Submission from Maclay Murray and Spens LLP

1. **What are the advantages and disadvantages of the approach taken in the bill? Are there are provisions not included in the bill which you considered should be?**

   - We strongly support the Bill and do not believe that they are any particular disadvantages nor further provisions that need to be included. We see the fundamental purpose of the Bill as to remedy a perceived "defect" in current Scots law for the benefit of clients and the legal profession.

   - Although there is some case law to the effect that execution in counterpart has always been possible under Scots law, there has been sufficient doubt that such execution has in practice virtually never been used. The consequence is that parties must all sign the same single document. This can cause logistical difficulties, particularly in the case of major high value commercial transactions involving a number of parties, not all of whom may be in the same country let alone the same city.

   - Pragmatic as ever, Scots lawyers have therefore resorted to circulating a single document by various means, but even this causes delay and practical difficulties. Equally pragmatic, but undesirable, a solution has been to change the governing law of the documents to that of English law in order that execution in counterpart would be possible. This is undesirable generally from the point of view of Scots law, including the fact that one thereby loses the opportunity to litigate any matters arising under Scots law or have Scotland as the seat of any arbitration under the document. Further, and in any event, the latter solution does not work in relation to property documents, as the governing law is that of the *lex loci* i.e. Scotland.

2. **How will the Bill improve the process of the execution of legal documents in Scotland?**

   - We have answered this above.

3. **Do you consider that the Bill will precipitate an increase in the use of Scots Law to govern transactions?**

   - Yes for the reasons stated in response to Question 1 above.

4. **What the financial implications of the Bill?**

   - This is not a question to which we can give a particularly full answer. We would note, however, that there will be costs savings for parties
if the mode of execution of documents is simplified. On the other side of the financial equation, allowing issues arising from the document to be litigated/arbitrated in Scotland will increase the flow of legal work to this jurisdiction.

5. **Are there any equality issues arising from the Bill?**
   - We are not aware of any equality issues that do, or could, arise from the Bill.

6. **What is your view of the potential environmental impact of the Bill?**
   - To the extent that there is an environmental impact, it arises from issues flowing from our answer to Question 1 above, namely the need to avoid parties travelling, whether by plane or otherwise, in order to execute the documents in order to consummate legal transactions in Scotland.