

**NOTE ON THE EXECUTION OF A LEGAL ASSIGNMENT UNDER SECTION 136 OF THE LAW OF
PROPERTY ACT 1925 BY ENGLISH AND OVERSEAS COMPANIES AND ENGLISH LIMITED
LIABILITY PARTNERSHIPS**

prepared by The City of London Law Society Financial Law Committee and dated 30 January
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1. Introduction and scope

1.1 This note has been prepared by The City of London Law Society Financial Law Committee ("**FLC**") to help parties who wish to enter into legal assignments under section 136 of the Law of Property Act 1925 ("**LPA 1925**") and their legal advisors. This note has been shared with the City of London Law Society Company Law Committee, which has endorsed its contents.

1.2 In view of market practice on financing transactions, this note considers legal assignments executed by attorneys on behalf of English and overseas companies and English limited liability partnerships ("**LLPs**") and does not consider execution by other agents on behalf of such entities.

1.3 This note is limited in scope to legal assignments executed by such entities in a business context, rather than those executed by consumers or other individuals. However, certain principles considered in this note may also be applicable to legal assignments entered into in other contexts. Each transaction should be approached according to its own facts and parties should take into account the wider implications of the transaction, including any relevant regulatory or tax implications.

1.4 This note is in respect of the position under English law only.

2. Background

2.1 This note considers the requirement in section 136 of the LPA 1925 for a legal assignment "of any debt or other legal thing in action" to be "by writing under the hand of the assignor".

2.2 This requirement was most recently considered in the case of *Frischmann v Vaxeal Holdings SA*¹ ("**Frischmann**") which was the decision of a Master on an application for summary judgment. Prior to *Frischmann*, it had only been considered in *Technocrats International Inc v Fredric Ltd (No.1)*² ("**Technocrats**").

2.3 *Frischmann* concerned the assignment of loans and a guarantee by an individual. The assignment was executed by his son as attorney under a lasting power of attorney, on the basis that section 7(1) of the Powers of Attorney Act 1971 ("**PoAA 1971**") provides for the

¹ [2023] EWHC 2698 (Ch).

² [2004] EWHC 692 (QB).

execution of a document by an attorney to be as effective as if it had been duly executed by the donor personally.³

2.4 The Master held that the requirement in section 136 of the LPA 1925 for a legal assignment to be by writing under the hand of the assignor was not satisfied in the present case where the son had signed as his father's attorney and that the PoAA 1971 should not be treated as rewriting the LPA 1925 in the absence of any express reference to the earlier statute.⁴ Instead, the assignment took effect as an equitable assignment.

2.5 In reaching her decision, the Master was referred to several cases, including *Technocrats*, although only *Technocrats* concerned section 136 of the LPA 1925. *Technocrats* also concerned an individual assignor. In that case, assignments were signed by the assignor's wife as his agent with his authority. The Judge held in that case that the words of section 136 did not allow for the possibility of someone other than the assignor signing in the assignor's name and the assignments took effect as equitable assignments.

3. Companies and Limited Liability Partnerships

3.1 *Frischmann and Technocrats* concerned assignments by individuals; there is no case law considering the requirements for execution of a legal assignment under section 136 of the LPA 1925 in the context of companies or other legal entities.

3.2 Where an English or overseas company or an English LLP is executing a legal assignment, it is the opinion of the FLC that the requirement in section 136 of the LPA 1925 for the assignment to be by writing under the hand of the assignor is satisfied where the assignment is executed by an English company or English LLP acting by its attorney as envisaged by section 47 of the Companies Act 2006 ("**CA 2006**") or by an overseas company acting by its attorney. This opinion is informed by the following factors.

3.2.1 The starting point is that, unlike an individual, a company cannot write its own name. A company has by implication a general power to appoint and act by agents, since it cannot act in its own person. This is reflected in the execution provisions in the CA 2006 which set out how a company can enter into documents.⁵

³ Section 7(1) of the PoAA 1971 provides: "If the donee of a power of attorney is an individual, he may, if he thinks fit – (a) execute any instrument with his own signature, and (b) do any other thing in his own name, by authority of the donor of the power; and any instrument executed or thing done in that manner shall...be as effective as if executed by the donee in any manner which would constitute due execution of that instrument by the donor or, as the case may be, as if done by the donee in the name of the donor".

⁴ Section 7(1) of the PoAA 1971 originated from section 123(1) of the LPA 1925, which may explain the absence of a reference in section 7(1) to the LPA 1925. The PoAA 1971 repealed section 123(1), replacing it with section 7(1) which was expressed in substantially the same terms.

