

E-signatures are good in Guernsey

Service area / [Corporate, Investment Funds](#)

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This memo summarizes the legal validity of electronic signatures (“**e-signatures**”) in Guernsey both generally and more specifically in relation to funds. In short, Guernsey encourages the commercial use of e-signatures and smart contracts.

[Electronic Transactions Law](#)

The commercial use of e-signatures in transactions is supported and provided for in the Electronic Transactions (Guernsey) Law, 2000, as amended (the “**ET Law**”). The ET Law was modelled on the UK’s equivalent Electronics Communications Act 2000 and has been updated and amended to encourage the use of smart contracts technologies. Broadly, the ET Law provides that a contract, declaration, signature, seal, attestation or notarisation is not denied legal effect, validity, enforceability or admissibility solely because it is in electronic form. A signature in electronic form is defined as “a signature wholly or partly in electronic form attached to or logically associated with information in electronic or non-electronic form, and references to a signature being in electronic form shall be construed accordingly”. Generally, e-signatures are considered as valid as wet signatures for most commercial contracts. Certain documents are “exempt” and these include conveyances of Guernsey real property, wills, certain sealed documents and documents to be sworn or executed in court or before a notary.

[Companies Law](#)

The Companies (Guernsey) Law 2008, as amended (the “**Companies Law**”) has no bar on e-signatures and has simple provisions regarding execution of documents (including

powers of attorney). A company may execute a document (including appointing an agent) in its name by (1) affixing the company’s common seal (if any), or (2) the signature of a director or secretary; or (3) any means authorised by the company’s memorandum or articles of incorporation. Powers of attorney given by a company require a director’s signature or by any manner provided for in the articles. Typically, most Guernsey memoranda and articles contain a common signature provision which provides for a director’s signature (a few adopt seals) and the name of the company which would be amenable to e-signature. Note that an individual signing a power of attorney may be subject to the slightly more complex formalities under the Powers of Attorney and Affidavits (Bailiwick of Guernsey) Law 1995, as amended.

The ET Law has no particular rules to deal with the identity or authenticity of an e-signature. A scanned manuscript signature is commonly accepted or an e-signature from a platform such as DocuSign. It is a question of fact whether there is sufficient certainty that an e-signature is authentic and was properly authorised (see below). Some boards resolve that documents may be executed by a specific method, and a clear procedure for doing so is set out and followed in each case.

Accordingly, a Guernsey company with no restrictions in its memorandum or articles can execute most documents in, for example, a fund closing by e-signature and store documents in electronic form without having to maintain the originals save for the documents specified in the exemptions listed above. A contract governed by non-Guernsey law will be subject to differing legal requirements and the validity of such execution is outside the remit of this note.

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English guidance relevant to Guernsey

As the ET Law is silent on e-signature authentication, our view is that a Guernsey court would take a pragmatic and non-prescriptive approach. As there is no Guernsey case law on e-signatures, English common law precedent and guidance in relation to e-signatures would be persuasive, albeit not binding, in a Guernsey Court. In this regard the Law Commission of England and Wales' 2019 [Summary Report on the Electronic Execution of Documents](#) is helpful. The report provides that an e-signature is capable of being used to execute a document if (i) the person signing the document intends to authenticate the document; and (ii) any formalities relating to execution of that document are satisfied – such as witnessing or being “handwritten”. *“Save where the contrary is provided for... the common law adopts a pragmatic approach and does not prescribe any particular form or type of signature. In determining whether the method of signature adopted demonstrates an authenticating intention the courts adopt an objective approach considering all of the surrounding circumstances”*. In England and Wales, the courts have, for example, held that the following electronic forms amounted to valid signatures where there is a statutory obligation to provide a signature but where the statute is silent as to whether an e-signature is acceptable:

- a name typed at the *bottom* of an email;
- clicking an “I accept” tick box on a website; and
- the header of a SWIFT message.

Witnessing

In commercial contracts, there are only a few occasions when a document needs to be witnessed particularly as Guernsey does not have the English law concept of a “deed”. Where a witness' signature is required, we would follow the Law Commission's report which concludes that a statutory requirement for witnessing and attestation is capable of being satisfied in the case of an electronically executed [deed] *“where the witness is physically present in the same location as the signatory”*. This could be achieved by the witness observing the signatory apply their electronic signature in the same location, and then attest to this fact by adding their own electronic signature to the same document. This approach would be subject to any restrictive formalities for those types of exempted documents listed above.

Counterparts, electronic platforms and DocuSign...

Commonly, a contract will be signed in multiple counterparts. When a Guernsey governing law contract is executed by multiple people electronically – for example using the e-platform DocuSign – each signatory applies their signature to the same file, uploads it to the relevant signature platform and this will be treated as one counterpart (Guernsey would likely follow [The UK's Law Society guidance on execution of a document using an electronic signature](#)). It is not strictly necessary to include a counterparts clause in the contract itself because, even if there is no such clause, the executed contract will still be valid under Guernsey law (assuming other signing requirements/authorities are in order). However, bespoke counterpart wording can reassure parties of their intentions regarding execution.

Cryptographic keys as e-signatures?

In the recently published [UK Jurisdiction Taskforce's Legal Statement on Cryptoassets and Smart Contracts](#), the view was held that a statutory signature requirement is highly likely to be capable of being met by means of an encrypted private “key”. *“That is because an electronic signature which is intended to authenticate a document will generally satisfy a statutory signature requirement, and a digital signature produced using public-key cryptography is just a particular type of electronic signature. ... Where a private key is used to sign a document, it may be the case that the signature itself is comprised solely of a signed message using signature authentication software confirming the validity of the signature. We understand this has led to some concern that the use of a private key may not fulfil a statutory signature requirement. In our view, this does not present a problem. The key question is not what the signature looks like, but whether or not it is clear that the party intended to authenticate the full terms of the document”*. To support the adoption of smart contract and e-signatures, Guernsey recently amended the ET Law to confirm that self-automated “smart contracts” are “electronic agents” and as such are recognized as valid in Guernsey law. Consequently, some Guernsey fund administrators have adopted private blockchain and distributed ledger technologies which rely on smart contracts. For more see our briefing on [Guernsey's recognition of electronic agents and smart contracts](#).



PLEASE NOTE

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