealed surprising findings: employees’ time is usually spent on physical meetings, consuming most of their weekly hours and allowing them less time for the actual, substantial work, shifted into time constructively spent on the production of such work. This conveys a message that physical meetings might be over-estimated, if not unnecessary for conducting closings.

In light of the new normal, with restrictions imposed by several jurisdictions on travelling and physical meetings, the mechanism of the “virtual” closing should be revisited as it represents a getaway to overcoming logistical difficulties and delays.

Before embarking on a “virtual’ closing, the following key takeaways should be adopted:

Ante closing

- A detailed step plan should be prepared and agreed by the parties along with their relevant counsel listing all the documents forming part of the transaction that will be circulated, accompanied by a set of thorough procedural instructions as how to print or download, execute, witness and or certify (as necessary), scan and circulate the documents or pages thereof. A virtual data room can be set up and used for the uploading of documents.
- The type of technology to be used in order to accommodate these closings should be agreed in advance; many video conference platforms available in the market provide high quality multiparty video streaming at little or no cost. Such platforms can be utilised not only for the interaction of the parties to the transaction ensuring a constant level of communication, as the medium for discussion in case problems are encountered, thus finding solutions on the spot, but also for the verification of the identity of the persons involved and the signatories throughout completion. Collaboration can also be enhanced by the possibility, offered by some of these platforms, of screen sharing functions so that the parties can simultaneously visualize the same transaction document.
- Parties and their respective counsel should familiarise themselves with the requirements and should understand their responsibilities. It is recommended that legal advisers arrange for a pilot run-through of the closing with their clients and the signatories in order to ensure that the instructions relating to the procedure of closing are clearly understood so that they can be followed to the letter. Caution must be exercised in order to avoid endangering the flow of the signing which will be detrimental to the time and benefit thereof.

Around the “virtual” closing table

- Within the EU, Regulation 910/2014/EU (the “**Regulation**”), which is directly applicable on all member states, establishes a comprehensive legal framework for e-signatures, e-seals, e-documents and in general all forms of electronic communications. Cyprus has additionally chosen to incorporate the provisions of the Regulation through Law 55(I)/2018 “Providing for a legal framework for electronic identification and related issues” which maps out the legal framework governing electronic signatures and some certification services aiming at facilitating their use and legal recognition. The aforementioned clearly allow for the possibility of signing the transaction documents electronically. For further reading on this, I refer to our team’s article on the matter:

[\[https://www.pavlaw.com/wp-content/uploads/2020/03/electronic-signatures_covid.pdf\]](https://www.pavlaw.com/wp-content/uploads/2020/03/electronic-signatures_covid.pdf)

Post closing

- As an additional cushion to all the aforementioned steps, parties are advised to adopt a post closing follow-up procedure which will be focused on the requirement to circulate “wet-ink” originals, even when a “virtual” closing process is followed. One party of the transaction and/or their counsel should be in charge of gathering and compiling the original hard copy transaction documents for subsequent circulation to each party, as well as for purposes such as filing, registration or stamping if applicable (in the relevant jurisdictions) of the signatories.

As a forward-looking law firm, from the beginning of this pandemic, we have been working closely with our dedicated IT team for the implementation of digital or virtual tools, mechanisms and software so that we may continue to maintain our policy of delivering the best level of service to our clients.

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