

Snapshot: witnessing Powers of Attorney via electronic means in Jersey

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Powers of Attorney (**PoA**) are commonly used in private equity transactions due to the operational efficiencies they can create.

In the funds context, one such operational efficiency is often realised in the subscription agreement further to which a PoA is typically granted by each investor in favour of the general partner (or any other nominated party). By authorising the attorney to sign all the required documents on behalf of each investor, the speed of the execution process is increased and as such closing formalities for PE funds with a global investor base is a more efficient and streamlined process.

However, the move towards electronic signatures has raised questions regarding how the witnessing requirement, relevant where the PoA is granted by an individual, may be met in a remote signing context. Jersey's recently amended Electronic Communications (Jersey) Law 2000 offers welcome clarification on this point.

Jersey Law formalities when granting a PoA

Under the Powers of Attorney (Jersey) Law 1995 (the **1995 Law**), where the donor of the PoA is an individual, the PoA must be witnessed by another individual who is not a party to the PoA. A simple enough requirement in the context of wet ink signatures contemplated when the 1995 Law was brought into force, however, the move to electronic signatures (emphasised throughout the COVID-19 pandemic and the associated lockdowns) has led to queries regarding how the witnessing requirement may be met in a remote signing context.

Amendments

The amendments brought in under the Electronic Communications (Amendment No.2) (Jersey) Law 2022 (the **Amendments**), which came into force on 11 March 2022, offer welcome clarification on the electronic witnessing of documents.

In accordance with the Amendments, a signature can be electronically witnessed if both the signatory and the witness can see each other via any audio-visual link, such as Zoom or Microsoft Teams and, dependant on the proposed manner of execution of the document, either:

- a. *(when the document in question is to be executed in either hard form or soft form)* (a) the witness identifies the signatory and sees the signing of the document, (b) the signatory sends the witness an electronic copy of the document, and (c) the witness then signs the document attesting to the signatory's signature (the **Attestation**); OR
- b. *(where both the witness and the signatory are screen sharing and both can see and/or edit the same electronic document)* (a) the signatory and the witness are in communication by any other electronic means, (b) both can see the document, (c) the signatory electronically executes the document, and (d) the witness completes the Attestation.

The Amendments also importantly allow for the witness to complete their Attestation at any time after the act of witnessing the execution, which is an added bonus as it minimises the need for the parties to repeat the process if, for whatever technical reason, the document in question could not instantly be provided to the witness for the Attestation.

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