⁵ Section 43(1)(b) of the CA 2006 provides that a contract may be made on behalf of a company, by a person acting under its authority, express or implied. Section 44(2) of the CA 2006 provides that a document is validly executed by a company if it is signed on its behalf by two authorised signatories (defined in section 44(3) as being every director of the company and, in the case of a private company

- 3.2.2 It was also recognised in the case of *re Diptford Parish Lands and In Re the Charitable Trusts Acts, 1853 to 1925* which involved a legal entity.⁶ In the case, a petition for appeal, to be presented under section 11 of the Charitable Trusts Act 1869 had to be made in writing *under the hand* of the appellants. The petition was signed by the solicitor to the appellants which was upheld by the Judge who did not consider it correct to read section 11 as requiring actual physical signature by an appellant and that it would be sufficient if an appellant signed the petition by his duly authorised agent. The appellant was a Parochial Church Council and the Judge queried how such a body could sign under its own hand, concluding that there was no substance in the argument that signature by the agent was not sufficient for section 11.
- 3.2.3 The argument was made in *Frischmann and Technocrats* that sections 40 (now repealed) and 53 of the LPA 1925 contained specific references to signature by an agent, whereas section 136 did not.⁷ However, in the case of companies, the LPA 1925 contains specific provisions on execution by corporations, providing generally in sections 74(3) and 74(4) for an attorney appointed by a corporate donor to execute instruments, including assignments. These provisions are supplemented by section 74(6) which provides that, notwithstanding anything contained in section 74, any mode of execution or attestation authorised by law or by practice or by the statute, charter, articles, deed of settlement or other instrument constituting the corporation or regulating the affairs thereof, shall (in addition to modes authorised by section 74) be as effectual as if section 74 had not been passed.
- 3.2.4 Section 47(1) of the CA 2006 provides that a company may, by instrument executed as a deed, empower a person as its attorney to execute deeds or other documents on its behalf. Section 47(2) of the CA 2006 provides that a deed or other document so executed has effect as if executed by the company.
- 3.2.5 Section 47(2) performs the same function in relation to execution of documents by attorneys on behalf of companies that section 7(1) of the PoAA 1971 performs. However, the background to section 47(2) and the history of how a document could

with a secretary or a public company, the secretary (or any joint secretary) of the company) or a director of the company in the presence of a witness who attests the signature.

⁶ [1934] Ch. 151. This case was considered in *Technocrats* but distinguished as not concerning section 136 LPA of the 1925, although *Wilson v Wallani* (1880) L R 5 Ex. 155, which concerned section 23 of the Bankruptcy Act 1869 and an individual, was looked to for support in construing section 136 in *Technocrats*.

⁷ In *Frischmann*, counsel for the defendants referred to a footnote in *Chitty on Contracts* (34th ed.) to [22-007] on section 136 which provided that: "in view of the specific references to signature by an agent in ss.40 and 53 of the same Act (cf. Law of Property (Miscellaneous Provisions) Act 1989 s.2(3)), it would seem that signature by an agent is here insufficient, at any rate if he signs his own name: see *Wilson v Wallani* (1880) 5 Ex. D. 155." See footnote 6 above on *Wilson v Wallani*.

be signed by a company are distinct and a reflection of how a company signs documents compared to an individual.⁸

- 3.2.6 The intention of the legislature in respect of companies signing legal assignments is also found in The Financial Collateral Arrangements (No.2) Regulations 2003 ("**FCARs**"). In dispensing with the signature requirement for financial collateral arrangements, regulation 4(3) provides that section 136 shall not apply in relation to a financial collateral arrangement "to the extent that the section requires an assignment to be signed by the assignor *or a person authorised on its behalf*, in order to be effectual in law" (emphasis added). In their application to non-natural persons, the FCARs recognise that a legal assignment may be executed on behalf of a company.⁹
- 3.2.7 In the case of overseas companies, the Overseas Companies (Execution of Documents and Registration of Charges) Regulations 2009 (the "**OCR 2009**") apply sections 43 and 44 of the CA 2006 to overseas companies with modifications.¹⁰ Section 47 of the CA 2006 is not applied to overseas companies. However, an attorney of an overseas company could sign a legal assignment if that mode of execution is permitted by the laws of the territory in which that overseas company is incorporated (in accordance with the modified section 44 of the CA 2006).
- 3.2.8 In the case of English LLPs incorporated under the Limited Partnerships Act 2000, sections 43 to 47 of the CA 2006 are applied to LLPs with modifications pursuant to regulation 4 of the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009.

4. Disclaimer

- 4.1 The aim of this note is to make suggestions only and not to give legal advice. No duty of care or liability whatsoever is accepted by those involved in the preparation or approval of this note, or the firms or organisations that they represent, to any company or other legal entity or individual who relies on material in it.

⁸ The precursor to section 47(2) was section 38(2) of the Companies Act 1985 ("**CA 1985**") which provided for a deed executed by an attorney to have the same effect as execution under the company seal. The requirement for companies to have a seal was subsequently abolished with section 47(2) reflecting the wording in section 44(2), with execution under section 47(1) being an alternative to section 44(2) and the wording in section 44(2) reflecting that it was no longer necessary for a company to have a seal.

⁹ This is also reflected in textbooks on assignment. See, for example, Smith & Leslie on the Law of Assignment (paragraph 16.40, 3rd Ed.) and Guest on the Law of Assignment (paragraph 2-17, 4th Ed.).

¹⁰ Section 44(2) of the OCR 2009 provides that: "A document- which (a) is signed by a person who, in accordance with the laws of the territory in which an overseas company is incorporated, is acting under the authority (express or implied) of the company, and (b) is expressed (in whatever words) to be executed by the company, has the same effect in relation to that company as it would have in relation to a company incorporated in England and Wales or Northern Ireland if executed under the common seal of the company so incorporated."

The Financial Law Committee

30 January 2025