

The Jersey perspective on electronic signatures: key points

Briefing Summary: Developments in technology and the increase in remote working, particularly as a consequence of the spread of the coronavirus (COVID-19), have made the desire or need to use electronic signatures much more acute.

Service Area: Banking and Finance, Corporate, Corporate Regulation and Compliance, Investment Funds, Restructuring and Insolvency, Trusts and Private Wealth

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Introduction

This note provides a brief Jersey law summary on:

- the execution of Jersey law documents by electronic signature; and
- the witnessing of such electronic signatures.

It also sets out some other Jersey law points and practical matters to be considered in relation to the execution by a Jersey entity of Jersey or foreign law documents by electronic signature.

It focuses on those documents that are typically used in corporate or financing transactions.

Key points

- Jersey law establishes a statutory framework for electronic signature, which provides that a signature, seal, attestation or notarisation is not to be denied legal effect validity or enforceability only because it is in electronic form.
- In most cases Jersey law documents can be executed by electronic signature. The main exceptions are documents that are not usually relevant to corporate or financing transactions such as contracts relating to Jersey land.

- The following methods of electronic signature of a document are generally acceptable for Jersey law purposes:
- where a person accesses a document through a web-based e-signature platform and clicks to have his or her name in a typed or handwriting font automatically inserted into the document in the appropriate place;
- where a person electronically pastes his or her signature (e.g. in the form of an image) into an electronic (i.e. soft copy) version of a document in the appropriate place; and
- where a person uses a finger light pen or stylus and a touchscreen to write his or her name electronically in the appropriate place in a document,

provided that, in each case, the method used identifies the person who provided the signature and indicates the person's approval of the document. The method provided by DocuSign, or other similar electronic signature platforms, is an acceptable method of execution of a document.

- The person who has been authorised to sign the document should be the one who inserts/pastes their name or signature electronically. They should not authorise someone else to do this on their behalf. In addition, wherever possible, the person who was authorised to sign should be the one who sends the electronically signed document from their own email address back to the lawyers or other parties.
- Consideration should be given to whether the standard level of authentication of identity offered by such methods of electronic signature will be appropriate in each case. In most cases the standard email-based method of authentication used by DocuSign and other similar platforms should be sufficient. There may however be cases where additional levels of authentication, such as SMS authentication, should be considered, particularly in the case of documents that have special importance or are entered into in unusual circumstances.
- There are few documents in corporate or financing transactions whose execution is required by Jersey law to be witnessed. If a Jersey power of attorney is to be granted by: (a) a natural person who is to execute by electronic signature; or (b) a company, whose articles of association require its sealing, or signing to be witnessed, a witness must be physically present at that signing or sealing. Alternatively, where a natural person is to execute the power of attorney, witnessing by video conference is acceptable in accordance with a recent revised direction of the Royal Court, subject to the conditions/caveats set out in that direction, including that the power of attorney is executed by wet-ink signature. In the case of a company, it may be possible to amend the articles to remove any such requirement for sealing, or signing to be witnessed. If a witness is required, the witness can generally sign the document by electronic signature using one of the methods set out above. Where the requirement for execution to be witnessed is imposed by another party to a document, rather than by law, that party or its advisers should be consulted as to what formalities are required for witnessing or whether witnessing is really necessary. Where the requirement for witnessing is a matter of foreign law, lawyers in the relevant jurisdiction should be consulted.

- It could be prudent for the parties to a document that is to be signed electronically to agree a procedure to ascertain whether that document (or, e.g., an email attaching a counterpart of such document) was from its alleged originator.
- Where it is proposed that a document (whether Jersey or foreign law) is signed electronically on behalf of a Jersey entity, then its constitutional documents must be checked as to: (a) whether such documents permit (or at least do not prohibit) electronic signature on behalf of the entity; and (b) any requirements that an electronic signature must satisfy. Additionally, the relevant corporate authorisations must be checked: the best practice will be for them to refer to electronic signature of such document including the particular method of signature.
- Foreign law will be relevant to electronic signature of a foreign law document by a Jersey entity.

For further information or professional advice please get in touch with your usual Carey Olsen contact.

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