

Electronic Signing - Guernsey

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With self-isolation and social distancing now forming the rule rather than the recommendation, working from home has become the norm during these uncertain times. Although these actions have proven necessary, they also present certain logistical and administrative obstacles to companies continuing their business efficiently and effectively. Among the issues that we have seen raised on a number of occasions by our clients over recent weeks are whether the directors of a Guernsey company are able to execute documents electronically and whether they are able to rely on documents executed in such a manner. The below sets out some general guidance for directors and companies facing similar issues during these unprecedented times.

When considering the validity of electronic documents and signatures, directors should look primarily to the provisions of:

1. the Companies (Guernsey) Law, 2008 (the **Companies Law**);
2. the relevant company's articles of incorporation (the **Articles**); and
3. the Electronic Transactions (Guernsey) Law, 2000 (the **Electronic Transactions Law**).

| Companies Law

The Companies Law provides that a document shall be executed on behalf of a company by affixing the company's common seal, by signature of a director or secretary of the company or by such other means as the memorandum or articles of incorporation authorise. Beyond this, the Companies Law remains silent on the form of signature required and thus does not expressly prohibit the signing of documents in electronic form.

Although not directly relevant to the electronic execution of documents, it may be helpful to note that Schedule 3 of the Companies Law deals specifically with electronic communications to the members of a company, which, although beyond the scope of this note, directors should bear in mind when seeking to provide notices, information and documents to a company's members for approval.

Articles

As noted above, the Companies Law allows for the execution of documents on behalf of a company by such means as may be authorised by the company's Articles. Therefore, when considering the question of whether a document has been validly executed on behalf of a company based on an electronic signature (e-signature), directors should also look to the provisions of the Articles.

It is not uncommon for Articles to be silent on the subject of electronic signatures, with companies often relying on the default statutory position when adopting their Articles in order to avoid making their Articles convoluted and unnecessarily restrictive. However, it remains advisable to review a company's Articles before arranging for the electronic execution of a document in order to ensure that they do not contain any provisions expressly preventing the use of electronic signatures. Directors should also be aware of provisions expressly requiring the execution of documents in person or requiring certain signing procedures to be followed that can only be done in person, which may include a signature being witnessed.

Electronic Transactions Law

Where a company's Articles remain silent, the provisions of the Electronic Transactions Law will prevail. This law was introduced in order to confirm that the legal requirements of form can be met electronically and that information and documents shall not be denied legal effect, validity, enforceability or admissibility solely because they are in electronic form.

The Electronic Transactions Law covers a range of matters relevant to the continuation of a company's business, most notably stating that contracts, declarations, statements, documents and signatures shall not be denied legal effect, validity, enforceability or admissibility solely because they are in electronic form. Of particular importance, the Electronic Transactions Law also states that where a law, whether statutory or customary, requires a signature, seal, attestation or notarisation then such signature, seal, attestation or notarisation in electronic form will satisfy the requirements of that law.

It may also be helpful to note that should a document need to be retained, the Electronic Transactions Law provides that the retention of an electronic copy of that document will also be sufficient for the purposes of the relevant law.

When arranging for the electronic signing of documents, directors should remain conscious of the fact that the provisions of the Electronic Transfers Law shall not prevent a document being denied legal effect, validity, enforceability or admissibility when executed electronically for a reason other than that it is in electronic form or was done by electronic means.

Recommendations

Although companies are currently faced with an unprecedented level of restrictions on their directors and employees being able to interact in person, directors should take comfort from the fact that Guernsey has a robust statutory framework in place that will facilitate continued business during this time. Before arranging for the electronic execution of documents we would recommend that a company's directors consider the following:

- the directors should thoroughly review the company's Articles to be sure that there are no restrictions on the signing of documents electronically;
- for the sake of certainty, the directors should expressly authorise the execution of the relevant documents electronically during the course of the board meeting at which such documents are considered; and
- the directors should ensure that all normal signing requirements and procedures are complied with when arranging for the electronic execution of a document.

Ogier has assisted a number of clients to ensure that they are well-placed to continue operating as seamlessly as possible despite the current difficulties. Should you have any questions or require specific advice on your circumstances, please do not hesitate to get in touch with us.

Ogier's team is fully versed in the use of Electronic Signatures and Digital Contracts across our global jurisdictions. We can also prepare digital contracts for electronic signature on our clients' behalf, enabling them to benefit from the technology without needing to invest in the infrastructure themselves. To find out more, contact any of the team members on the right or visit our [online services page](#).

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Meet the Author



Bryon Rees

Partner

Guernsey

E: bryon.rees@ogier.com

T: [+44 1481 752312](tel:+441481752312)

Key Contacts



Tim Clipstone

Partner

British Virgin Islands

Guernsey

E: tim.clipstone@ogier.com

T: [+44 1481 752265](tel:+441481752265)

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